TE

KĀHUI MAUNGA

Downloaded from www.waitangitribunal.govt.nz

TE KĀHUI MAUNGA

The National Park District Inquiry Report

Volume 3

Wai 1130

Waitangi Tribunal Report 2013

The cover photographs show the mountains Tongariro, Ngāuruhoe, and Ruapehu in the Tongariro National Park. The top photograph is by Glen Coates, the lower one by Daniel Talbot.

National Library of New Zealand Cataloguing-in-Publication Data

New Zealand. Waitangi Tribunal.
Te kāhui maunga: the National Park District Inquiry Report /
Waitangi Tribunal.
(Waitangi Tribunal report 2013)
Includes bibliographical references.
ISBN 978-1-86956-305-9
1. Tongariro Power Development Scheme—History. 2. Treaty of Waitangi (1840) 3. Maori (New Zealand people)—New Zealand—North Island—Claims. 4. Maori (New Zealand people)—Land tenure—New Zealand—North Island. 5. Land tenure—New Zealand—North Island. 6. Tongariro National Park (NZ)—History. [1. Kerēme (Tiriti o Waitangi). reo 2. Tiriti o Waitangi. reo 3. Mana whenua. reo 4. Whakatau mauri. reo 5. Whenua tautohetohe. reo 6. Tuku whenua. reo]
I. Title. II. Series: Waitangi Tribunal report
333.11—dc 23www.waitangitribunal.govt.nz

Typeset by the Waitangi Tribunal
This report was previously released on the internet in 2012 in pre-publication format as *Te Kāhui Maunga: The National Park District Inquiry 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

Downloaded from www.waitangitribunal.govt.nz

SHORT CONTENTS

VOLUME 1

VOLUME 3

VOLUME 3

LIST OF TABLES

ABBREVIATIONS

AEE	Genesis Power Ltd, *Tongariro Power Development: Assessment of Environmental Effects* (Manukau: Genesis Power Ltd, 2000)
AJHR	*Appendix to the Journal of the House of Representatives*
app	appendix
ATL	Alexander Turnbull Library
CA	Court of Appeal
CFRT	Crown Forestry Rental Trust
ch	chapter
CNI	central North Island
comp	compiler
doc	document
DNZB	*The Dictionary of New Zealand Biography*, 5 vols (Wellington: Department of Internal Affairs, 1990–2000)
DOC	Department of Conservation
DTHR	Department of Tourist and Health Resorts
ECNZ	Electricity Corporation of New Zealand
ed	edition, editor, edited by
fl	flourished
FMC	Federation of Mountain Clubs
fn	footnote
fol	folio
ha	hectare
LHAD	land history alienation database
LINZ	Land Information New Zealand
ltd	limited
MA	Department of Maori Affairs file, master of arts
MOW	Ministry of Works
NCC	Nature Conservation Council
NIWA	National Institute of Water and Atmospheric Research
NLC	Native Land Court
no	number
NZED	New Zealand Electricity Department
NZFS	New Zealand Forest Service
NZLR	*New Zealand Law Reports*
NZPD	*New Zealand Parliamentary Debates*
OIC	Order In Council
OTS	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
PC	Privy Council
PEP	Project Employment Programme
pt	part
repr	reprinted
RMA	Resource Management Act 1991
ROI	record of inquiry
ROLD Act	Reserves and Other Lands Disposal and Public Bodies Empowering Act
s, ss	section, sections (of an Act of Parliament)
SC	Supreme Court
sec	section (of this report, a book, etc)
sess	session
SOE	State-owned enterprise
SPB	Scenery Preservation Board
TBZ	Taumarunui Borough Council
TNP	Tongariro National Park files
TNPMP	Tongariro National Park Management Plan
TPD	Tongariro Power Development
TTC	Tongariro Timber Company
TTCMS	Department of Conservation, *Tongariro/Taupo Conservation Management Strategy, 2002–2012* (Wellington: Department of Conservation, 2002)
TVZ	Taupō volcanic zone
WAS	Waimarino Acclimatisation Society
vol	volume

'Wai' is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, endnote references to claims, papers, and documents are to the Wai 1130 record of inquiry, a select copy of which is reproduced in appendix IV.

Downloaded from www.waitangitribunal.govt.nz

PART IV

MANAGEMENT AND DEVELOPMENT OF NATURAL RESOURCES AND THE ENVIRONMENT

Part III focused on the loss of Māori land, whether for Pākehā settlement, public works, or conservation. As land passed out of Māori hands, there was loss of subsistence, loss of livelihood, and loss of opportunity – and all this made it difficult for Māori to participate in the new economy. But in part IV, we turn to more recent developments and current grievances, and we begin to look forward as we consider the management and development of natural resources specific to the National Park district. The tide is turning and ngā iwi o te kāhui maunga are positioning themselves for a new future.

The Tongariro National Park, the subject of chapters 11 and 12, contains an abundance of taonga: the mountains, the waters that flow from them, the forests, and the diversity of fish and wildlife. Te kāhui maunga, the iconic peaks Tongariro, Ngāuruhoe, and Ruapehu, form the core of the national park, and the relationship between Crown and iwi which builds on the 1887 tuku. The Crown argued that this relationship improved markedly in 1987 when the Conservation Act was passed. We thus separate discussion of the management of the park into chapter 11 (1887 to 1987) and chapter 12 (1987 to 2007).

The primary question we address in both chapters is the extent to which ngā iwi o te kāhui maunga were able to exercise rangatiratanga over their taonga. We look, in chapter 11, at the succession of legislative and management regimes for the park to see if tangata whenua were included in decision-making. We ask, in particular, if Whanganui Māori were involved in management, and whether four generations of Te Heuheu were able to participate alongside their partner, the Crown.

The story is carried forward into chapter 12. The Conservation Act 1987 created the Department of Conservation (DOC) and charged it with the administration of Crown conservation lands, and the protection of wildlife and cultural property. Section 4 of the Conservation Act 1987 contains a very explicit Treaty clause:

> This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

The Crown has argued that this Act, and its implementation by DOC, have brought about very significant changes. We look, in turn, at the legislation, the policy frameworks, and the outworking of these policies on the ground. We explore the extent to which ngā

iwi o te kāhui maunga are now able to exercise rangatiratanga over their taonga.

The claimants have drawn our attention to experience in Australia and Canada. Building on our findings, and the insights gained from Canada and Australia, we make a set of recommendations for Tongariro National Park.

Waterways and customary fisheries (chapter 13) are each held in high regard as taonga by the claimants: important for everyday life, and linking whānau, hapū, and iwi.

We point to divergent conceptualisations of waterways. The Crown, building on British common law, is able to separate the water in lakes or streams, from the beds of the lakes or streams, and the banks which contain the water bodies. Māori, in contrast, conceptualise a river or a lake as a single indivisible entity. We ask if Crown's purchase agents explained their conceptualisation in clear and unambiguous terms. Unless they did, there could be no free and willing consent to the purchase of rivers or lakes. We examine how waterways passed out of Māori hands and into the hands of the Crown.

We consider customary fisheries and trout together. Both have provided bounty and subsistence where other foods were limited by extreme winters. Historically, this bounty was shared with downriver whanaunga. We examine claims that the loss of fisheries means loss of tikanga and mātauranga, and opportunity to exercise manaakitanga and kaitiakitanga.

It is no surprise that the Tongariro power development looms large in this inquiry. Behind this report are bigger issues to do with rangatiratanga, kaitiakitanga, and mana over water. These matters are dealt with by the National Freshwater and Geothermal Resources generic inquiry.

The TPD was conceived at a time of rapid economic growth and serious electricity shortages, and built by the Ministry of Works between 1964 and 1984. The headwaters of the Whanganui and Tongariro river systems were diverted into Lake Rotoaira to generate power at Rangipō and Tokaanu. Water released enhances generation from nine more power stations on the Waikato River.

The TPD chapter divides into three parts. The first considers the intentions of the Crown and the nature of consultation with Māori during the establishment and construction phases. The second examines post construction impacts, and the extent to which regulatory regimes have been Treaty compliant. The third looks forward: asking what measures can be put in place to restore the kaitiakitanga of ngā iwi o te kāhui maunga.

The Taupō volcanic zone extends into our district: the Tokaanu–Waihī geothermal field underlies the boundary, and the Tongariro–Ketetahi field is within this district. Hot springs and fumeroles are important in an environment which has severe winters. The microclimates which result made it possible for hapū of Ngāti Tūwharetoa, in particular Ngāti Hikairo, to live in their kāinga and cultivate their māra year round. Whanaunga and manuhiri travelled to Ketetahi Springs and Lake Rotoaira to enjoy warmth and the healing springs, and the manaakitanga of the kaitiaki hapū.

In chapter 15, we address questions regarding the ownership and the management of the geothermal resource, especially at Ketetahi Springs, before we consider options for economic development. The Crown exercised a monopoly over generation of electricity from geothermal fields, excluding Māori for five decades. An important breakthrough came in 1999 when the Tuaropaki Trust obtained resource consents from Environment Waikato to build a geothermal power station on the Mokai field in the CNI. The Crown has pointed to the success of Mokai, and Ngāti Tūwharetoa and Ngāti Hikairo are exploring the possibility of similar small scale developments in this district.

CHAPTER 11

HEI WHENUA TAPU MO TE IWI KATOA: THE ADMINISTRATION OF THE PARK, 1887–1987

11.1 Introduction

Horonuku Te Heuheu's tukunga whenua, on behalf of his people, marked the beginning of a new era for the management of cultural resources and the natural environment in the National Park inquiry district. Acquiring the peaks of te kāhui maunga in 1887, the Crown took steps to give effect to its objective of establishing a national park around the three iconic maunga: Tongariro, Ngāuruhoe, and Ruapehu. Over 100 years after Te Heuheu's tukunga whenua, the Tongariro National Park now encompasses several hundred thousand acres of land in the central North Island, in which both Whanganui Māori and Ngāti Tūwharetoa have significant interests. During this period, the Crown has administered the land and its resources under various legislative regimes and through various boards and government departments. That administration has reflected principles of preservation and recreation over time, for which Yellowstone, the world's first national park, provided some inspiration. But international models and experiences cannot be simplistically applied to the Tongariro National Park. This park has a unique history, not least because it was established on the basis of a relationship between Māori and the Crown. The nature of that relationship historically, however, remains a source of considerable complaint from claimants in this inquiry. Ngāti Tūwharetoa contend that the relationship did not reflect the spirit of Te Heuheu's tuku, whereas Whanganui Māori claim that they have had no relationship with the Crown at all, despite the inclusion of their ancestral lands and waters in the park. In this chapter, we assess these claims in terms of what actually happened on the ground.

In part II of our report, we found that the Rohe Pōtae negotiations of the 1880s and the Taupōnuiātia application were legitimate expressions of tino rangatiratanga and practicable opportunities for partnership. In part III, we considered that the Crown breached Treaty principles in the pursuit of its goals for the region. Those goals centred on the Crown's desire to expand its sphere of authority into the centre of the North Island. An aspect of that involved developing a tourist industry in the central North Island under government control. Officials and promoters of tourism stressed the importance of public ownership of tourist assets to prevent scenic features falling into the hands of speculators and, thus, undermining government control. In pursuing this policy, however, the Crown acquired, in breach of Treaty principles, several taonga of tangata whenua, most notably the mountains, Ruapehu, Ngāuruhoe, and Tongariro.

In part IV of our report, we explore the management and development of natural resources and the environment, to determine if this complied with the Crown's Treaty obligations. In this chapter, we consider park administration from the time of the tuku until the passing of the Conservation Act 1987. This 100-year period witnessed significant development and environmental change within the Tongariro National Park. Chapter 12 then picks up management of natural and cultural resources within the inquiry district by the Department of Conservation (DOC) until the completion of our hearings in 2007. This 20-year period has also witnessed significant change, particularly with respect to the Crown's understanding of Māori interests.

Aside from the Crown's Treaty duties, a focal point of the claims in these two chapters is the expectations and obligations arising from the tuku, and whether the administration of taonga that are now in the national park complied with those expectations and obligations. We consider those in this first chapter, as they inform the rest of our analysis with respect to the governance of natural resources and the environment in part IV.

The key question that frames our analysis in this chapter is: In the history of the park, to what degree has the Crown provided for ngā iwi o te kāhui maunga to exercise rangatiratanga over their taonga and what impact has this had on their way of life?

We now turn to claimant and Crown submissions.

11.2 Claimant Submissions

Claimant submissions identified two standards by which the Tribunal should measure Crown actions in the history of park management. The first of these was the Treaty standard. Counsel argued that the Treaty guaranteed to Māori active protection of their tino rangatiratanga over their natural and physical resources and taonga for so long as they wished to retain it. In accordance with this guarantee, the Crown should have entered into arrangements with tangata whenua to promote and protect their rangatiratanga. However, rangatiratanga, say the claimants, is not qualified by a balancing of interests. Rather, the Crown's governance is qualified by the promise to protect and guarantee Māori rangatiratanga over their possessions.[1]

Not only is the ability for Māori to exercise tino rangatiratanga over their taonga a Treaty guarantee, but it was essential if claimants were to exercise their cultural responsibilities. The rights and duties that Māori have as kaitiaki of the environment necessitate active protection of their rangatiratanga. These rights and duties, counsel emphasised, exist regardless of the legal ownership of land. The Treaty guaranteed this.[2]

The Treaty guarantees, however, have not been met in the history of park management. The Crown failed to recognise and protect the tino rangatiratanga of tangata whenua within the legislative framework governing the park. In particular, the Crown delegated powers of management and control of the national park to a statutory board of management. That statutory delegation, in the claimants' view, consistently failed to reflect the right of tangata whenua to exercise their rangatiratanga and kaitiakitanga over their taonga. The legislation failed to enshrine the tangata whenua's values, as well as ensure them adequate powers of governance through board management of the park. This has continued to the present day.[3]

Instead, the Crown imposed a European concept of a 'national park' on tangata whenua that was irreconcilable with their tikanga and values. First, the legislative regime enshrined values of preservation and recreation. Māori values or interests, on the other hand, had no place within the statutory framework. Secondly, the only provision for tangata whenua input in the history of park management was the statutory provision for Te Heuheu and his lineal descendants to sit on the board.[4] Whanganui Māori received no representation on the board for the entire history of the park. For these reasons, claimants argued that the Crown's statutory delegation of park administration breached the principles of partnership, reciprocity, and active protection.[5]

Counsel for Ngāti Tūwharetoa had a different focus from other claimants. Counsel examined administration of the national park from the expectations arising out of the 'gift'. According to counsel, it was a condition of the

'gift' that a partnership was created for the joint ownership and management of the taonga into the future. Te Heuheu expected that Ngāti Tūwharetoa would exercise tino rangatiratanga over taonga in the future. That would have enabled the tribe to decide whether certain activities within the park were culturally appropriate.[6]

According to counsel for Ngāti Tūwharetoa, the Crown failed miserably to fulfil the conditions of the 'gift'. Te Heuheu was granted a symbolic role in governance of the taonga, rather than his rightful position as the Crown's partner.[7] Initially, Te Heuheu was one of four trustees on the board. Then, in 1914, the Crown legislated to remove Te Heuheu's seat altogether without consultation. It did this consciously and aware that it would breach one of the conditions of the gift. Te Heuheu regained his place on the board in 1922, but his mana was further insulted by the inclusion of a large number of 'interest groups'. This got progressively worse over time. The National Parks Act 1952 established a National Parks Authority, which nationalised the management of all parks and ranked above the local park board. This effectively watered down the local board's overall decision-making powers, thus completely failing to fulfil the conditions of the gift.[8]

The Crown also failed to legislate for the implementation of Ngāti Tūwharetoa's cultural and spiritual values in park management. This failure can be attributed to the Crown's assumption that Te Heuheu's objectives aligned with its own. Ngāti Tūwharetoa, however, rejected this assumption. Te Heuheu, in counsel's submission, thought that a 'national park' was an area that was to be kept sacred and inviolate in partnership with the Queen. The Crown's statutory framework failed to uphold those cultural and spiritual values.[9]

Although the statutory framework failed to reflect either the Treaty standard or the conditions of the gift, claimants submitted that the duty of active protection still applied. The Crown was under a continuing obligation to actively protect taonga (including cultural taonga) from the exercise of external authority, exploitation and damage.[10] To fulfil that Treaty duty, the Crown was required to make informed decisions on matters affecting Māori interests.[11] This included a duty to consult with Māori to determine the impact that governance of the national park would have on their interests. In counsel's submission, however, the Crown failed to sufficiently inform itself of the consequences of board administration.[12] The focus of the Crown was not on protection of Māori interests, but rather the treatment of everything within the park as the Crown's property for use however it wished.[13] This did not take into account Māori perceptions of land and nature, nor allow for use of their land and taonga.[14]

In terms of the Crown's duty to inform itself of Māori interests, claimants made several important submissions. Whanganui claimants argued that Te Heuheu's position on the park board did not represent a wider Māori community of right-holders within the rohe. Counsel argued that there was no record of Te Heuheu consulting with Whanganui Māori on any issues before the board. Nor does it seem likely that Te Heuheu ever saw himself as a Whanganui Māori representative with respect to the park. For that reason, it is clear that Whanganui Māori interests were totally excluded from board administration.[15] Policy guidelines developed in the last 20 years that encourage consultation with tangata whenua are a step in the right direction, but constitute a gesture that, in reality, is no greater than that extended to the public in general. The Crown's lack of consideration for Whanganui Māori interests occurred despite their significant contribution to the creation of the park and the Crown's historical awareness of their interests in the rohe.[16]

Several hapū of Ngāti Tūwharetoa also commented on the Crown's understanding of their interests. Ngāti Hikairo, Ngāti Waewae, and Ngāti Mananui contended that their relationship with the park board in the first 100 years of management existed primarily through Te Heuheu's position on the board. In their view, this fell short of what the hapū required. According to the principle of partnership, the Crown and its statutory delegates had a responsibility to ensure that these hapū were actively involved in the park's administration.[17]

Even Te Heuheu's position on the board, according to counsel for Ngāti Tūwharetoa, did not mean the Crown was adequately informed of Māori interests. Historically, the board was composed primarily of members whose

values were diametrically opposed to the values of tangata whenua. The composition and agenda of the board to develop the park as a recreational playground, therefore, made a place on the board extremely uncomfortable for Te Heuheu. In the circumstances, Te Heuheu was not given the practical opportunity to have meaningful input or influence on board decision-making. Significantly, major infrastructural developments were approved without any understanding of Ngāti Tūwharetoa's interests. According to counsel for Ngāti Tūwharetoa, minutes of board meetings show that Te Heuheu was silent on a number of important development proposals before the park board. This possibly reflected Te Heuheu's private anguish at development that was supported by his fellow board members, but that failed to take account of the sacred character of the mountain.[18]

Management of taonga by the board without sufficient consideration of Māori interests caused considerable prejudice to tangata whenua. Recreational development within the park reflected the conception of Māori taonga as 'resources' to be gathered, taken or utilised for recreational and commercial pursuits. This took no account of the effect on the wairua of the taonga or tangata whenua. Historically, the maunga were the focus for recreational development. The board was charged with the responsibility to make the mountains publicly accessible and provide facilities for the public to enjoy their beauty and other scenic attractions.[19] As a consequence, te kāhui maunga were not protected in a manner befitting the cultural and spiritual expectations of tangata whenua. Private enterprise ran business on the maunga, reflecting the huge chasm in beliefs and values between the two different cultures. Several uses violated the tapu of the maunga and caused the mauri to suffer, including:

- tramping, climbing, skiing on the mountain;
- the erection of infrastructure and visitor facilities, including club huts, ski fields, and the Chateau;
- the construction of toilets and the inadequate and culturally insensitive disposal of sewage, rubbish, and waste water;
- access to areas of spiritual and cultural significance;
- the reproduction of photos or videos of the maunga without permission; and
- flying and landing on the maunga for recreation.[20]

Despite the significant development that centred on their taonga, tangata whenua were excluded from the economic benefits generated from recreational and tourism development. Ngāti Tūwharetoa submitted that they were supposed to be partners with the Crown in holding the mountains in joint ownership and keeping them tapu. Joint ownership would have carried with it the right to benefit from revenue earned by the park, if it was opened up for commercial tourist activities. They argued, however, that the Crown pursued a rival development plan in the 'national interest', centring on natural resources that are taonga to Ngāti Tūwharetoa. In doing so, the Crown acted not as a Treaty partner, but as a competitor in the development opportunities within the national park.[21] Tangata whenua were left behind in the process, at significant cost in lost opportunity to their people.

Management of the park in accordance with the principle of preservation also compromised Māori customary rights. According to claimants, preserving resources for experiencing nature's ecosystem as a visitor was very different from the Māori conception of their ongoing relationship with their resources and the environment. Legislation prohibiting access to their resources, therefore, prevented tangata whenua from performing their cultural obligations legally throughout the history of the park. Not only did the legislative regime compromise those rights, however, but acclimatisation of exotic species also proved environmentally disastrous and directly interfered with customary rights. Claimants argued that the Crown did not consult with Māori over acclimatisation of exotic species, failed to exercise effective control over that acclimatisation and, finally, was slow to respond to the evidence of a negative impact on indigenous flora and fauna from acclimatisation. This amounted to an overall failure of the Crown to take responsibility for the decline of Māori taonga. As a consequence, important customary resources are now no longer available to ngā iwi o te kāhui maunga, or face considerable competition from exotic species.[22]

Interference in Māori customary rights, according to claimant counsel, may occur only when:

- it is for some overriding national or conservation purpose;
- it is a last resort; or
- reduced use by non-Treaty rights-holders would be insufficient for national or conservation purposes.[23]

Furthermore, if the rights of those with a Treaty-protected interest are to be interfered with, it should be the minimum necessary to achieve the desired aim, reviewed regularly, and removed when no longer required. The claimants alleged that, if the Crown wished to introduce conservation measures, we could expect to see:

- an assessment that the resource is under threat;
- an assessment of the source of the threat and whether controls on non-Treaty rights-holders would be sufficient; and
- if control on Treaty rights-holders are required, the minimum consistent with the goal of conservation.[24]

Claimant counsel submitted that where conservation required Māori and non-Māori to restrain resource use because of previous Treaty breaches, the issues of redress and equity are raised. In such circumstances, special assistance may be required to ameliorate the effects of regulation and control on Māori.[25]

11.3 Crown Submissions

The Crown submitted that in the 120 years since the establishment of the national park, considerable development in park management has taken place. For that reason, the Crown recommended the Tribunal consider a broad range of issues relating to what might be described as 'park management' in this inquiry. Historical context was also regarded as important, particularly the fact that no national parks existed in New Zealand at the time of the gift. The Crown emphasised:

> From 1887 to the present day, the idea of national park management has evolved from an embryonic form into what is today a highly sophisticated area of professional and voluntary effort, involving many people from both within and outside the government, and significant public funding.[26]

The Crown's understanding and approach to managing cultural and environmental heritage was a key part of that evolution.[27] Māori are recognised as kaitiaki and their involvement in park management has been, and is, actively sought. According to the Crown, claimants in this inquiry have not taken sufficient account of the changes made in the administration of the park.[28]

In the Crown's submission, there were three 'high level' issues for Tribunal consideration:

- Whether the Crown's legislative and policy settings favoured non-Māori use and excluded Māori;
- Whether the Crown struck an appropriate balance between protection of the park and human use; and
- Whether use of the gift area was consistent with the terms of the gift itself.[29]

These three issues framed its submissions.

The Crown rejected the contention that legislative and policy settings for the management of the park have favoured non-Māori use and enjoyment. For the Crown, that argument had proceeded from two broad premises. First, that the national park concept was philosophically exclusive, and, secondly, that the park was administered so that Māori were rendered invisible and their interests subsumed by predominantly non-Māori interests.[30]

The Crown rejected claimant arguments on the philosophical exclusivity of national parks. This, the Crown argued, overlooked significant differences between international precedents, such as Yellowstone National Park, and our own national parks. In particular, the Tongariro National Park was 'the first in the world to be founded on a special relationship between an indigenous people and the Crown.'[31] Furthermore, the park has remained accessible to all throughout its history in accordance with the values of public access for recreation.[32] Therefore, the Crown suggested, the Tribunal should focus on what actually occurred in terms of the park's management, and by reference to what is known about Crown and Māori motivations, action and reactions.[33]

The Crown stated that national park administration was not based on a philosophy of wilderness preservation to the exclusion of all other values and interests. According to the Crown, legislation, statutory policies, and management plans have consistently specified a balance between preservation and use.[34] In the Crown's view, the early Tongariro National Park statutes had a public amenity and recreation character quite different from the protection of natural values underpinning modern national parks.[35] How well this legislative regime was understood amongst tangata whenua is difficult to know. What is clear, the Crown submitted, is that there is no historical evidence of Māori dissent from the philosophy underlying national parks legislation.[36] Nor is there evidence of dissatisfaction with the extent of public access provided for recreation, either from the Te Heuheu representative on the board or Ngāti Tūwharetoa.[37]

The other premise the Crown took issue with was the idea that Māori were rendered invisible and their interests subsumed by non-Māori interests. The Crown's starting point is that park management involves a legitimate exercise of article 1 rights. In the Crown's submission, this reflects the Tribunal's understanding of the hierarchy of interests in respect of natural resources, as expressed in the *Radio Frequencies Report* and the *Ngawha Geothermal Resource Report*. The first interest is the Crown's duty to control and manage those resources in the interests of conservation and the wider public interest. Following that is the tribal interest ahead of those who have a commercial or recreational interest. According to the Crown, where its kāwanatanga duties to protect the rights of Māori to exercise rangatiratanga are in conflict, consultation is necessary. But the Crown's responsible exercise of kāwanatanga may ultimately require it to make the final decision.[38]

Māori interests were not rendered invisible. The gift gave rise to an expectation on the part of the descendants of Te Heuheu and Ngāti Tūwharetoa that they would have an ongoing role in the governance of the national park. Ngāti Tūwharetoa was granted a seat on the board of trustees governing the park via the legislation.[39] A seat on the board was to meet the ariki's expectation that the association of Te Heuheu and Ngāti Tūwharetoa with the sacred mountains would never be lost. According to the Crown, 'that is the expectation and standard against which subsequent Crown conduct ought to be measured'.[40] In the Crown's assessment, the legislative framework is to a very large extent congruent with the Crown's understanding of Te Heuheu's values and motivations for the gift.[41]

Ngāti Tūwharetoa's ancestral connection to the park has, in the Crown's view, received prominent formal recognition. This can be attributed to the Crown's appreciation for the gift, which laid the foundation for the park.[42] The Crown acknowledged, however, that at times it appeared that 'Ngati Tuwharetoa's involvement in the governance and management of the park may not have been at the level contemplated by Te Heuheu at the time of the gift'.[43] In 1914, Tūreiti Te Heuheu's trusteeship ceased for eight years. Ngāti Tūwharetoa was not consulted about this action and Te Heuheu's position was not re-established until 1922. Deliberately or inadvertently, therefore, the Crown failed to consistently fulfil the condition of the gift to maintain Te Heuheu's personal and tribal connection with the mountains through the statutory mechanism of the right to be a trustee.[44]

The Crown argued it could expect certain things from Te Heuheu's membership on the board. For instance, the Crown thought it was reasonable to expect Te Heuheu to have used his board membership to have provided Ngāti Tūwharetoa with information about management of the park. It was also reasonable for Te Heuheu, as trustee, to have canvassed the tribe's views on business before the board, including development plans and proposed additions to the park.[45]

As for non-Ngāti Tūwharetoa interests, the Crown conceded that there was no formal role for Māori in policy development or park management between 1900 and 1952. That was because recognition of the special relationship between tangata whenua and parklands has occurred only recently, reflecting 'the renaissance of consciousness about Maori interests, particularly as kaitiaiki'.[46] In that respect, Whanganui Māori, particularly Ngāti Rangi, 'have had a longer journey' than Ngāti Tūwharetoa to have their rights and role as tangata whenua recognised by park management.[47] This meant that Māori participation in the

park, apart from Ngāti Tūwharetoa, was essentially on the same basis as other citizens until the 1980s. In 1983, Māori interests were given greater recognition through the *General Policy for National Parks*.[48] As we discuss later in the chapter, the views of tangata whenua were to be taken into consideration in the formulation of future decision-making from then on.[49]

The Crown argued that there is little evidence that Māori suffered prejudice from management of the park historically. It explained that the claimants' submissions focused on three particular areas of prejudice:

- environmental degradation of national park lands and environment;
- exclusion of Māori from sharing in the economic benefits flowing from the park; and
- fracturing of the relationship between the tangata whenua and national park lands and resources.[50]

The Crown accepted that the duty of active protection extends beyond property interests, to include taonga guaranteed to Māori by article 2 of the Treaty. But the Crown says it is not possible to state what 'priority' Māori interests will take. These will depend on a range of factors, such as the relative importance of the taonga to Māori, any environmental threat to the taonga, available research about it, other interests that may exist in respect of it, and the human and monetary resources required for effecting Māori interests. The Crown's overriding obligation is to the environment. In carrying out the balancing exercise, the Crown acknowledged that it 'must adhere to the Treaty obligations of good faith, reasonableness, and partnership'.[51]

The introduction of exotic species within the national park and the inquiry district was not, in the Crown's view, an action that was in breach of Treaty principles.[52] The Crown submitted that the introduction of exotic flora and fauna into New Zealand was undertaken in good faith and without full knowledge of the ultimate effects on the environment and Māori cultural practices. The Tribunal should not use present-day knowledge and behaviour to judge the actions or omissions of European colonisers, as the ecological effects of such introductions were not reasonably foreseeable by the actors at the time. In the Crown's view, it is important to examine the knowledge that was either held at the time or was reasonably available to the Crown.[53]

The Crown did accept that the introduction of heather was an act that, by today's standards, was misguided and unfortunate. Through force of personality, former police commissioner John Cullen introduced heather as part of his plan to transform the Tongariro National Park into a Scottish hunting park. The Crown acknowledged that Cullen's connections to Prime Minister William Massey may have assisted him in his activities, but stated that he was acting in a private capacity only, and during a time when there was insufficient proof of an adverse impact on indigenous plant species. In the Crown's view, the fact that responsible agencies may not have done much to restrain Cullen's activities, as would be expected today, does not mean that the Crown introduced heather into the national park.[54]

At a general level, therefore, the Crown submitted that it took reasonable steps to avoid and mitigate environmental degradation and pollution. In the Crown's view, natural resources adapt to changing environmental circumstances and this change will occur with and without human interference.[55] The human ability to protect natural resources is limited, as some factors impacting on those resources can be controlled, and others cannot, or only to a limited extent. According to the Crown, it acted reasonably and in good faith in the circumstances. Environmental impacts are an almost inevitable and regrettable consequence of colonisation.[56]

Excluding tangata whenua from the economic benefits of the park was another issue claimants raised. The Crown acknowledged that the extent to which claimants feel excluded from the economic benefits of the national park is a serious issue. However, it stated that the existence of the national park has significant flow-on benefits, including economic benefits, for communities within the district. The Crown submitted, however, that the Treaty does not require the Crown to facilitate Māori entry or participation in any form of commercial industry, including tourism. Successful economic development is complex and, according to the Crown, depends on a range of

factors, including ownership of an attraction which draws in tourists, capital, skills, and experience. Enterprise associated with the national park has had a chequered history, including insolvency (for example, the Chateau and Tūroa ski field) and business difficulties arising from volcanic events and adverse climatic patterns.[57]

The third issue raised by claimants was the effect park management had on their relationship with taonga. There appeared to be two key areas of concern. First, there was the issue of customary rights and how the legislation and policy framework restricted access for Māori to their taonga historically. Secondly, there was the issue of public access to tapu areas in the park.

The Crown acknowledged that customary rights were an important feature of Māori life in this inquiry district. Traditionally, customary rights were exercised throughout the park, including in close proximity to the mountains.[58] Although the statutory framework restricted certain rights, this was not, according to the Crown, in breach of Treaty principles. In the Crown's view, these restrictions were a reasonable exercise of the Crown's authority under article 1, enabling governance for the conservation of natural resources and the balancing of competing interests.[59] Furthermore, the Crown stated that it is unclear how such legislative restrictions actually impacted upon the people on the ground. Evidence before the Tribunal demonstrated that some tangata whenua continued to practice their rights in the first half of the twentieth century. In the circumstances, it is possible that such laws were not well known and a 'relatively light-handed approach to enforcement' ameliorated any impact on Māori customary rights.[60]

Public access to tapu areas was the other area of significant concern to claimants. The most talked about region of the park were the mountains. The Crown argued that a degree of European access to the mountains was accepted as part of the realities for their future management when Te Heuheu signed the deed of 1887.[61] While access to the mountains was always contemplated, the Crown acknowledged that there was opposition to commercial or intrusive development into sensitive areas.[62] This was particularly the case with the peaks of te kāhui maunga. While the Crown acknowledged the need to maintain dialogue with tangata whenua over this sensitive area, it stated that it has a duty to govern in the interests of all New Zealanders. This may, in the Crown's submission, require access to the peaks.[63] According to the Crown, the actual extent of the tapu area is unclear from the evidence available. Nonetheless, the Crown acknowledged that use of the maunga for limited human activities and associated infrastructure does raise important questions in terms of the gift.[64]

11.4 Submissions in Reply

At a generic level, claimants disagreed with the Crown's contention that they had not taken sufficient account of the evolution of park administration. According to claimants, the Crown was using the terrible state of affairs that used to exist historically to justify the bad state of affairs that now exists. An improvement in park administration today, particularly as it relates to recognition of Māori interests, does not mean that the Crown has not breached the principles of the Treaty in the past, or is giving them full effect today.[65]

Counsel for Whanganui claimants went a step further and argued that the Crown had totally missed the point. The issue is not that Māori were excluded from park lands, but that tangata whenua, particularly Whanganui iwi, were excluded from governance and management of their taonga and resources for over a century.[66] Provision for kaitiakitanga must include an obligation to manage and govern the national park.[67] Instead, the Crown delegated decision-making power, historically, to a body that was not accountable for its actions in Treaty terms.[68] A Treaty-compliant regime would contain the fundamental elements of partnership, with legislative provision to provide for rangatiratanga.[69]

Ngāti Tūwharetoa claimants also argued that the Crown missed the fundamental issue, which, in their view, was whether ngā maunga tapu had been managed in partnership with the tangata whenua. That was Te Heuheu's kaupapa in making the 'gift', but the Crown had failed to manage the taonga in this way.[70] Te Heuheu was only one

of a number of members on the Tongariro National Park Board governing the taonga, and this position did not specifically account for hapū views with respect to those taonga.[71]

The claimants also submitted that the Crown has failed to take responsibility for the impacts of its management of the park. The underlying preservationist philosophy has disregarded the kaitiaki role of tangata whenua in the park's history. Furthermore, the development of recreational and tourist facilities failed to take appropriate regard of the sanctity of the taonga.[72] In the management of taonga, therefore, the Crown has failed to meet its Treaty responsibilities.

11.5 Tribunal Analysis

In our introduction, we indicated that we have divided our analysis of this topic into two separate chapters covering separate time periods. We did this primarily in response to submissions made by the Crown. In opening submissions, the Crown acknowledged that its recognition of the special connection that tangata whenua have with the national park and the maunga has evolved over time. In particular:

> there has been greater recognition of tangata whenua over the last 20 years than previously.[73]

In that sense, the Crown appeared to argue that the last 20 years were a turning point and, therefore, required separate treatment. The reason for this was because:

> The Conservation Act 1987 . . . represent[ed] an evolution with regard to the recognition of Treaty principles.[74]

We agree. Section 4 of the Conservation Act 1987 requires DOC to 'give effect' to Treaty principles in its administration of the conservation estate. That change in the statutory framework provides the principal reason why we examine the post-1987 period of park administration separately. Policies and procedures developed for the purpose of ensuring the department fulfils its requirements under legislation have proliferated since 1987. These policies and procedures guide the department in its everyday action to ensure it 'gives effect' to Treaty principles. We need to scrutinise those policies and procedures in detail to ensure that we can be sure the department has interpreted its Treaty obligations appropriately. We discuss this further in chapter 12.

11.5.1 What rights did the Treaty protect?

For ngā iwi o te kāhui maunga, the Tongariro National Park inquiry district contains an abundance of taonga. The most prominent of all taonga in our district are te kāhui maunga: Tongariro, Ngāuruhoe, Ruapehu, Pīhanga, and Hauhungatahi. These maunga are revered by the tangata whenua as living entities and stand at the centre of a region replete with kai and rongoā resources. In chapter 2, we emphasised the relationship that the tangata whenua have with their natural resources and taonga in the National Park inquiry district. We explained that the historical abundance of taonga within this district was the reason that some hapū were prepared to live in such a challenging climate. Indeed, the particular challenges posed by the climate and soil fertility in this region reinforced the dependence of ngā iwi o te kāhui maunga on their taonga.

Māori survived these unforgiving surroundings, and even prospered, through an intimate knowledge of their environment and what it had to offer. Te Ngaehe Wanikau recalled his father's kōrero on living within the embrace of te kāhui maunga:

> my father was once asked what possessed his ancestors to actually choose to reside in this area, where the weather was notorious for its ferocity and mood swings, where the very earth itself was unsuited to growing many of the crops that were the mainstay of many of the other tribes through-out the country.
>
> His answer was simple: it was the richness of this area as a food source. The waterways teemed with native fish species, in the surrounding forests and cliff faces, were Taiko, Kereru, Tui, Kiwi, and many other manu, on the ground were kiore. This was a bountiful larder for those who inhabited the rohe.

The central volcanic plateau. Despite being harsh and challenging, the environment provided local Māori with a rich variety of resources.

> Of course the weather conditions were not easy, which required a larger hapu estate than most others. This allowed the hapu to range within their rohe, gathering and hunting in a cyclical manner. For this form of gaining sustenance from the land, there [is] required a large rohe.[75]

Historically, tangata whenua have relished the rich resources of this high country plateau. The volcanic soils and ngahere provided an abundant source of paru (dye) for traditional weaving. Rosita Dixon explained that

> The red ochre, the sulphur and bark for dyes are only found in certain places and it's important that we regularly take from those places to monitor their growth patterns.[76]

This environment was also a plentiful source of rongoā. The bush surrounding the mountains was described as the 'old people's chemist'.[77] Alpine plants, unique to this area, were frequently used to cure a variety of health problems, including stomach complaints and skin conditions.[78] Some claimants professed that they never got sick growing

Volcanic soil and vegetation. These provided a source of dye for traditional weaving.

up.[79] Combined with the healing properties of Ketetahi Springs on Mount Tongariro and the Whangaehu River on Ruapehu, ngā iwi o te kāhui maunga had access to abundant sources of rongoā in this inquiry district.

The luxuriant forest flora of te kāhui maunga enabled a variety of fauna to thrive. Birds, insects, and animals were always in good condition and were highly sought after by the hapū as seasonal delicacies. Indigenous species, such as kererū, kākā, weka, kiwi, pekapeka and, very importantly, tītī, were all part of the staple diet of tangata whenua.[80] These sources of kai served the needs of not only the whānau, but through koha served to strengthen relationships between their neighbouring whanaunga.[81] Exotic fauna, like pig, deer, and sheep, were also an important supplementary source of kai for Māori, particularly with the decline of indigenous species during the twentieth century. The forested area around Lake Rotopounamu became a particularly rich source of these exotic species.[82]

One of the most important resources for tangata

Koromiko (*Hebe stricta*). Māori particularly valued koromiko for its curative properties in healing skin diseases and diarrhoea.

whenua in this region were birds. Not only were they a valuable food resource for the people, but in Māori eyes they share common kinship roots with humankind. As Tyronne (Bubs) Smith explained:

> Traditionally, it is our belief that birds were under the guardianship and protection of' Tane, who is the ancestor of man as well as birds. We believe that we descended from a common ancestor, Tane, who created the plants, birds and trees of' the forest as well as man.[83]

Māori visited the numerous bird snaring areas in this inquiry district, performed their rituals and obtained kai for their whānau. The main bird snaring areas for Ngāti Tūwharetoa were on the eastern slopes of the three maunga in what is referred to as Rangipō desert. In the desert between Tongariro and Ruapehu, there were numerous easterly or north-facing tāiko and tītī burrows that, as Tūroa Karatea explained, were strategically positioned to see the rising sun. They were also a base from which the birds would begin their migration to the northern hemisphere and back for breeding.[84]

There was also a significant birding area on the northern slopes of Tongariro. Ngāti Tūwharetoa's traditional history report, *Te Taumarumarutanga*, records that the hapū would assemble in the forest at Te Ngahere o Ōkahukura to perform their rituals before venturing up to Ketetahi (occasionally on horseback) and then to te tihi o Tongariro, the burrow areas of the tāiko.[85] Mary Pātena recalled memories of accompanying her mother up to the burrows:

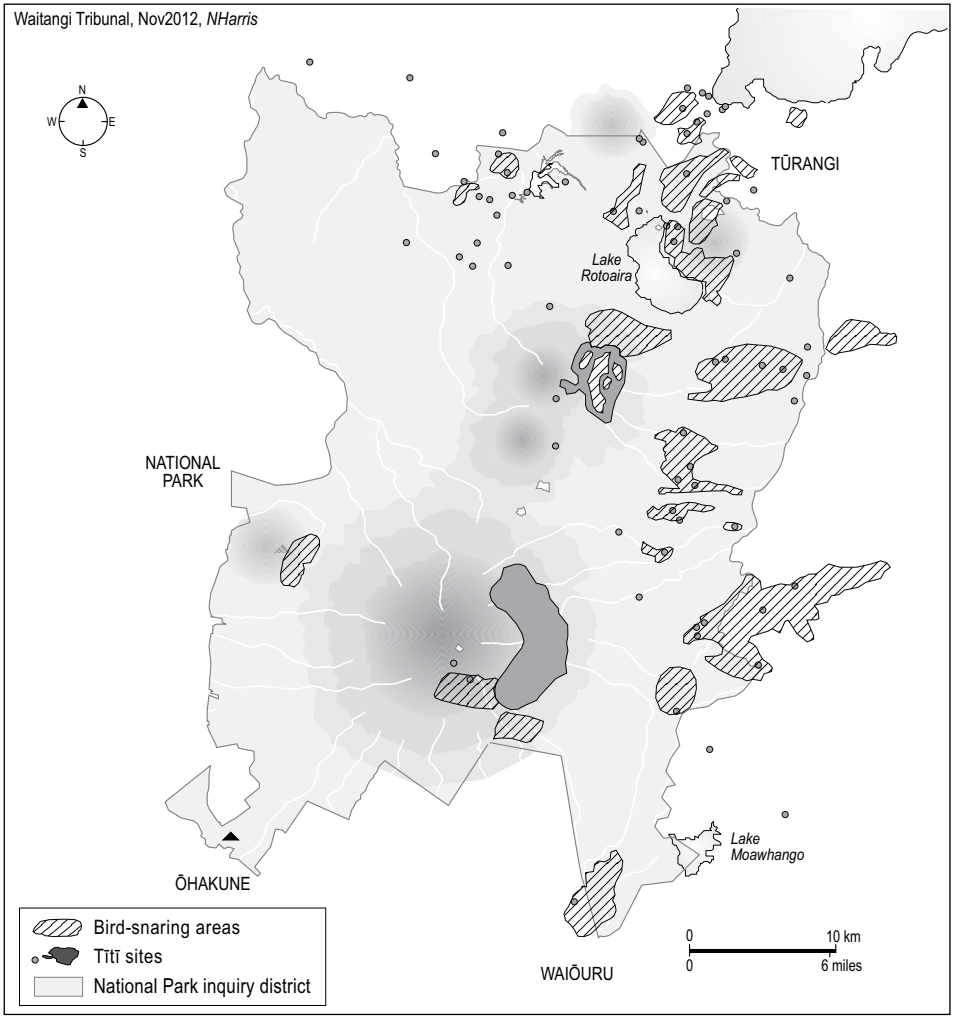
> On arrival at the nesting place of the birds, her uncle Turanga Pito would karakia. 'Each crevice burrow had at its entrance a kaitiaki mokomoko' which once acknowledged could be moved aside allowing one to reach inside to take the birds. Appropriate to the seasons large numbers of tāiko and their eggs were gathered.[86]

Historically, Māori ranged over this vast territory to harvest the abundant tāiko, tītī, and weka. The bird hunting grounds of Ngāti Tūwharetoa continued around to the southern region of the inquiry district. They included the Rangipō–Waiū plains and the slopes of Ruapehu where they overlapped with those of Whanganui Māori.[87] Ngāti Rangi claimant, Mark Gray, explained that the upper reaches of the southern slopes of Ruapehu were important tītī harvesting grounds. These were on the blocks known as Rangipō North 8 and Rangiwaea–Tāpiri, which, Che Wilson stated, were like the rest of the park a no-go zone for Māori, other than for kai, rongoā, and karakia. There were also mahinga kai extending down the southern slopes of Ruapehu, such as Rotokawa in the Rangataua North block, that were important to Whanganui Māori.[88] Food resources were gathered in the appropriate season and then stored for use as needed.

Native trees and bush on Mount Ruapehu. Native forest and bush surround large areas of the Tongariro mountains. The luxuriant and abundant growth of native trees and plants meant that there was a good source of food and that there was no lack of rongoā for Māori.

To the west of Mount Ruapehu, Whanganui Māori had further bird snaring areas. The smaller maunga to the west of Ruapehu, Hauhungatahi, was one such location. Turuhia Edmonds recalled that this maunga had another local name, Puketītī (muttonbird hill), because it was the nesting place for tītī travelling from Taranaki on their migratory route to the north. On the slopes of this maunga, the tītī nested in burrows amongst the tussock where they were captured and preserved within their own fat in a calabash (or huahua) for special occasions. In order to maintain the sustainability of this taonga, only one bird from each nest was harvested on a particular hunting trip and burrows were guarded jealously by the hapū to prevent outsiders from poaching.[89]

Birds were not only an important source of kai for ngā iwi o te kāhui maunga. Claimants recalled that all parts of the bird were used for traditional practices. Bird feathers were treasured by tangata whenua as they frequently



Map 11.1: Traditional birding areas within the park

adorned people and their possessions. Kahukura Taiaroa emphasised that tītī feathers provided warmth in traditional clothing, particularly the lining of kākahu to protect from the puaka (heavy mist and dew) of this region.[90]

Other parts of the birds were used for a variety of purposes. Wooden weapons were greased with the oil from bird fat to provide waterproofing. Bird skins, such as kakapō, pūkeko, and whio, were all used for the treatment of wounds, burns, and skin disorders. Even the bones of birds, as Mr Smith explained, were used for tattooing implements, musical instruments, and fishing hooks.[91]

At this juncture, we consider what rights the Treaty protected in respect of ngā taonga o te kāhui maunga. To answer that question, though, first we need to identify aspects of the Māori world view. We note first that the Māori world was not unchanging; Māori wished to participate in the new economy. It was clear that the development of resources would sometimes lead to the

Hauhungatahi, the smaller mountain to the west of Mount Ruapehu. Hauhungatahi used to be known also as Puketītī, or muttonbird hill, because tītī were known to nest on it.

modification of taonga. In our view, the key point was that both Māori and the Crown had the right to engage in decisions about how such development proceeded.[92]

The *Report on the Muriwhenua Fishing Claim* articulated key concepts underlying Māori thinking with respect to the natural world. In particular:

(i) A reverence for the total creation as one whole;
(ii) A sense of kinship with fellow beings;
(iii) A sacred regard for the whole of nature and its resources as being gifts from the gods;
(iv) A sense of responsibility for these gifts as the appointed stewards, guardians and rangatira;
(v) A distinctive economic ethic of reciprocity; and
(vi) A sense of commitment to safeguard all of nature's resources (taonga) for the future generations.[93]

The claimants in this inquiry spoke of these concepts in rich and meaningful ways. Ngāti Rangi claimant Colin Richards explained:

> Our ancestral values are about respect for life, respect for all those things around us. It's not only about learning or hearing the kōrero of our old people, but about living it. And if you live it then you come to understand those values. So we were brought up to live them, and so that's why we still carry them

today. Then naturally you care for the natural world because you understand and respect its life essence. So that naturally transfers onto your whānau, and your hapū and so forth.[94]

The reason that respect for life is so central to Māori values is because, as Keith Wood explained:

We consider ourselves to be an integral part of the environment as whanaunga (relations). This connection is also the basis for our relationship of kaitiakitanga . . . Our traditional practices and uses were important mechanisms to strengthen and maintain our whakapapa (identity) and ahi kā (cultural and spiritual connection to our lands and waterways).[95]

For tangata whenua, kaitiakitanga denotes certain roles and responsibilities. A kaitiaki has the responsibility to give care and stewardship to taonga. As Ngāti Hāua claimant, Nyree Nikora, explained:

Our role and responsibility is to uphold and protect nga taonga tuku iho for our future generations. This includes our right to use, develop and manage our taonga [i]n accordance with our customs, traditions and beliefs that have never been relinquished and [are] consistently asserted.[96]

As Ms Nikora stated, in order for tangata whenua to meet their responsibilities to these taonga, an effective form of authority and control is necessary. The interrelationship between rangatiratanga and kaitiakitanga was explained in the *Muriwhenua Fishing Report*:

'Te tino rangatiratanga o o rātou taonga' tells of the exclusive control of tribal taonga for the benefit of the tribe including those living and those yet to be born. There are three main elements embodied in the guarantee of rangatiratanga. The first is that authority or control is crucial because without it the tribal base is threatened socially, culturally, economically and spiritually. The second is that the exercise of authority must recognise the spiritual source of the taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. Thirdly, the exercise of authority was not only over property but over persons within the kinship group and their access to tribal resources.[97]

In other words, tangata whenua could only fulfil their obligations as kaitiaki by exercising control over their taonga, and Māori were guaranteed this under the Treaty. The Treaty signalled a partnership between Māori and the Crown on the basis of an exchange of promises:

the Crown assumed the governance on the basis of its promise that Māori authority or rangatiratanga over their possessions would be guaranteed.[98]

As part of the responsible exercise of kāwanatanga, the Crown was obliged to provide a legislative regime that protected Māori authority and control over their taonga. Not exclusive control, as *Ko Aotearoa Tēnei* clarified. Rather an arrangement where 'all legitimate interests (including the interests of the environment itself)' can be considered and 'balanced case by case'.[99] How, then, could the protection of Māori authority and control be achieved to the fullest extent practicable? The *Report on the Management of the Petroleum Resource* provided specific guidance on this issue:

Our answer is that . . . the only way that the Crown can guarantee Treaty-compliant outcomes is by ensuring that all key decision-making processes involve Māori participation of a kind that is appropriate to the decisions being made. We consider this to be a critical element of the Treaty principle of partnership between the Crown and Māori. What is 'appropriate' for particular situations cannot always be prescribed with precision in advance. But, as will be seen, it has been proposed by previous Tribunals that, for certain issues of importance to Māori, the decision-making body must include, or indeed comprise, Māori representatives.[100]

Māori representation on the relevant decision-making body, in that Tribunal's view, reflected Treaty principles of active protection and partnership. In the *Tauranga Moana* Report, the Tribunal also considered Māori representation on the decision-making body to be the most

'straightforward way' of meeting the Treaty standard. It reasoned that 'exclusive control' vested in only one partner was unlikely to be appropriate. That was because, 'in making a place for two peoples, the need is always to ensure . . . that the rights, values, and needs of neither should be subsumed'.[101] We agree with previous Tribunals. The Crown was obliged to ensure that the statutory framework gave expression to Māori rights and values in relation to their taonga. Māori representation on the board was a straightforward way in which to accord with this requirement, and to meet the Treaty obligation to consult on 'truly major issues'.[102]

11.5.2 The legislative regime and Treaty duties

(1) *The legislative regime, 1887–1987*

At this point, we examine the legislative regime governing management of taonga in the national park between 1887 and 1987. Our discussion will inform our assessment of the statutory framework's compliance with the Treaty and Te Heuheu's tuku. In particular, it will enable us to determine if ngā iwi o te kāhui maunga were granted appropriate representation on the delegated authority governing the park and whether the legislation gave expression to Māori rights and values.

(a) *1887–94:* As we discussed in chapter 7, the Tongariro National Park Bill 1887 never made it to law. The 1887 Bill proposed to delegate management of the park to Horonuku Te Heuheu, the Native Minister, and 'such other person as the Governor shall appoint', with all the powers the Governor was capable of delegating under the Public Domains Act 1881. Also, as explained, the 1887 Bill would have gone some way toward meeting Te Heuheu's objectives if it had been enacted. Native Minister, John Ballance's Bill, however, was dropped at the end of the parliamentary session in June of 1887 and only re-emerged, in modified form, in 1894. Between Te Heuheu's tuku of September 1887 and the passing of the relevant law in 1894, therefore, the national park concept lay dormant. Faced with other priorities and issues, including numerous petitions and protests over the Taupōnuiātia hearings, the government put the national park proposal to one side. Then, seven years after Te Heuheu's tuku, the government finally passed the Tongariro National Park Act 1894. The Act provided for formal establishment of a national park, once gazetted, of 62,300 acres around the three iconic mountains of Tongariro, Ngāuruhoe, and Ruapehu. It also constituted a board of trustees responsible for governance in accordance with the provisions of the Public Domains Act 1881.

Technically, therefore, although the Crown had secured the most strategically important land for the establishment of its national park, no formal park actually existed between 1887 and 1894. The land was treated no differently from other Crown lands in the vicinity of the mountains under the authority of the Lands and Survey department.

(b) *1894–1914:* Many elements of Ballance's 1887 Bill remained intact in the 1894 legislation. The Act placed the park under the control of the Governor, but delegated the powers prescribed under the Public Domains Act 1881 to the board of trustees. The board comprised the Minister of Lands (chair), the surveyor general, the director of the geological survey, Horonuku Te Heuheu Tūkino, 'and such other persons as the Governor shall appoint'.[103] Te Heuheu's trusteeship was guaranteed for life, but all other board members would hold office for five years only. If a member died or resigned, the Governor had the power to appoint successors to the board.

The 1894 Act had two significant differences from Ballance's original Bill of 1887. First, the composition of the board differed. Under Ballance's Bill, the Native Minister and Te Heuheu 'and such other person as the Governor shall appoint' were the trustees. Under the 1894 legislation, however, the board included two Crown officials beside Te Heuheu and the Minister. Secondly, under Ballance's Bill, Te Heuheu's successor was to be elected by the tribe at a public meeting convened for that purpose. This clause was dropped in the 1894 legislation, which stipulated that the Governor would appoint Te Heuheu's successor.[104]

The 1887 Bill and 1894 Act were, however, identical in terms of the powers available to the board. The trustees were to exercise powers delegated by the Governor under

the Public Domains Act 1881. Section 4 of the Public Domains Act 1881 stated that the Governor could manage and administer any domain through wide-ranging powers. The Governor could 'lay out, inclose and plant' anything considered appropriate, set land apart for specific purposes (such as recreation), purchase, exchange, or lease any 'tenements and heriditaments' deemed necessary, create carriage-ways and footpaths, and alter any bridge, way, or watercourse subject to the payment of compensation for damage to adjacent land.

The Governor could also delegate these powers to trustees, who could also make bylaws, orders, and regulations for various reasons, including:

- the control of all persons, animals, and vehicles within the domain;
- the preservation of plants and animals;
- the prevention of any nuisance; and
- the general use of the domain.[105]

Although not prescriptive in terms of management, the inference that can be drawn from the Public Domains Act 1881 and its predecessor of 1860 is that such lands would be managed in accordance with the fundamental principle of public access for recreation. There was also a strong preservationist element to the Act. Under section 17 of the 1881 Act, it was considered an offence to light fires, damage the flora, injure any animal, or remove anything from the park. Persons caught performing these activities would be fined.

The 1894 Act also specified how management of the national park would be financed. Under section 6, the cost of administration would be defrayed out of the penalties, fees, and tolls arising under the Tongariro National Park Act, together with any money accrued to the board under the Public Domains Act 1881. These sources of funding could also be supplemented 'from time to time' by government appropriations.[106]

Between 1894 and 1914, the park remained confined to the 62,300 acres surrounding the peaks of the three maunga. As we discussed in chapter 7, though, the park then expanded over time to incorporate significant parcels of land surrounding these taonga. For that reason, other legislative regimes governing the management of land and resources are relevant to the period under discussion. We turn to those briefly now.

Restrictions on customary rights were enshrined in law from the late nineteenth century and applied to land and resources not initially part of the national park. From 1895, animal protection laws were enacted in response to increased concern over lowland forest clearance by settler colonists, and the predation of eggs and juvenile birds by introduced predators. Of particular significance was the introduction of closed seasons for kererū hunting every six years under section 7 of the Animals Protection Act Amendment Act 1895. The government then passed the Animals Protection Amendment Act 1910, prohibiting the destruction, injury, or capture of any bird indigenous to New Zealand, excluding species classified as native game at the time.[107]

Scenery preservation legislation, first introduced in 1903, and amended over subsequent years, also prohibited certain activities in scenic reserves. For instance, financial penalties were imposed for unlawful cutting of timber, lighting of fires, or causing any damage in a scenic reserve.[108] The Scenery Preservation Act 1910 prohibited the discharge of firearms and the hunting of game on reserves, but allowed the Governor to grant Māori the right to take or kill birds, providing these were not protected by animal protection laws.[109] Scenery preservation laws restricting these activities applied to the Rongokaupō Scenic Reserve, located in the southern part of our inquiry district, from 1910 until it was incorporated into the national park in the 1970s.

(c) *1914–1922:* In early 1914, the Crown proposed changes to the legislative framework governing management of the Tongariro National Park. According to Crown historian Cecilia Edwards, a variety of officials and private interests persuaded the government to place responsibility for the administration of the park within the tourism department. It was hoped that the tourism department could attend more closely to development than Lands and Survey, which had significantly more functions to perform. The general manager of the Department of Tourist and Health Resorts (DTHR) advised his Minister that

legislation would be necessary to effect this change, but cautioned that

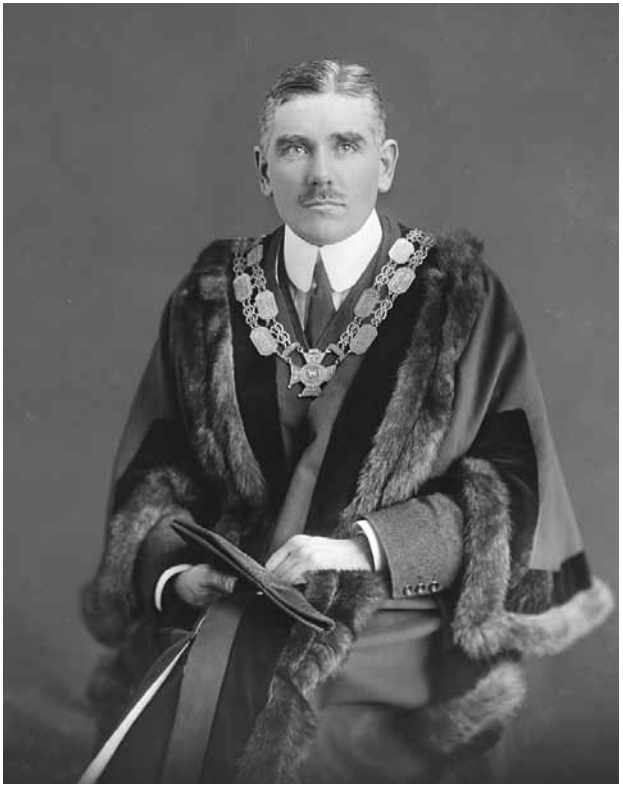
> there may be other difficulties in the way of removing the control from the present trustees, as the original reserve was ceded to the Crown by deed of gift made by the late Te Heuheu Tukino.[110]

Unfavourable comparisons with other national parks and increasing pressure from interested parties eventually persuaded the Minister to vest the park in the Tourism Department in 1914. The Reserves and Other Lands Disposal and Public Bodies Empowering Act (the ROLD Act) of 1914 provided the legal mechanism for doing so. The park was to be administered as a reserve under the Tourist and Health Resorts Act 1908.[111]

Although the Tongariro National Park Act 1894 was almost entirely repealed by section 54 of the ROLD Act, certain provisions of the Tourist and Health Resorts Control Act 1908 continued the application of the public domains legislation in management of the park.[112] In several ways, therefore, the range of activities prohibited under the DTHR's authority was broadly the same as under board management of the park.

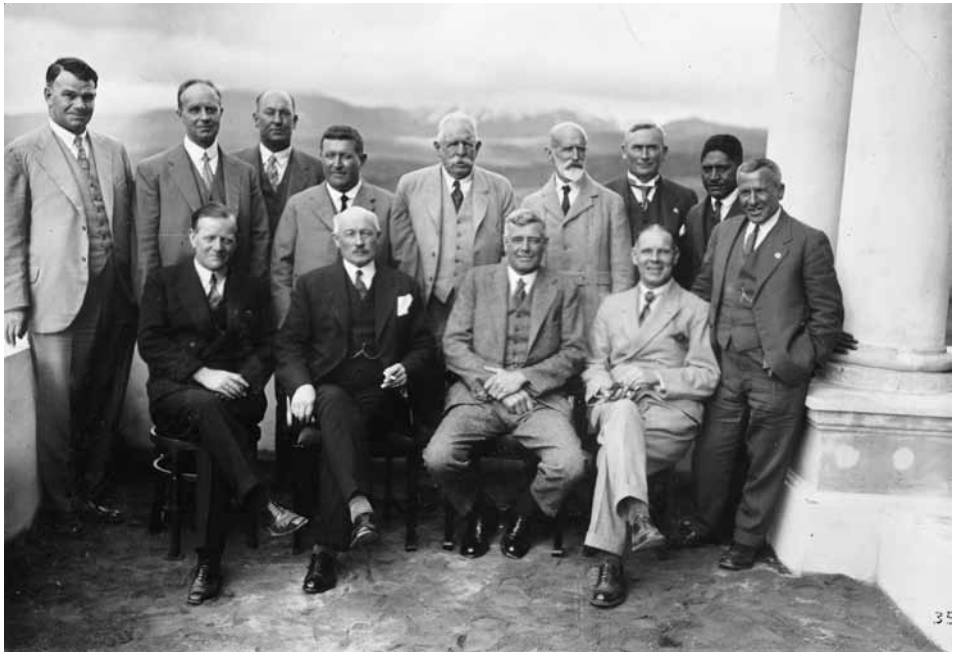
Whether customary resources were contained on land within the park or not was much less important by the early 1920s. Amendment to animal protection laws provided further restrictions on customary harvesting within the district. The Animals Protection and Game Act 1921 added kererū and tītī (muttonbird) to its list of native birds absolutely protected throughout New Zealand. No longer were these considered 'native game' species, as under previous legislation.

(d) *1922–52:* By 1922, a new statutory framework was in place. The fundamental elements of how the park would be managed remained unchanged under the new regime, but the delegated authority was reconstituted and with a totally different complexion from that prescribed previously. The catalyst for this change was primarily disappointment at the slow expansion of the park and the lack of tourist facilities by the early 1920s. Influential leaders and groups lobbied the government to reconstitute the board. This, it was hoped, would facilitate the tourism development envisaged by those interested in the park's future. Two of those parties were Sir James Gunson, the mayor of Auckland, and John Cullen, an acclimatisation enthusiast and the park's first honorary warden, who together co-wrote the Bill enacting the change.[113]



Sir James Gunson, the mayor of Auckland, in his ceremonial robes. When Gunson and John Cullen, an acclimatisation supporter, became frustrated by the lack of progress made on the Tongariro National Park in the early 1920s, they co-wrote a Bill that allowed for the expansion of the park and more tourist facilities.

Passing through parliament virtually unchanged, the Tongariro National Park Act 1922 returned to the board all powers capable of delegation under the Public Reserves and Domains Act 1908. Under the new legislation, the



The original Tongariro National Park Board, Chateau Tongariro, 1929. Among the members are Edward Phillips Turner, surveyor and director of forestry (standing, sixth from left) and Hoani Te Heuheu, Ngāti Tūwharetoa's representative (standing, second from right).

board was significantly expanded to include several *ex-officio* appointments:

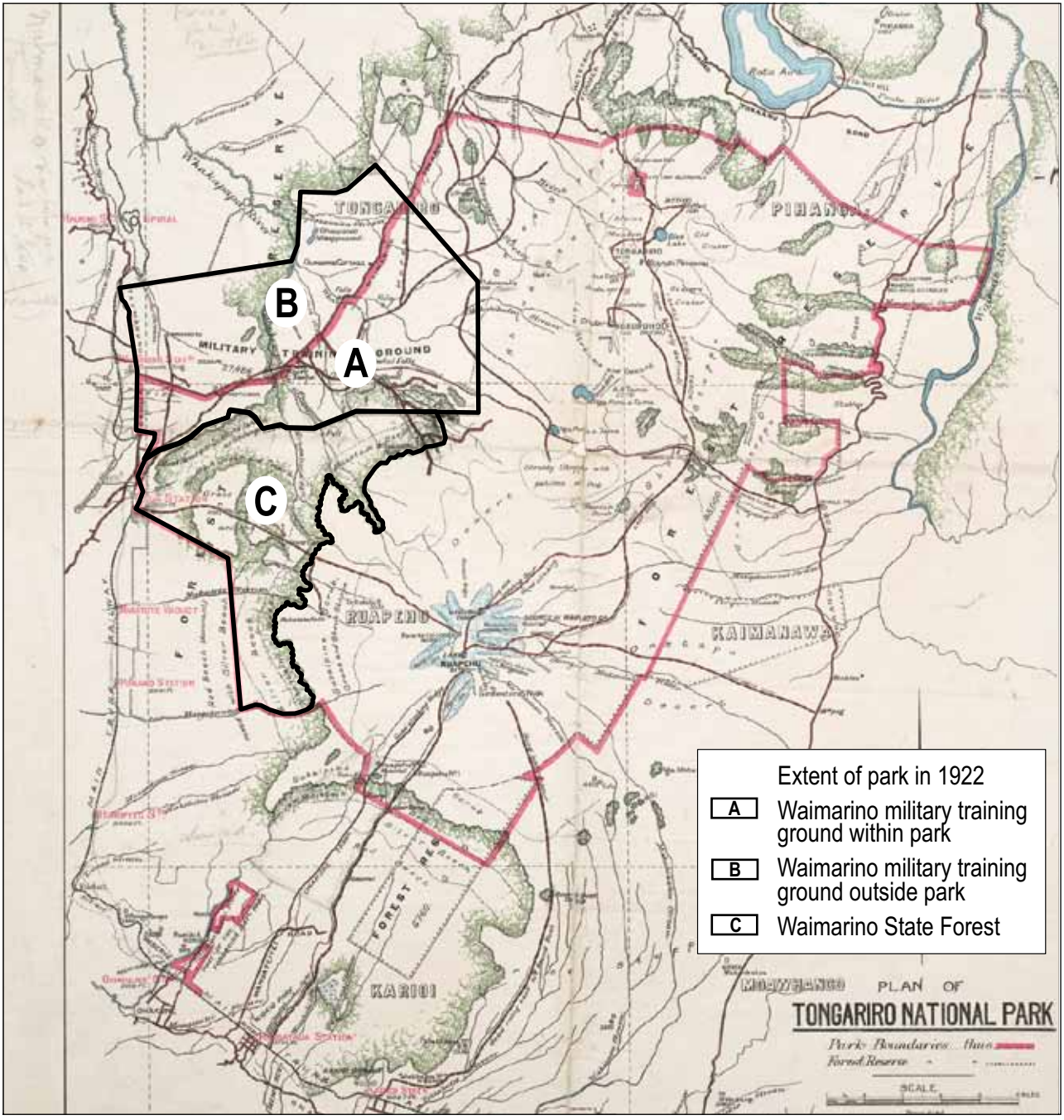
- the Minister of Lands;
- the paramount chief of Ngāti Tūwharetoa;
- the mayors of Auckland and Wellington;
- the park warden;
- the under-secretary of the Department of Lands and Survey;
- the general manager of the DTHR;
- the secretary of the State Forest Service;
- the president of the New Zealand Institute;[114] and
- no more than four other persons appointed by the Governor-General in Council.[115]

Members other than Te Heuheu were to hold office for three years, and the Governor General would appoint a chairman from among their number.[116]

The 1922 Act was also significant for its incorporation of large areas of Crown land into the park. The over 145,000 acres of previously acquired Crown land included portions of the Waimarino Military Reserve and the Waimarino State Forest based on the recommendations of both the Cockayne and Phillips-Turner's survey of 1908, and the New Zealand Institute's own appraisal.[117] These early scientists reasoned that the diverse flora of the region needed the protective umbrella of national park administration.

The new board responsible for that administration gained new powers and retained some previous ones. The board was given the power to set areas apart for leasing, and to issue licenses for the removal of gravel, construction of roads or tramways. Significantly, it could also build accommodation for tourists. Board administration would, as before, be paid for out of revenue generated from penalties, fees, parliamentary appropriations, and local authority contributions. Section 25, however, enabled the board, subject to ministerial approval, to borrow money to erect buildings, form roads, and make improvements in the park.[118]

Between 1922 and 1952, board membership increased significantly. Section 134 of the ROLD Act 1924 allowed



Map 11.2: Land within the Tongariro National Park subject to exemptions for certain activities

the Governor to appoint up to six members beyond those prescribed in the Tongariro National Park Act 1922. This took Board membership from a possible 13 to 15 members. Twenty-four years later, four more positions were added to accommodate those regarded as having a particular interest in the park. Seats were provided to the member of parliament of the electoral district in which the park was situated, representatives of both the Federated Mountain Clubs and the Ski Council, and one member appointed by the Royal Society of New Zealand.[119] By 1948, the board could include as many as 19 members.

The broader spectrum of views that legislative change provided to the board table was curbed by one important change to park administration that may have arisen due to depression-era constraints. Under section 30 of the ROLD Act 1931, the board could appoint executive committees of two or more members to exercise its powers.[120] When invoked this placed significant power in the hands of a few individuals constituted as an executive by the full board. An executive board – comprising the chariman and the Wellington board members – was first authorised in 1925 to deal with routine and urgent matters. While not particularly active early on, from 1934 to the 1950s, the executive board met much more regularly than full board.[121]

Several other legislative changes were made between 1922 and 1952, two of which were particularly significant. First, provision was made for the Prisons department to continue removing timber from an area of the park in 1923.[122] Secondly, the Defence Department was granted ongoing access and use of the former Waimarino Military Reserve lands for training purposes in 1927.[123] The significance of these two changes will be discussed later in our analysis.

(e) *1952–80:* By the end of the Second World War, pressure from various conservation and recreational groups forced the government to develop a still more coordinated approach to its administration of New Zealand's national parks.[124] Legislation enshrining this change represented a radical departure from previous administration of the Tongariro National Park. The National Parks Act 1952 established a two-tier system of authority for the park. A central decision-making body, the National Parks Authority, sat at the top and was responsible for broad policy, the allocation of funds, and advice on creating new parks and enlarging existing ones.[125] Below the authority was a network of park boards, including the Tongariro National Park Board, that were responsible for administration at the local level. These boards managed their parks in accordance with the general policy and direction of the authority. This two-tier authority structure was perceived as providing a more efficient and professional approach to national park governance in the future.[126]

The authority itself comprised nine members, each appointed for a term of three years. Five of those members were *ex-officio* Crown appointees.[127] Occupying the other four places were representatives of the Royal Society, Forest and Bird, the Federated Mountain Clubs, and a local park board.[128] While it is true that these members were collectively responsible for policy development, the Minister still retained important powers under law. Section 6 of the National Parks Act 1952, for instance, clearly stated that the authority possessed only a recommendatory power to determine the allocation of parliamentary appropriations for park administration. The following section of the Act, section 7, also specified that the authority 'shall have regard to' ministerial representations on how to give effect to the decisions of government. In theory, therefore, the authority required tacit, if not explicit, ministerial approval of its decisions, depending on the circumstances.

While the power of the authority was constrained by law, so, too, was the power of individual park boards. Individual boards were required, by law and under the authority's direction, to administer parks in ways that secured public use and enjoyment consistent with the preservation of natural features and native flora and fauna.[129] The Tongariro National Park Board comprised eight members: the commissioner of Crown lands for the Wellington land district (the chairman), the paramount chief of Ngāti Tūwharetoa, and six ministerial appointments, which included an appointment made on the recommendation of the Federated Mountain Clubs, and another by the New Zealand Ski Association.[130] Although

considerably fewer members than under the previous legislation, the additional tier of authority above the park board meant there were, in fact, more people influencing the administration of the national park at the local level. The board oversaw day to day management, but, ultimately, park administration was subject to the policy constraints established by the National Park Authority.

The National Parks Act 1952 did introduce some significant new powers for park boards. One important power relevant to our analysis in this chapter was the ability of boards to delineate any part of a park for public amusement or recreation. Within such zones, boards could authorise the building of huts and skiing infrastructure designed to facilitate tourist traffic.[131] As we shall see later, particular zones containing a significant amount of recreational infrastructure were created on Mount Ruapehu.

While the authority maintained general control over board decisions, in practice it provided little direction to the boards on how to administer their parks. It promoted a consistent approach towards national park administration across the country and encouraged individual boards to operate with a minimum of direction.[132] Individual boards, therefore, had to rely on the objectives and offences enshrined in the National Parks Act 1952 to guide them. The objectives were broadly the same as before. National parks, including the native flora and fauna, were to be preserved 'as far as possible' in their natural state, and the public should have freedom of entry subject to any restrictions necessary for the preservation of the park and its assets.[133] Offences within parks were also broadly the same as previously enshrined in law. Section 54 stated that it was an offence to light fires outside designated areas, damage, remove, or introduce any flora, fauna, or other substance, or in any way damage the scenic or historic features within park boundaries.[134] Breaches of the law could lead to terms of imprisonment or substantial fines.[135] Although penalties increased over time, the objectives of park administration and a definition of what constituted an offence remained relatively consistent.

(f) *1980–87:* New priorities and concerns created the climate for further significant change to national park administration in 1980. Legislative reform was designed to streamline overall administration and increase public input into policy making. The National Parks Act 1980 retained the two-tier system of governance with the National Parks and Reserves Authority at the top, but disestablished the park boards below. Where boards under the 1952 Act were dedicated to managing parks alone, the new regional boards were responsible for areas well beyond existing park boundaries.[136]

Under the new legislation, the National Parks Authority retained its central position in park administration. Membership of that authority, however, had quite a different complexion to that prescribed under the previous regime. Ministerial appointments based on the recommendations of the Royal Society of New Zealand, the Royal Forest and Bird Protection Society of New Zealand, and the Federated Mountain Clubs of New Zealand were retained, but the Minister could now supplement those appointments with three members approved by the Ministers of Tourism and Local Government (not the Minister of Māori Affairs), and four members with 'special knowledge of or interest in' the parks and their wildlife.[137] Gone were the specific places for *ex-officio* Crown officials so prominent under earlier pieces of legislation.

The regional board below that authority and with responsibility for the Tongariro National Park was, from 1980, the Tongariro–Taupō National Parks and Reserves Board. The new board comprised a total of 10 members, one of which was the paramount chief of Ngāti Tūwharetoa, thereby continuing the statutory position for a lineal descendant of Te Heuheu that had been in place since 1922. The Minister was also empowered to appoint eight other members with special knowledge of, or interest in, the management of national parks, tourism, recreation, or conservation.[138] This gave the Minister wide scope to appoint a range of individuals to the body responsible for management and control of the park.

The new legislation modified the roles and functions of both the National Parks and Reserves Authority and the regional boards. Under the 1952 Act, the National Parks Authority alone designed the policy that guided boards in the administration of their parks. By 1980, however, the

government had responded to calls for accountability to a larger stakeholder group by giving the regional parks and reserves boards an increased role in policy development. Nonetheless, the authority retained overall responsibility for preparing general policy and for approving the individual boards' management plans. In fact, the scope of board functions decreased considerably. From 1980, the Department of Lands and Survey took over all administration of national parks and reserves. While the Tongariro–Taupō Parks and Reserves Board prepared management plans and advised on policy issues, day-to-day management of the park was left solely to the department.[139]

There were also strong points of continuity in the legislation. The objectives guiding national park management articulated in section 3 of the 1952 Act, and most of the sections relating to offences and penalties, were carried over into the new regime.[140] Sections relating to the setting apart of areas for special protection, or for recreational and public amenities, were also carried over.[141]

As we have shown from this summary of the statutory framework, there were both substantial points of continuity and change in national park administration over its history. Apart from a brief interregnum in the early twentieth century, the legislation delegated administration of the Tongariro National Park to a board with powers to manage the land and its resources according to values of preservation and recreation. That was a consistent foundation of the statutory framework in the period under review. While the fundamentals of the framework remained reasonably consistent throughout, there were also significant changes – particularly in board composition, power and influence – that affected management of the park at the local level. The gradual expansion of board membership, the promotion of a central decision-making body above that of the park board, and an increase in the sphere of responsibility for the local board were all significant legislative changes to the administration of park. A further significant change was the gradual acquisition of control and ownership of indigenous flora and fauna in the park and beyond. Later in our analysis, we consider more fully the ramifications of these points of continuity and change within the statutory framework.

(2) *Tangata whenua representation on the board*

From our appraisal of the legislation above, we have clarified the nature of tangata whenua representation on the governing board historically. We have shown that the only statutory representation granted to tangata whenua was that provided to the paramount chief of Ngāti Tūwharetoa. The position for the lineal descendants of Horonuku Te Heuheu on the board was enshrined in legislation for the entire history of the park except the period 1914 to 1922. Between 1914 and 1922, there was no provision in legislation for tangata whenua input into governance of their taonga, and no formal channel for consultation with tangata whenua.[142] Apart from this eight-year period, therefore, Ngāti Tūwharetoa representation in governance was consistent. But no other Māori sat at the board table in a representative capacity for ngā iwi o te kāhui maunga.

At this point, we pause to consider why Ngāti Tūwharetoa received representation on the board. In chapter 7, we concluded that Te Heuheu believed the arrangement entered into with the Crown in 1887 would achieve his objectives for the maunga, and he and Ngāti Tūwharetoa awaited legislation to preserve appropriate tribal authority over the taonga forever. But Ballance's Bill of 1887 did not pass. Furthermore, the deed Te Heuheu signed on 23 September did not give effect to his wish of holding the peaks jointly with the Crown. When legislation was finally enacted in 1894, the Crown's primary obligation to Te Heuheu and Ngāti Tūwharetoa could not be fulfilled. Te Heuheu was not a trustee holding the peaks in partnership with the sovereign. Instead, the Crown had acquired legal title to the peaks and delegated governance of the national park to a statutory board, of which Te Heuheu Tūkino was only one of several representatives.

There is no evidence to determine who proposed delegating governance of the park to a board. It was probably something that developed out of the kanohi ki te kanohi meeting between Native Minister Ballance and Horonuku Te Heuheu in late January 1887. The evidence for this is that soon after that meeting took place, Ballance made some notes directing officials to draft legislation constituting a board of trustees to govern the park, a decision that was also announced in the press.[143] Based on this

evidence, it seems reasonable to assume the proposal to delegate exclusive control of the taonga developed during Ballance and Te Heuheu's kōrero. Te Heuheu's request to be kaitiaki (guardian or trustee) of the taonga on behalf of his tribe was probably interpreted by Ballance as a desire to retain a tangible connection with te kāhui maunga in the wake of his magnanimous gesture. From the Minister's point of view, receiving a gift of fee simple title to three mountain peaks was an act imbued with deep symbolism that he probably accepted warranted some special recognition of Te Heuheu's honour. As the *Evening Post* reported in February 1887, the 'gift' was considered 'most generous' and the newspaper characterised it as signalling more than anything 'the expansion of the native mind'.[144] It seems plausible that the Minister would have considered a request from Te Heuheu for 'kaitiakitanga' reasonable, considering it, as he did, from the starting point of Crown ownership of the taonga. The issue for Ballance then most likely became how to accommodate Te Heuheu's wishes.

Starting from the basis of Crown ownership of the mountains, Ballance evidently tried to accommodate Te Heuheu's request from within the existing statutory framework. The Public Domains Act had first been introduced in 1860. The latest version of that Act, passed in 1881, governed a number of regional parks and other recreational areas around the country.[145] For the Crown, the preservationist principles underpinning the Act obviously made it suitable for Ballance's proposed national park. The first person to suggest setting aside land in the Tongariro district was European explorer James Kerry-Nicholls, who in 1883 suggested proclaiming a 'public domain' there, 'for there would be no place equal to it in the northern or southern hemisphere'.[146] Placing the proposed park under the public domains legislative regime, however, also had other advantages. In particular, the Act, as discussed above, contained provision for the Governor to delegate all or any of his powers specified within the Act. In that sense, the board would exercise a degree of autonomy in governing the local asset.[147] Ballance probably believed that Te Heuheu's request for kaitiakitanga of the taonga would more than be accommodated by invoking this provision. All that the Minister had to do, therefore, was pass legislation that had the effect of bringing the land under the Public Domains Act 1881 and specify who the trustees should be.

That was the intention of the 1887 Bill. As counsel for claimants highlighted, the Bill was remarkably simple in its design. The Tongariro National Park Bill outlined the membership of the delegated authority (the board), and prescribed its powers in accordance with those stated in the Public Domains Act 1881.[148] As Ballance commented during the introduction of the Bill to parliament:

> The Act itself is of an exceedingly simple character. It is not encumbered with regulations; it brings the land at once under the Domains Act, and it provides, as I have said, for coming into force when the title is complete, so that there can be no possibility of complications.[149]

In that sense, the existence of the board and Te Heuheu's position on it reflected, in part, the Crown's response to what it considered was Te Heuheu's gift of the mountains. Ballance introduced a Bill to parliament on the basis that Te Heuheu's conditions, as he interpreted them, would be legislated for. Although the Bill never made it into law, representation of the paramount chief of Ngāti Tūwharetoa was subsequently enshrined in the statutes of 1894, 1922, 1952, and 1980.

The legislation also provided avenues for the Crown to appoint other tribal leaders onto the board. As we have shown, each statutory regime allowed for the appointment of discretionary members not prescribed in legislation. The legislation of 1894, for instance, allowed the Governor to appoint 'other persons' beyond the four identified members. This power was carried through in successive Acts. Four discretionary places were available under the 1922 Act and six under the 1952 Act. By 1980, the Minister had discretion to appoint seven members to the authority and eight to the regional board. The Crown, therefore, had opportunities to appoint more tangata whenua prior to 1987. In the documents before us, there is evidence that at least one board member, Brian Jones – of Tainui, Ngāti Maniapoto, and Ngāti Tūwharetoa descent – was appointed to the board in the early 1970s. But he was not

appointed in a representative capacity for ngā iwi o te kāhui maunga.[150]

(3) *Consultation over national park legislation*

There is an issue as to whether the Crown consulted with ngā iwi o te kāhui maunga over the legislation governing the Tongariro National Park. The issue arises because claimants alleged that there was no consultation with iwi on the legislation and that this was in breach of article 2 of the Treaty.[151] In our view, there were two key aspects of the legislation that absolutely necessitated consultation with tangata whenua. The first was the composition of the governing authority and the second was the guiding principles underpinning administration of the park.

From our appraisal of the evidence, the situation with regard to Whanganui Māori is reasonably clear. In closing submissions, the Crown conceded that there is no evidence of any consultation with Whanganui Māori in relation to the creation of the national park.[152] Cecilia Edwards also found no evidence of consultation with Whanganui Māori on the 1922 legislation.[153] In our view, the lack of evidence suggests that none took place. In fact, Ms Edwards noted that overall, Whanganui Māori appeared to have 'no role in park management'.[154]

The situation for Ngāti Tūwharetoa is slightly less clear. As discussed in chapter 7, there is indeed evidence of some discussion with Tūreiti Te Heuheu on the national park bills 1893 and 1894. However, the extent of that discussion, as previously explained, is unclear from the documentary evidence. What is clear is that Te Heuheu persuaded the government in 1893 to adjourn passing the Bill until he could confer with the Minister about it. He then had to lobby parliament further in 1894 to ensure that his 'rights' were included.[155] There was, as Ms Edwards discovered, evidence also that the Crown discussed with Tūreiti the position for the paramount chief on the board prior to legislating for its reinstatement under the 1922 Act.[156] Again, the documentary evidence is sparse, but it shows that Tūreiti was in much the same situation as 25 years earlier. The chief had to lobby the government to restore something that Ngāti Tūwharetoa was entitled to under the terms of Te Heuheu's agreement with Ballance. His request to the Minister of Tourism and Health Resorts in 1920 is indicative:

> In 1914 Mr Grace told me that my name had been struck off this particular Board.
>
> . . . . .
>
> When I heard that, of course I felt very grieved over it . . . As you are the Minister-in-Charge of Tourist Resorts, I want you to have my name put back on as one of the governing people in connection with that Park . . .[157]

Discussions between Te Heuheu and officials, members of parliament, and relevant ministers evidently took place, therefore, but we would not characterise this as formal consultation. Without formal consultation, we cannot accept the proposition that Ngāti Tūwharetoa unreservedly approved of either board composition or the principles underpinning management of the park. In terms of board composition, Tūreiti acted in both 1893 and 1920 to protect his right to play a role in governing the park. In such circumstances, we think it unlikely that Te Heuheu would be so concerned with who else would be on the board. His own position was not secure, so he was scarcely well placed to apply leverage on behalf of others.

As to the principles underpinning management of the taonga, there were other problems afflicting the legislative process. In particular, the Māori version of the 1893 Bill did not, we think, convey to Te Heuheu how the board would govern ngā taonga o te kāhui maunga from then on. Section 4 stated:

> a kua tukuna hoki ki a ratou nga mana katoa e ahei ana te Kawana te tuku i raro i te Ture 'Whenua O Te Katoa, 1881,' ki nga kaitiaki o nga whenua o te katoa hei huarahi whakahaere ma ratou mo aua whenua.[158]

In essence, the Māori text explained that, in terms of management, the board was invested with all the powers the Governor was capable of delegating under the 'Land of all the People, 1881' law. Similar wording was used in the Māori version of the 1894 Act. Without a precise explanation by the government regarding the import of that

law, we do not think that Te Heuheu or Ngāti Tūwharetoa would have been necessarily alarmed by this section when the Bill passed through parliament in 1894. As for the Bill of 1922, Ms Edwards could find no evidence that it was ever translated into Māori.[159] The lack of a Māori version of the Bill would appear an unhelpful oversight in the Crown's legislative process. We return to this topic later in our analysis.

(4) *How board representation was determined*

As we discussed in Part II of our report, the Crown had anticipated the economic potential of the mountains and surrounding landscape in the developing colonial economy. This economic potential, along with a determination to prevent the mountains being cut up and sold to private developers, underpinned the Crown's ambition to get the mountains into public ownership during the 1880s.[160] But the Crown expected management of the national park to be self-funding through board administration, which was made clear in Ballance's speech to parliament in 1887:

> With regard to the cost of management, that will entirely depend upon the action of the Trustees in future, and the money that may be set aside for the purpose by the House; but I think that the cost of management need not be great, but will be comparatively trifling, and I think that to a certain extent it may be made self-supporting by charging a reasonable fee to tourists who visit that part of the country. Then, portions of land will be leased for short terms at reasonable rates to people who will keep accommodation-houses and provide for tourists. On the whole, under judicious management, the maintenance of the Park would cost only a very small sum, and might soon be self-supporting; and, at any rate, the indirect advantages to the colony at no distant date will be enormous, because I can see that this Park will become famous and attract a large number of people.[161]

According to the Minister's logic, the board would 'manage' ngā taonga o te kāhui maunga through a combination of government appropriations and funds expected to flow from tourism. Ballance's funding model carried through into the legislation passed by his successor, John Mackenzie, in 1894. Under section 6 of the Tongariro National Park Act 1894, administration of the park would be defrayed out of the penalties, fees, and tolls arising under the Act, supplemented by government appropriations. Considering the 'large number of people' expected to visit, the government believed the board would have sufficient funds to maintain the park and its assets.

The government also had ideas about how to ensure that facilities and infrastructure were provided to the satisfaction of tourists in the region. According to Ballance, the board would lease park lands for short periods to people 'who will keep accommodation-houses and provide for tourists'. The Public Domains Act 1881, particularly section 5(1), provided the initial mechanism for the board to lease park lands to private parties 'for such consideration' and 'such period not exceeding twenty-one years'. The board's discretion on leasing arrangements was both powerful and controversial, as we shall see later in our analysis.

To the disappointment of supporters, tourism development within the first two decades of the park's existence was poor. The inoperative state of the board prior to 1914 and the inadequate funds available to the DTHR under its short watch necessitated a change in approach. The government decided that it needed to provide representation directly to those willing to devote their attention to the park's development. Seats for the mayors of Auckland and Wellington, for instance, were justified on the basis that they would provide a direct link to the business community, which had a commercial interest in providing for tourists.[162] At the first board meeting in 1923, the Minister of Lands explained why members were selected:

> From the outset it was considered advisable to have direct representation from the two big cities of the North Island which are both vitally concerned in the development of the Park . . . Amongst the members there were also men of sound business training whose advice and assistance would prove invaluable . . .[163]

These members, the government envisaged, could facilitate much-improved tourism and recreational

development. The continued representation of the mayors of Auckland and Wellington was again justified during the debate on the Tongariro National Park Amendment Bill 1948:

> It may appear strange that the mayors of two cities so remote from the Park should be *ex officio* members of the Board, but it must be remembered that both those cities made available considerable sums of money for the development of the park.[164]

Representation of those with links to the business community was important, but so, too, was representation of the recreational users of the park. As Dr Brad Coombes explained, the fixation on tourism development within the first decades of the twentieth century was compatible with the new emphasis on skiing in the postwar period.[165] During the same debate of 1948, the Minister remarked that:

> It is important that we should realize the value of Tongariro National Park from the point of view of attracting tourists, and also for providing ski-ing grounds for our own people. Ski clubs have become very active since the war and plan to build a number of additional lodges on the mountain . . . The present membership of the board does not give representation to those who are actively participating in the sport provided at the park. The Bill proposes to include on the Board . . . two representatives of those actively using the park, and that will be to the benefit of all concerned.[166]

The influence of mountaineering and ski clubs in the administration of the park only increased after the passing of the National Parks Act 1952. Representation of the Federated Mountain Clubs on both the National Parks Authority and the Tongariro National Park Board was justified on the basis that as a federation they represented 47 affiliated clubs, with a combined membership of approximately 10,000. Those clubs, according to one parliamentarian, had 'a great responsibility' for the administration of these 'natural playgrounds' in which they had taken 'so deep and vital an interest'.[167] In fact, the relationship between board representation and recreation was so entrenched that by the 1970s the only two board members without such an interest were the chairman and Te Heuheu.[168]

As we have discussed, the Crown's determination to develop the economic potential of ngā taonga o te kāhui maunga was apparent from the outset. What was not clear, however, was how dependent the Crown would become on private interests to facilitate the recreational and tourist infrastructure necessary to fulfil that potential. In that sense, representation on the board became inextricably linked to the Crown's development ambitions for this unique cultural and physical landscape.

(5) *The situation for Whanganui Māori*

At this point, we wish to focus on the Treaty compliance of the legislative framework governing ngā taonga in the national park. We address this question, firstly, from the point of view of Whanganui Māori. The reason we do that is because the tuku engaged the Crown in certain reciprocal obligations, in addition to its Treaty duties. We explore those conditions and duties in our next section.

At the beginning of our analysis, we set out the standards by which we measure Crown action. We concluded that the Crown had a duty to actively protect Whanganui Māori in the exercise of tino rangatiratanga over their taonga. We also established that delegating governance of the park to a statutory board did not absolve the Crown of this fundamental Treaty obligation. For Whanganui Māori to exercise rangatiratanga, they needed to have the authority to manage and control their taonga in accordance with their cultural and spiritual values. This applied not only to their tipuna maunga, Ruapehu, but to all their taonga within the Tongariro National Park.

In closing submissions, the Crown made several important points that are relevant to the present discussion. The Crown acknowledged that it had a Treaty duty:

> to act honourably and in good faith in its dealings with all Maori who had customary interests and ancestral association with the Mountains when it moved to establish the Tongariro National Park.[169]

Given te kāhui maunga were of immense significance to other tribes as well as Ngāti Tūwharetoa, the Crown noted that '[t]his puts squarely in issue the adequacy of the Crown's treatment of those Māori other than Ngati Tuwharetoa'. In that respect, Crown counsel acknowledged that:

> There is no evidence of any consultation or discussions with, for example, Whanganui Maori, in relation to the creation and establishment of the National Park.[170]

Furthermore, counsel noted that the Crown made no attempt to actively engage with Māori who had interests in blocks on the southern side of Ruapehu, even though the Crown had purchased land in these blocks from Whanganui Māori. By the Crown's own admission, it ought to have known of the historic and strong customary association that Whanganui Māori have with Ruapehu maunga when it legislated to establish the park in 1894. Crown counsel conceded that:

> The failure to consider, and provide for, the interests of Whanganui iwi was inconsistent with [the Treaty] duty, was in breach of the Treaty of Waitangi and its principles, and has been the cause of suffering for Whanganui iwi.[171]

We take this concession to mean two things. First, the Crown acknowledges that it should have consulted with Whanganui Māori on the statutory framework governing the park, including the principles governing how the taonga would be managed. This was necessary to ensure that the tino rangatiratanga of Whanganui Māori was upheld, alongside the Crown's kāwanatanga.

Secondly, under the Treaty the Crown was required to consult with Whanganui Māori over ongoing issues regarding the park. This requirement could have been fulfilled by including Whanganui representation on the board between 1894 and 1987. The interests of Whanganui Māori necessitated wider representation than just Ngāti Tūwharetoa in the governance of the park. The principle of equal treatment demanded that Whanganui Māori be treated the same as other Māori groups with interests in the park. Yet, the only representation of tangata whenua on the board was the statutory provision of a seat for Te Heuheu, justified on the basis of his gift to the nation. We agree with claimant counsel, however, that Te Heuheu's seat was not representative of Whanganui Māori, nor would he have seen it that way.

We consider that the principle of equity is also relevant. The Crown argued that the participation of Whanganui Māori was essentially on the same basis as other citizens until the 1980s.[172] That was not the case. As we have shown, the Crown provided representation on the board to those willing to devote their attention to tourism and recreational development. In return, those representatives facilitated the Crown's ambitions for the region. There was, in essence, a dovetailing of interests, which, in the process, left Whanganui Māori without a stake in the governance of their taonga.

The Crown's concession was confined to a key taonga for Whanganui Māori in the inquiry district: Ruapehu maunga. As we found in chapter 7, Whanganui Māori had no involvement or association with the tuku or the creation of the Tongariro National Park. Instead, the Crown legislated for the creation of a national park that incorporated the tūpuna maunga of Whanganui Māori in 1894, but, as conceded, failed to consider and provide for their interests in the process.

In our view, the Crown's concession should apply equally to all taonga acquired in breach of Treaty principles and incorporated into the national park. Ruapehu maunga is one of those taonga most important to Whanganui Māori – analogous to Aoraki for Ngāi Tahu[173] – but, as we have identified, it is not the only significant taonga within the national park. The Crown ought to have known that Whanganui iwi had historic and strong customary associations with other taonga progressively brought under the board's control. The Crown had a Treaty duty to ensure that it actively protected Whanganui Māori rangatiratanga over all those taonga too.

(6) *The situation for Ngāti Tūwharetoa*

At this point, we consider whether the Crown upheld its Treaty obligations by ensuring that the conditions of

Te Heuheu's tuku were complied with. In chapter 7, we concluded that partnership was at the centre of motives behind the tuku. Partnership was a consistent principle underpinning Ngāti Tūwharetoa's intent for te kāhui maunga from the very beginning. As we have seen in chapter 7, the tribe developed its 'rārangi matua' (defensive lines) in 1885. The rārangi matua tuarua: ngā pae maunga tapu emerged in response to concern over a need to protect ngā maunga tapu from piecemeal alienation. The tribe eventually reached a consensus to obtain the assistance of Pākehā law to assist in upholding the sacred sanctions over their taonga (see section 7.6.1(3)). Seven chiefs would hold the mana tangata to the taonga on behalf of the tribes of Tongariro, and the Crown would also obtain an interest in the taonga for the people of New Zealand via Te Heuheu's tuku. In receiving this interest, the Crown was forever bound to the tribe to do everything it could to ensure the protection of Ngāti Tūwharetoa rangatiratanga over the taonga. The tuku signalled the release of te kāhui maunga into the protective custody of Pākehā law – that was the tikanga of the tuku.

With the Tongariro National Park Bill 1887 not passing into law and rapid alienation of the tribal estate during the land court process, a shift in strategy became necessary. At the conclusion of the Taupōnuiātia hearings, purchase agents working on commission had managed to acquire a considerable quantity of Ngāti Tūwharetoa's land, including interests in the maunga blocks. Without securing tribal authority over the taonga through legislation, and recalling his father's prophetic warning that land loss would result in the loss of Ngāti Tūwharetoa mana, Te Heuheu acted to ensure that the tribe did not lose its rangatiratanga over their most precious taonga. Te Heuheu subdivided out the peaks of the maunga and released them into what he believed to be joint title with the Queen. In the absence of legislation guaranteeing his trusteeship, joint title would ensure that partnership for the protection of this taonga remained in place forever.

In chapter 7, we explained that the deed of conveyance Te Heuheu signed on 23 September 1887 did not provide for joint title of the peaks, as he had expected it would. At this fundamental level, therefore, the Crown did not fulfil Te Heuheu's intention to put the taonga into joint title and thereby actively protect the partnership he had intended. Having concluded that the Crown did not meet Te Heuheu's expectations at this principal level, did it, nonetheless, give effect to Te Heuheu's other wish in accordance with its Treaty duties?

During our hearings, Stephen Asher described what he saw as the problem with the governance of the park historically:

> The whole culture of governance and management of the National Parks since it was established has been essentially to treat Ngati Tuwharetoa as noble savages. We gave this thing [the mountain peaks] out of the goodness of our heart . . . and now we can sit over there and look noble while the Crown and its agencies gets on with the business over here and occasionally we might talk to each other. Now that's not a Treaty relationship, that's not even a normal relationship that you would have where two parties should come together and equally determine the principles of that relationship and how they should be implemented.[174]

In essence, the Treaty had not informed the governance of the park throughout its history. This was Ngāti Tūwharetoa's expectation since the park's creation, but, according to the tribe, the Crown had not delivered.

In closing submissions, the Crown argued that Horonuku Te Heuheu's fundamental expectation in the negotiations of 1887 was that the association of Te Heuheu and Ngāti Tūwharetoa would not be lost in the future administration of the park.[175] Te Heuheu's association was provided for through the Act of 1894, which gave Te Heuheu a seat on the board governing the mountains.[176] The Crown conceded, however, that it failed to consistently uphold Te Heuheu's position on the board, particularly as it was unilaterally repealed in 1914 and only reinstated in 1920.[177] This was inconsistent with its duty to act in good faith and was in breach of the Treaty of Waitangi and its principles.[178]

We think the Crown considerably understates matters with respect to its submission on Te Heuheu's 'fundamental expectation'. We think it was much more than a desire

to ensure that Te Heuheu's and Ngāti Tūwharetoa's association with the mountains would never be lost. We found in chapter 7 that, by signing the deed of conveyance, Te Heuheu believed he was sharing title with the Queen of England. He was motivated by a desire to retain real power and authority over the taonga for the tribe. The Crown, in our view, could not have misunderstood that objective. What the Crown did is impose its own view of what the tribe wished to do and steadfastly followed a path that led to the Crown obtaining title to the mountains.

We refer again to the documentary evidence, particularly key passages of Tūreiti's meeting with Minister William Nosworthy in 1920:

> . . . [Mr Lewis] made a request . . . that my Father should agree that the Queen be put into the Title along with himself, so that the Crown should be represented in the Title of that partition. I was present, and my Father (I was his only son) asked me what I thought about that arrangement. I then said to my Father that I thought he should agree to the request made by Mr Lewis, as it would be a very great honour to him to have the name of the Queen as co-owner, as it were, in that partition. It was decided that that should be – and that Queen Victoria should be a life member. *When the Board was set up the Queen's name was mentioned as being a life-member of the Board – . . . and at his [Horonuku's] death I was to take his place, and be also appointed a life member of that Board during my life-time.* [Emphasis added.][179]

This statement provides some clues as to how Tūreiti and his father understood the relationship between joint title and board representation. Crown historian Andrew Joel postulated that Horonuku Te Heuheu conflated co-ownership of the peaks with the status of a management trustee.[180] We rejected that proposition in chapter 7. To our mind, the account demonstrates that both men believed there were two parts to the exchange. First, they believed there was agreement on joint title of the peaks. That is apparent from Tūreiti's statements that the Queen would be a 'co-owner' 'in the title of that partition' after Te Heuheu's tuku. It is confirmed by Tūreiti's comment in the Native Land Court in 1908 that 'the only person included with me in the title [of the Tongariro National Park] is the King of England'.[181] Secondly, it is clear by the way that Tūreiti described the agreement, particularly the italicised statement above, that both rangatira understood life membership of the board to be an additional component to the agreement. When the Crown passed legislation delegating authority for management of the national park to the board, Te Heuheu Tūkino would, thus, be both a legal owner of the mountains and a life-member of the board governing the taonga for the future. These two parts were at the heart of Te Heuheu's expectations of the tuku.

Then there is the illuminating exchange between Tūreiti, the Minister and his translator, Captain Vercoe, immediately following:

> **Hon Tūkino:** . . . In 1914 Mr Grace told me that my name had been struck off this particular Board.
>
> . . . . .
>
> When I heard that, of course I felt very grieved over it. My reason for being so grieved about the matter was that I am the only one in the Title to the Land. It was the wish of the then Minister in power that the name of the Sovereign should be included along with my name in the Title to the land. This is what I want to get at. As you are the Minister-in-Charge of Tourist Resorts, *I want you to have my name put back as one of the governing people in connection with that Park*, and I want you to see that the Act of 1914 is either adjusted or struck out.
>
> . . . . .
>
> **Hon Mr Nosworthy:** [To Captain Vercoe] Does he just want to get back on to the Board of Trustees? Would he be satisfied with that?
>
> . . . . .
>
> **Captain Vercoe:** His point Sir is this: he does not in any way wish to take an active part in the conduct or control of the National Park. All he wants is the right of his Father, and his Father before him to that land – in his name.
>
> **Hon Mr Nosworthy:** He wants his name perpetuated alongside of the ruling Monarch of the Empire, as Trustee in joint with the Sovereign. He wants to be honorary trustee of the National Park?
>
> **Captain Vercoe:** That is just it. He does not want the name of His Father or his own name lost in connection with the thing.

> **Hon Tūkino:** If the governing body should at any time be operating in connection with the Reserve, *I would like to know what is going on around there in the interests of myself and my people*.
>
> . . . . .
>
> My reason for making this request is that I may be of considerable assistance to you, because if my people understand the position they would perhaps be of assistance to those officers of your Department who would be operating there, instead of being detrimental. [Emphasis added.][182]

We agree with Dr Coombes on this matter – Tūreiti was expressing his desire to contribute to the better governance of the park.[183] From the Crown's point of view, however, 'honour', not real power, was at the centre of Te Heuheu's conception of his trusteeship. Vercoe's interpretation appears to have informed this belief. From our analysis, Vercoe's attempt to clarify what Te Heuheu wanted fundamentally misrepresented his kōrero to the Minister. Te Heuheu stated that he wanted his place restored as 'one of the governing people in connection with that Park'. He was 'the only one in the Title to the Land' with the Crown, and so it was fitting that he should have a seat on the governing authority. Grace, however, had informed him that the 1914 ROLD Act meant that he no longer was. Tūreiti wanted the situation rectified. Yet, Vercoe communicated to the Minister that Te Heuheu did not want to participate in the park's administration. Towards the end of the conversation, Te Heuheu again stated that he wished to know 'what is going on' in respect of governance for the park. But it seems that Vercoe's interpretation of Te Heuheu's kōrero persuaded the Minister otherwise. Nosworthy and his officials appeared to be convinced that Te Heuheu's objection reflected symbolic recognition only.

Correspondence from Nosworthy's departmental head to Nosworthy demonstrated the misunderstanding:

> . . . I understand that the revival of his trusteeship is more a matter of sentiment than a real desire to participate in the active administration of the park as now constituted. He considers his 'mana' has been violated by the repeal of statute which created him a trustee for life.

The official considered that Te Heuheu's motivation was really about seeking some monetary grant as

> a solatium for the loss of office. His interpreter inquired whether there were any other means of recognising Tūkino's claim for restoration of his 'mana' and I inquired whether he would accept appointment (to be gazetted) as an honorary warden for life, in place of his trusteeship, of the park as at present constituted, but received a reply to the effect that that would not be acceptable.[184]

The documentary evidence above shows that Crown officials understood that Te Heuheu highly valued his trusteeship of these taonga. It also demonstrates that, historically, Ministers and officials regarded the position more as a matter of honour and prestige, than one denoting real power and authority over the taonga. We can only conclude that this was due to a fundamental misunderstanding of Te Heuheu's objectives in entering an arrangement with the Crown to protect the mountains in the first place. Te Heuheu's role was not an honorary one, as ministers and officials seem to have considered it to be. To our mind, Te Heuheu's position on the board was at the heart of his original conditions for the tuku and nothing less than a substantive role in governance would suffice. Both Te Heuheu and the Queen (or her representative) would exercise their authority and control over the taonga in partnership in the future: rangatiratanga and kāwanatanga in operation to protect the most precious taonga of Ngāti Tūwharetoa.

We agree with Mr Asher that there is a fundamental Treaty issue at play. The Crown was under a Treaty duty to ensure that, in delegating its authority to a statutory board, it did so in a way that did not impede Ngāti Tūwharetoa from exercising rangatiratanga in partnership with the Crown. Ngāti Tūwharetoa regarded active protection of their authority and control, through Te Heuheu's trusteeship, as essential to governance arrangements for te kāhui maunga.

Did, then, the Crown's legislative regime comply with those expectations? We have already concluded that the Māori versions of the 1887 and 1893 Bills did not

adequately convey how the taonga would be managed once the law was in place. It is highly unlikely that Te Heuheu understood the application of the public domains legislation to management of the park when reading the Māori version of the Bill. As a member of the authority governing the taonga, Te Heuheu would have expected to determine the principles for future management in partnership with the Crown. As the Tribunal stated in *He Maunga Rongo*, the very essence of kaitiakitanga is the authority to control what is possessed in accordance with the cultural and spiritual values deemed appropriate.[185] In our view, the legislation neglected to enshrine principles for management of taonga with the informed consent of tangata whenua.

There is also the issue of board composition. In our view, Te Heuheu's envisaged partnership was met, to some extent, by Ballance's Bill of 1887. Governance was placed in the hands of the Native Minister, Te Heuheu and 'such other person as the Governor shall appoint'. Sadly though, the Bill was discharged before becoming law. Legislating for Te Heuheu's position on the board in 1894, however, did indeed secure a role for Ngāti Tūwharetoa in the governance of their taonga. That was a positive result. But the statutory delegation of power to the board was not defined in a way that reflected a partnership. Under the legislation, Te Heuheu was one of four trustees on the board; the other three were representatives of the Crown, leaving Te Heuheu in a minority position. Ngāti Tūwharetoa's authority over this taonga was, therefore, constrained by the numerical superiority of Crown interests in 1894.

How, then, could the Crown have complied with the conditions of the tuku and its Treaty duties? We agree with Mr Asher's response to the Crown on this issue:

> **Mike Doogan:** . . . what should the Crown have done, what ought it have done to respect that gift?
>
> **Stephen Asher:** My view is that . . . Tūreiti at the time should not have been just one of a number of people. The relationship should have been first of all what you would call a treaty relationship, a true treaty relationship with the iwi of the mountains equally represented with Crown appointees. Now that was not the case. Tūreiti was simply made a member of a Government-appointed body, so it starts as early as that. Then you have a succession of Park Boards where Tūreiti and his successors again are appointed by the Government in a minority role.[186]

The evidence of Te Heuheu's ever-decreasing power on the park board, referred to by Mr Asher, was outlined at the beginning of our analysis. In 1952, the legislation was changed to introduce another level of authority (the National Parks Authority) above the Tongariro National Park Board. We summarise board composition here once more (see table 11.1).

In our view, this summary of the statutory delegation over time demonstrates the problem from Ngāti Tūwharetoa's point of view. Te Heuheu's actual power and potential influence on that board was watered down more and more under each legislative regime. The 1887 Bill offered the possibility of partnership in governance, but the 1894 legislation reversed that, and with each subsequent change to the legislation partnership was less likely. If the Crown wished to alter the composition of the board away from a partnership, consultation with, and the consent of, Te Heuheu and Ngāti Tūwharetoa would have been essential. As we have shown, however, the evidence suggests that discussions with Te Heuheu during the legislative process could not be characterised as formal consultation.

We conclude, therefore, that the Crown did not adequately provide for Ngāti Tūwharetoa's rangatiratanga in the statutory delegation of authority and its accompanying regime. We confirm our conclusion in chapter 7 that there was inadequate consultation with Tūreiti Te Heuheu and Ngāti Tūwharetoa in regards to the Tongariro National Park Act 1894. In our view, the problem was only compounded with each subsequent change to the size and composition of the board.

The Crown's delegation of authority did not deliver the partnership that Te Heuheu and Ngāti Tūwharetoa envisaged. Te Heuheu was not a partner with the Crown at the board table. Te Heuheu was only one of several representatives on the board, which, over time, became dominated by individuals whose primary interests did not include

Legislative regime	Prescribed members	Number	Additional appointments
The Tongariro National Park Board, 1887–1951			
Tongariro National Park Bill 1887	Native Minister Te Heuheu	2	1
Tongariro National Park Act 1894	Minister of Lands Te Heuheu Surveyor-general Director of Geological Survey	4	Unlimited*
Reserves and Other Lands Disposal and Public Bodies Empowering Act 1914	Board abolished	0	0
Tongariro National Park Act 1922	Minister of Lands Te Heuheu Mayor of Auckland Mayor of Wellington Park warden Under-Secretary of Lands and Survey General manager of the Department of Tourist and Health Resorts Secretary of State Forest Service President of New Zealand Institute	9	4†
The Tongariro National Park Board, 1952–80			
Tongariro National Park Act 1952	Commissioner of Crown lands Te Heuheu	2	6‡
Tongariro National Park Act 1980	Te Heuheu	1	9§
The National Parks Authority, 1952–80			
Tongariro National Park Act 1952	Director-general of lands Assistant director-general of lands Secretary for internal affairs Director of forestry General manager of the Department of Tourist and Health Resorts Representative of the National Parks Board¶	6	3
Tongariro National Park Act 1980	None	0	10§

* Section 4 of the Tongariro National Park Act 1894 states that the Governor can appoint 'such other persons' as required.

† Tongariro National Park Act 1922, s 5(3). The number of Governor-appointees expanded from four to six under section 134 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924. In 1948, four new positions were granted to the member of parliament of the electoral district in which the park was situated, representatives of both the Federated Mountain Clubs and the Ski Council, and one member from the Royal Society of New Zealand by legislative amendment.

‡ National Parks Act 1952, s 16; National Parks Amendment Act 1956, s 2

§ National Parks Act 1980, s 32(2), (4)

¶ This was increased to two under section 2 of the National Parks Amendment Act 1968.

In 1980, the National Parks Authority became the National Parks and Reserves Authority and the Tongariro National Park Board became the Tongariro National Park and Reserve Board.

Table 11.1: The composition of the Tongariro National Park Board, 1887–1980, and the National Parks Authority, 1952–80

consultation with tangata whenua, or kaitiakitanga over taonga.

11.5.3 What did the Treaty require the Crown to do?

During our hearings, the Tribunal asked Dr Nicholas Bayley what he considered to be the most important issues before it on the topic of park management. Dr Bayley responded that park management had evolved until recently without any real consideration for Māori. He considered that the major issue was, therefore, whether it should have done so, given what the park means to Māori.[187] We agree with Dr Bayley.

Failing to adequately provide for Māori rangatiratanga in the legislative framework did not entirely preclude the Crown from meeting its Treaty responsibilities in other ways, through the regimes it established for governance of the park. In the second half of our chapter, therefore, we bring the focus down to the practical operation of park governance. The claimants argued that their taonga have not been protected in a manner befitting the cultural and spiritual expectations of the tangata whenua. This has, in their view, caused the erosion and destruction of their traditions and way of life. To assess this claim, we must first determine what the Crown's Treaty duties to ngā iwi o te kāhui maunga were: what was reasonable for the Crown to do in the circumstances of the time to keep the Treaty? Having determined that, we will then go on to assess whether the Crown met this standard and, if not, what impact this had on Māori and their taonga.

Unpacking the respective positions of the claimants and the Crown, it becomes clear that the differences lie over the parties' views of:

- the appropriate priority that should be given to Māori interests in environmental management;
- the extent of consultation and informed consent in management decisions; and
- the extent to which the values underpinning park management have historically converged with those of ngā iwi o te kāhui maunga.

We will address each of these points of difference, but first we begin with a consideration of what Treaty standards should be applied.

The Crown accepted in closing submissions that its duty of active protection extended beyond property interests to include taonga guaranteed to Māori by article 2 of the Treaty. It submitted, however, that it is not possible to state what priority Māori interests will take, as this depends on a range of factors, including the importance of the taonga, environmental threats to the taonga, available research about it, and the human and monetary resources required for effecting Māori interests. According to the Crown, its overriding obligation is to 'the environment'.[188]

We welcome the Crown's acceptance of the Treaty standard. Previous Tribunals have discussed the nature of the Crown's duty of active protection with respect to Māori taonga. For instance, the *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* found that

> Article 2 of the Treaty requires the Crown actively to protect the claimants' respective interests in both the benefit and enjoyment of their taonga and the mana or authority to exercise control over them. Failure to afford such protection constitutes a breach of Treaty principles.
>
> The degree of protection to be given to the claimants' taonga will depend upon the nature and value of the resource. The value to be attached to their taonga is essentially a matter for the claimants to determine. Such value is not confined to, or restricted by, traditional uses of the taonga. It will include present day usage and such potential usage as may be thought appropriate by those having rangatiratanga over the taonga. In the case of a highly valued, rare and irreplaceable taonga of great spiritual and physical importance, . . . the Crown is under an obligation to ensure its protection (save in very exceptional circumstances) for so long as Maori wish it to be so protected.[189]

The report continued:

> The Crown's right to manage, or oversee the management of . . . resources in the wider public interest must be constrained so as to ensure that the claimants' interest in their respective taonga is preserved in accordance with their wishes. The Tribunal is unaware of any exceptional circumstances or

> overriding public interest which would justify any other conclusion which might leave it open for the claimants' interest in their taonga to be harmed or rendered ineffectual.[190]

We concur with the Tribunal on this matter. In our view, a national park is not a space where Māori interests should be harmed or rendered ineffectual. While the public of New Zealand has a strong interest in national parks because of their environmental and recreational qualities, this should not override the interests of Māori. The principle of active protection requires the Crown to give a high priority to Māori interests in their taonga. This was confirmed in the *Te Tau Ihu* report, where the Tribunal concluded that

> Active protection requires honourable conduct by, and fair processes from, the Crown, and full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected.[191]

Throughout this report, we have emphasised the central importance of the various taonga of the National Park inquiry district to tangata whenua. By their very nature, we concluded that the Crown was bound to offer a very high degree of protection to these taonga to ensure it complied with its Treaty obligations. Furthermore, we have agreed with previous Tribunals that the Crown was bound to actively protect taonga, and this includes allowing tangata whenua to perform their kaitiaki responsibilities toward taonga.[192]

We have already concluded that the statutory framework fulfilled neither Treaty standards, nor the conditions of the tuku. Whanganui Māori were not consulted over the legislation, nor provided with any representation on the delegated authority governing the park. At this fundamental level, therefore, the statutory framework did not adequately fulfil Treaty standards even though the Crown was aware of Whanganui Māori interests in the park historically. The legislative regime also did not fulfil the conditions of the tuku. Te Heuheu expected to govern the taonga in partnership with the Crown, but, as we demonstrated above, Te Heuheu was increasingly outnumbered by other interests on the board. This did not accord with the principle of partnership.

The failings of the statutory framework for ngā iwi o te kāhui maunga did not, however, negate the possibility for the Crown to fulfil its Treaty obligations. The Crown could still have acted in accordance with principles of good faith, partnership, and active protection in the circumstances of the time. To do so, the Crown had to ensure that it was fully informed of Māori values and interests in the national park. In our view, adequate consultation and the development of policies that accorded those values and interests appropriate weight in park administration were critical elements to success.

The Crown could have ensured the members of its delegated authority consulted with tangata whenua on a policy framework that conformed to their cultural values. Failing that, the Crown could also have ensured that its delegates on the board actively and constructively cooperated with tribal leaders on the appropriateness of all proposals before it. This would have ensured that the Crown sanctioned no activity that it knew would have a negative impact on Māori interests and values without consultation and the informed consent of those affected in the first instance. If it did sanction activity without prior knowledge of the negative impact on tangata whenua, then the Crown would need to take prompt action to remedy the situation. There would need to be full discussion with the tribe and any affront to their mana mitigated. Such an approach would have guaranteed that, despite shortcomings in the statutory regime, the Crown still abided by Treaty principles. In our view, that is the priority that Māori interests should have taken, and must take in future.

11.5.4 Did the Crown fulfil its Treaty requirements?

To determine whether the Crown met the Treaty standard required of it, we have to assess, first, how taonga within the park were managed and the role that tangata whenua had in decision-making. An understanding of that lies at the heart of determining whether the Crown met the protective standard that the Treaty required of it. If, for instance, the Crown or its delegated authority sanctioned

activity within the park that negatively affected Māori interests and values, we would need to know two things: (1) Was the Crown or its delegated authority aware of those interests, and if not, why not?; (2) Did the Crown take appropriate action to ensure that any encroachment on tribal mana was mitigated or, at least, the subject of consultation and managed considerately? With answers to these questions, we could determine whether the Crown adequately protected Māori from actions or inactions that had a negative impact on their interests. In our estimation, if ngā taonga o te kāhui maunga were managed with due consideration for Māori interests and values, then the relationship between kaitiaki and their taonga would be healthy and strong. In line with the Crown's suggestion, therefore, we propose to assess its conduct in terms of what actually took place on the ground.

(1) *Board management of the park*

The purpose of this section is to examine how the Crown's delegated authority managed the park over time. A prominent theme of this discussion is the relationship between board composition and recreational development on the mountains. Recreational interests exercised considerable control over ngā taonga o te kāhui maunga because they were represented directly and substantially on the board. This led to the park being developed as an 'adventure playground', with little consideration of its cultural importance or the protection of Māori taonga. As Dr Coombes stated, park management is, in many ways, a misnomer, because for decades the natural resources within its precincts received little management. Policies and procedures for the 'management' of taonga have really only emerged since the 1950s. Prior to that time, most of the board's focus was directed toward the provision of facilities and options for revenue.[193]

A further prominent theme in this section is the inadequate resourcing available to the board to manage activities within the park. Although the Crown envisaged that the park would be mainly self-funding when it legislated for its existence, the board has consistently had insufficient finances to manage and control the natural assets within the park. Not only have the natural assets suffered, but as we see later on, the board did not even have the finances necessary to cope with the rapid escalation in visitor numbers to the region in the post war period. In the circumstances, environmental degradation of the taonga became a major problem.

(a) *Managerial neglect, 1887–1921:* For 35 years after Te Heuheu's tuku, the Tongariro National Park was a space that received little in the way of formal attention. Tourists visiting the region, excited by the prospect of visiting New Zealand's first national park, would have encountered a landscape largely unchanged. Between 1887 and 1907, no park, in fact, legally existed. Then in the following 15 years, the park's administration was plagued by an inoperative board and inadequate management from the responsible government department.[194] Dr Coombes aptly described the entire period as one of 'managerial neglect'.[195] At this point, we explore briefly why that happened.

There was considerable public interest in the park from the beginning. Organised ascents of the mountains began soon after the Crown acquired title to the peaks in 1887. The *New Zealand Herald* reported in 1889, for instance, that

> A great many tourists are now making their way to this [south] side of the lake [Taupo] to view the wonders of this district which are many and varied . . . Those who have ascended the Tongariro mountain (which ladies climb easily) are in ecstasies over the surrounding majestic scenery and the marvellous handiwork of Nature . . . It is the universal opinion of those who have been in this district, and seen all the sights, that it is far more interesting than anything they have seen in the Rotorua district or Taupo side of the lake and that ultimately it will become one of the greatest tourist resorts in New Zealand.[196]

Tourists' enthusiasm for visiting the park was not, however, reflected in the attention paid by the Crown to developing recreational infrastructure or caring for the park's assets. The Crown's primary focus prior to 1907 was to acquire the remaining interests in lands identified for the park. As we discussed in chapter 7, this took until 1903

A group of mountaineers on Te Heuheu Peak, Mount Ruapehu, 1910. Organised climbing parties became more frequent after 1887, when title to the peaks was acquired by the Crown.

to complete. With the formal establishment of the park in 1907, however, the board of trustees was empowered to govern the park. As chairman of the board, the Minister of Lands was responsible for calling board meetings, but, between 1907 and 1914, only three were held before the board was abolished altogether.[197] Administration of the park was simply not enough of a priority for the government to do anything more at the time.

In the absence of an operational governing body, private citizens often acted independently to achieve their goals. Demands for recreational infrastructure grew significantly in the early twentieth century and the Department of Lands and Survey began receiving requests from newly formed alpine clubs for permission to form tracks and erect accommodation in the park. On each occasion, the department responded that the concurrence of the board was required. With an inoperative board, however, a decision-making vacuum was created. In the circumstances, clubs simply went ahead with their plans anyway.[198]

Transferring responsibility to the DTHR in 1914 did not mark any significant change to how the park was administered thereafter. With the backing of a department dedicated to increasing the country's tourism potential, legislators and supporters hoped the move would expedite recreational development within the park. The onset of the First World War made that impossible. The war both constrained the potential external tourism market, as well as the government's own resources.[199]

Frustrated by the continuing lack of progress under the management of the DTHR, alpine clubs and determined

A cottage at Whakapapa built in the 1920s. Possibly one of the first to be built in the area to accommodate skiers, this house was followed by exclusive accommodation for ski clubs.

individuals pursued their own agendas for the park. Since erecting the first huts in 1904 at Ketetahi and Waihohonu, nothing was done to accommodate an increasing number of visitors to the region. Accommodation on the mountains was a key issue for skiing pioneers who wished to have ready access to the slopes. The department's inaction simply persuaded such groups to build accommodation huts and tracks around the emerging Whakapapa and Tūroa ski fields, all with the approval of the DTHR. Such infrastructure was provided for the use of the general public, but, by the early 1920s, ski clubs pushed for exclusive accommodation on the mountains. Citing the department's neglect of the park hitherto, clubs suggested that it would be totally unfair for the government to discourage the principle of 'self-help' when those clubs had the will and resources to provide their own facilities. While no exclusive accommodation was accepted prior to transferring the park back to a park board, those

clubs' involvement in providing accommodation secured them a strong influence on the future direction of park development.[200]

As alpine clubs pursued their own interests on the mountains, other individuals undertook to transform the park into a 'paradise for sportsmen'. In the absence of effective administration of the park, several exotic species were released as game for enthusiastic hunters. Species, such as deer, were intended to attract a new elite class of tourist keen to explore what the country had to offer. Then, from the early twentieth century, former police commissioner John Cullen led acclimatisation efforts within the park. Cullen, the park's first honorary warden, introduced a more diverse range of both flora and fauna species to the park, all of which thrived in their new habitat.[201] Sadly, the ecological effects of these exotic introductions were felt long after the park became a sanctuary for indigenous flora and fauna.

Cullen's introduction of heather is notable, in particular, for the direct assistance he received from the Crown. Cullen first introduced heather into the region in 1913, using a supply of seed sourced from the South Island.

Police Commissioner John Cullen. As the park's first honorary warden, Cullen introduced a variety of plant and animal species into the region. One such plant, heather, which was first introduced in 1913, was to have lasting ecological effects.

The alpine native gentian, *Gentian bellidifolia*. Alpine plants like the native gentian inhabit the Tongariro mountains, standing out against tussock colours with pure white flowers. This plant is competing with heather.

Heather (*Calluna vulgaris*). Since it was introduced into Tongariro National Park, heather has spread widely, forming a mat and inhibiting the growth of other plants. Remarking on its introduction to the park, distinguished botanist Leonard Cockayne stated that he was strongly against any interference with the native vegetation in national parks and scenic reserves.

Within a few short months, the plant was reported to be flourishing.[202] Wishing to spread it further through the park, however, Cullen received financial and logistical assistance from Prime Minister Massey, through New Zealand's high commissioner in London, to procure more seed sourced from various boards of agriculture in the United Kingdom. Hundreds of acres were sown under the DTHR's watch, using local police constables and prison labour.[203]

As we said at the outset, the park was generally neglected by the Crown between 1887 and 1922. An ongoing focus on acquiring the lands required for the park, little effort toward enabling board governance, and inadequate attention paid by the DTHR created a vacuum that allowed recreational clubs and influential people to carry out their activities largely unhindered.

(b) *Prioritising tourism and recreational development, 1922–44:* The park board was reconstituted at a time of shifting public attitudes as to the purpose of national parks. Tourism and recreational development remained a high priority and the new board expressed its determination to provide adequate facilities and infrastructure for the influx of tourists and recreationalists expected over the

coming years. The Minister of Lands remarked in his opening statement before the reconstituted board that development of the park was crucial:

> Its attainment was of the greatest importance to New Zealand, not only in the sense that it would make accessible a unique field for enjoyment and study but in the broader sense that it would attract to our shores thousands of visitors from abroad and help to make the name 'New Zealand' known in all parts of the world.[204]

The desire to increase New Zealand's profile around the world coincided with a general concern to protect what was distinctive about the environment. Early experiments at converting the environment into a game preserve were criticised by one member of the scientific community as 'a childish outrage', and an 'insult to the Maori donors, and to all lovers of New Zealand as New Zealand'.[205] In September 1924, the Legislative Council resolved that the park should be 'a reserve for native plants and birds, and as a recreation ground for the people of New Zealand'.[206] In November 1904, the park board approved an amendment to the park's status as an 'absolute sanctuary', stating that

> no birds or animals be introduced into the Park, or trees or plants planted, or seed thereof sown, without a resolution of the Board authorising the same from time to time.[207]

Hoani Te Heuheu, as Ngāti Tūwharetoa's representative on the board, supported the amendment.[208]

The board's immediate attention was focused on two particular issues, preservation and accommodation. By the mid-1920s, the board was focused on undoing the acclimatisation mistakes of the past, particularly Cullen's introduction of heather. In 1925, the board resolved to eradicate all heather in the park in order to preserve the fragile alpine flora it was threatening to displace. By 1926, however, the board had to reverse its position and concede that 'it is impossible to eradicate the heather save at cost beyond the means of the board'.[209] Although the board tried to prevent heather from spreading further, the chairman eventually admitted that they were not winning the battle.[210]

The board's other priority was accommodation for tourists to the region. Its focus was firmly on the western slopes of Mount Ruapehu, which quickly became the centre of recreational activity in the park. While the issue of accommodation preoccupied the board throughout the 1920s, members disagreed on the sort of accommodation to provide. The huts erected prior to the 1920s were available for those willing to rough it, but there was nothing for the more well-to-do visitors.[211] Some members suggested leasing land for the construction of accommodation to suit such travellers. Not only would this provide a good source of revenue for the board, but there was significant public interest in such an approach. Cullen claimed in 1923 to have 40 people ready and waiting for the board to grant them permission. Other members, however, regarded Cullen's suggestion as a 'very dangerous one' that could lead to a town springing up on the mountain.[212]

Although initially reluctant to lease any portion of the park for commercial tourism, the board quickly reversed its position. The board's lack of funds meant there was no hope for it to sponsor the sort of luxury accommodation in mind. In the circumstances, the board invited offers for the construction of a large hostel on the western slopes of Mount Ruapehu.[213] The Tongariro Park Tourist Company took on a lease for 63 acres in 1928, and with financial assistance from the board to the tune of $60,000, the Grand Chateau was opened with much fanfare in 1929.[214]

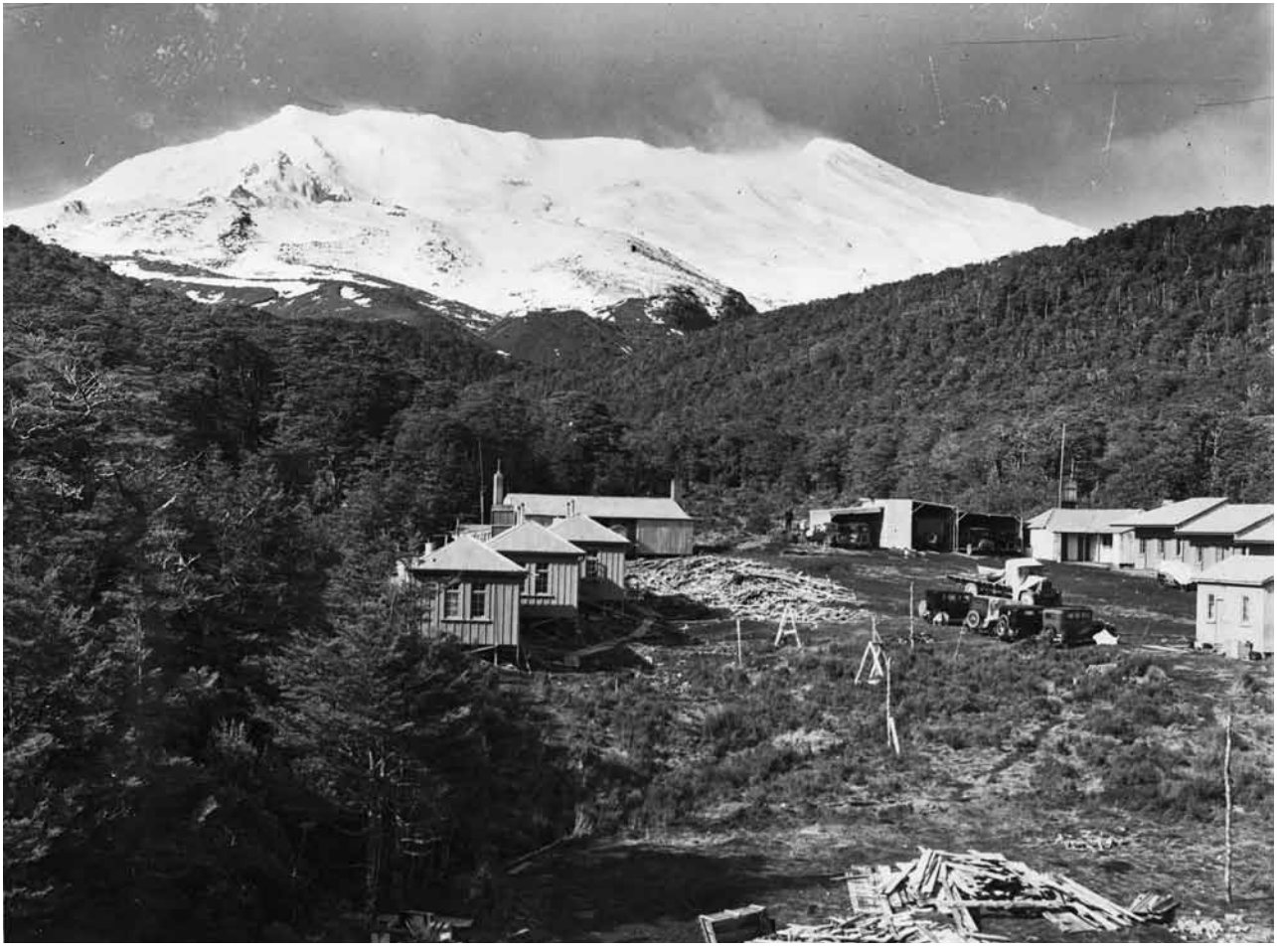
But the celebrations were short-lived. Less than two years after the Chateau opened, the company that built it went into receivership. The board was forced to take possession in February 1931, and in a few months the Chateau exhausted almost all of the board's finances. The company's failure was, in fact, felt for decades afterwards, as few financial or personnel resources were devoted to any other task than keeping the hotel afloat. A downturn in tourism during the Second World War and ongoing maintenance only made the board's financial position more precarious.[215] By 1945, the Chateau had occupied a significant proportion of the board's finances to the overall detriment of the rest of the park.

Crowds celebrate the opening of the Chateau Tongariro, 1929. The chateau was to become a prominent tourist destination throughout the twentieth century.

Although preoccupied with the Chateau for years, the board was instrumental in facilitating the growth of recreational infrastructure on Mount Ruapehu. A camping ground, ski courses, and more accommodation were prominent among the developments of the 1920s and 1930s.[216] Club huts, in particular, proliferated after the board identified 75 sites around the Chateau for private use. Clubs enthusiastically took up leases with the board, wanting to take advantage of the growing ski field area at Whakapapa.[217] One board member, who was also vice-president of the Ruapehu Ski Club, stated that

> I want to encourage bona fide clubs to erect huts in the Park Area, as they will provide accommodation for young New Zealanders who should be encouraged to use their National Parks as playing areas. The tendency is to encourage the overseas tourists, and old people who have the means to enjoy the luxury of the Chateau and similar structures.[218]

Increasing access to the mountain for 'young New Zealanders' encouraged the board to approve huts higher up the slopes of Mount Ruapehu. The first huts constructed within the three-mile radius of the peak emerged



Accommodation alongside the Chateau Tongariro. In the 1920s and 1930s, outdoor recreation on Mount Ruapehu was aided by developments such as a camping ground and these huts, and these developments were instrumental in encouraging young people to visit the park.

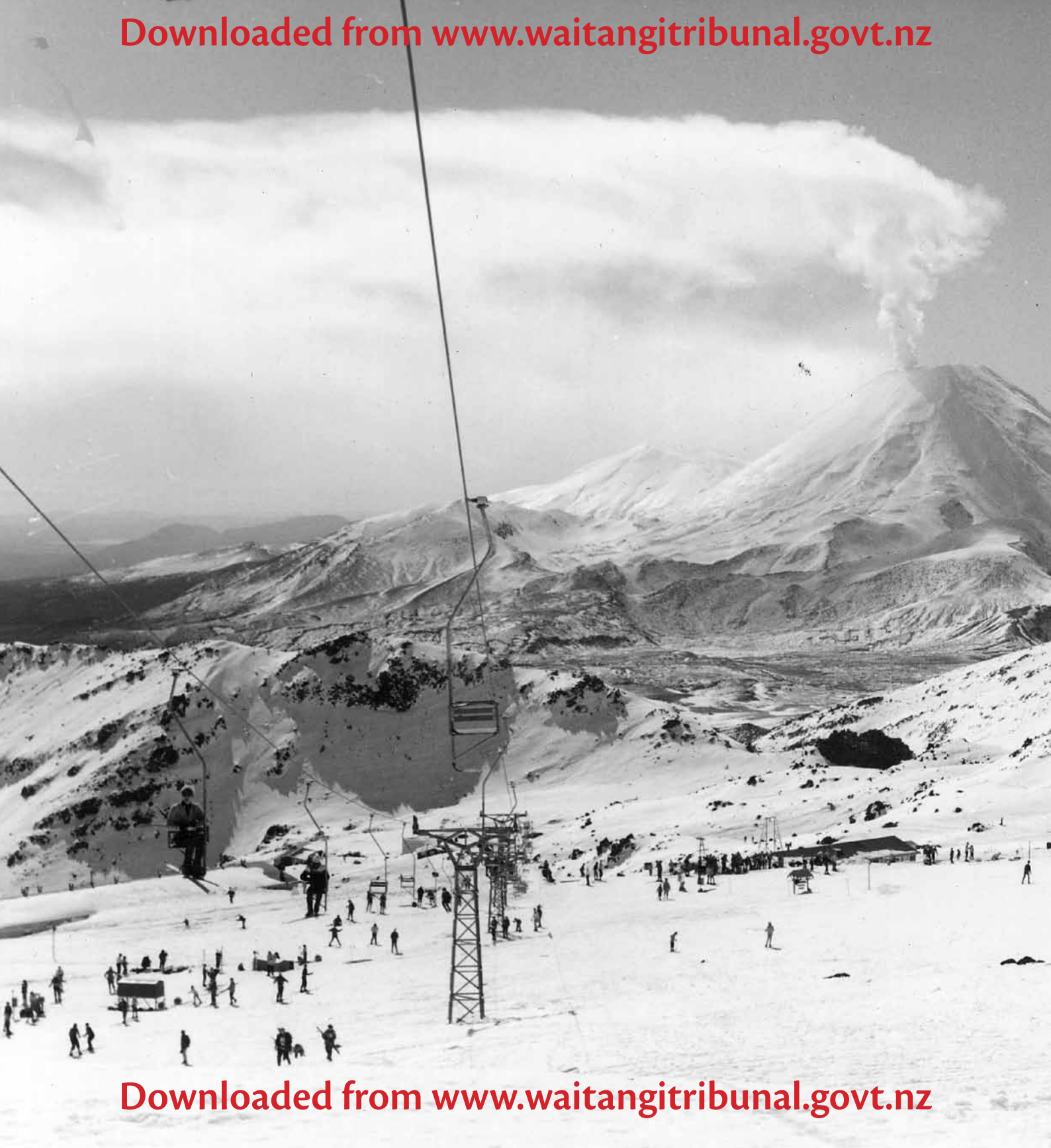
in 1926. Five years later, the board approved the construction of a hut at 5,080 feet (1,548 metres) for 'use in connection with winter sports'.[219]

Over the following decade, the number of huts grew steadily, with a significant change to park governance providing the catalyst for this growth. Section 20 of the Reserves and Other Lands Disposal Act 1931 authorised the board to appoint a subcommittee of two or more members to exercise its powers.[220] An executive board comprising *ex-officio* Wellington-based members was first established in 1925 to 'attend to routine and urgent business,'[221] but it was not employed to any significant degree in the 1920s. During the 1930s, however, the executive board performed the functions of the full board on a more consistent basis, and commercial tourism and recreational development increased significantly on the mountains.[222]

As private accommodation increased, the board turned its attention toward regulating development on

◄ Skiers on a Whakapapa glacier, 1938. These skiers tackled the Whakapapa skifield on Mount Ruapehu before the advent of tow ropes and chairlifts.

▼ A view from Whakapapa Glacier with skis and poles, 1938. During the 1930s, the promotion of tourism and recreational development encouraged increasing visits to the mountains.



the mountain. Concern at the rapid spread of huts, for instance, prompted the Board to develop policy guidelines for the future. The policy reaffirmed the board's commitment to allowing clubs to construct their own accommodation providing the building was situated above 5,000 feet and was for the exclusive use of the club. This would confine the spread of huts and also ensure that such accommodation would not compete for business with the Chateau. As a consequence, increasing numbers of huts emerged on Mount Ruapehu above the Chateau and above the 5,000-foot level. Board policy for the protection of the Chateau inevitably consolidated the position of club huts at what would become 'Iwikau Village', the highest altitude 'township' in the country.[223]

(c) *Over-development and the 'peoples' playground', 1945–80:* The new emphasis on recreation in the post-war period created the environment for what can only be characterised as a building boom on Mount Ruapehu. Improved transportation had made short trips to the mountain possible, thus greatly increasing visitor numbers keen to explore what it had to offer. Amateur skiing courses developed by enthusiastic pioneers took more definite shape in this period and were accompanied by a network of people-moving devices and club huts around the old skiing circuits on the mountain.[224] Enthusiastic Swiss entrepreneur Walter Haensli constructed the first chair lift on Ruapehu in the early-1950s. Haensli's influence was critical to the creation of Ruapehu Alpine Lifts, a company that has dominated commercial recreational activity on the slopes of Mount Ruapehu for several decades. With a chair lift capable of moving up to 400 people an hour, the chairman of the Tongariro National Park Board commented to his colleagues in 1952 that, to 'make the Mountain available to the public', the board was 'apparently all agreed' that a chair lift was desirable and that it was their responsibility to 'endeavour to have one installed'.[225] With the chairlift came additional facilities. In just a few short years, recreational groups, particularly the ski lobby, fostered an exponential increase in recreational infrastructure that was to have long-lasting consequences for the park.

This building boom was facilitated by the continuing dominance of the executive board after the Second World War. Members of the executive by then regarded themselves as having the authority to do as they pleased and without reference to the full board. A comment by the chair of the executive board that the full board would support any action it took – 'though perhaps only out of courtesy' – reflected just how dominant the executive had become in the governance of the park by that time.[226]

The most intensive development occurred at Iwikau Village. Because of the board's determination to prevent competition for accommodation with the Chateau, huts at Iwikau proliferated. The executive board also approved huts for the first time at 8,000 feet (2,438 metres), an altitude that encroached into the blocks that Te Heuheu tukued in 1887.[227] By the late 1940s, one member of the Ruapehu Ski Club observed that '[e]very weekend the scoria ridges rang with the sounds of pick and shovel, blasting, bulldozers, tractors, concrete mixers.'[228]

To relieve itself of the burden of monitoring this growth, one board member proposed to devolve responsibility for authorising club hut construction to the Federated Mountain Clubs (FMC).[229] Although the Minister of Lands (a board member) rejected the proposal as inappropriate, he did support the FMC's involvement in the process, as a gatekeeper for the application process. The arrangement, it was reasoned, would create a closer link between the board and those recreational interests with a stake in the park. The board secretary explained that he felt sure that

> the Federation has at heart the interests of the park generally, and would co-operate with the Board in insisting among its member clubs that the type of huts erected are of the highest possible standard.[230]

The FMC was to ensure that, prior to the full board's consideration of any application, the site and design of

◀ **Skiers on Mount Ruapehu, 1950s. As the numbers of huts built by clubs increased after the war and transportation became easier, skiers flocked to Mount Ruapehu. Iwikau Village, high up on the mountain, become the focal point for huts at the 'Top of the Bruce' Road and for skiers who came for the day.**

the hut and standing of the applicant club met the board's conditions. Claimant counsel discussed this with Dr Coombes during our hearings:

> **Mr Bennion:** Now you talk about . . . a devolution which I was fascinated by. So the Federated Mountain Clubs . . . through its ski council actually looked at the standard of design and how huts would look and feel, that sort of thing, and they did that for the board, the board devolved that to them in a sense?
> **Dr Coombes:** I would say it went beyond that . . . the Council or Federated Mountain Clubs . . . was allowed to comment on where the best sites for club huts were . . . [and] they seemed to have an influence on the number as well.[231]

In Dr Coombes' view, the full board almost never rejected the advice of the FMC. In effect, the FMC became the responsible agent for approving club huts on the mountains.[232] By the late 1940s, over half of the 28 clubs affiliated to the FMC were permitted to establish huts at Iwikau Village.[233] As the responsible agent, the FMC did not question the existence, elevation, or environmental impact of club huts on the maunga. In fact, their interest was focused simply on assisting their member clubs gain an exclusive foothold on the mountains.

The federation's involvement in this process, however, caused major environmental issues. FMC's reluctance to 'interfere unduly in the domestic affairs of Clubs' meant that it relied on club officials to ensure refuse and rubbish was appropriately disposed of.[234] By the early 1950s, the government started receiving complaints from concerned citizens about the state of Iwikau Village:

> I am deeply shocked at the unseemly conglomeration of shacks that are ruling the rugged grandeur of the mountain. Is there no one concerned with the quality, siting, fitness of the buildings permitted to be erected in the Park? . . . with motor access, now as far as the Ruapehu Ski Club Hut, there is growing up at an alarming rate a shanty town, buildings entirely out of character and harmony with the site, of no relationship with each other, each attended by its own W C and its own litter of tins and broken beer bottles. Surely here, if anywhere, your department should exercise planned control and seek to enhance rather than destroy one of nature's gifts.[235]

With reportedly over 90 per cent of the board's annual revenue already spent in the Whakapapa area, the executive board considered revoking certain clubs' permits. Instead, it opted for a less bold solution. In 1955, all clubs were instructed to discard their waste in Whakapapanui canyon. This was, as Dr Coombes argued, the board condoning environmentally destructive practices on the mountain. Concerns expressed by one board member that this would pollute the Whakapapanui Stream, were rejected by the majority. That member openly criticised the full board for relying so heavily on the executive board, which, in his view, had diminished board members' accountability and sense of democracy. For four years the board sanctioned rubbish dumping in the canyon before embarrassing legal action forced the board to set up a collection point at the end of the Bruce Road and contract its removal to Rangipō Prison. Even this was only a trial measure, which many clubs still refused to take up.[236]

Another part of the board's response to environmental damage was the definition of 'development areas' in its first management plan. Although the impetus for this plan emerged from a determination to confine the damage at Whakapapa, the 1954 plan provided the blue-print for growth of infrastructure and facilities throughout the park. The board determined that it was necessary to divide the park into two different categories: areas upon which preservation of the native flora and fauna would be the sole objective and areas to be developed for the use and enjoyment of the public to the full extent available. The board then delineated four development areas under the second category, largely formalising where recreational infrastructure had emerged hitherto.[237]

Upon setting the development areas, the board decided to encourage the 'close settlement' of infrastructure within them. The staking of additional sites to achieve this objective, however, only fuelled another building boom that increased the concentration of infrastructure not only at Whakapapa, but also at the new Tūroa and

'Snow's better!' As the number of huts escalated at Iwikau Village, problems arose with litter, especially tin cans and broken beer bottles, and with waste. By the early 1950s, letters of complaint began descending on the government from people concerned about the destruction of such a magnificent natural area.

Tūkino ski fields on the southern and eastern slopes of Mount Ruapehu. These new ski fields relieved pressure on Whakapapa, particularly Iwikau Village, which was suffering from over-development. As one club member remarked in 1963, New Zealand's 'highest town' consisted of 40 huts catering to a seasonal population of about 1,000 recreationalists. By 1973, there were 61 club huts – five at Whakapapa, 48 at Iwikau, one at Tūroa, three at Tūkino, and four others – on the mountain.[238]

The rapid escalation of huts on the mountain meant sewage disposal became a major environmental problem on surrounding waterways. The ineffectiveness of septic tanks at high altitude made it clear that an integrated sewerage reticulation and treatment system was badly needed. But the cost of such a scheme was beyond the resources of the board. In the circumstances, the board allowed clubs to continue using septic tanks without monitoring. Negative publicity regarding a potential epidemic at the Village in the early 1970s, however, caught the attention of the government. Responding to claims of incompetence, the government acknowledged that a number of the septic tanks fell short of the required health standard, but accused the media of exaggerating the prospect of an epidemic at Iwikau Village. Soon after, the board requested regular monitoring and desludging of septic tanks and resolved that no further club huts be erected at Iwikau Village.[239]

The chair of the National Parks Authority even floated the possibility of removing huts from Iwikau Village altogether. Regarding it as inappropriate for particular interest groups to have 'privileged' rights on the mountains, the chair suggested that the board assume ownership of the huts with a view to their eventual removal.[240] The Tongariro National Park Board criticised this suggestion as 'quite unworkable', however, largely because it could not conceive of ever having the millions of dollars necessary to purchase the existing huts.[241] In 1978, the board requested a report from some local park rangers to

The Whakapapanui Stream. The stream, which flows down Mount Ruapehu, was in danger of becoming polluted following the executive board's decision in 1955 to allow waste to be discarded for three years in Whakapapanui Canyon.

advise it on the future of the club huts. The Department of Conservation's current conservator of the national park, Paul Green, was one of those two rangers. The report agreed that huts were 'nothing but the holiday homes of a privileged class' and recommended that they be disestablished over time and opened up to the general public.[242]

The board ignored this advice and resolved to maintain the status quo. Members discussed the issue and concluded that they could see no justification for the general removal of club huts, favouring individual hut removal, if necessary, or the regrouping of huts into a redeveloped village. Although the wisdom of previous boards' decisions to allow club huts on the mountain had been seriously questioned by officials, they survived this intensive public and institutional scrutiny and have remained in place today.[243]

◄ A bridge on the Ōhakune Mountain Road,1958. This road enabled the opening up of the Tūroa skifeld on Mount Ruapehu.

▼ Ski huts and ski fields on Mount Ruapehu, 1969. By the late 1960s, there was a proliferation of ski huts at Iwikau Village. The opening of additional ski fields at Tūroa and Tūkino on Mount Ruapehu gave skiers more choice and eased the pressure at Whakapapa.

In short, as we have discussed, recreational development in the post-war period increased exponentially. Recreational groups set and dominated the development agenda with limited planning or care and the park was dominated by the operation of the executive board at crucial times. Expansive ski fields, unplanned growth in club huts and the environmental impacts associated with that development were the result. The board's attention was increasingly directed toward mitigating the problems it had created with inadequate funds. The board tried to control growth in recreational facilities by defining areas where development was confined. Despite this, user demand grew and the board responded by encouraging a range of facilities to service the increasing number of visitors venturing onto the mountains.

Year	Administration (£)	Land acquisition (£)	Total (£)
1955	14,430	4,330	18,760
1956	22,246	160	22,406
1957	26,732	6,770	33,502
1958	32,274	4,451	36,725
1959	43,490	4,350	47,840
1960	55,121	289	55,410
1961	68,435	4,353	72,788

Table 11.2: Total expenditure available to national park boards for managing their assets, 1955–61

(2) *Resources available to the board*

Throughout the period examined here, the Tongariro National Park Board was reliant not only on government appropriations, but on the revenue it derived from leases and licences, donations, penalties, fees, and royalties. In the first half of the twentieth century, the latter source was the most important, and yet still failed to provide the necessary funds to achieve what the board wanted. The chairman proclaimed in 1923 that

> the Board has no funds for current expenses other than the receipts from fees payable by visitors to the Park for camp accommodation, etc. so that the strictest economy requires to be exercised in all directions at the present time. It is, however, hoped that with the gradual development of the park, and the provision of better accommodation, fees from visitors will be largely augmented and that at no distant date the Board's finances may be on a thoroughly satisfactory footing.[244]

The board hoped that revenue generated from the influx of visitors and commercial activity would provide the necessary funds to manage the park. That was the original policy Native Minister, John Ballance, described in parliament in 1887. Sixty-three years later, however, the new Minister of Lands (and board member) explained that this policy had failed:

> The Board, unfortunately, was not self-supporting, the revenue coming from activities on the Park being insufficient to do those things that must be done if the park was to be something real to the public of New Zealand and it was only by going to the Government of the day and seeking authority for expenditure that the Board could do those things.[245]

With the professionalisation of national park management in the post-Second World War period, government funding to park boards dramatically increased. The majority of this funding, however, was absorbed by the growing costs of administration and provision and improvements to facilities and amenities (see tables 11.2, 11.3, and 11.4).[246]

Although government funding for national parks dramatically increased in the second half of the twentieth century, Dr Coombes argued that it still remained lower than was necessary for their effective management.[247] The Department of Lands' own reports support Dr Coombes' argument. Assessing the 1963 to 1964 financial year, for instance, the department stated, '[i]n spite of expenditure exceeding £100,000 for the first time . . . public facilities and amenities are insufficient to cope with the ever-increasing influx of visitors'.[248] This was a recurring theme in reports over following years.[249]

The dramatic increase in visitor numbers to the nation's parks was highlighting the urgent need to provide and

Year	Administration (£)	Capital works (£)	Land acquisition (£)	Donations (£)	Total (£)
1963	45,032	31,059	147,485	4,995	228,571
1964	51,716	32,989	2,080	14,349	99,054
1965	71,287	59,442	761	9,617	140,346
1966	85,028	70,859	13,478	13,586	169,473
1967	109,247	68,787	5,391	11,534	189,568

Table 11.3: Total expenditure available to national park boards for managing their assets, 1963–67

Year	Administration ($)	Capital works ($)	Total ($)	Donations ($)	Loans to park board for capital works ($)	
1968	253,338	100,642	353,980	19,165		
1969	284,538	94,242	378,780	39,988		
1970	174,739	138,193	312,932	20,415		
1971	222,830	152,116	374,946	16,766		
1972	237,679	159,225	396,904	28,245		
1973	275,969	180,635	456,604	19,752		
1974	330,372	396,036	726,408	33,921		
1975	405,246	769,706	1,174,952	42,014	94,833	
1976	533,930	836,288	1,370,218	22,477	80,950	
					Special grants	Overall total
1978	740,000	338,000	1,078,000	72,400	1,322,600	2,400,600
1979	975,000	508,000	1,623,000	140,000	958,000	2,581,000
1980	1,409,000	480,000	2,003,000	114,000	678,000	2,681,000
1981	1,620,300	533,400	2,254,000	100,300	209,000	2,463,000

Table 11.4: Total expenditure available to national park boards for managing their assets, 1968–81

improve essential amenities and other services. It was also provoking officials to contemplate how a fairer balance to financing park development and maintenance could be struck between users and the taxpayer in the future.[250] For the mean time, however, park boards remained dependent primarily on government funds to support basic operational needs. Sometimes, even these were jeopardised by fiscal pressures on governments, as in 1978, when the government's appropriation was reduced. The Department of Lands issued the sobering caution that

> additional funding . . . will be essential if park boards are to meet their responsibilities for preserving the parks while at the same time meeting the needs of the ever increasing numbers of park visitors.[251]

Unable to be self-supporting, successive park boards became dependent on royalties from concession activities to maintain the park's natural assets.[252] From the late 1960s, the board expanded the range of concessions within the park to include activities such as helicopter flights and snowmobiles up to the peaks of the mountains. Guiding operations were also authorised from 1973. Concessionaires paid royalties to the board as a percentage of gross revenue, providing the board with a considerable incentive to maximise concessions within the park.[253] In 1976, the National Parks Authority openly acknowledged this incentive for the Tongariro National Park Board:

> The present economic stringencies . . . have caused this Board to further consider ways of meeting the costs of adequately administering the park. While, by drastically reducing such things as building and track maintenance, weed control, services to the ski field, the Board can continue to administer the Park for the current year, it is obvious that if the grant to the Board is not substantially higher next year, various areas of administration will have to be shut down, and with this the facilities provided for the public.[254]

(3) *Consultation with Whanganui Māori*

At this point, we turn to consider if the Crown ensured that the board consulted with Whanganui Māori to ensure it met its Treaty obligation of active protection. Our analysis of the legislative framework above has shown that Whanganui had no representation on the park board prior to 1987. We concluded that the principles of equity and equal treatment were applicable in that context and that the Crown could have provided Whanganui Māori with representation on the board. We also concluded, however, that the Crown could have fulfilled its Treaty obligations to Whanganui Māori by ensuring that the statutory authority governing the park consulted on issues that affected their interests in their taonga. This would have ensured that, in the absence of board representation, those interests were not disregarded.

The Crown made relevant submissions on this issue at the completion of hearings. It acknowledged that Whanganui Māori, in particular Ngāti Rangi, have had a longer journey than Ngāti Tūwharetoa to have their rights and role as tangata whenua recognised in park management. The longer journey for recognition of their rights meant that all Māori participation in governance (aside from Ngāti Tūwharetoa) was essentially on the same basis as other citizens until the 1980s, when a 'renaissance of consciousness' about Māori interests emerged.[255] In particular, the Crown highlighted the *General Policy for National Parks* of 1983, which recognised tangata whenua interests in management planning for the first time. Under this policy, park administrators would foster consultative procedures and fully consider the views of tangata whenua in the management of national parks in the future.[256]

We acknowledge that there has been some development from a policy perspective since the 1980s. While 1983 may be a turning point in the policy domain, the evidence within this inquiry confirmed that no real change took place on the ground prior to 1987. The conservator for the Tongariro–Taupō conservancy, Paul Green, stated that there was little involvement of tangata whenua in park management prior to the passing of the Conservation Act 1987.[257] In fact, Mr Green and several other long-serving Tongariro National Park officials confirmed that, prior to the creation of the Department of Conservation, 'there was no real iwi consultation' with respect to park

management.[258] This was confirmed by the research of Dr Robyn Anderson, Dr Nicholas Bayley, and Mark Derby.[259] That meant that Whanganui Māori were never consulted about fundamentally important issues, such as the establishment of ski fields on their tupuna maunga. Keith Wood explained just how little Ngāti Rangi had to do with the Crown:

> I don't know a lot about the original setting up of the ski fields on our maunga . . . I do know that our kaumatua were very unhappy about the ski field developments and there was a lot of resistance and negative kōrero from our old people about the development that took place.[260]

Lack of consultation on the establishment of ski fields was only part of the problem. In the absence of any consultation with Whanganui Māori prior to 1987, the Crown could simply not fulfil its Treaty duties in the governance of these taonga.

(4) *Ngāti Tūwharetoa input into board decision-making*

The Crown is correct that we can legitimately expect certain things from the tenure of successive members of the Te Heuheu line on the park board. A Te Heuheu has been a member of the board for most of the park's history and, from the Crown's understanding, in a representative capacity for his tribe. The Minister for Tourist and Health Resorts explained in 1922:

> when the gift to the Government was made by the original Tūkino, it was understood that he was to be recognised as representing his people in connection with the administration of the Reserve . . .[261]

With a place on the board, the paramount chief of Ngāti Tūwharetoa could provide the iwi with information about management of their taonga and, in turn, feed any responses from the iwi back to the board table.[262] During periods when Te Heuheu retained his seat on the board, therefore, Ngāti Tūwharetoa had at least some influence in the board's decision-making process.

But was that influence able to be utilised to practical effect? In the absence of a legislative regime stipulating partnership, it would seem that overcoming the numerical superiority of other interests on the board was the key to the tribe's success. To assess whether the Crown adequately fulfilled its duty of active protection to Ngāti Tūwharetoa, therefore, we need to examine whether the Crown ensured that its delegates cooperated with Te Heuheu in the administration of the park. We propose to examine the course of development within the Tongariro National Park around the periods of successive members of the Te Heuheu line on the park board. The reason we divide our analysis in this way is to assess the role of Te Heuheu in decision-making over time. Ngāti Tūwharetoa alleged that there were numerous activities within the park that violated the tapu of ngā maunga tapu and damaged the mauri. The Crown responded that there is no historical evidence of dissatisfaction with the extent of public access to the mountains by either Te Heuheu or Ngāti Tūwharetoa. The difference between the parties on this important point requires us to examine what input Te Heuheu, as the Ngāti Tūwharetoa representative, had in the board's deliberations.

Our focus is mostly confined to Ruapehu maunga. Historically, this mountain was the focal point for tourist and recreational development within the park. Just because development on Ruapehu reflected the needs of tourists and recreationalists does not, however, necessarily mean that Ngāti Tūwharetoa opposed every activity. We have already concluded that Ngāti Tūwharetoa had at least some input into management of ngā taonga o te kāhui maunga by virtue of Te Heuheu's tenure on the board. We, therefore, need to assess Te Heuheu's position on the development proposals that came before the board, through a close analysis of board minutes. Unfortunately we only have those minutes for the period prior to 1952 but, for the first half of the century at least, they do enable us to form some opinion on the extent to which Māori views were expressed and heeded, in the context of park board decision-making.

Between the passing of the Tongariro National Park Act 1894 and the Conservation Act 1987, three descendants of Horonuku Te Heuheu were represented on the park

board. Horonuku's son, Tūreiti Te Heuheu, held a position on the board between 1907 and 1914. Between 1914 and 1922, the board was abolished and the Crown, through the DTHR, managed the park exclusively. In 1922, Tūreiti's son, Hoani Te Heuheu, was appointed to the reconstituted board and remained a member until his death in 1944. Hoani's son, Hepi Te Heuheu, then held a position on the Tongariro National Park Board until it became the Tongariro National Parks and Reserves Board under the 1980 legislation. He remained a member of that board until the passing of the Conservation Act in 1987.

(a) *Tūreiti Te Heuheu, 1894–1921:* As discussed previously, the Tongariro National Park Act passed in 1894, but the park (and by extension the governing board), did not come into existence until 1907. For 20 years after Horonuku Te Heuheu's tuku, neither his son nor any other Māori had statutory representation on the board governing their taonga. The trustees, therefore, had no formal powers prior to the park's proclamation. In legal terms, authority over the taonga remained exclusively with the Department of Lands and Survey and the DTHR as the government departments responsible for the land.[263]

With the formal establishment of the park in 1907, the board of trustees was empowered with the functions specified in the 1894 Act. The Minister of Lands, as chairman of the board, was responsible for calling meetings to enable the board to consider issues. Between 1907 and 1914, however, the board met only three times (all of them in 1908,[264] and each time in Wellington), before it was abolished under the ROLD Act 1914. The Minister of Lands conducted these three meetings in the absence of Ngāti Tūwharetoa's representative, Tūreiti Te Heuheu.[265]

Given the inoperative state of the board before 1907 and after 1908, it would seem likely that Tūreiti had no input into park administration. Ms Edwards argued, however, that the documentary record proved otherwise and that two visible trends could be discerned in the early period of the park's history. First, Ms Edwards explained that Tūreiti had plans for Ngāti Tūwharetoa to benefit from tourist traffic in the area by supplying transportation and guiding services. Secondly, government correspondence indicated that Crown officials were communicating with Tūreiti in respect of particular issues connected with the park, such as the development of huts. Taken together, this, in Ms Edwards' view, reflected officials' anxiety to ensure that proper consultation with Tūreiti was undertaken.[266]

Ms Edwards highlighted three instances to support her conclusion that officials wished to ensure proper consultation. In 1897, the Wellington Acclimatisation Society liberated four red deer into the park. Surveyor-general Stephenson Percy Smith wrote to Tūreiti soon afterwards, presumably in his capacity as a future trustee, asking him to warn his people that they were not to touch the animals. Dr Anderson interpreted this warning as the only communication with Te Heuheu on the matter, but Ms Edwards considered it possible that other communication took place between Percy Smith and Te Heuheu, both of whom were based in Wellington at the time.[267]

The documentary evidence also showed that Percy Smith and other officials communicated with Tūreiti Te Heuheu over the location of a hut near Ketetahi Springs. According to the evidence, the two men met in November 1900 to discuss a proposal to erect two small huts in the park, for which Te Heuheu indicated he could potentially supply the timber and cartage for construction. Te Heuheu asked that Keepa Puataata, a rangatira of Ngāti Tūwharetoa, be appointed as a guide for tourists exploring the three maunga and that

> he and his people would supply to visitors their coaches and conveyances' at a rate to be negotiated in the future. Based on this meeting, Percy Smith advised the surveyors in the district, 'to confer with him [Te Heuheu] and try to co-operate.[268]

Surveyor Robert Reaney then reported to Percy Smith in March 1901 that he had met with Te Heuheu and had established his preferences. Te Heuheu wanted a hut situated at or near the Ketetahi Springs on the western side of Mount Tongariro. According to Reaney:

> It appears that the majority of tourists go to Tokaanu and arrange there with the guides to take them up the mountains, and that what Te Heuheu requires is a whare for these

Horse-drawn coaches at Waihohonu Hut in Tongariro National Park, circa 1905. The hut, which was built in 1903 at the foot of Mount Ngāuruhoe and is still standing today, was used as a stopover by coaches travelling from Whanganui to Taupō. Skiers and trampers also used the hut as a base when visiting the park.

> people to stay the night in as it is at present too far to get from Tokaanu to the springs and up the mountains and back in a day.[269]

In his meeting, Reaney had also suggested a hut be constructed on the eastern side of the mountain, near the Waihohonu stream, to accommodate tourists from the south. Reaney reported, however, that 'Te Heuheu has no interest in this site'. It appears that for this reason, Reaney suggested a deferral to any plans for a hut in the area.[270] Percy Smith's reply indicated he wanted further discussion between Reaney and Te Heuheu over the hut's location and the chief's tourism aspirations before final decisions were made. At that point, the trail of correspondence ends. All we know is that Ketetahi hut was constructed on Mount Tongariro later that year by the DTHR.[271]

The DTHR also took another significant step. The superintendent of the department reported in 1902 that a 'McSweeney' from Tokaanu would guide people visiting the mountains.[272] The DTHR's decision to recruit

McSweeney for guiding possibly had links to concerns raised by tourism promoters in the nineteenth century. A writer for *The New Zealand Tourist*, for instance, commented in 1879 that Māori women often acted as guides at specific sites, but, in the Hot Lakes district:

> An intelligent white man, rather than a Maori, who can scarcely make himself or herself understood, is much to be desired . . . A guide who is intimate with every nook and corner to be visited, who speaks the Native language fluently, and will really act fairly by those who place themselves in his hands, is worth liberal remuneration.[273]

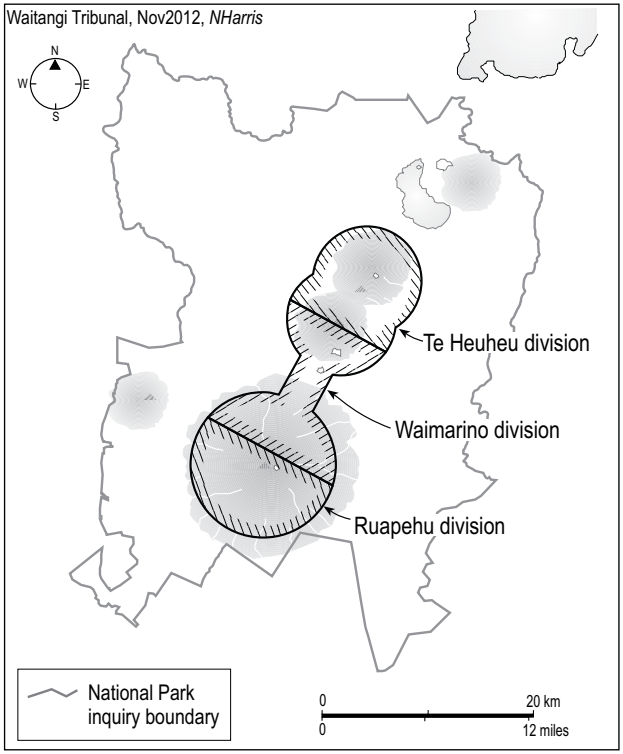
Therefore, if McSweeney had no connections to Ngāti Tūwharetoa, then Te Heuheu's desire for Ngāti Tūwharetoa control of this service had failed.[274] A Pākehā guide working in the region with the backing of a government department would have significantly undercut Ngāti Tūwharetoa's development goals over the long term.

The third example of communication cited by Ms Edwards related to the naming of the park. The documentary evidence showed that Tūreiti's solicitor and the Native Minister corresponded in 1907 on how to appropriately acknowledge Te Heuheu's tuku. His solicitor, J Wyndham Hopkins, wrote:

> The Petitioner, who is a trustee for life under the said Act, is the sole surviving son of the donor and the principal representative of the great tribe.
>
> The Petitioner now prays that in order that the name of the donor may be for ever kept in memory in association with his gift to the country, the name of the said national park be changed to 'The Te Heuheu National Park'.[275]

Considering his response, the Minister of Lands wrote:

> The name 'Tongariro National Park' is so comprehensive that it would, I think, be a mistake to alter it by the substitution of two or three names.
>
> It is, however, advisable that the name of the original donor should not be lost, even though the gift relates only to a portion. In the same way the name of the tribe should be preserved. This might be done by making provision for the immense domain being subdivided into Districts, and the Districts might be designated as desired by Mr Hopkins on behalf of the Maori donor.[276]



Map 11.3: Divisions of the Tongariro National Park

These districts could be rough, the Minister explained, because it was necessary only to recognise 'Te Heuheu's donation', not anything else.[277] Later that year, the park was divided into three divisions: the Te Heuheu division (20,746 acres), Ruapehu division (20,767 acres), and Waimarino division (20,767 acres). In Ms Edwards' view, the naming of the division reflected Te Heuheu's specific request.[278]

We acknowledge that the documentary evidence outlined above demonstrates that Crown officials were communicating with Te Heuheu on issues of concern. Ms

Edwards speculated that there may have been more cooperation with Te Heuheu, who lived mainly in Wellington from 1894, than we can glean from the documentary evidence.[279] That is certainly possible. What the available evidence confirms for us is that the Crown was taking account of Te Heuheu's view on certain issues when the board was inoperative, but on each occasion he only partially achieved his objectives.

Officials evidently fulfilled Te Heuheu's wish as to the hut's location, but it appears that the Crown may have competed with Ngāti Tūwharetoa's plan to offer guiding services. The DTHR arranged for McSweeney, not Keepa Puataata, to guide people up the mountains. Similarly, Tūreiti requested that the park be renamed the 'Te Heuheu National Park' in memory of his father, Horonuku, who was responsible for its origin. But the Minister only agreed to subdivide the park into administrative divisions in 1907, one of which was named after his father.

We contrast the evidence of cooperation outlined above with government actions at the time the board was operational. One of the government's first actions after the park was proclaimed was to formulate regulations for its administration. Those regulations contained measures to appoint officers of the board, determine offences within the park, and established bylaws for the use and maintenance of huts. Apart from section 17, which divided the park into the three divisions, these regulations appear to have been enacted without any consultation with Te Heuheu.[280]

Then there was the Minister of Lands' surprising decision to conduct three board meetings in May, July, and September of 1908 without Te Heuheu. This, in our view, was a significant oversight. The board was dealing with issues that Te Heuheu would undoubtedly have had a view on, such as additional land for inclusion in the park, adoption of the regulations, and proposals to liberate animals in the park. The DTHR's decision to liberate more deer, for instance, was something that caused considerable consternation amongst members, as it directly contravened the board's wishes. The Minister, Robert McNab, criticised the department for releasing the deer and suggested that 'every provision should be made' for their disposal, and that the matter required 'the consideration of the board'.[281]

There was inaction on the part of the government, though, when it came to empowering the board for the consideration of such issues. As mentioned above, only three board meetings were held between 1907 and 1914 before the board was abolished altogether. Responsibility for calling meetings lay with the Minister of Lands, as chair of the board, but successive ministers called no meetings despite a clear need for them. The under secretary of Lands advised both John MacKenzie in 1912 and William Massey in 1913 to call a meeting, as there was urgent business before the board. Such urgent business included applications to erect huts, form tracks and appoint guides, but neither minister took action. In the circumstances, it appears that Tūreiti was left without a say on these important matters.[282]

Then, between 1914 and 1922, the Crown administered the park through the DTHR and presumably without consulting Te Heuheu at all. As we outlined above, this eight-year period was important because the skiing fraternity cemented their stake in the park's future by erecting public huts on the mountains at a time when Te Heuheu's place on the board had been revoked. Te Heuheu objected to this treatment, demanding in 1920 to have his name 'put back as one of the governing people' of the park and 'to know what is going on around there' in the interests of his people.[283] This was only achieved in 1922, a year after Tūreiti Te Heuheu had passed away.

On balance, the evidence shows that Tūreiti did indeed have some input into park administration before the board was operational. That input led to the partial achievement of his objectives in two instances referred to above. There were some positive signs early on. But there is also evidence of the Crown proceeding without Tūreiti when the board was operational, not empowering the board to do its job when there were important issues before it, and finally disestablishing the board altogether. The trend of park administration over the period examined in this section, therefore, was that decision-making increasingly consolidated in the hands of government representatives.

(b) *Hoani Te Heuheu, 1922–44:* With the reconstitution of the board in 1922, Hoani had the opportunity to

participate in governance of the park on behalf of Ngāti Tūwharetoa. Like other members, Hoani could attend scheduled board meetings and raise issues and discuss them with fellow members. He could also exercise his vote on any proposal formally placed before the board. In the 22 years that Hoani represented Ngāti Tūwharetoa on that authority, he contributed directly and was clearly valued by his colleagues. At the first meeting after he passed away, the board resolved that it place on record:

> its deep regret at the passing away of Mr Hoani Te Heuheu . . . whose family's association with the original ownership of the park made him a valuable member of the board.[284]

We can discern the nature of Hoani's contribution in governance from a close analysis of board minutes. These records, while having limitations, do capture when Te Heuheu attended meetings, what he said (if anything) and how he might have voted if a vote was called. The minutes are, therefore, a key source of historical evidence on the position that Te Heuheu and Ngāti Tūwharetoa took on various issues before the board. With care, we use the minutes in our analysis.

Assessing Hoani Te Heuheu's attendance at board meetings cannot be separated from changes to board procedure during his tenure. Because membership spanned the length and breadth of the North Island, coordinating the quarterly meetings with all members was a particularly challenging task for the secretary. In view of these difficulties, the board resolved in 1925 to have biannual meetings, with routine and urgent business in the interim delegated to an executive board consisting of the chairman and Wellington-based members. Within a few years, board meetings were cancelled if there was insufficient business, and financial sign-off on minor matters was granted to the executive board.[285] This arrangement was then legislated for under section 20 of the ROLD Act 1931. Hoani, who was present at the meeting in 1925 when the decision was taken, resided in Taumarunui at the time.

The table on the previous page demonstrates that from December 1926 until the end of the decade, meetings were all held in Wellington. Although the executive board was subject to the overall control of the full board, the latter met less frequently during the Depression and average attendance dropped overall. Only the executive board met during the Second World War.[286] The increasing reliance on the executive board is demonstrated in the table opposite.

In reviewing the evidence, Ms Edwards considered that Hoani averaged a 'good attendance', whereas Dr Coombes concluded that he was not a regular attendee.[287] The table shows that while Te Heuheu missed only two of nine full board meetings in or near the park, he attended less than 53 per cent of their meetings overall. Both Dr Coombes and Ms Edwards agreed that a lack of funds to cover his travelling expenses to Wellington could not account for his absence. Section 10(d) of the Tongariro National Park Act 1922 allowed the board to pay its members' costs associated with attending meetings, and Te Heuheu's expenses were regularly included as a paid item on the board's accounts.[288]

Dr Coombes speculated that two factors may have caused his patchy attendance. First, he suggested that Te Heuheu avoided meetings because he knew his voice would be lost among the Pākehā business interests that dominated the board. Secondly, Te Heuheu may have been reluctant to attend Wellington meetings because of the travel involved.[289] To our mind, neither explanation is particularly persuasive. On this issue, we consider Ms Edwards' explanation compelling. During the 1920s and 1930s, Te Heuheu's tribal commitments escalated considerably. From 1926, Ngāti Tūwharetoa were enmeshed in the legal and financial difficulties associated with the Tongariro Timber Company and also in the protracted negotiations in respect of fishing rights over their lakes.[290] This would have left Hoani Te Heuheu with much less time to devote to board matters. It is important to note also that, aside from this, the reliance on the executive board, particularly from 1931, removed Te Heuheu from any practical role in board decision-making.[291]

What, then, of Te Heuheu's involvement in board discussion about accommodation on the maunga? The evidence shows that Te Heuheu was present when the board approved the construction of huts on the upper slopes

of Mount Ruapehu. In 1926, at a meeting attended by Hoani Te Heuheu, the board granted permission for the Tongariro National Park Sports Club to erect a hut at 6,000 feet (1,828 metres). The construction of a hut at 1,828 metres ventured into the Ruapehu 1B block. Te Heuheu is also recorded as supporting an application to construct a hut at 5,080 feet (1,548 metres). Taken together, these two examples demonstrate that Te Heuheu did not oppose the existence of huts on the upper slopes of the maunga.

The role of Hoani in decision-making over the Chateau

Date	Board	Te Heuheu's attendance	Venue
25 January 1923	Full board	Attended	Cliffs Hotel, National Park
11 April 1923	Full board	Did not attend	Waimarino
19 November 1924	Full board	Attended	Wellington
24 February 1925	Full board	Attended	Cliffs Hotel, National Park
3 July 1925	Full board	Attended	Wellington
18 December 1925	Full board	Did not attend	Kings Court Hotel, Ōhakune
9 June 1926	Full board	Attended	Wellington
7 December 1926	Full board	Attended	Cliffs Hotel, National Park
10 December 1926	Executive board	Not a member	Wellington
17 June 1927	Full board	Did not attend	Wellington
8 December 1927	Full board	Did not attend	Wellington
21 January 1928	Full board	Did not attend	Whakapapa Hut
4 September 1928	Full board	Did not attend	Wellington
26 June 1929	Full board	Did not attend	Wellington
21 February 1930	Full board	Did not attend	Wellington
29 March 1930	Full board	Did not attend	Wellington
4 February 1931	Full board	Attended	Wellington
4 February 1931	Executive board	Not a member	Wellington
14 February 1931	Full board	Attended	Chateau
25 February 1931	Executive board	Not a member	Wellington
13 March 1931	Executive board	Not a member	Wellington
27 April 1931	Full board	Attended	Chateau
15 September 1934	Executive board	Not a member	Wellington
20 July 1937	Executive board	Not a member	Wellington
14 May 1938	Full board	Attended	Chateau
23 November 1939	Executive board	Not a member	Wellington
10 April 1940	Executive board	Not a member	Wellington
17 September 1940	Executive board	Not a member	Wellington
11 December 1941	Executive board	Not a member	Wellington

Table 11.5: Hoani Te Heuheu's attendance at board meetings

The Chateau Tongariro with Mount Ngāuruhoe in the background. Opened in 1929, the Chateau greatly impressed Hoani Te Heuheu, the grandson of Horonuku Te Heuheu, whose gesture had enabled the creation of the Tongariro National Park.

also deserves some attention. It is clear from an analysis of the evidence before us that Te Heuheu supported the project in principle. A site for the Chateau was chosen by the board in February 1925, and Hoani voted in favour of the location proposed.[292] A lease for the proposal was then drafted by a subcommittee of the board (of which Hoani Te Heuheu was not a member), and agreement was reached with a private syndicate in September 1928. The lease with the Tongariro Park Tourist Company Limited was for 42 years and on 63 acres of land near the site of the Whakapapa Hut.[293]

Although Te Heuheu was not involved in the drafting of the lease, nor the negotiations towards an agreement with the company, his reported comments at the opening of the Chateau are insightful:

> Hoani Te Heu Heu, the grandson of the donor, said that in the Chateau the spirit of the gift has been well preserved, and,

Date	Board	Te Heuheu's attendance	Venue
7 February 1945	Executive board	Not a member	Wellington
26 November 1946	Executive board	Not a member	Wellington
9 October 1948	Full board	Attended	Chateau
1 March 1949	Executive board	Not a member	Wellington
15 October 1949	Full board	Attended	Chateau
15 October 1949	Executive board	Not a member	Chateau
20 March 1950	Executive board	Not a member	Wellington
19 March 1951	Executive board	Not a member	Wellington
3 September 1951	Executive board	Not a member	Wellington
28 March 1952	Executive board	Not a member	Wellington
1 November 1952	Full board	Attended	Chateau

Table 11.6: Sir Hepi Te Heuheu's attendance at board meetings

> as the lineal descendant of the donor, he wished to express his pleasure in the magnificent building and the enterprise which had resulted in the present gathering.[294]

This statement demonstrates that Hoani Te Heuheu was pleased with the Chateau.

From an appraisal of the minutes available to us, Hoani's role in board decision-making appeared to be constrained and sporadic in the period between 1927 and 1941. Hoani attended six meetings between 1923 and the end of 1926, but only four after that date in a period when recreational development boomed. From 1931 onwards, Te Heuheu's limited attendance at board meetings can be attributed to the consolidation of power and control in the executive board, of which Ngāti Tūwharetoa's representative was not a member. During this period, the executive board conducted its business and made decisions affecting Māori interests, presumably with little recourse to the sole tangata whenua representative on the board.

(c) *Hepi Te Heuheu, 1944–1987:* Hepi Te Heuheu had a seat on the park board for the entire period from 1944 to 1987. He could attend meetings and exercise his vote like others on the board. Unlike the previous period, though, when his father Hoani was a member, our access to board minutes covering Hepi's period of service is limited. Ms Edwards' report analysed his participation in board decision making until 1952. This was based on the minutes, which she included in her supporting papers. While Dr Coombes' report referred to board minutes after 1952, he did not conduct any quantitative analysis of Hepi's attendance at board meetings after that date. Nor did he supply copies of the minutes he researched, which are all located at the Tongariro–Taupō Conservancy office in Tūrangi. From Ms Edwards' report, however, we were able to compile data relating to Hepi's attendance between 1944 and 1952 (see table 11.6).

From his appraisal of board minutes in the period after 1952, Dr Coombes concluded that Hepi Te Heuheu's attendance at meetings was irregular. He quoted correspondence from the mid-1950s that revealed the chair's anxiety over Te Heuheu's continual absence from meetings when the board was confronting some significant issues, including the first management plan and rubbish disposal.[295]

Using this evidence in conjunction with the data we have from Ms Edwards' report, we are able to draw some tentative conclusions about Hepi's participation in

governance in the early part of his tenure. The evidence from Ms Edwards' report shows that Hepi Te Heuheu attended all of the full board meetings he was invited to. Between 1945 and 1952, however, there were only three called. Hepi was keen to participate in the management of the park at that time. The problem was that the executive board dominated decision-making during this period.

The information we have on Hepi's first 10 years of board membership is, in our view, sufficient for reaching some conclusions on the issues before us. By the mid-1950s the park was set on a particular course that, as Dr Coombes argued, was crucial for determining the trajectory of the park thereafter. It also made a significant change in direction for how the park would be administered very unlikely. In just a few short years, the park had firmly established itself as 'the peoples' playground' with thousands visiting each year.[296] Recreational infrastructure, particularly for skiing, had become a permanent accretion on the slopes of Ruapehu, and to a significant degree thereafter, the board's attention was focussed on responding to the problems created by that boom in development. The increased representation of recreationalists, particularly skiers, on the board left Hepi with little prospect of controlling the rate and extent of development on the mountains into the future. Despite his mana, he was after all just one man.

That is not to say that Te Heuheu opposed skiing or recreational development of the maunga. From the three meetings that Te Heuheu attended between 1945 and 1952 we could see that he did not oppose some applications for clubs to construct huts at Iwikau village, nor did he oppose a proposal for the park ranger to construct toilets in the park 'at suitable places'. Te Heuheu also supported the construction of a chairlift on Mount Ruapehu in 1952.[297]

(d) *Assessing Ngāti Tūwharetoa's input:* In chapter 7, we concluded that the tuku arose out of Horonuku Te Heuheu's determination to obtain the benefits of a Crown stake in the mountains, whilst still securing the tribe's mana over the mountains. Those benefits were, principally, the Crown's law to protect the taonga, particularly from unauthorised and unfettered Pākehā encroachment. The government was expected to protect the highly prized mountains. During the negotiations, '[Horonuku] asked Mr Ballance to have an Act passed by Parliament making sacred the peaks of those mountains and for those mountains to be his own property'.[298] Te Heuheu believed he had entered into a partnership agreement with the Crown for the care of these taonga, which, he expected, would enable the tribe to control access to the mountains.

We agree with the Crown, though, that Te Heuheu and the tribe did anticipate a degree of access to the mountains previously considered unthinkable. In the debate on the Tongariro National Park Bill 1887, Ballance stated that he anticipated guides escorting tourists to the top of the mountains for small fees in the future.[299] Dr Coombes also confirmed the existence of levying for guiding activities in an entry to a guidebook from 1894:

> There are several Maori villages about Roto Aira. At one of them, Otukou, an attempt may be made to levy a fee of 5s for permission to ascend the Tongariro Mountains.[300]

This evidence suggests, as the Crown argued, that Te Heuheu and the tribe were adapting to the emergence of tourism, and that this was an accepted part of the future for the mountains. However, the tribe wanted to exercise due influence over such activities in the future. We consider that the tribe believed Te Heuheu's trusteeship would ensure that it could do so. In chapter 7, we concluded that it was incumbent on the Crown to ensure that Te Heuheu, as Ngāti Tūwharetoa's representative, was able to exert his due influence to control and regulate access to these taonga in the future management of the park.

The evidence outlined in our previous section provides an insight into Ngāti Tūwharetoa's position with respect to development and certain activities on the maunga. Board minutes formed a critical part of our appraisal, particularly for the post-1922 period. We used them to assist us to determine Te Heuheu's role in board decision-making with respect to various proposals. As we showed, both Hoani and Hepi Te Heuheu attended board meetings and had the opportunity to participate in decision-making like other members of the park board. They could, and

Beginners' tow-rope on Mount Ruapehu. Skiers continued to grow in number and to enjoy the mountain playground.

did, vote on board motions. From our analysis of board minutes over a number of years, the invariable practice of the board appears to have been that, only in the event of a difference of opinion, would a vote be taken. In cases like this, the minutes would record those in favour and those against a particular motion, including Te Heuheu's position.

From our appraisal of the evidence, however, there appears (on the surface) to have been little disagreement over board motions in the majority of cases. One member would propose a motion and another member would second it. The motion was judged carried if the majority were in favour and there is no record of how individuals voted.

A review of the available evidence, arranged under successive Te Heuheu chiefs, confirms the following key facts:

- *Tūreiti Te Heuheu (1894–1914):*
  - Some Māori at Ōtūkou were charging a fee for tourists to ascend Tongariro in the 1890s.
  - Tūreiti discussed with Crown officials the erection of huts within the park and requested a

whare at Ketetahi Springs to accommodate tourists coming from Tokaanu.
- Tūreiti also requested that Keepa Puataata act as a guide for tourists exploring the three maunga.

- *Hoani Te Heuheu (1922–44):*
  - Conveyed his and his tribe's desire to cooperate with the reconstituted board to give every possible assistance in the development of the park.
  - Supported the erection of a 'hostel' on Ruapehu to accommodate tourists and voted in support of the location chosen.
  - Spoke of his pleasure at the opening of the 'magnificent' Grand Chateau in 1929, which he said preserved well the spirit of the gift.
  - Supported the proposal to delineate 75 sites around the Chateau for private leasing.
  - Was present when the board authorised the Tongariro National Park Sports Club to erect a hut at 6,000 feet (1,828 metres).
  - Is recorded as supporting the erection of other huts on Ruapehu, including a hut at 5,080 feet (1,548 metres) 'for use in connection with winter sports.'[301]
- *Hepi Te Heuheu (1944–87):*
  - Supported the proposal of Walter Haensli of Ruapehu Alpine Lifts to construct a chairlift on Ruapehu in 1952 and have private enterprise run it.
  - Did not oppose some applications for the erection of huts at Iwikau Village.
  - Did not oppose a proposal in 1952 for the park ranger to construct toilets in the park 'at suitable places.'[302]
  - Strongly supported 'the use of helicopters as a legitimate use in the Park.'[303]

These facts have emerged from the documentary evidence available to the Tribunal. Ms Edwards stated that, if Ngāti Tūwharetoa objected to various activities within the park, such as the erection of huts and other facilities, these objections were not articulated to the board.[304] While it would be hazardous to read too much into that evidence, particularly sparse board minutes, one important point does emerge. When the board was operational, both Hoani and Sir Hepi Te Heuheu could oppose any proposal regarded as inappropriate or in violation of Māori values. The advanced distribution of an agenda before meetings provided both Hoani and Sir Hepi with an opportunity to canvas the views of the tribe and bring those views to the table. Not only would any such opposing views have been recorded in the minutes, but a vote would have been called for a particular motion to pass.

Counsel for Ngāti Tūwharetoa submitted to the Tribunal that the silence of successive Te Heuheu chiefs in the minutes reflected their private anguish at development that failed to take account of the sacred character of the mountains. Implicit within this submission is the idea that Te Heuheu was uncomfortable to oppose board proposals.

While Sir Hepi is alleged by counsel (and accepted by Paul Green) to have felt uncomfortable at being the 'lone' tangata whenua voice on the board, he was evidently comfortable enough to tender his view in defence of issues he was passionate about. In fact, the evidence demonstrates that Sir Hepi was prepared to oppose things even when his was not the majority view. The board's deliberation over the use of helicopters in the park is but one example.

Brian Jones provided further context to this resolution:

> As I recall, that discussion . . . concerned the use of helicopters for legitimate purposes in the park, for instance, rescue operations comes to mind. My recollection is that Sir Hepi and I voted against the proposal because we did not want to ban the use of helicopters completely. We thought that in the future there may well be a need for the use of helicopters for legitimate purposes, and we did not think it was reasonable for the Board to rule that possibility out.[305]

For us, this evidence is unsurprising. Sir Hepi's willingness to oppose the majority view is something we would expect to see in board minutes. Sir Hepi was a forthright and confident man who was more than capable of defending his position on a particular issue. This applied equally to Māori issues in a predominantly Pākehā environment. As Mr Asher testified, it was the duty of the paramount chief to protect 'the seat of Tūwharetoa's spirituality and

The Use of Helicopters in the Park

In May 1978, the Tongariro National Park Board discussed the use of helicopters in the park:

> The Board discussed the Notice of Motion given earlier in the meeting by Mr Lewis.
>
> That the Board reaffirm its policy that it not permit helicopter flying in the Park except for work purposes authorised by the Board.
>
> Mr Lewis, in presenting the motion, spoke at length on the reasons why he saw the use of helicopters for non-essential purposes as inappropriate in the Park.
>
> Mr Jennings seconded the motion, concurring with the comments by Mr Lewis and pointing out possible dangers that could arise with the use of helicopters in the Park.
>
> Each member then spoke on the topic with Mr Jones and Mr te Heuheu strongly supporting the use of helicopters as a legitimate use in the Park.
>
> Following the discussion the motion was put with votes by show of hand and CARRIED. It was requested that the voting be recorded. It was as follows:
>
> For – The Chairman, Messrs D E Barkman, P S Lewis, D G Downey, K H Miers, J N Jennings, A R Bellamy
>
> Against – Messrs H te Heuheu, B H Jones and K F Buchanan.[1]

culturality'.[306] Issues such as the development of facilities or infrastructure that violated Māori values or the tapu of ngā maunga tapu would, in our estimation, have struck at the core of Sir Hepi's tribal responsibility. In such circumstances, we believe it reasonable to conclude that Sir Hepi would be compelled to speak up for the sake of the taonga. The use of helicopters was evidently something Sir Hepi supported inside the park.

But there were two particular changes to governance that reduced the ability of both Hoani and Sir Hepi to prevent physical and cultural harm to the taonga. First, the Crown empowered the board under the ROLD Act 1931 to delegate its functions to an executive board comprised of its Wellington-based members. Given that both Hoani and Sir Hepi were not on the executive board, this removed the input that Ngāti Tūwharetoa could have in decision-making. The period of executive board control, as we have discussed, set the mountains on a particular path that created the cultural impact complained of today. Crown counsel discussed this with Dr Coombes:

> **Mr Doogan:** . . . What degree of management involvement do you . . . from your research believe was required . . . ?
> **Dr Coombes:** . . . some of the very significant policy decisions that were least likely to have Māori influence, you know for example, during the 1930s where full commercial tourism started to become a possibility and certain facilities were constructed. A lot of the decision-making was being made by the Wellington Executive of the Board, very far removed from the Park and largely just the ex-officio members in Wellington.[307]

Second, the board's decision of 1949, in Sir Hepi's absence, to empower the FMC as gatekeeper of the club hut approval process, removed Ngāti Tūwharetoa's ability to control the number and position of club huts on the mountain. Responsibility for this effectively passed to a sub-committee of the board comprised solely of recreational interests. The board's laissez-faire policy towards the growth in huts in the post-war period created an environment that enabled the proliferation of permanent infrastructure on the western slopes of Ruapehu. Although the FMC's decisions were subject to the approval of the full board, in practice the FMC's recommendations were not scrutinised in detail and rarely disputed.

Our analysis above has shown that the three lineal descendants of Horonuku Te Heuheu were not opposed to recreation on the maunga. Although participating in board decision-making infrequently, of the decisions they did participate in, the evidence shows that Ngāti Tūwharetoa's representative on the board supported some activities, and did not oppose others. Two important

changes to board administration, however, reduced Ngāti Tūwharetoa's ability to prevent physical and cultural harm. We discuss this further in our next section.

(5) *The consequences for ngā iwi o te kāhui maunga*

In this section, we examine what the history of board management meant for Māori interests in the park. We explained earlier that the shortcomings of the legislative regime did not necessarily preclude the possibility of the Crown meeting its Treaty obligations. But to do so, the Crown had to ensure that it was fully informed of Māori interests through adequate consultation and the development of policy that accorded their values appropriate weight in administration. In our estimation, if ngā taonga o te kāhui maunga were managed with due consideration for Māori interests and values, then the relationship between kaitiaki and their taonga, and between these and kāwantangata obligations, would be healthy and strong. We determine if that is the case in the following section.

(a) *Living with an alien landscape:* At the beginning of our analysis, we concluded that the Crown did not adequately fulfil its Treaty duties in delegating its authority to a board for the governance of these taonga. We concluded earlier, however, that the Crown could still have kept to the Treaty standard by adequately monitoring the board to ensure that Māori interests were not disregarded, or that the relationship that tangata whenua have with their taonga was not jeopardised by any board action or omission.

In closing submissions, the Crown rejected the proposition that Māori interests were subsumed by non-Māori interests in the history of park management. It also rejected the suggestion that Crown actions impeded the relationship that Māori have with their taonga. Counsel submitted that protection of ngā taonga o te kāhui maunga has been achieved through the national park legislation.

We disagree. As we have discussed, administration of the park in the period under examination here has principally reflected non-Māori recreational use and enjoyment. Underpinning Māori values is a sense of kinship and a spiritual relationship to the natural world, and the concomitant responsibility of Māori, as kaitiaki, to nurture and care for its treasures. These values have not informed board management to any significant degree in the park's history. While we do not think successive governments deliberately set out to disregard Māori values, the composition and priorities of the board meant that that was the practical outcome nonetheless.

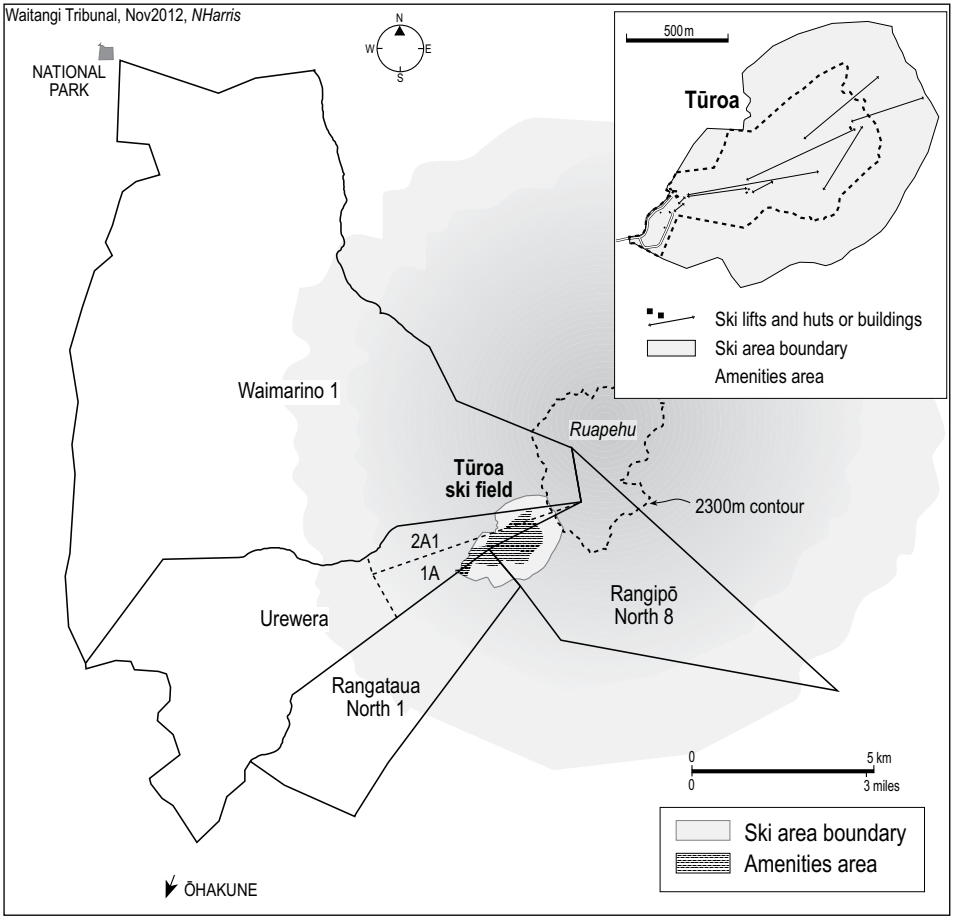
We consider the key problem to have been inadequate monitoring of the board in its administration of the park historically. At the outset, government representatives on the board did not determine a policy in partnership with iwi for how to manage the taonga it had acquired. The lack of policy created a vacuum that was filled by recreational groups willing to take an interest and invest in the park's development. This happened very early on and marked the beginning of cooperation between successive governments and recreational groups in the park's history. Administration of the taonga was conducted by the board in a fashion that reflected those priorities.

In the process, the spiritual values and cultural beliefs of ngā iwi o te kāhui maunga were disregarded. Ngāti Rangi elders explained that the existence of ski fields on Matua te Mana (Ruapehu) is a transgression of the tapu of their sacred mountain. Not only are kōiwi and taonga of their ancestors interred on the mountain for their protection, but the maunga is the home to many of their spiritual guardians. All of these things are regarded with reverence by Ngāti Rangi who are kaitiaki of these taonga.[308] However, kaitiakitanga is made much more difficult, as Keith Wood explained:

We cannot maintain this genealogy of custodianship without rights to these lands, rights that today can only be maintained by the current system of title and ownership, rights that have been systematically removed by the Crown in past breaches of the Treaty.[309]

The loss of title to the maunga has effectively denied Ngāti Rangi the authority to exercise kaitiakitanga over their taonga.

The reality for Whanganui Māori is that they are now lumped with ski fields and recreational infrastructure on their taonga. According to Che Wilson, the park was made for Pākehā rather than tangata whenua, and Tūroa ski field was 'only a place for Pākehā to go'.[310] What has



Map 11.4: Tūroa Ski Field

made this worse is the fact that the majority of Tūroa ski field, a name controversial among Ngāti Rangi, is located on Rangipō North 8, the block compulsorily acquired by the Crown in 1907 when the park was created.[311] Mr Wood outlined the hurt this had caused:

> to see people developing a playground on it with no respect for the mountain itself was a cultural affront to our people and they were devastated as a result. A lot of us still face difficulties with that now, especially when ski field operators are continually wanting to develop more facilities on the ski field.[312]

Failure to consider the interests of Whanganui Māori has produced long-lasting consequences. The relative permanency of recreational infrastructure on Matua te Mana is a reality the iwi must now face.

Significant sites on their taonga have also been renamed to commemorate prominent Māori individuals with an association to the region. Che Wilson described some of the examples. Blyth Hut and track, located on the Rangataua North 1 block, commemorates T A Blyth, a former park board member and member of the Ōhakune Chamber of Commerce. Whiowhio has become Te Heuheu peak and Girdlestone peak was named

after the death of surveyor and alpine explorer, Hubert Girdlestone.[313] From Ngāti Rangi's point of view, all these non-Whanganui identities have usurped their mana over these taonga and entrenched the feeling that their tupuna maunga is for Pākehā control and enjoyment.[314]

The situation for Ngāti Tūwharetoa is different, as the tribe did have input into park governance historically. Counsel submitted, though, that te kāhui maunga have not been protected in a manner befitting the cultural and spiritual expectations of tangata whenua. Development on the maunga has reflected the conception of these taonga as 'resources' to be utilised for recreational and commercial pursuits. This reflected a chasm between the beliefs and values of the two cultures.[315] There were also many uses, according to counsel, that violate the tapu of te kāhui maunga and cause the mauri to suffer, including:

- tramping, climbing, skiing on the mountain;
- erection of infrastructure and visitor facilities, including club huts, ski fields, and the Chateau;
- construction of toilets and inadequate and culturally insensitive disposal of sewage, rubbish, and waste water;
- access to areas of spiritual and cultural significance;
- reproduction of photos or videos of the maunga without permission; and
- flying and landing on the maunga for recreation.[316]

However, in light of our analysis and conclusions above, we cannot accept counsel's submission without considerable qualification. We have shown in our examination of board decision-making that, prior to 1952, Ngāti Tūwharetoa's representative did not disagree with many of the board's fundamental policies. For that reason, all the activities listed above and sanctioned by the park board (or the responsible government department) cannot have been seen by Ngāti Tūwharetoa as violating the tapu of the taonga.

But we do think Ngāti Tūwharetoa have legitimate grievances with respect to the execution of those policies. The key overarching problem, in our view, was the degree (rather than the fact) of recreational development on the mountains and its effect on these taonga. The over-development of the park, facilitated by the board and sanctioned by successive governments, has to a large extent created an alien environment around these sacred taonga. Brian Jones, a board member between 1973 and 1980, outlined the problem:

> . . . I am aware that there was always pressure on the Board from park users and their wants. The Board's concerns were servicing the recreational opportunities in the Park, and determining what the limits on activities were. The servicing

Keith Wood. Of Ngāti Rangi descent, Mr Wood is a forester who is passionately interested in and involved with conservation in Tongariro National Park.

Che Wilson. Mr Wilson of Ngāti Rangi has been actively involved in resource management and iwi matters for the last decade.

> of roads, concessions, lifts, tracks and accommodation put pressure on the Park Board for greater use of machinery to accommodate the public's increasing demands for sporting and recreational opportunities . . .[317]

Successive governments have not shown enough commitment to the protection of those taonga, the mountains.

In the history of the park, we do not think that Ngāti Tūwharetoa wanted to stop recreation on the mountains altogether. Conservator, Paul Green, testified that this was not the message that he had received over his 30 year association with the park, nor does the evidence allow us to support that contention.[318] But what Ngāti Tūwharetoa sorely needed was the ability to control the extent and rate of development on their taonga. Without that power, and without board members actively cooperating with the Ngāti Tūwharetoa representative on the board to ensure that did not happen, over-development seemed almost inevitable given the composition of the board. It was only made worse by the fact that the board delegated its powers for significant periods to bodies that were not accountable to Ngāti Tūwharetoa or Whanganui Māori. As a consequence, the spiritual values and cultural associations of tangata whenua were overridden. The extent of recreational development on the mountains has created an environment substantially alien to Māori.

The Crown is correct in arguing that the park is not, and has never been, philosophically exclusive. As New Zealand citizens, both Māori and non-Māori have always had the right to go there and enjoy the numerous treasures this region has to offer. But from Ngāti Tūwharetoa's point of view, governance of the taonga had lost sight of the need to protect tangata whenua interests. In other words, the mountains have been made accessible for the enjoyment of all people, but in doing so, the Crown had neglected the interests of its Treaty partner. Today, tangata whenua look to their sacred icons of tribal identity with mixed feelings. They see a playground before them overdeveloped to a point scarcely comprehensible.

(b) *Protection of the maunga from environmental damage:* From the evidence before us, we can discern some poor decision-making on the part of the board in the history of park governance. Rapid escalation in huts in the post-war period was the catalyst for over-development on Ruapehu. Huts formed the base from which ski fields and their associated facilities took shape around the mountain. The associated environmental problems from over-development of huts were readily apparent from the early 1950s. Visitors carelessly disposed of their waste with little concern for the cultural offence such behaviour caused

to tangata whenua. The board responded to the waste disposal issue in inconsiderate and lackadaisical ways. Rather than levy clubs for the collection and disposal of rubbish, as some clubs themselves suggested at the time, it requested they dump their rubbish in the Whakapapanui canyon. For several years, this practice was followed and it was only stopped when one of the board's own members took embarrassing legal action to require the Board to provide for adequate waste disposal methods from the mountain.

The board also failed to address the sewerage problems that emerged in the 1970s. In our view, the existence of toilets on the maunga was not the problem per se. The problem was that overdevelopment in certain areas, particularly Iwikau Village, led to a situation where too many toilets of substandard quality began to have a serious impact on the surrounding environment. When it became obvious that a reticulated sewerage system was needed, the board could not afford it. A reticulated system was eventually installed, but only at the lower development area around the Chateau, not in Iwikau Village. The system was not extended into the area that most needed it, and at the time when the effects of sewage outflow into the environment were most apparent.

Dr Coombes argued that the board had insufficient resources at its disposal to prevent such environmental damage. While the evidence suggests the board regarded a lack of resources to be a pressing issue historically, we consider it simplistic to target the level of resourcing provided to the board. Resources are not infinite and the level of resourcing provided to boards historically was never likely to be sufficient for actual needs on the ground. In the circumstances, it was the government's job to guide the board towards practical solutions for emerging problems. For instance, ministers could have instructed the board to prioritise protection of the mountain from environmental damage over anything else. They could also have directed the board to find ways of generating sufficient revenue to avoid compromising these basic human health standards. Levying clubs for the cost of rubbish and sewerage disposal from the beginning would have helped and were not outside the realms of possibility. Instead, successive governments sanctioned substandard environmental practices that were, in our view, totally unacceptable. Although the board was delegated the authority to care for this taonga historically, that did not mean the Crown could escape its Treaty duty of active protection.

(c) *Protection of tapu areas on the maunga:* Protection of tapu areas was another major concern raised by claimants, particularly Ngāti Tūwharetoa, during our inquiry. The most talked about tapu areas were the peaks of te kāhui maunga. During cross-examination, Crown counsel clarified Mr Winitana's belief that access to the peaks was something Horonuku Te Heuheu expected would be prohibited in the future management of the taonga when he made the tuku.[319] This was similar to the view of Dr Coombes, from his appraisal of park management during the twentieth century:

> **Mr Doogan:** Is it consistent from your research to the point where you would say the cultural preference was that there be no access at all to the Park, to the mountains?
> **Dr Coombes:** No
> **Mr Doogan:** Would you distinguish between an area identified by the original, the gift, the peak blocks and the wider lands in the Park? Do you see any distinction between the cultural preferences in relation to access to the peaks and the wider lands in the Park?
> **Dr Coombes:** Certainly the intensity of opposition to certain activities is more pronounced in that earlier area, so yes.[320]

The tapu nature of the peaks was also referred to by board member, Brian Jones, who was authoritative on Sir Hepi's position in particular. According to Mr Jones:

> Sir Hepi's attitude to any proposal regarding the mountains was always contingent on whether it impacted on their tapu. I am well aware that Sir Hepi held very strong views about this: he wanted to ensure respect for our tapu peaks and he would never allow any activity that would impinge on those values . . .
>
> Sir Hepi knew that people wanted to use the mountains for recreational opportunities, and he supported public

Mountaineers on the edge of the crater lake, Mount Ruapehu, 1936. The Tongariro mountain peaks and the crater lake on Mount Ruapehu were sacred places to Māori, and these mountaineers using pickaxes on the edge of the lake were not respecting the tapu environment.

enjoyment of the Tongariro National Park provided activities did not impinge on Ngati Tuwharetoa's cultural sensitivities. He wanted to ensure respect for the mountains while at the same time allowing for public recreation, and his approach to reconciling these objectives was to insist that the tapu peaks were off limits and were not to be touched. He was a gentleman, and he knew what he wanted, but he achieved things by discussion, not argument . . .

. . . . . .

. . . As with any proposal that came before him, his concern was whether such an activity was consistent with his strongly held views that there should be proper respect shown for tapu areas.[321]

Chris Winitana explained for the Tribunal why the peaks were regarded as tapu. In essence, the sum total of Ngātoroirangi's spiritual journey on the pathway of Io is left for his descendants on the peaks of ngā maunga tapu.[322] That is why access to the tapu peaks should be restricted, as Tumu Te Heuheu pointed out in 1998:

It has always been the view of the tribes that their *Kahui-Maunga*, Tongariro, Ngauruhoe and Ruapehu, were *tuaahu* (sacred altars). They were *tino tapu* (forbidden places) because they were the domain of *atua-wairua* (spiritual beings) . . .

An analogy to this is contained in the third chapter of the Book of Exodus in the Bible. It records an incident where Moses had arrived at the mountain of God called Horeb. The angel of the Lord appeared to him in a flame of fire out of the midst of a bush which, though burning, was not consumed by the fire. And God called to Moses from out of the burning bush saying:

. . . take off your shoes for the place whereon you stand is holy ground.

That is a perfect illustration of the concept of a *tuaahu* (a holy place or altar), which is exactly what the gift area meant to the tribes. The meaning may be lost on people today but the spiritual nature of the gift from Te Heuheu and his people should be understood for what it was, a holy place not

intended to be trodden by mortals, except at the call of Atua, as in the case of Moses. [Emphasis in original.][323]

Restricting access to the peaks, therefore, was a key objective in the future governance of the taonga. There has consistently been strong resistance to access and any sort of development on these areas. Determining what Ngāti Tūwharetoa regard as the extent of the peaks has been more difficult for the Tribunal to assess. The Tribunal discussed this with Ngaiterangi Smallman in respect of Tongariro during our hearings:

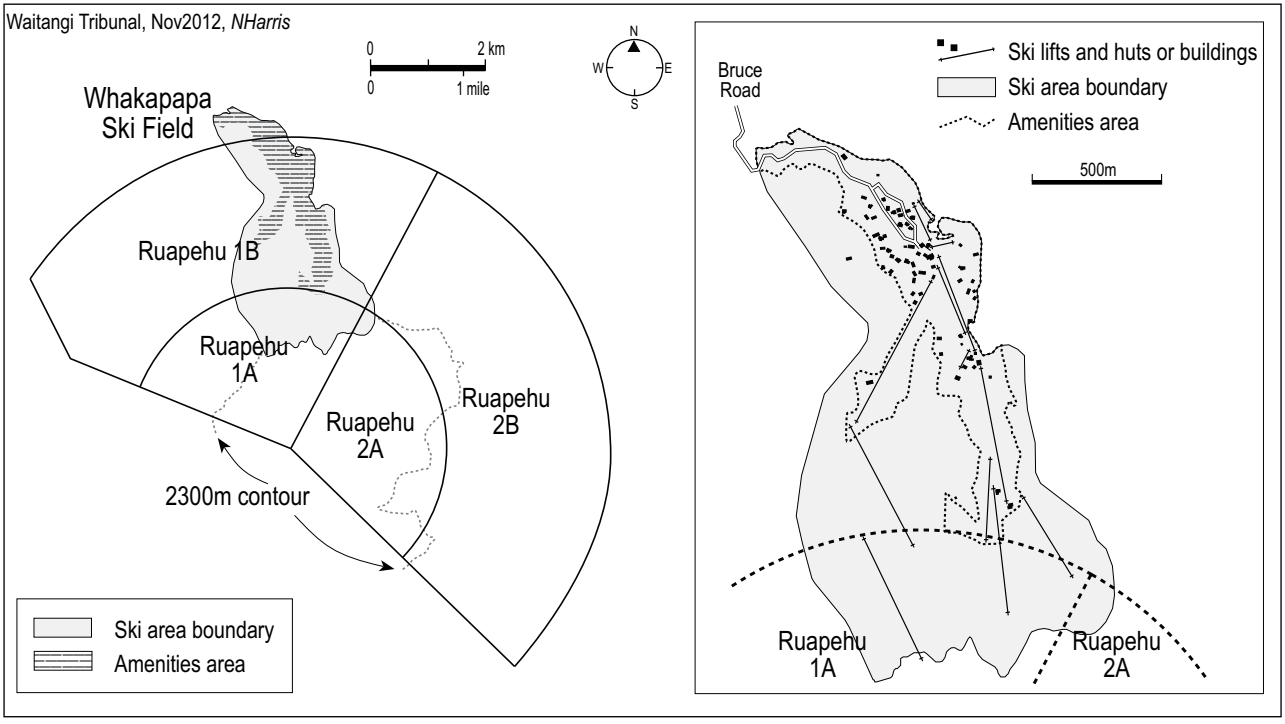
Tribunal: In your evidence you told us that people used to get food off Tongariro?
Mr Smallman: The peaks and the slopes are two different things. Basically, you have a forest line. Below the forest line was accessed for kai. Above the forest line is where you get your snow and your rock. That's in terms of the peak; the peak area is up there, above the forest line . . . Ketetahi is, what, only a couple hours in: a walk; whereas to get to the mountain it's going to take hours and hours.
Tribunal: So are you saying that the tapu part is only at the top?
Mr Smallman: I'm saying the maunga is tapu. The restricted area is above the forest line.
Tribunal: . . . And the food you are talking about is on the lower slopes?
Mr Smallman: Basically, people used to ride to Ketetahi, to the Springs, camp there, and around that area there are different food gathering areas. There are different caves and different resources up there. Up behind Pāpakai, the big hill up above there, there is more kai up that area.[324]

Mr Smallman's evidence suggests that the restricted area is above the forest line, which is a much larger area than the peak blocks defined in the Native Land Court. The court's definition of the peak blocks were the one-mile half-circles around Tongariro and Ngāuruhoe maunga, and the one-and-a-half mile semi-circles around Ruapehu. Yet, an examination of the aerial shot of the mountains in our map-book shows that the area of land above the tree-line encompasses a much greater area than just these blocks.[325] What Mr Smallman described as the restricted area includes not only the original three and four mile radii maunga blocks, but also land outside those blocks. We have already shown, however, that recreational development, some of which previous chiefs had supported, occurred on the maunga above the tree line. Furthermore, Ngāti Tūwharetoa's own map book, as the Crown highlighted, identifies resource gathering sites above that area too.[326] For both reasons, therefore, it seems unlikely that Mr Smallman's description is correct.

This raises the issue of how the restricted area should be defined. Excluding development from the original peak blocks has emerged as a tribal bottom-line over the past few decades. Tyronne (Bubs) Smith and George Asher, for instance, displayed considerable unease over the extent to which skiing infrastructure had encroached into these blocks. Nothing short of 'total exclusion', according to Mr Asher, is appropriate for this area, and the failure to prevent incursion into these blocks had completely disregarded the values and protection mechanisms envisaged by Ngāti Tūwharetoa.[327]

The evidence shows that there is indeed some infrastructural development that has taken place within these blocks. Under the executive board's authority, huts were approved at 8,000 feet, an altitude that encroached onto the peaks of Mount Ruapehu.[328] Further infrastructural development within this sensitive area took place over following decades. Because we do not have board minutes available to us after the 1950s, we cannot ascertain how that happened or whether Te Heuheu was even aware that it did. All we know is that, according to available maps, there are a total of five chairs and tows that encroach into the peak blocks of Ruapehu.[329] The presence of these structures on the peaks has been an enduring source of hurt for tangata whenua and led to their insistence, today, that the peaks are off limits from any further development.

Whether the peak block boundaries have any particular significance in customary terms and why these areas have emerged as a focal point for Ngāti Tūwharetoa requires some attention. In our view, it seems unlikely that these particular curved blocks of mountain peak (the tuku area) conform to a traditional rāhui or no-go zone.



Map 11.5: Whakapapa Ski Field

Such areas within Māori custom are not perfectly round, but commonly relate to geographical markers on the land. The Native Land Court, however, was ill-equipped to represent such areas with the kind of title that it could award. Moreover, we concluded in chapter 7 that Te Heuheu subdivided out the peaks to cement tribal rangatiratanga in the absence of legislation to that end. We also concluded that the subdivision was an act of mana from Te Heuheu. We do not, therefore, see strong significance in this particular boundary line other than the fact it broadly encompassed 'the peaks' of ngā maunga tapu, which Ngāti Tūwharetoa were concerned to protect from encroachment.

That aside, Ngāti Tūwharetoa still strongly oppose further encroachment in these blocks. Significantly, the tribe regards this as a bottom line. As part of its response, though, the Crown (through its responsible agency) has set new geographical parameters on the maunga from which further development of recreational infrastructure is prohibited. Counsel for Ngāti Tūwharetoa discussed this issue with conservator, Paul Green:

> **Ms Feint:** . . . in the management plan, why do you not have an exclusion zone that equates to the gift area?
> **Mr Green:** . . . we're dealing with a little bit of a historical situation, I suspect, in respect of the relationship of the ski field to the gift area, that's been in place since the 1950s.
> **Ms Feint:** So are you saying in effect because development has already occurred within the gift area that DOC is prepared to live with that and to move the exclusion zone higher up the mountain?
> **Mr Green:** What we're recognising is that the gift area boundary was, very much a radius from the summit and in identifying the pristine area . . . we've tried to take into account

perhaps the more obvious physical features on the mountain and rather than just relying on a figure that was a radius.[330]

In our view, it is entirely inappropriate for the Department of Conservation to decide, unilaterally, what the extent of the restricted area should be. A Treaty-compliant process for ongoing decision-making about this issue should properly be discussed between Ngāti Tūwharetoa and Whanganui claimants and the Crown in the future. Only then will tapu areas on the maunga be guaranteed of appropriate protection.

(d) *Exercise of customary rights:* In this section we consider the ability of ngā iwi o te kāhui maunga to exercise customary rights, such as harvesting environmental taonga, in the national park historically. We comment on the deficiencies of the statutory framework first and then consider how the Crown's record of environmental management in the inquiry district might have affected those rights.

For much of the period under review, tangata whenua were significantly dependent on natural resource-use to sustain their lives. Use of resources in the national park was problematic, though, because of the legislation. Māori customary rights were not provided for in the legislation governing the park in the whole period under review here. By way of response, the Crown argued that the statutory framework has consistently specified a balance between preservation and use. That is true. But the use referred to was of a recreational nature, not the type that allowed Māori to exercise their customary rights. It is instructive, we think, to review the activities prohibited from the beginning of the park's existence. Section 17 of the Public Domains Act 1881 stipulated that it was an offence to wilfully 'break or cut a tree or plant', 'take away, destroy, or injure any bird or animal', and 'take away any wood, shrub, plant, or other thing'. Such a loose description inevitably swept-up most of the customary rights tangata whenua exercised traditionally. Essentially, the law stated that indigenous flora and fauna were not to be interfered with under any circumstances.

Absolute preservation of the indigenous flora and fauna in the national park meant that ngā iwi o te kāhui maunga lost their customary rights. In the *Petroleum Report*, the Tribunal established a test to determine whether expropriation of Māori rights – in that case, in the petroleum resource – was justified in the circumstances such that there were no reasonable alternatives. The Tribunal used the *Moonen v Film Literature Board of Review*[331] decision to guide it in formulating that test. That decision reasoned:

> In determining whether an abrogation or limitation of a right or freedom can be justified in terms of s 5 [of the New Zealand Bill of Rights Act], it is desirable first to identify the objective which the legislature was endeavouring to achieve by the provision in question. The importance and significance of that objective must then be assessed. The way in which the objective is statutorily achieved must be in reasonable proportion to the importance of the objective. A sledgehammer should not be used to crack a nut. The means used must also have a rational relationship with the objective, and in achieving the objective there must be as little interference as possible with the right or freedom affected. Furthermore the limitation involved must be justified in light of the objective.[332]

Applying that reasoning to the issue of Māori rights in the petroleum resource, the Tribunal established that:

> the statutory objective must be sound; the interference in the fundamental right must be proportionate to the objective; there must be a proper connection between the interference and the objective; and the limitation must be no more than is absolutely necessary.[333]

We consider this an equally appropriate standard to apply when assessing the Crown's interference in Māori customary harvesting at the statutory level.

The first point we must assess, therefore, is whether the statutory objective was sound. In our view, protection of the indigenous environment was an extremely worthwhile objective. It was part of a wider colonial policy of setting aside and preserving domains for public enjoyment. In 1881, the public domains legislation provided the mechanism to achieve this goal, but was superseded in favour of scenery preservation and national park legislation. The

objectives behind preserving such environments were twofold. Setting aside and protecting various domains from the environmental change wrought by land clearance had an economic motive. Such domains provided a ready focus for tourists wishing to experience the unique qualities of the New Zealand landscape. There was another objective, however, connected to issues of identity and nationhood. Preserving the indigenous landscape coincided with a growing sense of public pride in everything indigenous. If people of the new Dominion were going to connect to their land and identify New Zealand as home, what made it distinctive needed preservation for the future. Without it, the flora and fauna would be displaced by an immigrant biota. These two principal objectives were complemented increasingly during the twentieth century by scientific, heritage, and ecological values, particularly as the devastating impact that acclimatisation had on indigenous nature captured national attention.[334] Today, the national parks are universally regarded by Māori and Pākehā alike as the jewels of the conservation estate.

The next point to establish is whether the Crown's interference in customary rights was proportionate to its objective. As explained above, the objective of the legislation was essentially to set apart and preserve pristine wilderness from the depredation of colonisation. But the resultant interference in Māori customary rights, at least at the statutory level, was absolute. There were no concessions to allowing customary usages to continue even where such usages would have been sustainable. In that sense, the interference was not proportionate to the overriding objective of environmental preservation. Although the objective was sound, it was not so important that it should automatically prohibit Māori customary rights in the park.

Was, then, there a proper connection between the interference and the objective in the legislation? Our answer to this is no. The objective of environmental preservation had little relationship to Māori customary rights in the park. Nor did it appear, initially, to have any relationship with the health of species within the region. Prohibiting any interference with the natural resources in the park was simply the blunt tool used to achieve that objective. It was, as the Court of Appeal warned against in the *Moonen v Film and Literature Board of Review* case, using a sledgehammer to crack a nut. The result for Māori was that their customary rights were legislated out of existence.

In taking such an approach, the Crown could not assess in the circumstances of the time whether the continuation of certain rights conflicted with the broader goal of environmental preservation. Historically, tangata whenua were prohibited from harvesting their taonga because interference of any kind was considered a threat to the long-term preservation of the environment. That is clear from the offences listed in the public domains legislation. What this overlooked, however, are the responsibilities inherent to kaitiakitanga.

The overriding responsibility of kaitiakitanga is for Māori to perform their rituals in sustainable ways. Kaitiakitanga is a responsibility that reflects the spiritual relationship Māori have with their kin of the natural world. As Merata Kawharu explained, a human kaitiaki has the responsibility to give care and management to resources, receive the benefits of the resource, and protect its sustainability as 'repayment' for what the resource gave.[335] The legislation governing the park, though, did not recognise that relationship and the responsibilities that Māori have to their resources. The law expressly forbade any person to damage the flora, injure any animal, or remove anything from the park.[336]

In our view, there was potential for at least some customary rights to continue while still achieving the overall objective of environmental protection. A blanket ban on interfering with all resources was not the only approach available to the Crown. Paradoxically, a blanket ban on customary rights in the national park occurred at the same time that the exercise of such rights continued in other jurisdictions. On the Tītī Islands, for instance, birding rights were granted to Rakiura Māori in early twentieth century regulation.[337] The customary harvesting of birds on scenic reserves under the Scenery Preservation Amendment Act 1910 was another example, demonstrating a capacity for Māori customary rights to continue in reserved spaces.[338] There were also powers available to

the Minister to exercise discretion under other legislative regimes. Section 31(2) of the Animal Protection and Game Act 1921, for example, gave the Minister power to allow birds to be taken for any purpose. This carried through into section 60 of the Reserves and Domains Act 1953 and section 6 of the Wildlife Act 1953.[339]

There was also evidence to show that the interests of other parties were accommodated. As explained earlier, provision was made in 1923 for the prisons department to continue timber cutting on lands included in the park the previous year. In doing so, a prior arrangement reached by the State Forest Service and the prisons department could continue. That was particularly significant, as the park board had no authority to grant timber cutting permits itself.[340] The Tongariro National Park Act was also specially amended in 1927 to allow the Defence Department continued access and use of former Waimarino Military Reserve lands. Part of this Reserve had been incorporated into the park under the 1922 Act, but without preserving the right of the military to use the land as a training ground. That situation changed in 1927 when the Defence Department were granted the right to use certain lands for military purposes as though the Tongariro National Park Act had not been passed.[341] In other words, there were alternatives to a blanket prohibition on certain activities within the park and the Crown was not ignorant of Māori needs and values.

The National Parks and Reserves Authority's 1983 *General Policy for National Parks* made an important change to that state of affairs. It contained a clause that '[t]raditional uses of indigenous plants or animals by the Māori people . . . will be provided for'.[342] This was the first time that customary rights were recognised within the policy framework. Those rights were permitted where such flora and fauna were not protected under other legislation and demands were not excessive.[343]

The Crown's right of governance meant that it had the power 'to impose reasonable constraints' to protect natural resources for everyone.[344] However, in the case of national parks, where a blanket ban on any usage was the fundamental principle underpinning the legislation, we consider that there are several steps the Crown should follow. First, the Crown would need to consult with Treaty right-holders about the limitation of their rights. Secondly, we would expect the Crown to conduct regular assessments of the state of taonga to determine whether cultural harvest can be restored. Effective consultation might lead to Māori being engaged in the restoration of natural resources of interest to them so as to enable cultural harvest to take place. While these steps may not have been a realistic expectation in the park's very early days – they were notably not followed in the entire period under examination in this chapter.

According to claimants in our inquiry, the blanket prohibition was sufficient to dissuade some from exercising their customary rights altogether.[345] In the process, Māori lost their knowledge, traditions, and culture. Keith Wood outlined the effect of prohibiting bird harvesting:

> Our tamariki and mokopuna have lost the ability to participate in these traditions. When it became illegal to harvest Kereru, we were then faced with the choice of whether to teach them about looking after and harvesting Kereru or not. Do you take your tamariki out to learn to do this knowing that it is now illegal and the consequences are severe, or do you teach them to hunt something else. For me it is similar to my mother being strapped for speaking te reo Māori in her formative years at school. She stopped speaking Māori and took up European ways. Getting punished means you are actively discouraged from being Māori and our culture is lost.[346]

Similarly, Rosita Dixon highlighted her concern over the loss of knowledge of important cultural practices:

> What is very worrying to me is we are forgetting how to take the paru from the whenua, how to prepare our harakeke for dying and how to weave garments to adorn our people. The red ochre, the sulphur and bark for dyes are only found in certain places and it's important that we regularly take from those places to monitor their growth patterns. These were things I did as a child with my aunties and nannies. This is precious knowledge and even the courses that I have enrolled in that are run from places like Te Wananga

o Aotearoa tend to encourage us away from our traditional taonga to use materials available from Pak n Save as a matter of convenience.[347]

For other claimants, though, the legislation simply had no effect on the continued exercise of customary rights.[348] Ngāti Rangi witness Che Wilson was one:

> Although it is a National Park which comes with some restrictions, our people continued to go to the places they were culturally allowed to go to in accordance with tikanga . . . we still continue today to get kai and rongoā . . . Theoretically we are not allowed to take anything out of the National Park, but I have no issue in performing my duties, I and many of my whanau take things out of the National Park because it is a major part of our tikanga and our practices are sustainable.[349]

Ngā iwi o te kāhui maunga were in an invidious position. In order to maintain their tikanga they had to break the law. The extent to which this interfered in their customary rights, however, is unknown. We had no evidence before us of any prosecutions in the period of management under discussion here. Dr Robyn Anderson confirmed this to Crown counsel during cross examination.[350] Furthermore, both Dr Anderson and Cecilia Edwards concluded that it was not known whether park officials took any steps to actively prevent Māori from exercising their customary rights.[351] In fact, Ms Edwards concluded that enforcement of the law prior to the 1950s was problematic because of an absence of permanent staff on the ground. While honorary rangers, such as John Cullen, and various departmental officials provided some field assistance, it is not apparent that anyone stopped Māori from practising their customary rights in the park. In its report of 1923, for instance, the board outlined bird species found within the park and made the following interesting statement:

> Mutton-birds, or ocean petrels, also come to rest in the slopes of the mountains. The young birds are a delicacy with the Māoris, *who often take them* before they are ready for flight to the sea. [Emphasis added.][352]

This implies that there was no enforcement of prohibitions on the ground. Therefore, it is entirely possible, as Ms Edwards argued, that customary usage continued unhindered.[353]

While we do not condone unlawful activity in the park either historically or today, it appears that, until the 1950s at least, when national park administration was professionalised, prohibitions on customary usage were less important than other issues. These included the effect that exotic species had on indigenous flora and fauna, the changing lifestyle of local Māori and their withdrawal from the area, the loss of natural habitat from logging, and the general environmental change brought about by colonisation.[354]

Claimants drew our attention, in particular, to the impact that acclimatisation of exotic species had on their customary usages. They alleged the Crown's introduction of exotic species depleted the indigenous flora and fauna that Māori depended on so heavily for their sustenance and also failed to adequately respond to the evidence of species decline. It is to these two issues that we now turn.

Ngāti Hikairo claimant Tyronne (Bubs) Smith described how detrimental acclimatisation had been on the native bird population in particular:

> By their very nature, mountainous environments tended to be sparsely populated, but the impact of introduced mammalian predators has had a catastrophic effect on most species of native birdlife, some to extinction locally, while hugely decimating the numbers of most others. Introduced mammals such as deer, pigs, possums, dogs, cats, rats and rabbits have all had either direct or indirect impacts on our wildlife, but it has been the introduction of mustelids such as stoats that have had dire consequences on most species of birds.[355]

The Crown's involvement in the acclimatisation process, as John Mananui put it, proved that it was a 'poor kaitiaki'.[356]

It is indeed true that the introduction of imported species can be linked to the Crown historically. Successive governments have empowered and encouraged exotic species introductions into the New Zealand environment since the mid-nineteenth century.[357] Most exotic species

A rat in a fantail nest. With their ability to climb, ship rats (*Rattus rattus*) are one of several species that have caused a reduction in the numbers of native birdlife in the park.

introductions into New Zealand occurred prior to 1900. The effects on the natural environment were disastrous. As Dr Geoff Park explained, the New Zealand landscape was in an advanced state of profound ecological transformation by the beginning of the twentieth century. New Zealand's indigenous flora and fauna was in obvious dramatic decline. Public opinion soon shifted to rejecting acclimatisation. It was replaced by growing anxiety about preserving everything indigenous, but, by then, in many cases, the damage was already done.[358]

While that is the picture for New Zealand as a whole, we had insufficient historical evidence specific to this inquiry district to determine the Crown's role in the acclimatisation of the majority of exotic species that have entered the park invasively. Animals and plants such as possums, feral cats, stoats, weasels, rabbits, hares, goats, pigs, broom, blackberry, and ragwort have all been pests to varying degrees over time in the district. The evidence before us, however, does not allow us to determine what role, if any, the Crown had in the introduction of those species into the district, nor whether it exercised adequate control over those responsible for the introductions.

A weasel. Mustelids (stoats and weasels) have been responsible for disastrous effects on most native birds in the Park.

The acclimatisation of heather in the park is one exception. Heather's introduction was directly attributable to the actions of John Cullen, a man influential in the early history of the park. The evidence suggests that Cullen operated in a private capacity on this issue, cultivating heather plants in vast plots in and around the park.[359] We agree with Ms Edwards, therefore, that the Crown did not introduce heather into the district. But if it were not for the Crown's assistance, specifically the efforts of the Prime Minister and his high commissioner in London, Cullen would simply not have succeeded (see section 11.5.4(1)(a)). In effect, by purchasing and supplying the heather seed, the Crown directly facilitated Cullen's ambitions.

As to the adequacy of the Crown's response to the impact of acclimatisation on indigenous flora and fauna, again, we had insufficient evidence to reach definitive conclusions on all species concerned. To determine that the Crown's response was inadequate, we would need to have solid evidence that it knew of the decline in indigenous flora and fauna in the district, that it was aware these were a taonga to Māori, and that the Crown failed to respond adequately. Such a consideration would require

an understanding of the Crown's national approach to pest eradication and how that approach intersected with the particular threats present in the National Park inquiry district. We have insufficient evidence before us to reach conclusions on all species. The only ecological assessments of the state of flora and fauna in the park prior to the 1950s were reports provided by staff on the ground, such as rangers or park wardens. With a limited number of staff on the ground, however, documentary evidence of the ecological condition of the park is scanty.

The documentary evidence available is also somewhat conflicting with the evidence presented by tangata whenua in our inquiry. Tangata whenua indicated that some bird species were declining by the early twentieth century. John Atirau Asher's observations, for instance, suggested a decline in the tītī population in the Rangipō desert region during his first bird snaring expedition in 1908. Mr Asher attributed the decline in tītī to rats destroying the eggs in their nesting burrows.[360] Other claimants, though, suggested the population was still healthy enough to allow for customary take for decades thereafter. John Manunui recalled that his father and grandfather continued to hunt for tītī into the 1920s and possibly even the 1930s.[361] It is, therefore, impossible to determine when the tītī became locally extinct from the national park, but it is likely that mustelids contributed to their demise. These exotic species must have found their way into the park over time from the surrounding environment.

Official reports recording the state of birds in the park appear to confirm Mr Mananui's testimony. By the early 1920s, the board reported that all bird species 'originally known in the Park' were still present.[362] Over following years a different picture emerged in these reports. A steady decline was observed in some native bird populations due to predation and competition from introduced species, prompting the board to declare the park an absolute sanctuary for native flora and fauna.[363] By 1930, the park warden reported:

> Native bird-life in the bush in the park appears to diminish year by year, and, as weasels and stoats are now quite numerous, it may be that their presence may have something to do with the disappearance of the birds.[364]

Four years later, the warden warned that the bird life of the park would continue to decline unless mustelids were exterminated.[365] He lamented that '[t]uis which used to be plentiful there some years ago are now rarely seen or heard'.[366] At the time of such observations, the board had resolved that no further liberations of exotic species would be tolerated in the park.[367] It seems that the park board had learned from the mistakes of the past. Members appeared anxious to avoid anything that would contribute to the further decline of the indigenous flora and fauna. But that did not lead to any positive action on the part of the board to eradicate mustelids and provide the sanctuary that it wished for native birds.

Although our ability to comment on the adequacy of the Crown's response to acclimatisation is limited, we can comment on its response to the effect of heather. The Crown is correct that there was no consensus in the scientific community and government circles on acclimatisation during the early twentieth century. The introduction of heather occurred at a time when the purpose and function of national parks were a focus for considerable debate. Ideas of preservation initially focused on protecting scenic beauty spots as pristine landscapes, free from the depredation of colonisation. Over time, preservationists came to emphasise the intrinsic importance of preserving the indigenous flora and fauna of the natural environment. By 1920, these ideas were ascendant and the board's decision to declare the park a sanctuary reflected that shift. When the board resolved to eradicate heather soon after, however, it faced a significant problem: insufficient resources to do so. In the circumstances, the board had to reverse its decision and, instead, observe heather spread and entrench itself over following decades.[368]

We think this could have been avoided had the Crown explored other options. Before we explain those, it is important to clarify that the Minister of Lands, his under secretary, and the general manager of the tourism department – all senior government representatives – opposed

Pervasive heather in Tongariro National Park. Although attempts have been made to eradicate the heather, it continues to be a pest that is difficult for the Department of Conservation to remove and control.

the original motion to eradicate heather in early 1925.[369] Their vote went against the advice of scientific experts at the time. On this decision, however, they were outvoted by the rest of the board including Hoani Te Heuheu. At the next board meeting, Cullen, the man responsible for the heather, requested that the board's decision be rescinded.[370] His request was not heard until December the following year, at which point a new motion was passed acknowledging that 'it is impossible to eradicate the heather save at a cost beyond the means of the Board'.[371]

Before changing its position, however, the board received several offers of support. Various scientific, recreational and preservationist bodies expressed their 'satisfaction' to the board in a flurry of congratulatory messages. Interestingly, two of these messages offered specific assistance to the board, in the form of £50 towards the work necessary and alpine plants to replace the 'waste areas' remaining after the heather was removed.[372] What is interesting about these offers are that they were tendered in the absence of any specific request from the board for help. Given the level of support expressed by various groups at the board's original decision, we can only imagine what additional support might have been forthcoming if the board actually requested help. It is just possible that the board could have obtained everything it needed to eradicate the heather from the park through a collaborative approach. Funds from outside sources could have assisted the venture. Prison labour was also available to the board if required and had been used to plant heather in the first place. In 1925, prison labour was being used for the purposes of road works and hut construction in the park.[373] There was also the possibility of volunteers from the pool of concerned citizens within the community.

Eradicating the heather should have remained a priority and it was the Crown's role to ensure that it did. The board had previously resolved to preserve the indigenous flora within the precincts of the park, but without a proactive approach to heather, success would always be limited. John Manunui explained why heather is so damaging to the environment:

> Once heather is established the ground beneath becomes barren and nothing else grows (total domination). The effect on native plant life is immeasurable. Pikopiko and ferns of the like that were part of the hapu diet became non-existent in areas overcome by heather. Our old people used to collect rongoa and kai from the bush around the Park. Today, there are very few places where the plants survive . . .[374]

Heather's 'total domination' has caused significant damage to the indigenous flora in parts of the park. Today, it remains a pest that the Department of Conservation has to actively manage. In our view, the Crown's available options in the mid-1920s could have produced a better result for the health of the indigenous flora. If government representatives on the board had followed a prudent approach, they would have explored the options fully and advised the board on a course of action. This could have taken place before the board abandoned its plan to eradicate heather from the park altogether.

In sum, the fact that there is no evidence of restrictions on customary use being actively enforced by the Crown or its statutory delegate is not the issue in our view. The fundamental problem is that the Crown, in legislating for the national park, failed to provide for customary rights in the first place. Regardless of whether these rights continued to be exercised in practice or not, the spectre of illegality and the potential for repercussions were important symbolically. This was the Crown legislating against a Māori customary right without their consultation or consent. We had insufficient evidence before us to assess Crown action in relation to the impact of acclimatisation on Māori customary rights. But we do think the Crown could have explored other options to successfully eradicate heather in the circumstances of the time. The majority of the board and various scientific, recreational, and preservationist bodies enthusiastically supported such a move. What was lacking was the will on the part of government representatives to explore other options.

11.6 Tribunal Findings

11.6.1 Crown concessions

The Crown conceded that there is no evidence that it actively turned its mind to those with interests in the blocks on the southern side of Ruapehu, despite the fact that the Crown had purchased land in this area from Whanganui Māori. By the Crown's own admission, it ought to have known of the historic and strong customary association that Whanganui Māori have with Ruapehu maunga when it legislated to establish the park in 1894. The failure to consider, and provide for, those interests was in breach of the Treaty and its principles, and has been the cause of suffering for Whanganui iwi.[375]

The Crown submitted that Te Heuheu's fundamental expectation was that his and Ngāti Tūwharetoa's association with the mountains would never be lost in future administration of the park, and it drew attention to the 1894 Act, which gave Te Heuheu a seat on the board. But the Crown conceded that it failed to consistently uphold Te Heuheu's position on that board, particularly as it was unilaterally repealed in 1914 and only reinstated in 1922.[376] This was inconsistent with its duty to act in good faith and was in breach of the Treaty of Waitangi and its principles.[377]

11.6.2 Our conclusions and findings

We agree with *Ko Aotearoa Tēnei* that the Treaty obliges the Crown to actively protect the taonga within the environment and the kaitiaki interests within them, and to carry out its functions in a manner that to the greatest extent practicable is consistent with the tino rangatiratanga of iwi and hapū. This reflects the Treaty principle of partnership.

We also agree with the *Tauranga Moana* Report that in making a place for two peoples, the need is always to ensure that the rights, values, and needs of neither should

be subsumed. That obliged the Crown to ensure any statutory framework governing taonga gave expression to Māori rights and values. In the circumstances of park governance, we agreed with previous Tribunals, the *Report on the Management of the Petroleum Resource* being the most recent example (see section 11.5.1), that the Crown could only guarantee Treaty-compliant outcomes by ensuring Māori representation on the relevant decision-making body.

We take the Crown's first concession to mean two things. First, the Crown should have consulted Whanganui Māori on the statutory framework governing the park, including the principles governing how the taonga would be managed. This was necessary to ensure that the Crown acknowledged and allowed the exercise of rangatiratanga by Whanganui Māori. Secondly, the Crown should have provided Whanganui representation on the board between 1894 and 1987. The interests of Whanganui Māori necessitated wider representation than just Ngāti Tūwharetoa in the governance of the park. The principle of equal treatment demanded that Whanganui Māori be treated the same as other Māori groups with interests in the park.

We find that the Crown considerably understates Te Heuheu's fundamental expectation with respect to the tuku. Te Heuheu was motivated by a desire to obtain joint governance over the taonga for the tribe, and understood there to be two parts to his tuku: (1) shared ownership of the peaks; and (2) life membership on the board of governance. This arrangement would ensure that he and the Queen could exercise authority and control of the taonga in partnership in the future.

We find that the Crown's statutory delegation and accompanying regime did not provide a partnership in the governance of these taonga prior to 1987. The 1887 Tongariro National Park Bill offered the possibility of shared governance, but did not pass. The 1894 legislation reversed that and left Te Heuheu on a board comprised of a majority of Crown representatives. The Crown did not then adequately consult on the 1894 legislation and for that reason we are not persuaded that Ngāti Tūwharetoa unreservedly approved of the resultant Act. With each legislative change thereafter, Te Heuheu's potential influence was further diluted by individuals whose primary interests lay in promoting recreation, preservation, and conservation within the park.

The shortcomings of the statutory regime intensified the Crown's duty of active protection in the history of park management. The Crown had to ensure that it was fully informed of Māori interests through adequate consultation and the development of policies that accorded Māori values appropriate weight. This would have prevented the Crown's statutory delegate from taking actions that were known to have a negative impact on ngā iwi o te kāhui maunga.

We find that the Crown and its statutory delegate did not consult with Whanganui Māori on issues affecting their taonga in the park prior to 1987. Furthermore, the Crown did not develop policy that took account of Māori values prior to 1987. The lack of policy created an opportunity for private interests, particularly recreational groups, to dominate board governance.

The situation for Ngāti Tūwharetoa was different, as Te Heuheu held representation on the Board for most of the park's history. Our analysis, though, demonstrated that, until 1952 at least, the input of Tūreiti, Hoani, and Sir Hepi in board governance was constrained and sporadic. The key reasons for this were (1) the inoperative state of the board between 1907 and 1914; (2) the abolition of the board between 1914 and 1921; (3) the ascendancy of the executive board from 1931, when recreational development boomed; and (4) the delegation of certain board functions to recreational groups in 1949. This limited the ability of Ngāti Tūwharetoa to prevent physical and cultural harm to their taonga.

The Crown submitted that there is little evidence Māori suffered prejudice from park governance historically. We fundamentally disagree. While views varied on specific board actions historically, we find that the Crown has supported and sanctioned a governing body to create a physical and cultural environment that is substantially alien to Māori. This has caused significant harm to the values and cultural practices of ngā iwi o te kāhui maunga.

We identify four key areas of prejudice.

- First, the Crown's statutory delegate has over-developed certain taonga within the park, such as Ruapehu maunga, for commercial and recreational purposes to the point of significant environmental degradation.
- Secondly, the Crown has not adequately protected tapu areas, particularly the peaks of te kāhui maunga, from culturally insensitive action.
- Thirdly, the national park concept that was established in New Zealand negated Māori customary rights in indigenous flora and fauna. The approach adopted legislated Māori rights out of existence without consultation or consent, and at a time when other groups were given special dispensation to continue certain practices within the park.
- Fourthly, we also find that the Crown did not adequately respond to known and reported threats to native birds and flora in the circumstances of the time. This interfered directly with Māori customary rights. In the case of heather, the Crown directly facilitated the introduction of this pest into the park through its financial and logistical support to John Cullen.

In summary, we find the Crown did not adequately fulfil its fundamental duty of active protection to ngā iwi o te kāhui maunga and that this has had an irreversible impact on their way of life.

Finally, we acknowledge that the concept of a national park is essentially a positive one, which – with improved technical knowledge and shared responsibility in management – may be a site of genuine partnership between the Crown and ngā iwi o te kāhui maunga for the future.

Notes

1. Tom Bennion, generic submissions on national park management and environmental law, 15 May 2007 (paper 3.3.34), pp 5, 7; counsel for Robert Wayne Cribb and others, closing submissions, 14 May 2007 (paper 3.3.19), p 16
2. Counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2007 (paper 3.3.42), p 79; counsel for Ngāti Waewae, closing submissions, 28 May 2007 (paper 3.3.41), pp 87–88
3. Counsel for Ngāti Hāua, closing submissions, 23 May 2007 (paper 3.3.39), pp 8, 37; counsel for Ngāti Hikairo ki Tongariro, closing submissions, 14 May 2007 (paper 3.3.29), p 46; counsel for Ngāti Rangi, closing submissions, 15 May 2007 (paper 3.3.33), p 56
4. Counsel for Uenuku, closing submissions, 22 May 2007 (paper 3.3.37), pp 118–119, 130–131
5. Paper 3.3.39, pp 38–39
6. Counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), pp 164–165, 386–387
7. Ibid, pp 173, 179–180
8. Ibid, pp 176–178
9. Ibid, pp 166–167
10. Claimant counsel, generic closing submissions on environmental issues, 14 May 2007 (paper 3.3.28), p 6; paper 3.3.33, pp 12, 78; counsel for Ngāti Manunui, response to statement of issues, 14 May 2007 (paper 3.3.27(a)), p 28; paper 3.3.42, pp 82, 85; paper 3.3.39, p 8
11. Paper 3.3.19, p 16
12. Paper 3.3.37, pp 140–141; paper 3.3.42, p 81
13. Paper 3.3.28, pp 8–9
14. Paper 3.3.29, p 55; paper 3.3.19, p 16; paper 3.3.37, pp 140–141; paper 3.3.42, p 81; paper 3.3.28, pp 8–9
15. Counsel for Tamakana Council of Hapū and others, 23 May 2006 (paper 3.3.40), pp 170, 174; paper 3.3.19, pp 16–17
16. Paper 3.3.39, pp 36–37; paper 3.3.37, pp 133–135; paper 3.3.40, pp 170, 174
17. Counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), p 169; counsel for Ngāti Manunui, closing submissions, 14 May 2007 (paper 3.3.27), p 21; paper 3.3.41, pp 87, 90; paper 3.3.42, pp 70, 81
18. Paper 3.3.43, pp 173–175, 179–80, 185–187; paper 3.3.37, p 130
19. Paper 3.3.37, pp 130–131
20. Paper 3.3.43, p 182
21. Ibid, pp 335, 386–387, 394
22. Paper 3.3.33, pp 54, 58, 89–91; paper 3.3.37, pp 118–121, 123, 126–128, 141; paper 3.3.28, pp 10–12, 15; paper 3.3.41, pp 94–98; paper 3.3.42, pp 82–87; paper 3.3.43, pp 179–180, 183; paper 3.3.29, p 51; paper 3.3.27, p 21; paper 3.3.34, p 29
23. Paper 3.3.34, pp 7–8
24. Ibid, p 8
25. Ibid, pp 8–9
26. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 9, p 4
27. Ibid, p 18
28. Ibid, p 3
29. Ibid, p 7
30. Ibid, p 14
31. Ibid, p 17
32. Ibid, p 6
33. Ibid, pp 14–15
34. Ibid, pp 3, 14
35. Ibid, pp 11–12

36. Ibid, p 3
37. Ibid, pp 11–12
38. Ibid, pp 20–21, 38, ch 13, p 10
39. Crown counsel, opening submissions, 27 November 2006 (paper 3.3.17), pp 14–15
40. Paper 3.3.45, ch 6, p 32
41. Ibid, ch 9, pp 9–10
42. Paper 3.3.17, p 14
43. Ibid
44. Paper 3.3.45, ch 6, pp 47–48
45. Ibid, ch 9, p 8
46. Ibid
47. Ibid, pp 22, 50
48. National Parks and Reserves Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1983)
49. Paper 3.3.45, ch 9, p 5
50. Ibid, p 40
51. Ibid, ch 13, pp 4–5
52. Ibid, p 3
53. Ibid, pp 12–14
54. Ibid, ch 9, pp 50–52
55. Ibid, ch 13, p 9
56. Ibid, pp 9–10
57. Ibid, ch 9, pp 41–42, ch 15, p 8
58. Ibid, ch 6, p 33
59. Ibid, ch 13, p 3
60. Ibid, ch 9, p 49
61. Ibid, ch 6, p 25
62. Ibid, p 33
63. Ibid, ch 9, pp 9–10
64. Ibid, ch 6, pp 4–5, 33
65. Counsel for Te Iwi o Uenuku, submissions in reply to Crown closing submissions, 7 July 2007 (paper 3.3.58), p 20
66. Counsel for Ngāti Hāua, submissions in reply to Crown closing submissions, 6 July 2007 (paper 3.3.48), [pp 3–4]
67. Paper 3.3.58, p 24
68. Ibid, p 28
69. Paper 3.3.48, [p 4]
70. Counsel for Ngāti Tūwharetoa, submissions in reply to Crown closing submissions, 11 July 2007 (paper 3.3.60), p 18
71. Counsel for Ngāti Waewae, submissions in reply to Crown closing submissions, 6 July 2007 (paper 3.3.53), p 15
72. Paper 3.3.58, pp 24–26, 39; paper 3.3.34, pp 22–23, 27–28
73. Paper 3.3.17, p 15
74. Paper 3.3.45, ch 9, p 4
75. Te Ngaehe Wanikau, brief of evidence, 28 September 2006 (doc G21), pp 20–21
76. Rosita Rauhina Dixon, brief of evidence, 8 May 2006 (doc D35(a)), p 8
77. Ibid
78. Te Mataara Pehi, brief of evidence, 11 May 2006 (doc D46(a)), p 8; Iwikino Piripi, brief of evidence, 4 September 2006 (doc F2), pp 7–8
79. Ariki Piripi (Alec Phillips), brief of evidence, 12 September 2006 (doc F10(a)), pp 11–12
80. Keith Wood, brief of evidence, 10 February 2006 (doc A64), p 15; Che Philip Wilson, brief of evidence, 10 February 2006 (doc A61), p 11; Turuhia Jim Edmonds, 5 May 2006 (doc D29), p 17
81. John Manunui, brief of evidence, 28 September 2006 (doc G27), p 12. See also chapter 2, section 2.5.3.
82. Document F10(a), pp 11–12; Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa, The Shadow of Ngati Tuwharetoa' (confidential commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc G17), p 222
83. Tyronne Smith, brief of evidence, 28 September 2006 (doc G24), p 17
84. Turoa Karatea, brief of evidence, 28 September 2006 (doc G26), p 8
85. Document G17, p 133; Ngaiterangi Smallman, brief of evidence, 28 September 2006 (doc G19), p 9
86. Document G17, p 134
87. George Asher, brief of evidence, 28 September 2006 (doc G52(a)), p 23; doc G26, p 9; John Reweti, brief of evidence, 28 September 2006 (doc G32), p 3; doc G17, p 221
88. Mark Gray, brief of evidence on behalf of Ngāti Rangi, 1 March 2006 (doc A68(b)), p 3; doc A61, pp 8–9, 11–12
89. Document D29, pp 14, 16–17; doc G17, p 221
90. Kahukura Taiaroa, brief of evidence, 5 May 2006 (doc D41(a)), p 7
91. Document G24, p 18
92. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 4, p 1238
93. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wellington: Waitangi Tribunal, 1988), p 179
94. Colin Richards, brief of evidence, 10 February 2006 (doc A63), p 3
95. Keith Wood, brief of evidence, 10 February 2006 (doc A64), p 24
96. Nyree Nikora, brief of evidence, 14 August 2006 (doc E22), p 3
97. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 181
98. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 320
99. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, p 112
100. Waitangi Tribunal, *The Report on the Management of the Petroleum Resource* (Wellington: Legislation Direct, 2011), p 150
101. Waitangi Tribunal, *Tauranga Moana 1886–2006: Report on the Post–Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 2, p 604
102. *New Zealand Maori Council v Attorney-General* [1989] 2 NZLR 142, 152 (CA)
103. Tongariro National Park Act 1894, s 4
104. Tongariro National Park Bill 1887, s 4(1) (Andrew Joel, comp, 'Supporting Documents to "The Origins of the Gift of the Peaks

and the Establishment of the Tongariro National Park"' (supporting papers, Wellington: Crown Law Office, 2005) (doc A56(a)), pp 289–290)

105. Public Domains Act 1881, s 10

106. Tongariro National Park Act 1894, s 6

107. Kererū, teal, grey duck, pūkeko, kea, and shags fell into this category. See Geoff Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning Indigenous Flora and Fauna 1912–1983* (Wellington: Waitangi Tribunal, 2001) (doc A20), p 145.

108. Scenery Preservation Act 1903, s 9

109. Scenery Preservation Amendment Act 1910, ss 6, 7; doc A20, pp 252–258

110. General manager for tourist and health resorts to Minister for Tourist and Health Resorts, 12 May 1913, AECB 8615 TO 1/70 1908/109 pt 2, Archives New Zealand, Wellington (Cecilia Edwards, comp, 'Document Bank to "Tongariro National Park: The Legislative Regime and Park Management, 1894–1952"', 6 vols (document bank, Wellington: Crown Law Office, 2005) (docs A53(a)–(f)) (doc A53(c)), vol 3, p 89); Cecilia Edwards, 'Tongariro National Park: The Legislative Regime and Park Management, 1894–1952' (commissioned research report, Wellington: Crown Law Office, 2005) (doc A53, pp 93–95)

111. Section 54 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1914 enabled the Governor to expand the boundaries of the park to include any adjacent Crown land. Section 54 also repealed four of the six sections of the Tongariro National Park Act 1894, leaving intact only sections 1 and 2 (the short title and the declaration of the area in the proclamation): doc A53, pp 98–99.

112. From 1914, the park was governed by the Tourist and Health Resorts Control Act 1908, of which section 8 applied two key provisions of the public domains legislation. First, section 38 of the Public Reserves and Domains Act 1908 – the successor to the Public Domains Act 1881 – enabled the Governor to make by-laws for the management of the reserve, the control of people, animals, and vehicles, the preservation of flora and fauna, and prevention of any nuisance. Secondly, section 52 of the same Act prohibited fires and damage to or removal of the park's flora and fauna: doc A53, p 106.

113. Document A53, pp 131, 137, 143–144, 151, 158–159

114. The New Zealand Institute was the forerunner to the Royal Society of New Zealand. It was established in 1867 to coordinate the activities of research societies around the country.

115. Tongariro National Park Act 1922, s 5(3)

116. Ibid, ss 6–7

117. Document A53, pp 91, 108, 143, 148–149, 164–165

118. Tongariro National Park Act 1922, ss 18–25

119. Document A53, pp 194–196; Tongariro National Park Amendment Act 1948

120. Document A53, p 196

121. Ibid

122. Reserves and Other Lands Disposal and Public Bodies Empowering Act 1923, s 71 (doc A53, p 181)

123. Tongariro National Park Amendment Act 1927, s 5 (doc A53, pp 182–183)

124. Document A53, pp 169, 172

125. Between 1952 and 1980, approximately 26,000 acres of Crown land was incorporated into the Tongariro National Park, including the Rongokaupō and Pīhanga Scenic Reserves (see section 10 of the National Parks Act 1952).

126. Document A53, pp 174–177

127. This included the director-general and assistant director-general of the Department of Lands, the secretary of the Department of Internal Affairs, the director of of the Department of Forestry, and the general manager of the Department of Tourist and Health Resorts.

128. Document A53, p 177

129. National Parks Act 1952, s 26

130. Ibid, s 16; National Parks Amendment Act 1956, s 2

131. National Parks Act 1952, s 28(a), (f), (g)

132. Brad Coombes, 'Tourism Development and its Influence on the Establishment and Management of the Tongariro National Park' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2007) (doc I1), p 386; doc A53, pp 232–233

133. National Parks Act 1952, s 3

134. Outside park boundaries, indigenous flora and fauna were protected through the Native Plant Protection Act 1934 and the Wildlife Act 1953. The Wildlife Act consolidated all previous animal protection legislation and remained the dominant legislation for animal protection until the 1980s. Both Acts reaffirmed the principle of absolute protection of New Zealand's indigenous flora and fauna.

135. National Parks Act 1952, s 54

136. Document I1, pp 392–394

137. National Parks Act 1980, s 17(2)

138. Ibid, s 32(2)

139. Document A53, pp 231, 239–240; doc I1, pp 391–392

140. National Parks Act 1980, ss 4, 60

141. National Parks Act 1980, ss 12, 13, 14, 15

142. Document A53, pp 165–166

143. *Evening Post*, 15 February 1887, p 2 (doc A56(a), p 48)

144. Ibid

145. For instance, the first schedule lists, among other things, Government House grounds in Auckland and Timaru Racecourse.

146. Andrew Joel, 'The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park' (commissioned research report, Wellington: Crown Law Office, 2005) (doc A56), pp 14–15

147. Document A53, p 254

148. Richard Boast, generic submissions regarding the 'Gift' of the peaks and origins of the Tongariro National Park, 15 May 2007 (paper 3.3.23), p 69

149. John Ballance, 20 May 1887, NZPD, 1887, vol 57, p 399 (doc A56(a), p 276)

150. Brian Hauauru Jones, affidavit, 12 February 2007 (doc I8), p 2

151. Counsel for Ngāti Tūwharetoa, fourth amended statement of

claim, 26 July 2005 (paper 1.2.14), p 26; claimant counsel, statement of generic pleadings for and on behalf of claimants affiliated to the Whanganui iwi, 22 July 2005 (paper 1.2.3), p 24
152. Paper 3.3.45, ch 6, p 48
153. Document A53, p 165
154. Document A53, p 257
155. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, 13 November 1920, TO 1 52/54, Archives New Zealand, Wellington, p 2 (doc A56(a), p 312)
156. Document A53, p 165
157. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, 13 November 1920, TO 1 52/54, Archives New Zealand, Wellington, p 3 (doc A56(a), p 313)
158. Tongariro National Park Bill, translation of second version in Te Reo Māori, 1893 (doc A56(a), p 298)
159. Document A53, p 165
160. Document I1, pp 457–458
161. John Ballance, 20 May 1887, NZPD, 1887, vol 57, pp 399–400 (doc A56(a), pp 276–277)
162. Document I1, pp 188, 194–195; Brad Coombes, under cross-examination by Karen Feint, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 93)
163. Tongariro National Park Board, report of first board meeting, 25 January 1923, TO1 52/59/1 pt 1, Archives New Zealand, Wellington (as quoted in doc I1, p 199)
164. C F Skinner, 28 October 1948, NZPD, 1948, vol 283, p 3351 (doc I1, pp 251–252)
165. Document I1, p 255
166. C F Skinner, 28 October 1948, NZPD, 1948, vol 283, p 3350 (doc I1, p 251)
167. Dudfield, 6 August 1952, NZPD, 1952, vol 297, p 768 (doc I1, p 254)
168. Draft reply for V Young, Minister of Lands, to I Manby, TNP 84, Department of Conservation, Tūrangi (as cited in doc I1, p 270)
169. Paper 3.3.45, ch 6, p 48
170. Ibid
171. Ibid
172. Ibid, ch 9, p 8
173. Ngai Tahu Claims Settlement Act 1998, no 97, sch 14, ss 205–206
174. Stephen Asher, under cross-examination by Mike Doogan, Ōtūkou Marae, 19 October 2006 (transcript 4.1.11, p 100)
175. Paper 3.3.45, ch 6, p 32
176. Ibid, pp 4–5, 47–48
177. Ibid, ch 1, p 17
178. Ibid, ch 6, p 48
179. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, 13 November 1920, TO 1 52/54, Archives New Zealand, Wellington, p 2 (doc A56(a), p 312)
180. Document A56, p 81
181. Taupō Native Land Court minute book 23, 5 June 1908, fol 31
182. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, 13 November 1920, TO 1 52/54, Archives New Zealand, Wellington, pp 3–4 (doc A56(a), pp 313–314)
183. Document I1, p 154
184. Acting general manager of tourist and health resorts to Minister of Tourist and Health Resorts, 19 November 1920, TO 1 52/54, Archives New Zealand, Wellington (doc A53, pp 153–154)
185. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1410
186. Stephen Asher, under cross-examination by Mike Doogan, Ōtūkou Marae, 19 October 2006 (transcript 4.1.11, pp 99–100)
187. Nicholas Bayley, under questioning by Hirini Mead, Grand Chateau, National Park, 16 March 2006 (transcript 4.1.7, p 356)
188. Paper 3.3.45, ch 13, pp 4–5
189. Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (Wellington: Brooker and Friend Ltd, 1993), pp 33–34
190. Ibid, p 34
191. 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 4
192. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1241–1242; Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 1, p 17
193. Brad Coombes, under cross-examination by Karen Feint, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 94)
194. Document A53, pp 62, 254
195. Document I1, p 133
196. 'Travels at Lake Taupo', *New Zealand Herald*, 27 March 1889 (doc I1, pp 87–88)
197. Document A53, p 101
198. Document I1, pp 135, 141–153; doc A53, pp 81, 92
199. Document A53, pp 88–93, 106–107; doc I1, pp 146, 164
200. Document I1, pp 169–174, 177
201. Document A53, p 125; doc I1, pp 155–164
202. Document A53, pp 119–120; doc I1, p 162
203. Document A53, pp 121–122; doc I1, p 163
204. Tongariro National Park Board, minutes, 25 January 1923, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 1 (doc A53(c), p 826); doc I1, p 199
205. H B Kirk to editor, 'National Park or Game Preserve?', *Evening Post*, 19 September 1924 (doc A53, pp 213–214)
206. Document A53, pp 214–215
207. Tongariro National Park Board, minutes, 19 November 1924, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 8 (doc A53(c), p 814)
208. Tongariro National Park Board, minutes, 25 January 1923, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 3 (doc A53(c), p 828)
209. Document A53, pp 214–215
210. Ibid, pp 215–218; doc I1, pp 166, 168, 217
211. Document I1, pp 196, 241, 245
212. Ibid, pp 200–201
213. Ibid, p 201
214. Document A53, pp 221, 223–224, 226; Tongariro National Park Board, minutes, 3 July 1925, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 1 (doc A53(c), p 786)
215. Document A53, pp 223–225; doc I1, pp 212–216, 249

216. Document I1, pp 237–240
217. Ibid, pp 202–203
218. Marchant, member of the board, to secretary of the board, 14 August 1939, TNP 154, Department of Conservation, Tūrangi (as quoted in doc I1, p 245)
219. Document I1, p 236; Tongariro National Park Board, minutes, 7 December 1926, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, pp 2–3 (doc A53(c), pp 768–769); Tongariro National Park Board, minutes, 27 April 1931, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 5 (Cecilia Edwards, comp, 'Document Bank to "Tongariro National Park: The Legislative Regime and Park Management, 1894–1952"', 6 vols (doc A53(b)), vol 2, p 710)
220. Document A53, p 196
221. Tongariro National Park Board, minutes, 3 July 1925, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 4 (doc A53(c), p 789)
222. Brad Coombes, under cross-examination by Mike Doogan, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 89)
223. Document I1, pp 241–246
224. Document I1, pp 249–250, 260, 263–265
225. Ibid, p 266
226. Tongariro National Park Board, minutes, 20 March 1950, TO 1 52/59/1 pt 2, Archives New Zealand, Wellington, p 7 (doc A53(c), p 857)
227. Document I1, p 313
228. J C Graham, *Ruapehu: Tribute to a* Mountain (Wellington: Reed, 1963) (as quoted in doc I1, p 310)
229. Document I1, pp 315, 389
230. Barber, secretary, Tongariro National Park Board, to secretary, Federated Mountain Clubs, 8 November 1948, TNP 154, Department of Conservation, Tūrangi (as quoted in doc I1, pp 315–316)
231. Brad Coombes, under cross-examination by Tom Bennion, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 101)
232. Document I1, pp 316–320
233. Ibid, pp 310, 319, 322
234. Thomson to secretary, Tongariro National Park Board, 20 December 1948, TNP 154, Department of Conservation, Tūrangi (as quoted in doc I1, p 317)
235. Marshall to Minister of Internal Affairs, 12 March 1953, TNP 154, Department of Conservation, Tūrangi (as quoted in doc I1, p 328)
236. Document I1, pp 338–343, 389
237. Ibid, pp 333–336
238. Ibid, pp 268, 311, 329–330, 336, 368–370
239. Ibid, pp 344–350
240. National Parks Authority, 'Club Huts: Draft Policy of the National Parks Authority' as appended to Coad to all national park board chairmen, 14 October 1975, TNP 154, Department of Conservation, Tūrangi (as quoted in doc I1, pp 363–364)
241. Document I1, p 364
242. P Green and D Wilson, 'Future of Club Huts – Whakapapa and Iwikau', paper for the Tongariro National Park Board, February 1979, TNP 154, Department of Conservation, Tūrangi (as quoted in doc I1, p 365)
243. Document I1, pp 367, 397
244. Tongariro National Park Board, minutes, 18 June 1923, TNP MB, Department of Conservation, Tūrangi (as quoted in doc I1, p 201)
245. Tongariro National Park Board, minutes of the Wellington Executive, 20 March 1950, TO1 52/59/1 pt 2, Archives New Zealand, Wellington (as quoted in doc I1, p 256)
246. Sourced from annual reports in AJHR. Data for the years 1962 and 1977 are omitted due to difficulty accessing these figures.
247. Document I1, pp 359, 374, 459
248. Department of Lands and Survey, 'National Parks, Reserves, and Domains', 29 May 1964, AJHR, 1964, C-1, p 14
249. Department of Lands and Survey, 'National Parks, Reserves, and Domains', 27 May 1968, AJHR, 1968, C-1, pp 14–15
250. Department of Lands and Survey, 'National Parks and Reserves', 27 May 1969, AJHR, 1969, C-1, p 14
251. Department of Lands and Survey, 'National Parks', May 1977, AJHR, 1977, C-1, p 14
252. Document I1, p 459
253. Ibid, pp 378–379, 384
254. National Parks Authority, 'Tongariro National Park User Pays Principle' case no 2, 28 July 1976, TNP 84, Department of Conservation, Tūrangi (doc I1, p 382)
255. Paper 3.3.45, ch 9, p 8
256. Ibid, p 5; doc A53, pp 241–243; doc A20, pp 351–352
257. Paul Green, brief of evidence, 10 November 2006 (doc H3), p 4
258. Nicholas Bayley and Mark Derby, 'Tongariro National Park Management from 1980 to the Present' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A6), p 22
259. Robyn Anderson, 'Tongariro National Park: An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2005) (doc A9), p 210; Nicholas Bayley and Mark Derby, under cross-examination by Liana Poutu, Grand Chateau, National Park, 16 March 2006 (transcript 4.1.7, pp 323–324)
260. Document A64, p 17
261. Document A53, p 156
262. Paper 3.3.45, ch 9, p 8
263. Document A53, p 62
264. On 20 May, 29 July, and 2 September 1908.
265. Document A53, p 101
266. Ibid, pp 65–66
267. Ibid, pp 63–64
268. Ibid, pp 64–65
269. Reaney to Surveyor General, 28 March 1901, TO1 1901/196 box 2G, Archives New Zealand, Wellington (as quoted in doc A53, p 65)
270. Ibid
271. Document A53, pp 65–67
272. Ibid

273. T Bracken, *The New Zealand Tourist* (Dunedin: Union Steamship Company, 1879), p 79 (as quoted in doc I1, p 91)
274. Document A53, pp 66–67
275. Hopkins, solicitor, to Minister of Native Affairs, 12 September 1907, L&S 4/362 box 0060/1502, Archives New Zealand, Wellington (as quoted in doc A53, p 69)
276. Minister of Lands to under-secretary for lands, 28 September 1907, L&S 4/362 box 0060/1502, Archives New Zealand, Wellington (as quoted in doc A53, p 70)
277. Minister of Lands/chairman, Tongariro National Park Board, annual report, June 1908, L&S 4/362 box 0060/1502, Archives New Zealand, Wellington (as quoted in doc A53, p 71)
278. Document A53, pp 68–69
279. Ibid, pp 63, 78
280. Ibid, p 69
281. McNab, Minister of Lands and Agriculture to Minister for Tourism and Health Resorts, 24 July 1908, L&S 4/362, box 0060 983, Archives New Zealand, Wellington (as quoted in doc A53, p 79)
282. Document A53, p 85
283. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, 13 November 1920, TO 1 52/54, Archives New Zealand, Wellington, pp 3–4 (doc A56(a), pp 313–314)
284. Document A53, p 195
285. Ibid, pp 196–197; doc I1, pp 203–204
286. Document A53, pp 196–197
287. Document A53, p 197; doc I1, p 205
288. Document I1, p 205; doc A53, p 197
289. Document I1, p 205; Brad Coombes, under cross-examination by Karen Feint, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 93)
290. Document A53, pp 204–205
291. Brad Coombes, under cross-examination by Mike Doogan, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 89)
292. Tongariro National Park Board, minutes, 24 February 1925, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 1 (doc A53(c), p 800)
293. Document A53, pp 221, 223, 226; Tongariro National Park Board, minutes, 3 July 1925, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 1 (doc A53(c), p 786); doc I1, p 207
294. 'Chateau Opened – The Official Dinner: Building Surprises All, Te Heu Heu Honoured', *Evening Post*, 5 November 1929, p 10
295. Document I1, p 261
296. Brad Coombes, under cross-examination by Karen Feint, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 94); doc I1, pp 361, 385
297. Tongariro National Park Board, minutes, 1 November 1952, TO 1 52/59/1 pt 2, Archives New Zealand, Wellington, p 4 (doc A53(c), pp 842–845)
298. Notes of an interview between Te Heuheu Tukino and the Minister for Tourist and Health Resorts, 13 November 1920, TO 1 52/54, Archives New Zealand, Wellington, p 1 (doc A56(a), p 311)
299. Ballance, 20 May 1887, NZPD, 1887, vol 57, p 401
300. George Frederic Allen, *Willis's Guide Book of the New Route for Tourists* (Whanganui: Willis Printer & Company, 1894), p 130 (as quoted in doc I1, p 91)
301. Document I1, p 236; Tongariro National Park Board, minutes, 7 December 1926, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, pp 2–3 (doc A53(c), pp 767–769); Tongariro National Park Board, minutes, 27 April 1931, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, pp 2–3 (doc A53(b), p 710)
302. Tongariro National Park Board, minutes, 1 November 1952, TO 1 52/59/1 pt 2, Archives New Zealand, Wellington, p 4 (doc A53(c), p 842)
303. Tongariro National Park Board, minutes, 12–14 May 1978 (doc I6), p 14. Brian Jones gave the example of rescue operations to indicate what Sir Hepi had in mind when referring to legitimate uses within the park: doc I8, p 2.
304. Document A53, p 230
305. Document I8, p 2
306. Chris Winitana (George Asher, brief of evidence, 28 September 2006 (doc G52(a)), p 33)
307. Brad Coombes, under cross-examination by Mike Doogan, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 89)
308. Tony Waho, Che Wilson, Tūrama Hawira, Esther Tinirau, and Hinurewa Poutu, 'Te Ahi Kā o Paerangi: Te Mana Whenua o Ngāti Rangi – Ngāti Rangi Customary Tenure Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc A69), pp 24, 34, 37
309. Document A64, p 9
310. Document A61, pp 13–14; Raana Mareikura, replacement brief of evidence, 16 February 2006 (doc A67(b)), p 7
311. Document A61, pp 13–14; doc I1, p 262; Central Claims Cluster, 'National Park Hearings Map Book' (map book, Wellington: Crown Forestry Rental Trust, 2006) (doc D52), p 39
312. Document A64, p 17
313. Document I1, p 100; James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-lore* (Wellington: Tongariro National Park Board, 1927), p 74 (Cecilia Edwards, comp, 'Document Bank to "Tongariro National Park: The Legislative Regime and Park Management, 1894–1952"', 6 vols (doc A53(f)), vol 6, p 2074)
314. Document A61, pp 12–13
315. Document G24, p 21; Chris Winitana, brief of evidence, 20 April 2005 (doc G1), p 9
316. Paper 3.3.43, p 182
317. Document I8, pp 2–3
318. Paul Green, under cross-examination by Karen Feint, Returned Services Association Working Men's Club, Ōhakune, 1 December 2006 (transcript 4.1.12, p 462)
319. Chris Winitana, under cross-examination by Mike Doogan, Ōtūkou Marae, 13 October 2006 (transcript 4.1.11, p 25)
320. Brad Coombes, under cross-examination by Mike Doogan, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 86)

321. Document I8, pp 2–3
322. Document G25, p 5
323. Tumu Te Heuheu, 'The Tongariro Heritage: A Personal Perspective', *Tongariro: The Annual*, vol 7 (November 1998) (doc G62), pp 5–6
324. Ngaiterangi Smallman, evidence given under cross-examination, 13 October 2006, track 2 (recording 4.3.11)
325. Crown Forestry Rental Trust, 'Maps of the National Park Inquiry District – A Thematic Overview Map Book to Support the Waitangi Tribunal Hearings', 2005 (doc A48), pl 3
326. Paper 3.3.45, ch 6, p 33; Wai 575 Claims Cluster Steering Committee, 'Te Pukapuka Whakaahua Whenua o Ngāti Tūwharetoa, A Ngāti Tūwharetoa Map Book to Support the Waitangi Tribunal National Park Inquiry Proceedings', 2006 (doc G18), pl 12
327. Document G24, pp 15–16; doc G52(a), pp 22–23
328. Document I1, p 313
329. Document D52, pl 41
330. Paul Green, under cross-examination by Karen Feint, Returned Services Association Working Men's Club, Ōhakune, 1 December 2006 (transcript 4.1.12, p 461)
331. *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9, 16 (CA) (Waitangi Tribunal, *The Petroleum Report* (Wellington: Legislation Direct, 2003), pp 59–60)
332. Ibid
333. Waitangi Tribunal, *The Petroleum Report*, p 60
334. Document A20, pp 325–326
335. Merata Kawharu, 'Dimensions of Kaitiakitanga: An Investigation of a Customary Maori Principle of Resource Management' (PhD thesis, Oxford University, 1998), fol 14 (as quoted in Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 115)
336. Under section 17 of the Public Domains Act 1881, it was considered an offence to light fires, damage the flora, injure any animal, or remove anything from the park.
337. Waitangi Tribunal, *The Ngai Tahu Report*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 3, pp 812–813
338. Scenery Preservation Amendment Act 1910, ss 6, 7; doc A20, pp 252–258
339. Document A20, p 488
340. Document A53, p 181
341. Document A53, pp 182–183
342. National Parks and Reserves Authority, *General Policy for National Parks*, p 351 (as quoted in doc A9, p 221)
343. Ibid
344. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 264
345. Mr Wilson testified to the fact that his whānau had to sneak around at night to exercise their customary rights: doc A61, pp 8–9.
346. Document A64, p 16
347. Document D35(a), p 8
348. Document G27, p 13
349. Document A61, pp 8–9
350. Robyn Anderson, under cross-examination by Aaron Martin, Grand Chateau, National Park, 14 March 2006 (transcript 4.1.7, p 93). The only example cited was that of Ngāti Rangi claimant, Te Whetumara Mareikura, for harvesting kereru, but this was in 1988, when the Department of Conservation managed the park. See Te Whetumara Mareikura, brief of evidence, 10 February 2006 (doc A65).
351. Document A9, pp 221–222; doc A53, p 258.
352. Department of Lands and Survey, 'Report of the Board of Tongariro National Park', 18 June 1923, AJHR, 1923, C-13, p 2 (doc A9, p 216)
353. Document A53, pp 167, 258
354. Document A9, pp 221–222; doc A64, pp 14–15; doc D29, p 14; Chris Ngataierua, brief of evidence, 5 May 2006 (doc D43), p 3; doc G24, p 19; doc G26, p 9
355. These include tāiko, hihi, kākā, kakapō, kākāriki, karearea, kererū, kiwi, kōkako, whio: doc G17, p 145; doc G24, p 19.
356. Document G26, p 11
357. Geoff Park, 'Summary Report 2: Summary of Parts II and III of "Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses concerning the Indigenous Flora and Fauna, 1912–1983"', not dated (doc A20(c)), p 18
358. Ibid, p 20; doc A20, p 529
359. Document A53, p 165
360. Document G17, pp 221–222
361. Document G27, p 12
362. 'Report of the Board of the Tongariro National Park', 18 June 1923, AJHR, 1923, C-13, p 2 (doc A9, p 216)
363. Tongariro National Park Board, minutes, 19 November 1924, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 8 (doc A53(c), p 814)
364. Department of Lands and Survey, 'Report of the Board of Tongariro National Park', 18 June 1923, AJHR, 1923, C-13, p 2 (doc A9, p 217)
365. Ibid
366. Tongariro National Park Board, annual report, July 1935, TO1 52/59/1 pt 1, Archives New Zealand, Wellington (as quoted in doc A53, p 217)
367. Tongariro National Park Board, minutes, 19 November 1924, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 8 (doc A53(c), p 814)
368. Document I1, p 168
369. Tongariro National Park Board, minutes, 24 February 1925, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 5 (doc A53(c), p 804)
370. Tongariro National Park Board, minutes, 3 July 1925, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 9 (doc A53(c), p 794)
371. Tongariro National Park Board, minutes, 7 December 1926, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 4 (doc A53(c), p 770)
372. Tongariro National Park Board, minutes, 7 December 1926, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, pp 3–4 (doc A53(c), pp 769–770)
373. Tongariro National Park Board, minutes, 18 December 1925, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 4 (doc A53(c), p 783); Tongariro National Park Board, minutes, 3 July 1926, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 7 (doc A53(c), p 792); Tongariro

National Park Board, minutes, 24 February 1925, TO 1 52/59/1 pt 1, Archives New Zealand, Wellington, p 6 (doc A53(c), p 805)
374. Document G26, p 10
375. Paper 3.3.45, ch 6, p 48
376. Ibid, ch 1, p 17
377. Ibid, ch 6, p 48

Page 855: The Use of Helicopters in the Park
Tongariro National Park Board, minutes of 12–14 May 1978 board meeting, not dated (doc 16), p 14

Page 849: Table 11.5
Sources: Documents A53(b), (c)

Page 851: Table 11.6
Sources: Documents A53(b), (c)

Downloaded from www.waitangitribunal.govt.nz

CHAPTER 12

THE DEPARTMENT OF CONSERVATION, 1987–2007

12.1 Introduction

The passing of the Conservation Act in 1987 represents a major pivot point in relationships between Crown and ngā iwi o te kāhui maunga. The Act established the Department of Conservation (DOC) and charged it with the task of managing Crown conservation lands and promoting the conservation of New Zealand's natural and historical resources. The Act has a clear and explicit Treaty clause which reads:

> This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.[1]

The Act established the New Zealand Conservation Authority which gives advice to the Minister, and 12 conservation boards, including the Tongariro–Taupō Conservation Board. It gives DOC responsibilities in a number of related fields including national parks and the protection of wildlife.

The focus of this chapter is on the work of DOC, which plays a major role through the administration of the Tongariro National Park and the Tongariro–Taupō conservancy. The hearings of the Tribunal were attended by DOC staff from conservancy, national park, and head office. As the evidence was presented, the submissions made, and questions were posed and answered, two things became very apparent to us. On the one hand, important gains have been made in the relationship between DOC and Māori and, on the other hand, significant differences exist that still need to be addressed.

The Crown is adamant that DOC has worked hard and in good faith to meet its Treaty responsibilities. Legislation and policy frameworks, the Crown submits, are Treaty compliant, and Treaty principles have a central place in conservation management. Tangata whenua are recognised as kaitiaki, and consulted on a variety of matters to ensure that their views and values are taken into account.

The claimants acknowledge that opportunities for tangata whenua inputs into the management of natural and cultural resources have improved considerably since the 1980s, but submit that the present framework of legislation and policy is still inadequate. The legislation governing Tongariro National Park, they submit, is deficient in Treaty terms. There is no requirement in the conservation legislation for DOC to facilitate the recognition of tino rangatiratanga. No tinkering with policy or practice will change the reality that tangata whenua have no decision-making powers with respect to Tongariro National Park. DOC, they believe, has replaced tangata whenua as kaitiaki.

The key questions which we use to assist our analysis and to structure this chapter on DOC from 1987 to 2007 follow from those posed in chapter 10 which examined the performance of the Crown up to 1987. The focus of attention now shifts to the period since the passing of the Conservation Act 1987:

> *Has the Crown now provided opportunity for ngā iwi o te kāhui maunga to exercise rangatiratanga over their taonga and, if not, is there a better way forward for governance and management of the Tongariro National Park?*

We have been guided in our analysis by the opening and closing submissions of the claimants and Crown. We provide a succinct overview of these very detailed submissions.

12.2 Claimant Submissions

We summarise these under six main headings.

12.2.1 Rangatiratanga and kaitiakitanga

The Crown has precluded iwi from exercising rangatiratanga and kaitiakitanga over: the maunga Tongariro, Ngāuruhoe, and Ruapehu; the Ruapehu crater lake; and the national park lands.[2] The claimants no longer exercise management and control over the natural and physical resources in the national park landscape. In particular, a large area of mountains has been removed from communal management and is owned and managed by the Crown through legislation such as the Conservation Act 1987 and the National Parks Act 1980.[3] The Conservation Act 1987 is an inadequate platform to give effect to the Treaty principles recognised in section 4 of that Act.[4]

The Crown's failure to implement *He Kaupapa Rangatira*, worked out by the Crown and iwi and built into the *Tongariro/Taupo Conservation Management Strategy* (TTCMS), is an ongoing grievance for Ngāti Tūwharetoa:

> although the 'Treaty principles' are 'ostensibly adopted' in the [conservation management strategy], they are not implemented in reality. DOC continues to operate as though the Treaty principles require nothing more than consultation with Māori . . .[5]

'"A right to be consulted" is fundamentally *not* tino rangatiratanga', and 'Māori remain vulnerable to the goodwill of DOC, able to make progress [only] where their interests coincide'.[6] If DOC does not support Ngāti Tūwharetoa's views (regarding Crater Lake and the extension of skifields), then 'Tūwharetoa are unable to enforce their position'.[7]

12.2.2 Recognising iwi and hapū as partners

The Crown does not treat national park iwi as partners in park management.[8] Consultation and engagement are on an ad hoc and project by project basis. There is no management role for iwi, and governance input is limited.[9]

Crown consultation with iwi and hapū has been uneven: with Ngāti Tūwharetoa over a much longer time span; with Ngāti Rangi since 1992; and with other iwi or hapū more recently or not at all. Consultation that has occurred is ad hoc and reliant on the good will and knowledge of DOC staff. The level of consultation is insufficient to establish a proper Treaty relationship between Whanganui iwi and the Crown in the national park.[10] The Crown has failed to make itself fully informed of those groups claiming interests in the national park. As a result, consultation processes are inadequate.[11]

12.2.3 Protection of ngā maunga tapu

The Crown has failed to actively protect the mana and tapu of the maunga and the environment and cultural integrity of the surrounding landscape. This has adversely impacted on tangata whenua relationships with maunga, lands, and taonga.[12] The Crown has exhibited a lack of respect and awareness of tangata whenua tikanga, and of the offence caused by rubbish, and the discharge from septic tanks onto Ruapehu maunga. The park board did not implement a reticulated sewerage system that would have removed the sewage treatment process from the maunga.[13]

Recognition of tangata whenua values with respect to ngā maunga tapu and the promotion of the mountains as

a recreational playground are inherently irreconcilable.[14] Ngāti Tūwharetoa reiterates that ngā maunga tapu 'are not to be used', they are tapu – to be respected, revered and honoured. The incompatibility is evident in the wording of the National Parks Act 1980 which is directed towards preserving parks 'for their intrinsic worth', and for 'the benefit, use and enjoyment of the public'.[15]

12.2.4 Māori access to places and resources

The Crown has failed to make provision, in legislation and in policy documents, to ensure that national park iwi continue to access national park lands to gather resources such as kai and rongoā, or to visit and care for wāhi tapu and other sites of significance.[16] The current legislation denies iwi the ability to carry out their traditional customary practices.[17]

12.2.5 Economic benefits from the park

The Tongariro–Taupō Conservation Board, through the Conservation Act, grants concessions for tourism, guiding, recreation, filming, scientific and mining exploration, and outdoor pursuits. The Crown has failed to ensure that iwi and hapū are able to benefit from economic activities centred on Tongariro National Park. Ngāti Tūwharetoa submit that the Crown has breached the right to development and Ngāti Hikairo submit that it has been denied the right to develop its own property and resources to take advantage of the recreational use of its traditional whenua.[18]

12.2.6 Protecting lands and waterways

The Crown failed to act in good faith towards the Ngāti Hikairo claimants by failing to actively protect land and waterways of the whānau, hapū and iwi.[19] The claimants cited, in particular:

> The random airdropping of 1080 by Environment Waikato Regional Council and the Department of Conservation over their lands, forests, waterways, homes, urupa, and Marae in the rohe of Ngaati Hikairo[, which] has had particularly adverse effects.[20]

12.3 Crown Submissions

12.3.1 Acknowledgements of Treaty breach

The Crown acknowledged a number of Treaty breaches in its closing submissions. Two of these are apposite in the contemporary national park context.

(1) *Whanganui Māori*

The Crown acknowledges the 'historic and strong customary association' of Whanganui Māori with te kāhui maunga, especially Mount Ruapehu:

> The failure to consider, and provide for, the interests of Whanganui iwi was [a] breach of the Treaty of Waitangi and its principles, and has been the cause of suffering for Whanganui iwi.[21]

(2) *Rangipō North 8*

The Crown acknowledges that

> it failed to purchase from, or identify, consult or compensate, the customary owners of Rangipo North No 8 block before including the block in the proclamation establishing the Tongariro National Park in 1907.

These actions were a breach of Te Tiriti o Waitangi and its principles.[22]

12.3.2 Significant changes made since 1987

The special connection that local Māori have with lands within the national park, and the peaks in particular, has been increasingly reflected in DOC's administration of the park. Tongariro National Park is public land, accessible to all, subject to legislation applying to all.[23] '[S]ignificant and consistent efforts have been made to improve consultation processes with Māori'. These include: *He Kaupapa Rangatira* in the TTCMS; recognition of cultural landscape under the Unesco World Heritage Convention; and the draft Partnership Toolbox.[24]

Since 1990, the Crown has employed a kaupapa atawhai manager in each conservancy, including the

Tongaririro–Taupō conservancy. They are part of the senior management structure of the conservancy.[25] The Crown alleged that

> Claimant evidence and submissions . . . do not take sufficient account of the changes made in the administration of the National Park to recognise Māori as kaitiaki, and to actively seek their involvement in park management . . .[26]

12.3.3 Philosophies for environmental and park management

According to the Crown:

> The Conservation Act 1987 did not constitute a significant change in the philosophy and consequently administration of national parks but did represent an evolution with regard to the recognition of Treaty principles.[27]

The administration of the national park has not been based on a philosophy of wilderness preservation: legislation, policies, and plans specify a balance between preservation and use.[28] The 'Yellowstone model' is an unhelpful term to use in the New Zealand context: no communities of indigenous people were removed from within the park boundaries.[29] The Crown noted:

> There is no evidence of dissent from [the Māori community] concerning the philosophy underlying national parks legislation, or the manner in which conservation was conceived under the legislation.[30]

12.3.4 Unesco World Heritage

The Crown sees DOC's commitment to world heritage as being

> consistent with Treaty partnership, and the gift, benchmarking Park management against international standards and submitting to the transparency and accountability of international monitoring.[31]

12.3.5 Some specific responses

Some specific responses are that:

- The Crown does not accept that it has failed to adequately protect the maunga and the environmental and cultural integrity of the surrounding landscape.[32] The Crown does not accept that the park management regimes fail to acknowledge the significance of ngā maunga to iwi.[33]
- Māori have not been 'effectively excluded' from park lands: 'The park is accessible by all' and 'Tangata whenua are formally recognised as kaitiaki'.[34]
- The Crown does not accept that it failed to make adequate provision in legislation and park management to ensure that iwi could continue to access the national park to gather traditional resources and to visit or care for wāhi tapu and other significant sites.[35]
- The Crown does not accept that iwi have been shut out from economic opportunities within the park.[36] There is 'no evidence that Māori have been excluded from applying for concessions within the National Park, or elsewhere in the inquiry district, or from undertaking or participating in enterprise'.[37]

12.3.6 The 'gift' and the reciprocal obligations

The Crown considers the 'gift' of nga kāhui maunga to be 'the central and most important issue in this inquiry'.[38] The Crown 'is not using the term "gift" in a legalistic sense as a way to deny obligation'.[39] '[O]ngoing reciprocal obligations clearly did arise.'[40] 'An important counterpoint to the obligations' of the Crown to Ngāti Tūwharetoa, 'as a result of the gift, are the obligations owed to other Māori with customary interests in the Tongariro Mountains'.[41] We quote paragraph 50 of the Crown's closing submissions in full:

> The Tongariro National Park is a special place for all New Zealanders. The Crown acknowledges that while it is important that all New Zealanders continue to enjoy the Tongariro National Park, it is also important that the mountains are treated with appropriate respect. How this can be better achieved is a matter that will need to be discussed within

> Ngāti Tūwharetoa, between Ngāti Tūwharetoa and the other iwi who have traditional associations with the mountains, and between the Crown and those iwi.[42]

The Crown adds that it is 'willing to enter into a dialogue at the Ministerial level on these important issues'.[43]

12.4 Claimant Submissions in Reply

We summarise the claimant submissions in reply under five headings.

12.4.1 Rangatiratanga and kāwanatanga

The 'overarching high level issue' for Ngāti Tūwharetoa is 'that Ngā Maunga Tapu are not managed in partnership with tangata whenua, as Te Heuheu had envisaged in making the "Gift"'.[44] Ngāti Tūwharetoa add that their concern has never been solely related to the peaks but to the whole maunga.[45]

Ngāti Rangi are recognised by the Crown but 'It is DOC, and not tangata whenua, who are ultimately accountable for decisions in relation to Park management'. This statement, Ngāti Rangi submits, accurately defines the Crown position and the continuing breach of the Crown's Treaty partnership with Ngāti Rangi in respect of the park.[46] Ngāti Waewae submit that the Crown's rights based upon kāwanatanga remain subject to Māori rights of tino rangatiratanga as set out in article 2 of the Treaty.[47]

The concept of 'co-operative management' is presented

> within the rubric of partnership. What DOC presented as 'co-operative management' looked [little] more than a process of consultation with Māori. . . . Fundamental change is required to the governance and management of the Park to provide for a Treaty compliant model.[48]

12.4.2 Kaitiakitanga

In Māori terms, the status of kaitiaki indicates an obligation to manage and govern the park. This role for Māori is not contemplated by the Crown. 'In the Crown's eyes, a kaitiaki is something much less, more like a Maōri liaison officer or a ranger. In any event, it is something less than a conservator.'[49] The role of kaitiaki is redefined or minimised in the DOC general policy document, which reads: 'includes components of protection, guardianship and stewardship and customary use.' This is a breach of the Treaty.[50] Formal recognition of kaitiaki status 'does not mean that tangata whenua groups have any control over the administration or management' of the land and resources.[51]

12.4.3 Balancing of interests

Māori and their interests are seen by the Crown as 'factors to be balanced' against other issues. Treaty considerations are given no primacy. Māori 'kaitiakitanga receives no more, and sometimes less, than the stewardship of the Forest and Bird Association'.[52]

'All environmental decision-making is at present retained by the Crown and/or its statutory delegates'. Where provision is made to delegate, it is 'at the discretion of the current decision-maker and no delegation to iwi has yet occurred'; input to decision-making is 'limited to non-substantive consultation'; where the Crown delegates 'decision-making power to statutory delegates, such delegates are not accountable . . . in Treaty terms'.[53]

The environmental framework is manifestly inconsistent with the principles of the Treaty of Waitangi.[54]

12.4.4 Recognition and consultation

The responses under this heading are iwi specific:

- Ngāti Waewae submits that the Crown acknowledges a need to maintain dialogue with Ngāti Tūwharetoa but does not acknowledge any need to maintain a dialogue with ngā hapū o Tūwharetoa. Despite 20 years of DOC management within the region, DOC has not formed any relationship with Ngāti Waewae.[55]
- Tamahaki and Uenuku Tūwharetoa submit that there is inadequate engagement or consultation and a lack of recognition in the present park management plan (2006 to 2016) of their rights and relationships with ngā maunga.[56]

- Uenuku submit that:

> The Crown ignores those Whanganui Māori that remain unrecognised despite their long journey . . . park management recognises who they want to recognise, while disavowing those it would rather ignore.[57]

- Ngāti Hikairo consider that DOC 'decides for itself how often it consults with [Ngāti Hikairo] and on what issues'. There is

> no practical Treaty relationship between the Crown and [Ngāti Hikairo] in relation to the management of the park and as a result [Ngāti Hikairo's] cultural and spiritual relationship with their maunga and whenua is undermined.[58]

  Ngāti Hikairo are 'not always consulted over decisions relating to the use of the land' and are 'excluded from exercising their rangatiratanga in relation to the management of the National Park'.[59] The Crown's failure to consider the historical relationship that Ngāti Hikairo has with the park continues today.
- The Crown has failed to develop 'a Treaty complaint process to bind and advance existing relationships'.[60] 'Evidence illustrates an absence of DOC involvement with Māori in the area other than with Ngāti Tūwharetoa and Ngāti Rangi.'[61]

12.4.5 No evidence of dissent

The Crown has asserted that there has been 'no evidence of dissent' concerning 'legislation or the manner in which conservation was conceived under the legislation'. Uenuku respond that this illustrates 'wilful deafness'.[62] 'There is no evidence of Rangi Bristol's dissent because nobody will listen to him'. 'Enforced silence', they add, 'cannot be construed as lack of dissent.' The Crown 'submission ignores the fact that Whanganui have been denied a voice in the Park since it was proclaimed'.[63]

Ngāti Tūwharetoa has identified the inherent tension between 'allowing all New Zealanders to enjoy the National Park, and ensuring that the mountains are treated in accordance with the values and tikanga of tangata whenua'.[64] A compromise which is build around a status quo which has developed in breach of the Treaty would add to the injustice. Claimant iwi point to a need for a major attitudinal shift on the part of the Crown. Ngāti Tūwharetoa express it thus:

> Ngāti Tūwharetoa believe that the way forward is to seek to address the true spirit of the 'Gift', and that this process will necessarily involve revisiting the values and tikanga that exemplified the relationship Ngāti Tūwharetoa have with Ngā Kāhui Maunga. It is for tangata whenua to best decide how to protect Ngā Kāhui Maunga, how to restore the tikanga.[65]

Other national park iwi, in particular Ngāti Rangi, endorse this. There can be no Treaty partnership unless accountability is shared.[66]

12.5 Tribunal Analysis

The Conservation Act was passed in 1987 and the Department of Conservation set about establishing its policies, plans, and protocols. The Crown has claimed that significant changes have been made. It is against a backdrop of more than 20 years of operational experience that we ask if the Crown now provides opportunity for ngā iwi o te kāhui maunga to exercise rangatiratanga over their taonga?

To assist our analysis, we will break that question down into three subquestions which look at the regimes in place for the exercise of rangatiratanga and the management of taonga. Each of the subquestions is framed in Treaty terms:

- In what ways has legislative change since 1987 brought improvements for ngā iwi o te kāhui maunga and does the statutory regime now uphold a Treaty partnership in respect of the park and its taonga?
- Has the policy framework given effect to Treaty principles for ngā iwi o to kāhui maunga?
- Have DOC–iwi relationships on the ground in Tongariro National Park been in accordance with Treaty principles?

We will then return to the primary question, and ask if there is a better way forward for governance and management in this inquiry district.

12.5.1 The legislation

In what ways has legislative change since 1987 brought improvements for ngā iwi o te kāhui maunga and does the statutory regime now uphold a Treaty partnership in respect of the park and its taonga?

The Conservation Act 1987 was part of a wider constellation of environment and resource management law reform initiated in the 1980s. The government of the day was intent on improving the efficiency and transparency of government, corporatising or privatising assets that were not seen as essential to the core functions of government, and reducing government expenditure by reshaping the administrative landscape.[67] Some new departments were created, and others were merged, abolished, corporatised, or privatised.[68] A conservation department was established to administer Crown conservation lands, and protect wildlife and cultural property. Conservation lands previously administered by the Department of Lands and Survey and the New Zealand Forest Service, including national parks, forest parks, and scenic reserves, came under the umbrella of the new department.

The new legislation spelt out the interests of the Crown in conservation, established DOC, and brought together in a single schedule a wide range of legislation relating to conservation lands, protected species, and cultural heritage. The Conservation Act was a key component of the Crown's restructuring and corporatisation programme and was passed four years before the Resource Management Act was enacted in 1991.

The Conservation Act was drafted and passed in the 1980s at a time when there was a renewed awareness on the part of the Crown of its Treaty responsibilities. The Waitangi Tribunal was at work and had issued the Motunui, Kaituna, and Manukau reports, all with significant environmental components, and the government, internationally, had been a party to discussions which culminated in the *Report of the World Commission on Environment and Development: Our Common Future*, also known as the Brundtland report.[69] Cabinet issued a directive in June 1986 that the Treaty of Waitangi should be recognised in all proposed legislation.[70] This was part of the policy context within which the Conservation Act was drafted and DOC established.

Conservation law reform, completed in a very compressed time frame, was much less comprehensive than resource management law reform.[71] The Conservation Act focused on the bare essentials of the task: the establishment of the new department, the New Zealand Conservation Authority, and the conservation boards; and the transfer of lands and responsibilities. The bigger set of conservation related legislation was not updated: the new department was charged with the administration of some 16 existing Acts which were listed in a first schedule.[72]

Four parts of the Conservation Act are especially pertinent in the present context: the purpose of conservation; the Treaty clause; the functions of the new department; and the schedule of Acts, including the National Parks Act, to be administered by DOC. Section 2 contains this definition:

> Conservation means the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

Neither 'natural and historic resources' nor 'intrinsic value' are given definition.

Section 6 sets out the functions of DOC. 'Natural and historic resources' figure prominently. They are to be managed and conserved and their use is to be 'fostered' for recreation and 'allowed' for tourism, to the extent that these uses are not inconsistent with conservation.

The Treaty clause is a very significant component of the Conservation Act. It was inserted into the Conservation Bill following the June 1986 Cabinet directive.[73] Section 4 reads that 'this Act shall be so interpreted

and administered as to give effect to the principles of the Treaty of Waitangi'.

The Treaty clause in section 4 is a strong one, requiring those who interpret and administer the Act to give effect to the principles of the Treaty. The body of the Act, however, lacks specifics to ensure that this is done. There is nothing in the Act which requires shared decision-making, at the governance or management levels, over taonga such as ngā kāhui maunga. There is no specific requirement for DOC to recognise and provide for te tino rangatiratanga of iwi.

DOC is given wide responsibilities for conservation and protection of natural and cultural heritage: it now administers some 22 Acts of parliament, listed in the schedule of the Conservation Act 1987.[74] Among them is the National Parks Act 1980. The core objective of the National Parks Act is described as follows:

> The National Parks Act 1980 aims to preserve in perpetuity as national parks, for their intrinsic worth and for the benefit, use and enjoyment of the public those parts of the country that contain scenery of such distinctive quality, ecological systems or natural features so beautiful, unique (or) scientifically important that their preservation is in the national interest.[75]

There is a strong emphasis in section 4 of the National Parks Act on the preservation of land in its natural state, the protection of indigenous plants and animals and sites of archaeological and historic interest, and the extermination of introduced plants and animals. Subject to these provisions, the public shall have freedom of entry and access for inspiration, enjoyment, and recreation.

The Conservation Act allows accommodation and facilities to be provided within national parks, and for leases and licences to be issued. There is one specific detail which we note now and will return to when we consider licences for ski fields and mountain club huts. Section 14(1)(b) permits licences to be issued for a period 'not exceeding 30 years in total'. The Conservation Law Amendment Act 1990 deleted the number '30' and extended it to '60'.

The Conservation Act 1987, with the conclusion of the Treaty clause in section 4, is a radical departure from what has gone before, including the National Parks Act 1980. There is a clear requirement for DOC to interpret and implement the new legislation in a way that gives effect to the principles of the Treaty.[76]

The Conservation Act 1987 has the potential to bring improvements for ngā iwi o te kāhui maunga, to create opportunities for the exercise of rangatiratanga, and to open the door to a Treaty partnership for the management of the Tongariro National Park and its taonga. If section 4 is downplayed, it provides the opportunity to preserve the status quo with professional staff in control of policy, management, and day-to-day operations of the national park, conservations lands, and indigenous flora and fauna. What happens in the larger policy context, and the specific Tongariro National Park context, will depend on the willingness of its policy makers to recognise and incorporate the principles of the Treaty, including partnership and rangatiratanga, into the full range of policy documents and operating practices.

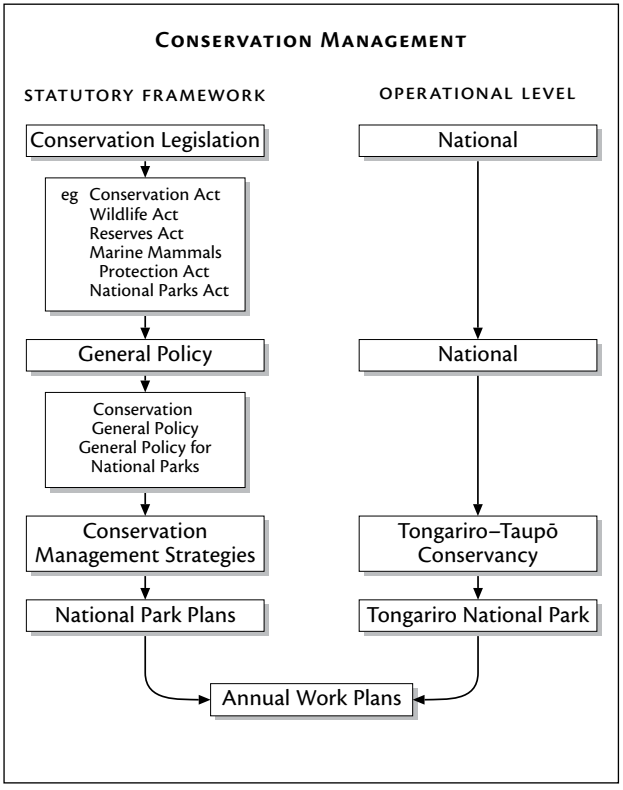
12.5.2 The policy framework

Has the policy framework since 1987 given effect to Treaty principles for ngā iwi o to kāhui maunga?

The Conservation Act 1987 might have opened up new possibilities for ngā iwi o te kāhui maunga. Whether these were beneficial for iwi depended on the policy frameworks that link the legislation to the governance and management of the Tongariro National Park.

The management structures for DOC are set out in the Conservation Act 1987 and elaborated in the Conservation Law Reform Act 1990. Together, these acts established the New Zealand Conservation Authority, a set of regional conservation boards, and the Department of Conservation (DOC). The National Park inquiry district, and the Tongariro National Park, sit within the Tongariro–Taupō conservancy, which has its headquarters at Tūrangi. The Acts triggered a sequence of policy documents and management plans which were worked out and put in position in the two decades after 1987.

DOC, from its establishment in 1987, made kaupapa



Department of Conservation statutory framework

Māori part of its corporate vision and worked to ensure that staff at every level were equipped to understand their Treaty obligations.[77] There was a director kaupapa atawhai at head office, and a Kaupapa Atawhai appointed at management level in every conservancy.[78] All of the kaupapa atawhai appointments are Māori, knowledgeable in terms of tribal tikanga. The DOC managers who drew up policy, strategy, and management documents from the 1990s onwards would have participated in kaupapa atawhai programmes and worked alongside kaupapa atawhai colleagues.[79]

Doris Johnston, the acting general manager (policy) for DOC, provided the Tribunal with an overview of the key documents which are effective for the inquiry district (see diagram above). The department has a decentralised organisational structure which allows for maximum initiative at the conservancy level and is held together by a national policy framework and policy documents, and made operational by management plans.

The two statutory documents which translate legislation into practice and provide uniform guidance to all who manage the conservation estate and the natural and historic resources under the DOC umbrella are the *Conservation General Policy* (2005) and the *General Policy for National Parks* (2005).[80] Both have chapters on Treaty responsibilities which build on section 4 of the Conservation Act 1987.

We note, at the outset, the first two sentences in the opening paragraph of chapter 2 of the *Conservation General Policy*:

> The Conservation Act 1987, and all the Acts listed in its First Schedule, must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (section 4, Conservation Act 1987). Where, however, there is clearly an inconsistency between the provisions of any of these Acts and the principles of the Treaty, the provisions of the relevant Act will apply.[81]

This explicit policy statement, set out above, has profound implications for all of the documents that nest inside, and must be consistent with, general policy. This policy statement, and the management practices which flow from it have serious consequences in the Tongariro National Park context. If DOC policy makers or managers consider that there are inconsistencies between the mandate for national parks, set out in the National Parks Act 1980, and the Treaty clause in section 4 of the Conservation Act 1987, they are able to give priority to the National Parks Act, 1980.

This interpretation of the legislation, and the policy statement set out above, allows the clear intention of section 4 of the Conservation Act 1987 to be overridden by earlier legislation, including the National Parks Act 1980. This statement in *Conservation General Policy*, approved by the Minister of Conservation in May 2005, is in clear breach of the Treaty of Waitangi.

We elaborate on the nature of the breach by examining the relationship between the Conservation Act 1987 and the National Parks Act 1980.

Neither Act contains an explicit statement which overrides or trumps the other. That being the case, the doctrine of parliamentary sovereignty should apply.[82] That doctrine requires that when a court is confronted with two different or conflicting expressions of statutory intention, the more recent expression of intention must prevail.

Furthermore, DOC is responsible for administering both Acts. As section 4 of the Conservation Act 1987 requires DOC to give effect to the principles of the Treaty of Waitangi in our view it would be inconsistent with that Act if DOC did not give effect to these principles when exercising its functions under the National Parks Act.

This issue was considered in 1995 by the Court of Appeal in *Ngai Tahu Maori Trust Board v Director-General of Conservation*.[83] In relation to competing interpretations, the court found that statutory provisions for giving effect to the principles of the Treaty should not be narrowly construed. If it was to be narrowly construed, as the policy above may suggest, it would lead to an obvious breach of the principles of the Treaty.

Therefore, the policy set out in the opening paragraph of chapter 2 of the *Conservation General Policy* is clearly in breach of the Treaty. As a result, it should be modified or deleted. If it remains, the breach remains.

(1) *General policy documents*

The Treaty chapters in the general policy documents for conservation and for national parks are explicit but selective with respect to Treaty principles: government, self management, equality, reasonable cooperation, and redress are listed from the Crown's 1989 position paper *Principles for Crown Action on the Treaty of Waitangi*.[84] In these documents, 'kāwanatanga' has become 'government', and 'rangatiratanga' has become 'self-management', and there is no mention of the principles of active protection, partnership and reciprocity, mutual benefit, and a right of development being worked out by the courts and the Waitangi Tribunal during the intervening 15 years.[85] Our analysis of these policy documents is in accord with *Ko Aotearoa Tēnei*, which recommends that the principles of partnership and tino rangatiratanga should be clearly spelt out.[86]

In both of the general policy documents, kaitiakitanga is given pride of place in the context of 'effective partnerships with tangata whenua'. It is described and elaborated on in a number of ways: as 'a spiritual and environmental ethic that governs tangata whenua responsibilities for the care and protection of mauri', it includes components of 'protection, guardianship, stewardship, and customary use'; it is 'exercised by tangata whenua in relation to ancestral lands, waters, sites, resources and other taonga'; and the focus is on 'manaaki (care)' and 'rāhui (protection)'. These statements contain substantial insights and are evidence of careful consultation and in-depth engagement with Māori at working group level. DOC, however, makes no link between kaitiakitanga and rangatiratanga. Indeed, the word rangatiratanga has no place in the general policy documents.

The 1989 general statement on Treaty responsibilities is followed up in each general policy document by a list of 10 policy expansions.[87] Section 2 in the *Conservation General Policy* closely parallels section 2 in the *General Policy for National Parks*. Relationships, partnerships, policies, consultation, customary use, public information, and participation in Treaty settlements are among the items that receive explicit recognition. All of these are important but one statement on partnerships has special significance in relation to te kāhui maunga and the options we will consider later in this chapter. Policy 2(b) is the same in both documents, and reads:

> Partnerships to enhance conservation and to recognise mana should be encouraged and may be sought and maintained with tangata whenua whose rohe covers any place or resource administered by the Department. Such partnerships will be appropriate to local circumstances.[88]

The general policy documents are expansive in terms of consultation with tangata whenua and the involvement of tangata whenua in conservation. Policy statements allow access to traditional materials and indigenous species

provided this is 'consistent with all relevant acts and regulations' (see policy 2(g)). Public information and interpretation should make use of te reo and draw attention to tangata whenua values (see policy 2(h)). The preservation of indigenous species, habitats, ecosystems, and natural features, is high priority (see chapter 4).

Policy statements relating to historical and cultural heritage have been developed in accordance with the Historic Places Act 1993 (see chapter 5). There is an emphasis on heritage from the past and links with 'the culture of those who have gone before'. Ongoing spiritual and cultural associations are recognised but not elaborated.

In the area of natural hazards, there is an important but unstated convergence between DOC policies and Māori values.[89] Management for natural hazards on conservation lands should be undertaken with minimal interference. The list of examples is comprehensive: earthquakes, landslides, avalanches, volcanic eruptions, lahar, geothermal sites, tsunami, floods, storms, rock falls, and fires. These natural processes, on conservation lands, should continue to function unhampered. Hazard and risk management plans should be developed and information provided to enable the public to assess the risks.

Both of the general policy documents have chapters on people's benefit and enjoyment.[90] In each case, there are conflicts with Treaty responsibilities which are not made explicit. Public access, for example, is to be planned for and provided free of cost, but there are no guidelines for protecting wāhi tapu from open access. Nor are there guidelines for recognising kaitiakitanga in relation to people's use and enjoyment. Chapter 2 on the Treaty of Waitangi, chapter 5 on historical and cultural heritage, and chapters 8 and 9 on people's use and enjoyment, are not interfaced.

Policies for 'Accommodation and Related Facilities', very important in the context of Tongariro National Park, are set out in both the *General Policy for National Park* and the *Conservation General Policy*.[91] DOC is a provider of accommodation and related facilities which are for the benefit and enjoyment of the public. Other people and organisations, including education services relating to parks, recreational clubs with open membership, and concessionaires, may be authorised to provide accommodation and facilities. No new accommodation or facilities for exclusive private use will be permitted in national parks, and existing private accommodation, not authorised under the National Parks Act, will be phased out.[92] There is no recognition that the facilities envisaged in this section may have adverse effects for wāhi tapu.

Policies relating to research and information are clearly set out in both policy documents. Māori world views, Māori approaches to science, and Māori values are provided for in the specific requirements that mātauranga Māori and tangata whenua interests in research and monitoring are recognised (see policies 12(c) and 11(c) respectively). These are important policy statements which set the scene for significant interchanges in the research context.

The glossaries appended to the two general policy documents contain interesting windows of insight. Importantly, they include definitions which are indicative of the world views of the two Treaty partners, for example: intrinsic value, natural character, and natural state, on the one hand; and mana, mauri, and mātauranga Māori on the other. Two deserve special notice.

The first, 'intrinsic value', not defined in the legislation, is contained in the glossary:

> A concept which regards the subject under consideration as having value or worth in its own right independent of any value placed on it by humans.[93]

'Mauri', in the same glossary, is defined as:

> Essential life force, the spiritual power and distinctiveness that enables each thing to exist as itself.[94]

The strengths and limitations of the general policy documents reflect the strengths and weaknesses of the Conservation Act 1987. There are positive statements about Treaty of Waitangi responsibilities in chapter 2, and important but far from complete policy guidance as to how these can be made operational across the wider spectrum of Crown conservation activities.

Principles of the Treaty of Waitangi are referred to in the policy documents, briefly and selectively. The reference to rangatiratanga is indirect and the word itself is omitted.[95] There is no explicit recognition of the principles of active protection and mutual benefit, or the right to development, which have been recognised and elaborated by the courts and the Waitangi Tribunal between 1989 and 2005. There are important statements about Treaty responsibilities in relation to kaitiakitanga and rāhui which are presented as tools to enhance conservation through the care and protection of natural resources and cultural heritage.

The importance of effective partnerships with tangata whenua is stated but the situations where partnerships are applicable and the manner in which the partnerships will operate are not indicated. Those who administer the legislation are given little guidance by the policy documents.

Māori values and concepts were not part of the ethos or the discussions that established the national parks administration in New Zealand and formulated the National Parks Act 1980.[96] In the three decades since then, there have been significant shifts in conservation values within New Zealand and internationally.[97] Indigenous peoples are in dialogue with the scientific community and conservationists,[98] and Māori scholars are among those who have explored the interplay between indigenous and Western world views.[99] The DOC general policy documents make some progress, but Māori values continue to be marginalised.

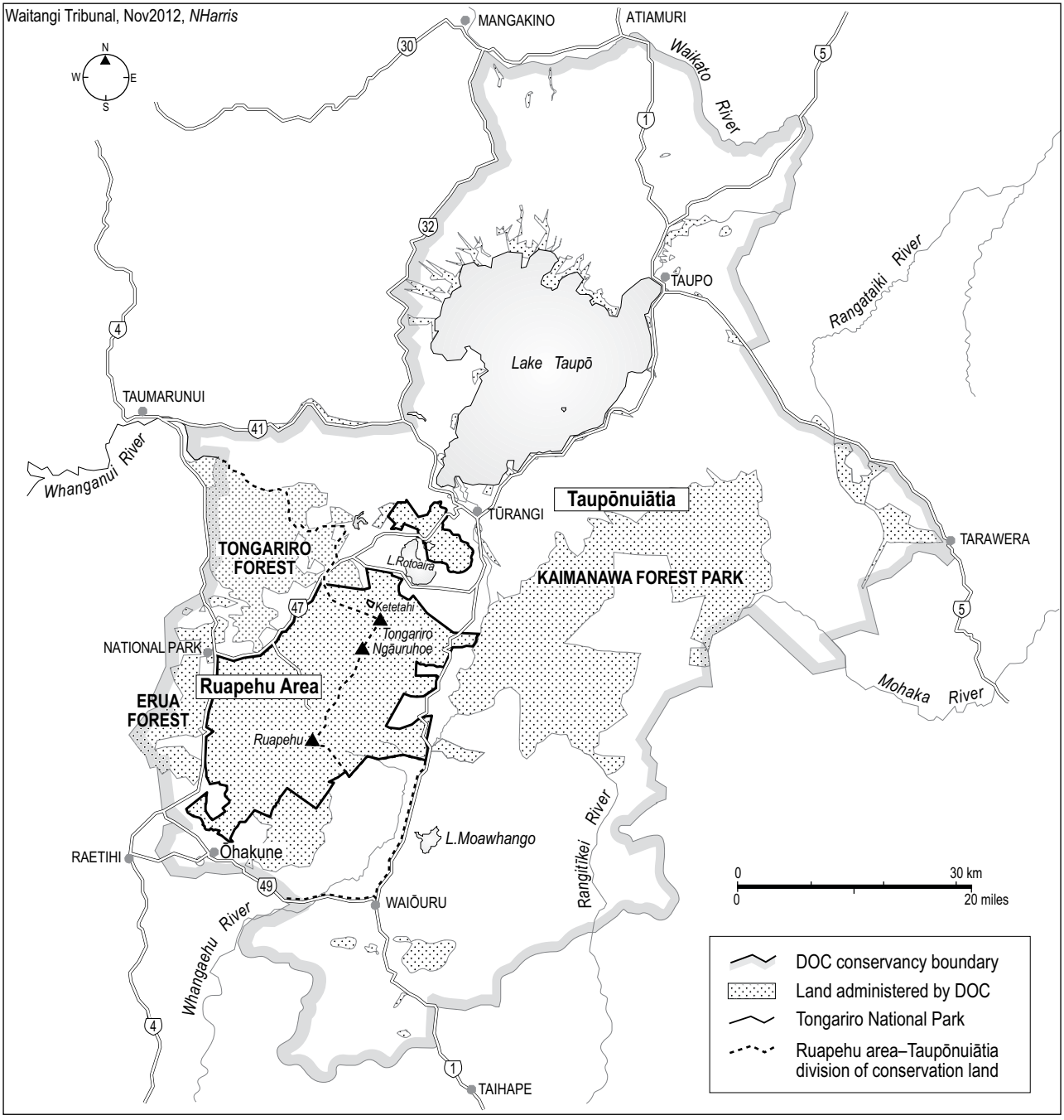
The silences are particularly evident in the definition of kaitiakitanga. Kaitiakitanga is defined in slightly different ways in the two main policy documents.[100] Neither definition makes links between kaitiakitanga and rangatiratanga, or points to any requirement that iwi and hapū be involved in decision-making with regard to environmental taonga, or responsible for the management and protection of wāhi tapu. These definitions add to a common concern that has been building up as we have studied the larger documents. Where Māori world views, and tikanga relating to the environment, reinforce the management priorities of DOC, they are taken up and incorporated into existing policies. Where Māori perspectives diverge from those of DOC, or are not understood and recognised by DOC policy makers, the policy documents ignore them. The problem, we believe, lies partly with Conservation Act 1987 which is minimalist in terms of Treaty specifics, and partly with the preservation ethos within DOC which dates from the decades up to the 1980s and continued to be influential in the 1990s. Importantly, there is a failure on the part of the Crown to include consideration of the principles of the Treaty in its *Crown-Māori Relationship Instruments* (CMRI) which provide direction to government agencies such as DOC.[101] *Ko Aotearoa Tēnei* points to the paradox this provides for DOC officials caught between the requirements of section 4 of the Conservation Act 1987, and their duties as government servants.[102]

(2) *The TTCMS*

The TTCMS sits between the *Conservation General Policy* and the management plans for particular lands, species, and heritage within the conservancy. It provides policy guidelines for DOC staff within the Tongariro–Taupō conservancy (map 12.1).[103]

Work on a draft TTCMS began in the early 1990s, was completed in 1994, and then used as a basis for consultation with Māori and with the public at large. It was taken to hui at a number of marae. The Tūwharetoa Trust Board was concerned about lack of consultation in the TTCMS preparation, lack of reference to the Treaty of Waitangi, and lack of specifics about the principles of the Treaty.[104] In March 1995, Sir Hepi Te Heuheu and the Tūwharetoa Trust Board lodged Wai 480, a claim to the Waitangi Tribunal which addressed the content of the draft TTCMS. Their primary concerns were that it did not give effect to the principles of the Treaty and that it overrode the right of Ngāti Tūwharetoa to exercise their tino rangatiratanga over the land and natural resources within their rohe.[105]

The Waitangi Tribunal began research but did not proceed to a hearing. Instead, it liaised with the two parties to encourage them to work jointly on a new TTCMS. A working party was set up with four members from Ngāti Tūwharetoa and four from the Crown. The face-to-face process was a positive one, and the outputs included a statement of Treaty principles and *He Kaupapa Rangatira*, a process for working together. The principles of the



Map 12.1: The Tongariro–Taupō conservancy

Treaty are a more complete and comprehensive list than those in the *Conservation General Policy*. We reproduce them in full opposite.

This list, prepared jointly by the DOC and Ngāti Tūwharetoa working group, is more comprehensive than the statements contained in the general policy documents previously discussed. Kāwanatanga and tino rangatiratanga, are carefully balanced when they are placed at the head of the list and positioned immediately adjacent to each other. This listing of the principles, confirmed in 2002 when DOC published the TTCMS, would have been available to those who compiled the shorter list contained in the *Conservation General Policy* which was confirmed and published in 2005. Policy documents are written with care and checked meticulously. We can only assume that the non-inclusion of rangatiratanga in the general policy list was intentional.

The Treaty principles in the TTCMS are positioned in section 3.7 on kaupapa Māori, before and after a section on *He Kaupapa Rangatira* which is described in the TTCMS as a joint initiative to be developed further by DOC and Tongariro–Taupō iwi, in the spirit of whakawhanaunga or partnership.[106] Specific areas to be worked at included access to cultural resources, participation in conservation projects, management of wāhi tapu, iwi involvement in concessions, and the development of projects which give effect to the principles of tino rangatiratanga and kaitiakitanga.[107] *He Kaupapa Rangatira* process was to be completed within eight months. Some concerns have been addressed internally by DOC or through direct arrangement between DOC and iwi or hapū, but the larger task was not completed within the timeframe. At our inquiry, each party brought explanations as to why the other party was not able to engage as anticipated.

The expanded TTCMS was put out for a second phase of consultation early in 2000, revised, and then approved by the Tongariro–Taupō Conservation Management Board in September 2000.

We comment, more briefly, on the content of the TTCMS. It opens with an introduction to the conservancy which links the DOC task to the specific and unique Tongariro–Taupō context:

> The Tongariro–Taupō Conservancy is rich in its diversity and has a proud cultural heritage. The department is charged with the guardianship of natural and historic values on public conservation land and has an advocacy role for the protection of natural and historic values over other lands within the conservancy.[108]

There is an acknowledgement that Tongariro National Park grew 'from the Tūwharetoa gift of its mountains to the nation in 1887', that the park received Unesco World Heritage Status in 1988, and that this was enlarged to natural and cultural World Heritage Site Status in 1993. The Crown has thus recognised and promoted 'the special significance of the park's mountains to the Tūwharetoa and Whanganui people' and brought this into an important international arena.[109]

The TTCMS provides, in section 2.1.2, a set of management principles that have been 'endorsed by community, iwi and the Crown'.[110] These include: the protection and enhancement of the natural environment; the protection of historic resources managed by DOC and the development of an effective conservation partnership with tangata whenua. Each principle is then elaborated on. Principle 3 on partnership with tangata whenua contains a strong link to the Treaty of Waitangi clause in section 4 of the Conservation Act 1987 but no direct reference to the rangatiratanga of the iwi and hapū who exercise manawhenua in this area.[111] There is a clear statement of intent 'to recognize and provide for the mana and spiritual value of the tops of the volcanoes on Tongariro National Park'. There is no guidance as to how these Treaty concerns will be interfaced with the core intentions of the Conservation Act and the other acts which have been brought under its umbrella.

He Tirohanga me te Whakakitenga a Iwi follows immediately, in section 2.1.3. It is a Māori vision for the management of the lands and resources in the Tongariro–Taupō conservancy. It is written in Māori and in English and progresses through a sequence of key concepts to Te Anga Tikanga Tuku Iho – a cultural framework which will ensure environmental protection, utilisation, and conservation. There are clear statements that the Māori world

Section 3.7.2 of the TTCMS – Principles of the Treaty of Waitangi

'Note that the principles of the Treaty are to be applied, not its literal words. The recognised authorities responsible for determining Treaty principles are the Courts and the Waitangi Tribunal. Based on decisions and findings from these sources, nine important principles have been identified as having broad application in the Tongariro/Taupo Conservancy. In summary they are:

Kawanatanga	The principle of government
Tino rangatiratanga	The principle of traditional iwi authority
Exclusive and undisturbed possession	The principle of exclusive and undisturbed possession
Oritetanga	The principle of equality
Kaitiakitanga	The principle of guardianship
Whakawhanaungatanga	The principle of partnership
Tautiaki ngangahau	The principle of active protection
He here kia mohio	The principle of informed decision making
Whakatika i te mea he	The principle of redress

'Note that the Courts and the Tribunal concur the spirit of the Treaty is what matters. Treaty principles will therefore continue to evolve and reflect changes in circumstances over time. Accordingly they should not be seen as exhaustive or definitive.

'The application of these principles and the achievement of their associated objectives will depend on the particular circumstances of each case including the significance to iwi of the land, resource or taonga in question, and the statutory framework. The way in which the principles and their objectives are stated provides direction for the broader machinery provisions of the conservation management strategy.'[1]

view is holistic, that the customary tikanga of Te Ao Tūroa (the environment) were 'designed to manaaki (care for) the mauri (life dynamic) of the environment's treasures and resources,' and that Te Tiriti o Waitangi and its principles 'will be important if tangata whenua are to achieve just and equitable outcomes in conservation terms.'[112]

An important question arises. What is the status of He Tirohanga me te Whakakitenga within the larger TTCMS? Clearly, it is an important resource from a kaupapa atawhai perspective, able to encourage the bicultural awareness of all staff and build up the confidence of Māori staff within DOC. But where does it sit in policy terms? Does DOC give equal weight to the 'key management principles' in section 2.1.2 and 'He Tirohanga' in section 2.1.3? This is a question to carry in mind as we continue.

Part III of the TTCMS moves into the practicalities of conservation policy and management across the Tongariro–Taupō conservancy. It elaborates on the protection of public conservation land; the protection of species; freshwater fisheries; recreation management; public involvement; kaupapa Māori; concessions; and planning. Kaupapa Māori is the sixth item on this list. It opens with a clear link to section 4 of the Conservation Act 1987 and lists the principles of the Treaty of Waitangi, prepared by the working group and set out in full above.

We affirm the work done in the wake of the Wai 480

intervention: the list of Treaty principles; the section on He Tirohanga me te Whakakitenga a Iwi, and the He Kaupapa Rangatiratanga process. A clear priority is given to face-to-face engagement which recognises kāwanatanga and rangatiratanga. We find, however, that this priority is not made operational in the policies and management guidelines contained in the TTCMS. There are few practical provisions for iwi and hapū to exercise rangatiratanga. He Tirohanga me te Whakakitenga a Iwi is a powerful policy statement but it is not used as a foundation for the TTCMS as a whole. It and the expanded list of Treaty principles have the potential to be important in the negotiation of partnership relationships with iwi and the drafting of the *Tongariro National Park Management Plan* (TNPMP).[113] The principles of the Treaty are crucial to the implementation. Their placement in the middle portion of the document, however, means that they may easily be lost within the larger swathe of policy and management provisions.

(3) *The TNPMP*

The extent to which iwi and hapū can exercise rangatiratanga and kaitiakitanga will be evident or not evident, as the case may be, in the management plans. The TNPMP for the decade 2006 to 2016 is one in a succession of management plans prepared for the Tongariro National Park Board from the 1970s onwards. It is the document that provides detailed guidelines for those charged with the governance and management of Tongariro National Park. TNPMP nests inside the legislation, the policy guidelines, and the conservation management strategy set out in the figure on page 891. It is of interest to a national and international audience and to serious park users. It provides guidance to the park board and staff and information to all who wish to apply for permits or concessions. Large portions are bilingual in Māori and in English.

The TNPMP was approved by the Tongariro–Taupō Conservation Board and the New Zealand Conservation Authority on 12 October 2006.[114] The status of the plan was not immediately clear and the manner in which the plan was completed, approved, and made operational became controversial during the Tribunal hearings in October and November 2006.

Tyronne (Bubs) Smith, the secretary of the Ngāti Hikairo ki Tongariro Trust (NKTT), reported on Ngāti Hikairo's concerns about the draft management plan. He told the Tribunal about the 'kanohi ki te kanohi' discussions which took place and the circumstances in which their detailed written submissions were made in 2003.[115] The NKTT submissions to the draft plan were very detailed, on a clause-by-clause basis: some clauses were supported, some objected to. A large number of amendments, relating especially to concessions and the impacts of visitors on the Tongariro alpine crossing, were suggested. They were intended by NKTT as a basis for ongoing discussion.

There was, however, a lack of follow up or engagement on the issues raised. Mr Smith told the Tribunal:

> Since the submission was submitted in Nov 2003, no consultation has taken place to date between the Department and Ngati Hikairo on whether or not any of the concerns of the Hapu are to be implemented and it is a concern that a lot of our objections may not be implemented.[116]

Mr Smith's evidence was the subject of detailed cross-examination during week seven.[117] In response to a question by claimant counsel he reported on a positive, two hour, meeting with the Tongariro–Taupō Conservation Board in 2003 but no further response during the three years following.[118]

Rākeipoho Taiaroa gave evidence in his capacity as secretary to the Tūwharetoa Māori Trust Board. He said that Ngāti Tūwharetoa iwi and hapū, Ngāti Hikairo among them, had substantial concerns about the draft management plan and made detailed written submissions in October 2003. At the core of these was the creation of a joint management board so that the park could be managed 'in a manner consistent with the ethos of the Gift by Te Heuheu Tukino IV'.[119] The submissions also addressed a range of specific issues including the construction of infrastructure on the mountains, discharges of contaminants, commercial activities within the Gift area, and

policies in relation to mining and extraction of materials. Intermittent meetings were held between DOC and TMTB between 2003 and 2006 but the substantive issues contained in the submission were not addressed in a comprehensive manner. On the date when Mr Taiaroa submitted his written evidence – 4 October 2006 – he was not aware 'where the draft Plan has got to.'[120]

Paul Green, for DOC, was less forthcoming in his prepared evidence.[121] He confirmed, in passing, that the management plan was 'approved on 12 October 2006'.[122] He responded in more detail when he was cross examined by counsel for Ngāti Tūwharetoa, in November 2006.[123] Claimant counsel began by expressing surprise that DOC had been close to signing off the management plan when the Tribunal met at Ōtūkou Marae in October 2006. Mr Green confirmed that this was the case and explained that going back to submitters was not part of the statutory process.[124] This statement confirms that, notwithstanding the Treaty relationship between Māori and the Crown, the standing of ngā iwi o te kāhui maunga is in fact no greater than that of an ordinary citizen in terms of setting the policy.

Claimant counsel summarised the core argument of the Ngāti Tūwharetoa submission on the draft management plan:

> [What] the Trust Board was seeking was the creation of a joint management board between DoC and tangata whenua so that the park could be jointly managed 'in a manner consistent with the ethos of the gift [of] Te Heuheu Tukino IV.'[125]

Counsel then asked, 'Where did that idea of a joint management board get to?' Mr Green replied:

> The joint management board was not adopted, the principle was not adopted. I guess because of it being in conflict with the legislation. It was seen to be a different issue rather than a management planning one.[126]

We return to the TNPMP itself. The national park is presented as an outstanding and distinctive physical environment with a strong and unique cultural heritage. The circumstances of its creation are described in these words:

> The nucleus of the park was a gift to the people of New Zealand by Te Heuheu Tukino IV (Horonuku), paramount chief of Ngāti Tūwharetoa, in 1887. The mountain peaks were set aside to be protected for and enjoyed by all of the people of New Zealand. From this nucleus the park has grown to encompass an area of 79,598 hectares and today enshrines in its management the purpose of that gift made more than 100 years ago.[127]

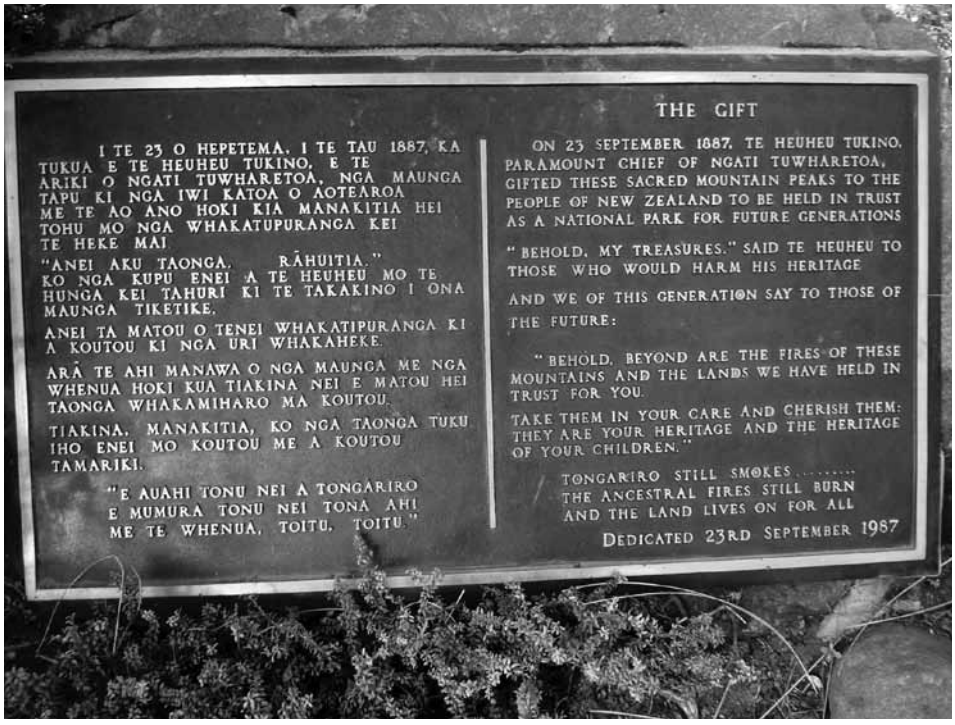
The management plan stresses the uniqueness of the park in national and international terms and places it within a tradition of national parks which includes Yellowstone in the United States:

> [Te Heuheu's] gift was made towards the end of a century which had witnessed massive destruction of natural landscapes and indigenous cultures in many parts of the world. Yet in that time of expanding frontiers and rampant industrialism, other social ideas were beginning to gain acceptance. A combination of democracy and Romantic culture gave the vision and means to preserve large areas of wilderness as the common heritage of all.

The management plan continues:

> The idea of a park belonging to the whole nation became a reality in 1872 at Yellowstone in the United States. Canada and Australia soon followed with parks of their own, and the basis for the world's fourth national park was laid by Te Heuheu Tukino's gift in 1887. It was no accident that this innovation happened first in the New World nations, which lacked cultural edifices to enshrine as national monuments but still had extensive tracts of unspoilt wilds.[128]

The park values are set out in a prominent position, between the introduction and the conservation philosophy.[129] This is a World Heritage site, one of only 24 which



Plaque commemorating the creation of the Tongariro National Park with the gifting of the mountain peaks. The plaque sits outside the Whakapapa Visitor Centre on Mount Ruapehu.

are recognised for both natural and cultural heritage. The park has important and distinctive cultural roles for Māori and for Europeans: the peaks Tongariro, Ngāuruhoe, and Ruapehu are mountains sacred to Māori and the tribes who have lived below them for centuries. The physical environment of active volcanoes, snow fields, crater lakes, multiple vegetation types, and rich biodiversity, is distinctive. The park is significant for recreation, and for tourism. It is also important for economic reasons: hundreds of thousands of visitors come each year and the ski industry is vital to the economy of the local towns. The park also functions as an important soil and water conservation area: the headwaters of the Whanganui and Waikato river systems are here, on the mountain slopes.

The management plan then moves on to a set of 11 principles which guide the decision-making processes for the park. These include the protection of the park in its natural state, the recognition that the peaks are a taonga 'a gift to the people of New Zealand from the Tūwharetoa people', and the importance of the world heritage status of the park.[130] There are clear links to the Treaty clause in section 4 of the Conservation Act[131] and an enlargement of the principal of partnership to include NGOs, universities, research institutions, and community groups.[132]

The positioning of two principles, side by side, requires specific mention. Principle 10 recognises that there are places within Tongariro where the park experience is compromised by infrastructure, and places where infrastructure must be reduced and disturbed sites restored.[133] This is then qualified, on the same page, by principle 11, which makes it clear that all existing legal agreements will be honoured. Concessions in ski areas, club and commercial accommodation, transport, and a range of recreational and use facilities receive specific mention. The statement concludes: 'No change can be contemplated to these existing agreements except where conditions within

World heritage plaque at Whakapapa. The plaque commemorates the Tongariro National Park as a world heritage site.

the agreements permit or by the mutual consent of the parties.'[134]

We comment, first, on the preparation of TNPMP. From the evidence and from the cross examinations of Mr Smith, Mr Taiaroa, and Mr Green, we are able to assess the extent of consultation. There were substantial consultations in 2003, intermittent contact in 2004 and 2005, and no consultation during the final stages of plan preparation in 2006. There was even less consultation with iwi other than Ngāti Tūwharetoa. The plan was signed off as a *fait accompli* on 12 October 2006. It has full legal status and has, since October 2006, been the primary guide for Tongariro National Park management. The manner in which the plan was prepared has been a matter of major concern to the various claimants. Ngāti Hikairo and Ngāti Tūwharetoa wished to engage with the Conservation Board and with DOC on important partnership issues. DOC did not provide opportunity at crucial stages of the process and Mr Green, quoted above, suggests a reason: he saw the possibility of a joint management board to be in conflict with the legislation.

We have pondered this complex situation. Two things are clear to us: DOC has a longstanding relationship with Ngāti Tūwharetoa, some relationship with the hapū Ngāti Hikairo, and a still-to-be-established relationship with Whanganui iwi, in particular, Ngāti Rangi; the partnership issues raised in the Ngāti Hikairo and Ngāti Tūwharetoa submissions went beyond the capacity of the DOC officials to engage with them. In this situation, consultation which began in 2003 dwindled and became silence in 2006. The TNPMP, and the manner in which it was signed off, raise a whole gamut of partnership issues that were not addressed in a face-to-face partnership manner. A new beginning is needed, one which embraces the complexity of the task, and the collective of ngā iwi o te kāhui maunga.

We now turn to the plan itself. It is a very large

document which provides detailed guidance to those who draw up special-purpose management plans and order day-to-day activities in specific fields such as endangered species, recreational management, amenity area management, or pest control. We have scrutinised the complete document and will now address five areas of concern identified by the claimants (see section 12.2 for a summary of these concerns).

(a) *Iwi and hapū participation in tourism and recreational services:* The Tongariro National Park is a key component of the national tourist industry. It is visited by up to a million people a year and generates considerable income for the national and regional economies. We have examined the TNPMP to find out if there is provision for iwi and hapū to engage in the provision in tourism and recreation ventures, or to provide the services that are needed for the operation of the national park.

A wide range of commercial activities are made available at the park, and provide for people's use and enjoyment of the park. These include accommodation, supply of foods and essential provisions, ski field operation, guiding, transport, and outdoor education. DOC also provides a range of essential services.

The management plan makes it clear in its opening chapters and in section 2.3 on 'the gift through time', that tangata whenua have a cultural and symbolic role in welcoming visitors from around the globe and across the nation. There is limited matching recognition that iwi and hapū have cultural associations that may enable them to make commercial contributions to visitor use and enjoyment of the park. There is one tentative but important pointer in the plan that is not taken up and expanded. Policy 9 on recreational guiding reads:

> The department will encourage the Ngāti Tūwharetoa and Ngāti Rangi people to take an active role in guiding and interpretation of cultural World Heritage values within the park.

Concessions are one of the tools which can enable this right to be exercised. In most cases where concessions and licences are issued, DOC receives and evaluates applications and approves those that best meet the criteria set out in the management plan. No situations are identified in the TNPMP where iwi or hapū should have priority or are entitled to a proportion of the concessions available.

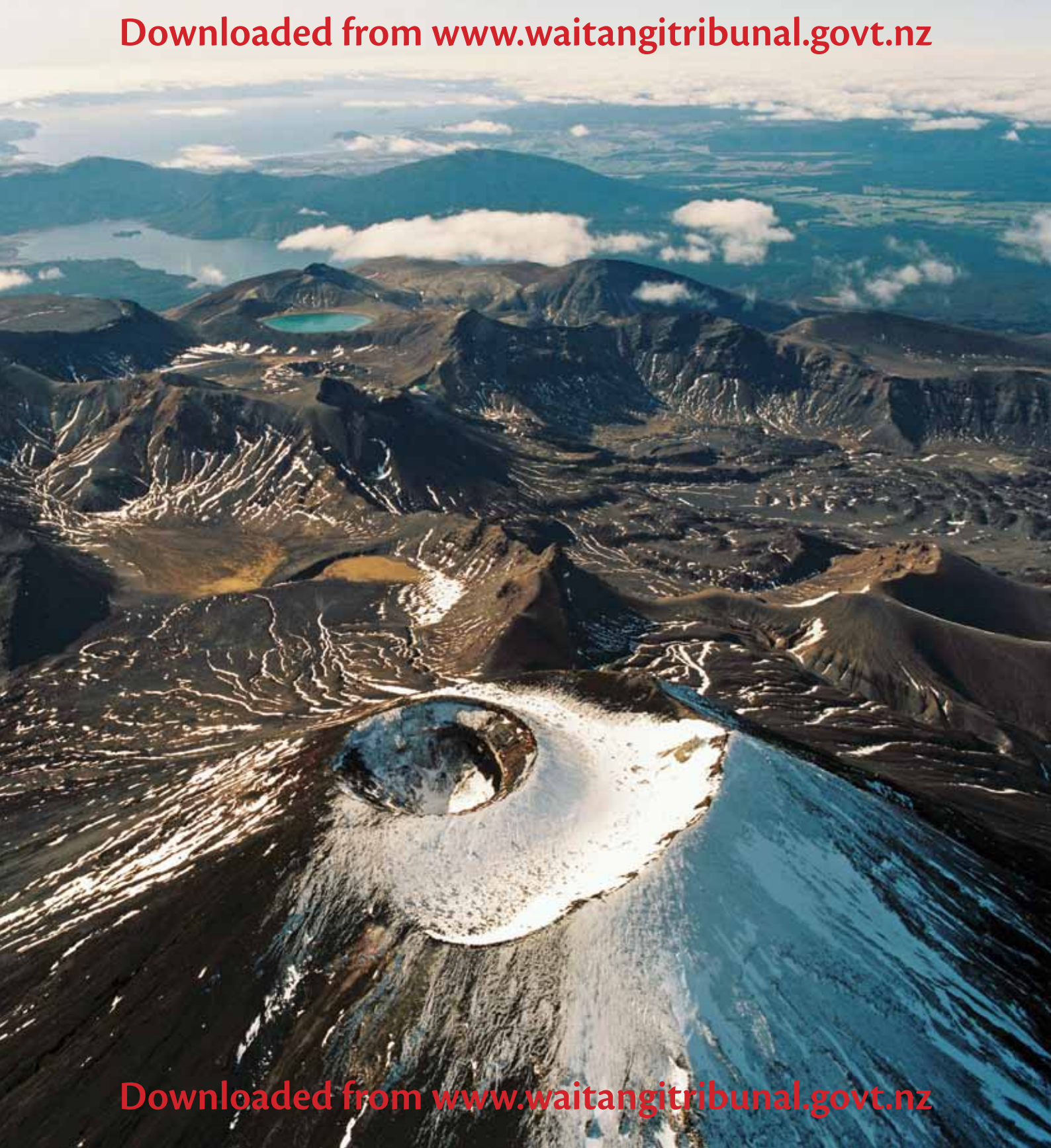
Most concessions within the national park are commercial and competitive, open to a number of operators. There are four situations, identified in the plan, where a unified management approach is adopted and a single concession or licence is envisaged. The first of these is the ski area licence. The case for coordinated operation of ski fields is then set out:

> Ruapehu Alpine Lifts Ltd holds all licences relating to Whakapapa and Turoa ski areas. The department believes that a ski area operated and managed by one concessionaire has benefits through a co-ordinated approach to public safety, the development of facilities, and ultimately the quality of the skier experience.[135]

The second relates to transport operation on the Bruce Road. The management plan recognises that transport to Whakapapa village is essential but is also a major source of congestion. It encourages transport operators to locate in satellite towns, outside the park.[136] Policy 14 recognises, however, that it is necessary, in the interests of public safety, to have a locally based service to serve the Bruce Road, especially during winter months.[137]

The remaining two relate to Whakapapa village which is located within the park and receives some 300,000 visitors per year.[138] DOC has been proactive in its planning and has prepared a Village Site and Landscape Plan and set out a number of policies designed to keep infrastructure to a minimum. New services and buildings are to be restricted to those essential for the safety and welfare of visitors.[139] Two single operator concessions are provided for: one is for a domiciled guiding service which provides basic equipment for park users; and the other for the

▶ **Looking north towards Lake Taupō over Mount Ngāuruhoe, Mount Tongariro, and Lake Rotoaira. The volcanic and mountainous nature of the plateau area is well illustrated in this image, where snow accentuates the valleys.**



provision of ski, snowboard, and climbing equipment for park visitors.[140]

Although the designation of particular services are provided by just one operator, the question arises as to whether some or all of these sole operator concessions should be provided by iwi and hapū who know the mountain, who are resident in the area, and are in the process of gaining skills and preparing for new economic initiatives.

The management plan gives a strong symbolic role to tangata whenua, but very limited operational or commercial role. The pointer which indicates that DOC 'will encourage the Ngāti Tūwharetoa and Ngāti Rangi people to take an active role in guiding and interpretation of cultural World Heritage values', could be expanded to embrace a wider spectrum of commercial activities. Ngā iwi o te kāhui maunga have customary associations with the park lands, and taonga which can provide the basis for commercial operations which will add to visitor use and enjoyment, and at the same time provide a livelihood for iwi and hapū. The plan fails to recognise that ngā iwi o te kāhui maunga have treaty rights to participate in development.

We turn now to the second issue.

(b) *Access to customary materials and wāhi tapu:* Ngā iwi o te kāhui maunga have underlined their desire to gather customary resources such as kai and rongoā, and to visit, care for, and carry out traditional customary practices in relation to wāhi tapu within Tongariro National Park.

Section 5 of the National Parks Act 1980 requires the prior written consent of the Minister to the taking of any indigenous flora and fauna from a national park. The Minister can only consent if the proposed taking is consistent with the management plan for the park. The Minister may delegate his power to the director-general or other offices of DOC, which, by section 43, are charged with administering and managing all national parks.

The protection of environmental taonga and wāhi tapu is clearly recognised in the conservation policy section which is the foundation of the TNPMP.[141] Under principle 6, the plan notes that DOC cannot manage public conservation lands without a relationship with tangata whenua.[142] This will be exercised through cooperative conservation management and the implementation of *He Kaupapa Rangatira*. Iwi are to be involved in 'decision-making processes for use of cultural materials, the reintroduction of previously-present bird species, the consideration of concessions which may impact on cultural values' and also in the 'development of further park guidelines or strategies'.

The objectives which follow link the exercise of kaitiakitanga to 'resources and taonga of significance to them and under the control of the department'. DOC is to facilitate the exercise of kaitiakitanga in respect of these traditional resources and taonga.[143] Further, the exercise of whanaungatanga will provide for a partnership between Māori and the Crown, which requires the parties to afford each other reasonable cooperation and utmost good faith, in accordance with their Treaty obligations.[144]

These policy statements are supported, in some cases, by specific objectives and policies in the body of the management plan. Section 4.1.7 on plants, for example, gives priority to the protection of indigenous plants, the enhancement of ecosystems, and the removal of plant pests from the park. Cultural take receives specific mention:

> Cultural take may be permitted on a case by case basis where it does not adversely impact on the environment or species for which preservation is the paramount priority, the use is non-commercial, the level of removal is sustainable and there is no source outside the park, use is traditional or is to establish a source outside the park, and is consistent with the *He Kaupapa Rangatira* protocol.[145]

The manner in which cultural take of plant materials or timber is permitted is thus qualified and bounded. The plan points to constraints imposed by legislation such as the Native Plants Protection Act 1934, and the Wildlife Act 1953. The customary take of indigenous fauna is treated similarly. The cultural value of birds such as kiwi, kākā, and kererū is recognised. DOC has policies which enable it to enter into species recovery programmes in partnership with iwi and other agencies.

Wāhi tapu are identified as important, first at the symbolic level, and then at the policy level. The opening

◄ Looking down the Bruce Road, Mount Ruapehu, towards the Waimarino Plains. The road becomes extremely busy during the ski season.

▼ The Chateau in its magnificent setting below Mount Ruapehu. Whakapapa Village is a significant area of Tongariro National Park and is frequented year round by visitors. It offers a range of stunning sporting and scenic experiences.

A North Island kākā. The kākā is one of several culturally important native birds that are protected.

chapters have a strong focus on the peaks of Tongariro, Ngāuruhoe, and Ruapehu as a gift to the people of New Zealand 'so that their tapu might be protected for all time.'[146] This cultural heritage is described in these words:

> Tongariro, Ngauruhoe and Ruapehu are mountains sacred to the Māori, especially Ngāti Tūwharetoa and Ngāti Rangi who have lived beneath them for centuries. The mountains are recalled in ancient tribal stories as great forces in a universe where everything is alive. They are seen as atua, as places of spiritual forces which command and give life to the natural world, and whose wild and capricious actions can create and destroy on a huge scale. Accordingly, they are regarded with respect and humility as well as with awe.[147]

The most explicit policy statement is made within the section on historical resources where objective (d) reads:

> To acknowledge the cultural, spiritual, historical, and traditional association of tāngata whenua with their wāhi tapu . . . and other places of significance.[148]

Policy 7 reads that the department will consult with tangata whenua on matters affecting Māori historic sites and adds that 'Information may be the intellectual property of tangata whenua.'[149]

Te Waiamoe, the Ruapehu crater lake, has a high level of importance for both DOC and iwi, and the policies are made explicit in the section on natural hazards. Matching perspectives are set out in section 4.1.14.1:

> The most significant natural hazard is lahars, which are mudflows or torrents of water and debris emanating primarily from the Crater Lake on Mount Ruapehu. Lahars are frequent and the lower slopes of the mountain are littered with lahar debris. In recent times, a lahar caused the death of 151 people in the Tangiwai disaster of 1953. Partial collapse of the Crater Lake outlet sent a formidable lahar down the Whangaehu River, washing away the railbridge . . . [The potential] exists for further disaster if risks are not managed.[150]

The iwi perspective is more succinctly worded:

> Mount Ruapehu's Crater Lake and its environs comprise a tapu site for tāngata whenua.[151]

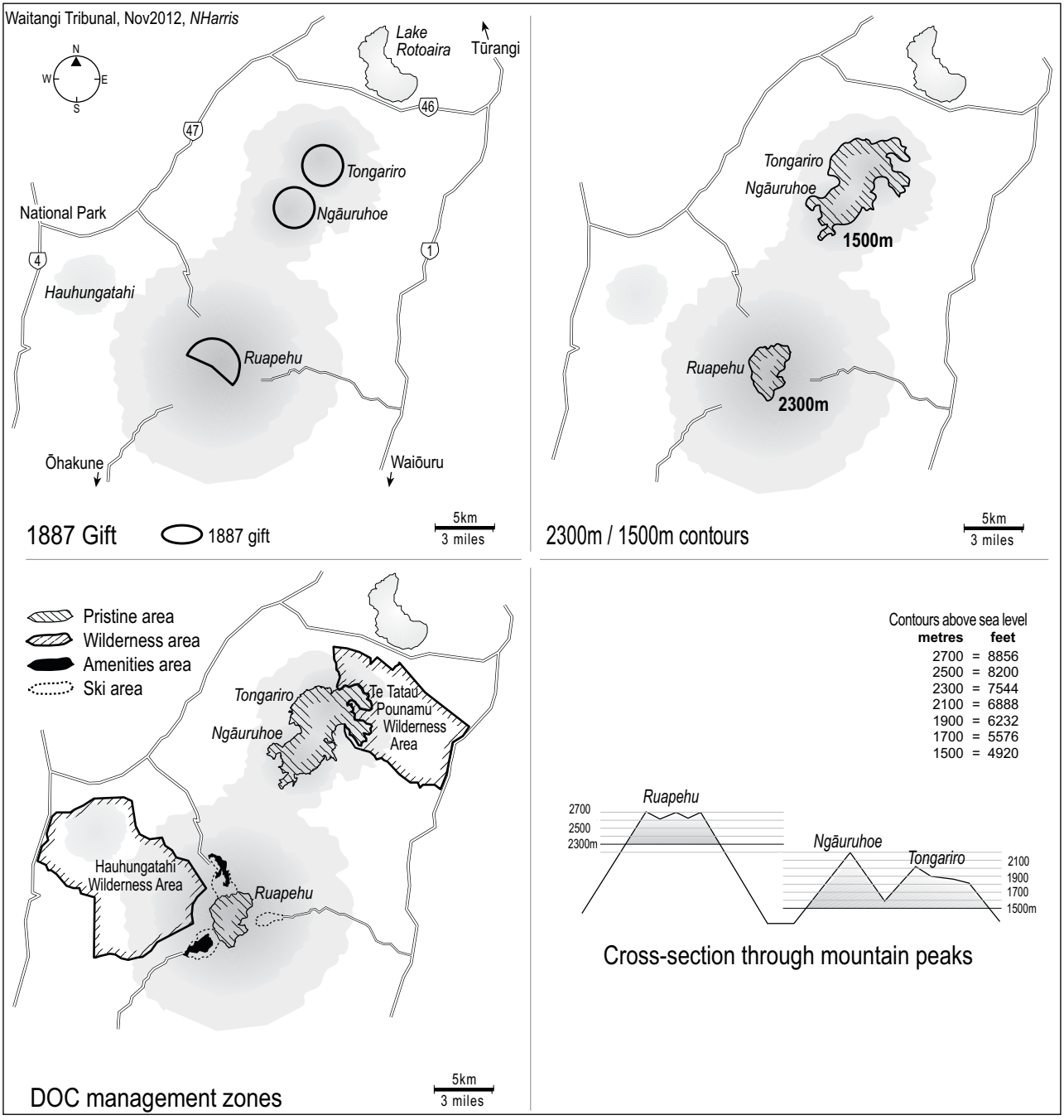
With these perspectives in mind, lahars and other volcanic hazards are planned for in three ways:

- physical systems which monitor the Crater Lake of Mount Ruapehu and give warning of lahars and other volcanic events;
- information and targeted risk reduction work; and
- warning systems that allow some time for people to be evacuated from the mountain and lahar paths.[152]

Is there adequate provision for access to customary materials, and wāhi tapu? Gains have been made at the level of understanding and general policy but there is little in the management plan which provides for secure access to the range of cultural materials which are important for ngā iwi o te kāhui maunga. Nor are there provisions in the management plan for the protection of wāhi tapu, the sacred places which they wish to protect and, for specific cultural purposes. DOC has demonstrated a growing understanding of the values and tikanga involved with taonga materials and places but has not followed this up with specific provisions in the TNPMP. At present, the question posed in this paragraph comes back to the provisions in the National Parks Act 1980.

(c) *Protection for the mana and tapu of te kāhui maunga:* Tongariro, Ngāuruhoe, and Ruapehu are large mountains which cover an extensive area. The claimant iwi and hapū, and many members of the public, place a high value on the landscape and cultural integrity of these mountains. Within the larger area of the park, there is a very specific focus on the peaks of ngā maunga tapu and, in particular, the area embraced by the 1887 gift (map 12.2).

The importance of te kāhui maunga is, as we have already noted, strongly affirmed in the opening chapters of the management plan. The peaks, sacred to Māori, were gifted by Horonuku Te Horonuku so that 'their tapu might be protected for all time.'[153] This protection is made explicit in principle 3: 'to protect the taonga – the peaks



Map 12.2: High-altitude areas of significance in Tongariro National Park

of Tongariro National Park.'[154] Treaty principles and the active protection of landscape are both there in the general objectives and policies.[155]

Zoning methodologies are used to provide active protection, and to create a balance between recreational use and wilderness preservation. Ski areas, amenity areas, and pristine areas are separately identified and managed. Specially protected areas are provided for in the legislation, and wilderness areas and pristine areas are included in the plan (map 12.2). The priority here is to provide a sense of solitude and quietness. Over-snow vehicles and helicopter landings are not permitted within the pristine zone, or on the mountains above 2,300 metres.[156] Recreational infrastructure is either non-existent or at the lowest level possible consistent with public safely and environmental protection. There are, for example, no marked routes or tracks in wilderness areas. The Tongariro plan gives the public access to wilderness and pristine areas, but restricts what can be done there. The National Parks Act has provision for the public at large to be excluded from some areas, such as scientific reserves or wildlife sanctuaries.[157] There are, however, no such exclusions in Tongariro National Park.

Amenity areas are designated and planned for at Iwikau and Whakapapa villages and in the vicinity of the Whakapapa, Tūroa, and Tūkino ski areas. Map 12.3, compiled from maps in the management plan, shows the boundaries of the 1887 gift area, the pristine area, and the amenity and ski field areas at Whakapapa, Tūroa, and Tūkino. It also maps the ski lifts, huts, and lodges on Mount Ruapehu.[158] Roads, transport flows, and parking areas are planned and managed in an integrated manner. There are specific policies for landscapes, base area facilities, electricity transmission lines, water use, snowmaking, and grooming. There are constraints on off-road vehicles, aircraft, and competitive events. The amenity areas are designated to absorb the pressures and remove the visual effects of development from other areas of the park. They are intensely developed and highly modified areas used by very large numbers of visitors.

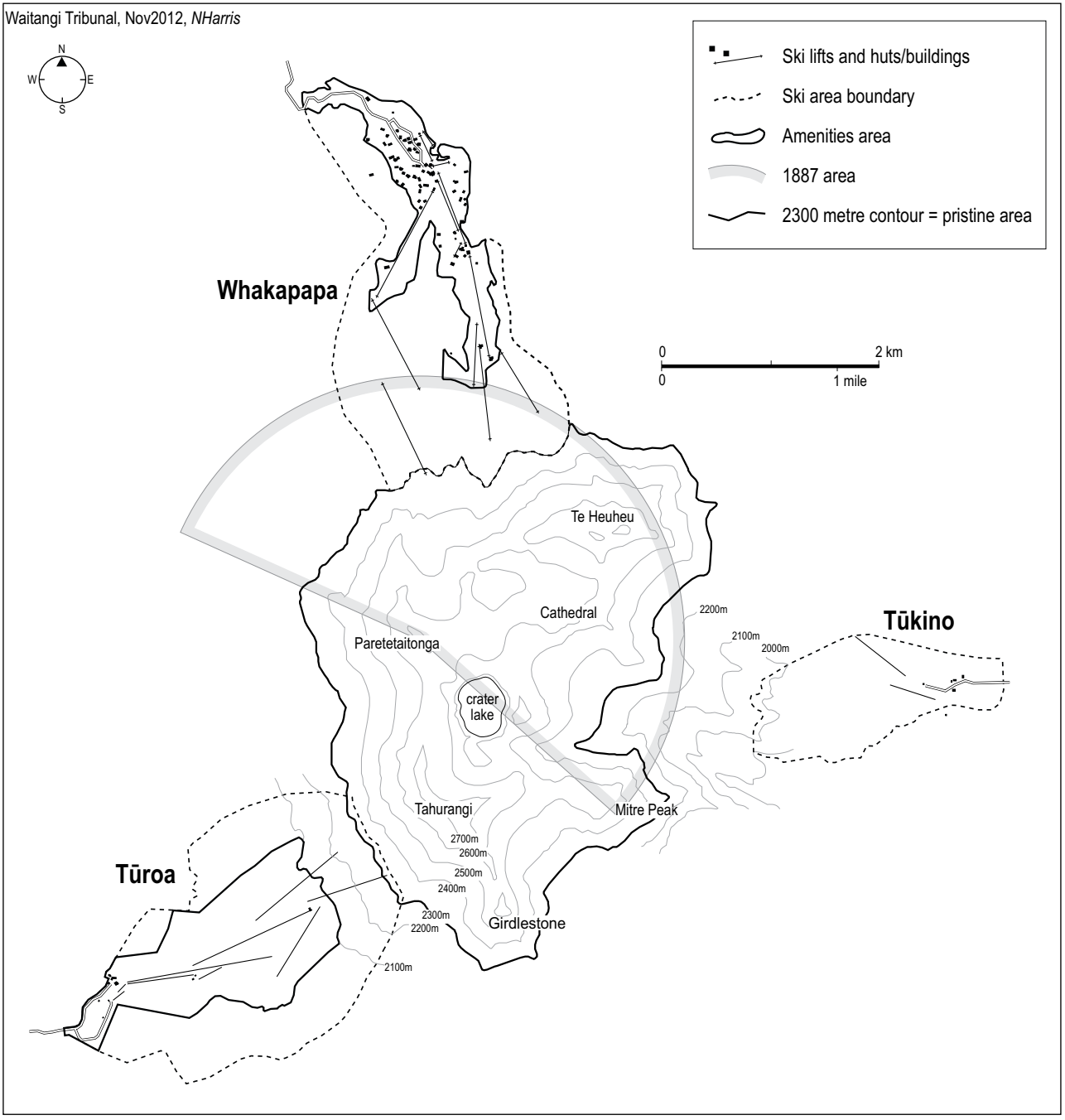
The pressures caused by increases in the number of visitors are recognised and strategies are identified to provide alternative experiences outside the park. There are, however, no specific provisions within this 2006 to 2016 plan to control or limit visitor numbers in areas such as the Tongariro alpine crossing, where the pressures are greatest in summer, or the ski fields and amenity villages on Mount Ruapehu, where the winter pressures are greatest.

Does the management plan protect the mana and tapu of te kāhui maunga? Protection means different things according to different world views and in the case of the TNPMP it is set alongside visitors' 'benefit, use, and enjoyment'.[159] We have seen, in chapter 11 on the period up to 1987, that access to the peaks has been unrestrained, that large numbers of visitors annually tramp the Tongariro alpine crossing, and structures from the Whakapapa, Tūkino, and Tūroa ski fields have extended up the mountain and, in the case of Whakapapa, well above the gift area boundary (see chapter 11, section 11.5.4(1)).[160] The zoning methodologies which could be used to provide active protection and create a balance between the two world views are already present in section 4.2 and map 9 of the management plan. These methodologies are not, however, used to provide absolute protection for the peaks of te kāhui maunga

There are a range of components in the management plan that indicate that DOC is working hard at the active protection of the cultural integrity of the surrounding landscape. The best efforts to protect the park landscape are hampered, however, as visitor numbers continue to increase. There are impacts on particular parts of the park, at particular seasons of the year. The conservation strategies are not made operational in a way that protects areas such as the Tongariro alpine crossing from the impacts of the growth of visitor demand.

The management plan contains important protective measures. These are not, however, used to full advantage. Wāhi tapu, including the peaks of te kāhui maunga, require a higher level of active protection.

There are two components in the current management plan which, taken together, cause us concern in terms of compliance with Treaty of Waitangi obligations. There is a statement in the section on club accommodation which reads:



Map 12.3: Mount Ruapehu, showing the 1887 gift area, the pristine area, the amenity areas, and the structures on the mountain

Skiers and supporting facilities at the staircase area of Whakapapa, 1970s. Visitor numbers have continued to climb especially during the winter season putting pressure on existing amenities.

> Ruapehu mountain clubs have had a strong and influential role in recent park history and this is expected to continue. This was sanctioned in 1996 by the signing of 60-year licences for clubs to occupy sites within the park.[161]

Lodges are located in a variety of positions, they have a range of designs and ecological footprints, and they perform unevenly in terms of waste disposal and water conservation. There is no evidence in the document as to whether planning for Iwikau, Tūkino, and Whakapapa was completed, and the individual lodges were put under scrutiny, before the full set of licences were renewed. What concerns us greatly is that licences which were once annual and 'at the pleasure of the Park Board' in the 1920s and 1930s, were converted in 1996 to 'licences to occupy for 60 years'.

The linked area of concern is contained in the general principles which are 'used for decision-making' and are the 'benchmarks against which activities and uses will be measured'. Principle 11, written at a time when the Conservation Act 1987 was firmly in position and Treaty principles were clearly established, complements and locks in the 60-year leases: existing legal agreements 'will be honoured' and these are to include 'concessions for ski areas, club and commercial accommodation'.[162]

These two together, the 60-year leases and principle 11, permit club lodges to remain on the mountain for an extended time horizon. They seriously diminish the opportunity for iwi to participate in decision-making or park administration to address the ecological and landscape damage done at Iwikau, Whakapapa, and Tūkino during the previous decades.[163]

(d) *Recognition of iwi and hapū as partners in management and control:* There are two issues involved in the recognition of iwi and hapū as partners. First, the matter of which

iwi and hapū are recognised by DOC in the Tongariro National Park context. Second, the nature of the partnership envisaged in each management context.

Crown and claimants have noted that there were long established relationships with Ngāti Tūwharetoa and more recent relationships with Ngāti Rangi. Claimants have voiced concern that there have been no similar relationships with other Whanganui River iwi who have customary interests in land now in the national park, or with ngā hapū o Tūwharetoa, including Ngāti Waewae and Ngāti Hikairo. The Crown, in its formal closing, has acknowledged that its failure to consider and provide for the interests of Whanganui Māori was a breach of Te Tiriti o Waitangi and its principles (see section 12.3).

The TNPMP contains no guidelines about recognition and consultation with iwi and hapū. DOC, resourced by kaupapa atawhai managers from the 1990s onwards, has been building experience in working with tangata whenua in the Tongariro National Park. This experience has not, however, been taken into the management plan. Neither DOC nor ngā iwi o te kāhui maunga are assisted by TNPMP at this point.

We turn now to the nature of the partnerships envisaged. Governance is not discussed and there is no substantial consideration of co-management, and no specific provisions which would make partnership, or co-management, operational. There are more than 70 references to 'consultation', spread through all sections of the plan.[164] There is specific reference to 'cooperative conservation management' in relation to cultural materials within the park, and the consideration of concessions that may impinge on cultural values, but no provisions for decisions to be made jointly, or for management to be carried out in a cooperative manner. Iwi and hapū are consulted but management, as provided for in the plan, is management by DOC, not cooperative management.[165] We will return to this subject in the final sections of this chapter when we consider co-management in equivalent situations in New Zealand, Australia, and Canada.

(e) *Kaitiakitanga and rangatiratanga:* We have searched the body of the TNPMP for specific provisions which will enable ngā iwi o te kāhui maunga to exercise kaitaikitanga and rangatiratanga.

Kaitiakitanga is, as we have noted above, clearly listed among the nine Treaty principles recognised by the Crown and is linked to lands, resources and taonga of significance to iwi.[166] The opening chapters of the TNPMP spell out the importance of te kāhui maunga and, in particular, the peaks which were the core concern of Horonuku Te Heuheu in 1887. Objective (d) in the section of the management plan that deals with historic resources is explicit about taonga to be recognised when it points to the traditional association of tangata whenua with their wāhi tapu and other places of significance.[167]

Tino rangatiratanga is listed among the principles of the Treaty of Waitangi which are carried forward from the TTCMS. It is elaborated on in the two objectives which follow. The first objective is clear:

> To recognise and actively promote the exercise by iwi of tino rangatiratanga over their land and resources, and taonga of significance to them.[168]

The second objective has two qualifiers:

> To identify with iwi opportunities for them to exercise an effective degree of control over traditional resources and taonga that are administered by the department, where this is not inconsistent with the legislation. *Note: 'An effective degree of control'* may vary from full authority at one end of the spectrum to a right to be consulted at the other end. [Emphasis in original.][169]

Are there provisions for kaitiakitanga and rangatiratanga? Kaitiakitanga appears in the broad statements of intent and is carefully linked to taonga. The remaining portions of the management plan, however, are silent about the manner in which kaitiakitanga is to be provided for and exercised. There is no specific provision for iwi or hapū to exercise kaitiakitanga in relation to taonga species of plants, or birds, or fish. The crater lake on Mount Ruapehu is recognised as a volcanic hazard and identified as a tapu site for tangata whenua. Tangata whenua values

are incorporated into hazard management in a sensitive and substantial manner, but no kaitiaki role is provided for in relation to the lake or the lahar flows.[170] Similarly, the importance of ngā maunga tapu is recognised by the creation of a pristine zone, but the iwi and hapū, who are kaitiaki, are given no role in its protection or management. There are no specific details about other wāhi tapu, and no mechanisms for the identification (or protection from identification) of wāhi tapu within the national park.[171] There is nothing in the detail of the management plan which enables iwi and hapū to exercise kaitiakitanga over their taonga.

Rangatiratanga is clearly recognised as a principle, then qualified by the two objectives that follow. Each objective is carefully phrased, each provides a degree of ambiguity, and each can be used to curtail the exercise of rangatiratanga. First, it is DOC which decides when and if iwi control is consistent with the legislation. Secondly, 'an effective degree of control', can be reduced to 'the right to be consulted'.

In summary, kaitiakitanga and rangatiratanga are both recognised in the broad statements in the section entitled 'Principles of the Treaty of Waitangi and Objectives'. The manner in which they are provided for is open to interpretation by DOC managers and can be constrained by the 'principles which reflect core values'. Neither kaitiakitanga nor rangatiratanga is elaborated on or made specific in the body of the TNPMP.

(4) *The policy framework since 1987 and Treaty principles*

The benchmark for our analysis is the provision in section 4 of the Conservation Act 1987 which requires that this Act, and the earlier Acts listed in the first schedule, be interpreted and administered to give effect to the principles of the Treaty. We have asked if the policy framework since that date has given opportunity for Treaty compliant outcomes for ngā iwi o te kāhui maunga. To this end we have scrutinized the general policy documents for conservation and for national parks, the TTCMS, and the TNPMP.

Our first finding directs attention to a clause in the *Conservation General Policy* that prioritises the National Parks Act 1980 over the Treaty clause in the Conservation Act 1987: where there is 'an inconsistency between the provisions of any of these Acts and the principles of the Treaty', it reads, 'the provisions of the relevant Act will apply'. We find that, unless this policy is amended, in the *Conservation General Policy* and in the *General Policy for National Parks*, there will be a continuing breach of the principles of the Treaty.

Both policy documents, the *Conservation General Policy* and the *General Policy for National Parks*, refer to section 4 of the Conservation Act 1987 and the principles of the Treaty. We find that the guidelines which refer to these principles are incomplete and out of date at the point where the documents were signed off. The reference to the principle of rangatiratanga is indirect and the word 'rangatiratanga' is not used in either document. Neither are there references to the principles of active protection, mutual benefit, or the right to development, which have been elaborated by the courts and the Waitangi Tribunal from 1989 onwards.

The general policy documents make progress in a number of specific areas. Some Māori values are recognized and presented to good effect, but other Māori values are marginalised. Where Māori and conservation values coincide in the minds of DOC policy makers, the documents are supportive; where Māori values differ from western conservation values the documents are largely silent.

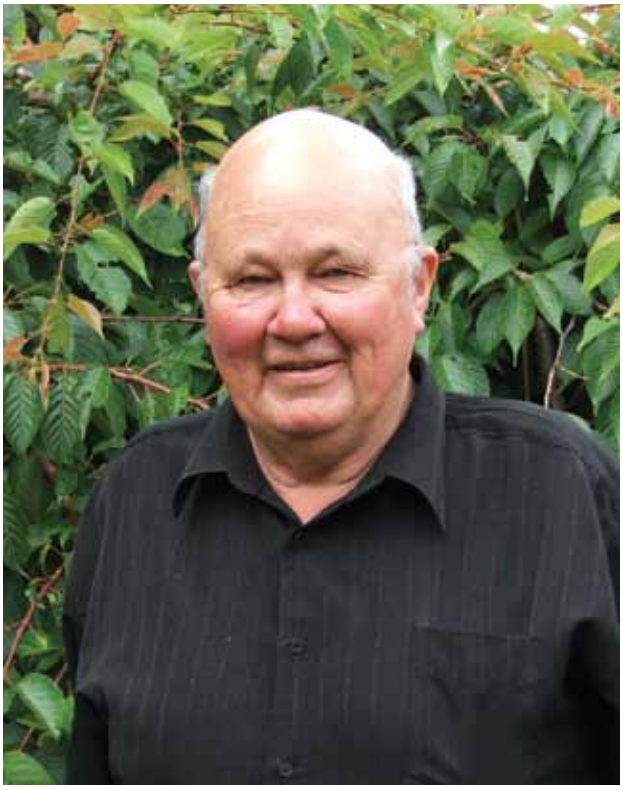
The TTCMS contains parallel policy statements: one under the heading 'key management principles'; and the other entitled 'he tirohanga me te whakakitenga a iwi'. The latter sets out 'he kaupapa rangatira' and an expanded set of 'principles of the Treaty of Waitangi'. The list is more comprehensive than that contained in the general policy documents and opens by setting the principle of rangatiratanga alongside the principle of kāwanatanga. TTCMS thus contains provision for rangatiratanga to be recognised and for DOC and iwi to work together in a Treaty partnership. The priority given to each of the two documents is not, however, made clear. The outcomes of the TTCMS will depend on the willingness of DOC policy makers at head office, and DOC staff on the ground, to engage with Māori world views and work together with iwi in partnership and shared decision-making.

The TNPMP builds on the legislation, the two policy documents, and the TTCMS. The manner in which the TNPMP was prepared and signed off in 2006 does not meet the principle of partnership.

We have scrutinised the TNPMP as a whole with particular focus on the areas identified by the claimant iwi as high priority. We find:

- there are no specific provisions in the plan which will allow ngā iwi o te kāhui maunga to exercise rangatiratanga over the Tongariro National Park;
- there is nothing in the specifics of the management plan which will ensure that iwi and hapū are able to exercise kaitiakitanga over their taonga in the park;
- the rights of iwi to participate in economic development, and share in the returns from development, within the park are not provided for;[172]
- there are no clear and robust guidelines to provide iwi with access to customary materials within the park;
- the zoning methodologies used in the park do not provide adequate protection for the peaks of te kāhui maunga, for the slopes of Tongariro maunga included in the Tongariro alpine crossing, or for wāhi tapu within the park;
- taken together, the extension of licences for club accommodation on Ruapehu maunga to 60 years, the extension of ski field licences to 30 years, with a right of renewal for 30 years, and principle 11 in the TNPMP that existing legal arrangements will be honoured represent Treaty breaches of active protection, good faith, and partnership; and
- there are no specific provisions in the TNPMP to make partnership or co-management with tangata whenua operative.

In summary, the policy documents have opened a number of doors which encourage conservancy and park managers to recognise Māori values and protect Māori taonga. The manner in which this is done is open to interpretation by DOC staff, whether they be policy makers at head office, or managers and staff engaged in day-to-day operations within the national park. There are very few operational protections for Māori taonga, Treaty breaches have occurred, and neither kaitiakitanga not rangatiratanga are elaborated on, or made specific, in the policy documents. This is the topic we address in our next section.



Paul Green. Starting in 1987, Mr Green was the conservator of the Tongariro–Taupō region for many years.

12.5.3 DOC and iwi relationships on the ground

The focus is on the changes that have taken place in the Tongariro–Taupō conservancy and the Tongariro National Park under the DOC policy regime between 1987 and 2007. The evidence for changes 'on the ground' has been provided by: claimant resource managers including Rākeipoho Taiaroa, Nyree Nikora, Colin Richards, Che Wilson, and Keith Wood; and by Paul Green, the conservator for Tongariro–Taupō for the period from 1987 to the present. We look in turn at the following: consultation

and resources for consultation; sharing in the benefits of economic enterprise; protection of environmental taonga, wāhi tapu; exercise of kaitiakitanga over these same taonga; and the interplay between rangatiratanga and co-management. We will then turn to the larger question: have DOC–iwi relationships on the ground in Tongariro National Park been in accordance with Treaty principles?

(1) *Consultation and capacity building*

Consultation is a term which needs to be defined with care. It was well described by Justice McGechan in a High Court judgment in January 1992.[173] Consultation requires meaningful exchange between parties that are each adequately informed and able to articulate their concerns and priorities.[174] Good consultation is made possible by a mutual relationship of respect and recognition. It requires openness and good faith. A party obliged to consult may have a working plan in mind but must be ready to change that mind or start afresh as a result of new insights gained during consultation.[175] Consultation is thus more than informing in advance about an action already intended. It involves a genuine search for consensus, coupled with a recognition that a decision may need to be made in the absence of consensus. Justice McGechan sums up:

> Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done.[176]

Christine Cheyne, in a 1999 article on public consultation, elaborates:

> It is widely recognised that consultation should occur sufficiently early in the development of a proposal for public input to be incorporated, but at a point at which the consulting body has something to inform the public about.[177]

These same insights into the nature of consultation are pertinent in the context of consultation between DOC and tangata whenua in the Tongariro–Taupō context.

The first thing we need to note is that changes on the ground were not immediate and did not come evenly. Mr Green acknowledged that there was limited involvement of tangata whenua in park management prior to 1985.[178] Then, in 1987, DOC worked closely with Ngāti Tūwharetoa and Sir Hepi Te Heuheu to celebrate the centennial of the national park. Similarly, in the 1990s, DOC worked with Sir Hepi and Tumu Te Heuheu to obtain recognition of Tongariro National Park as a world heritage site with cultural as well as natural values.[179] Mr Green described the relationships in these words:

> Traditionally the Conservancy has consulted with Ngāti Tūwharetoa, through the Paramount Chief and the Tuwharetoa Māori Trust Board, and with Ngāti Rangi representing people of Whanganui within the Conservancy. In the last 15 years the Conservancy has also had a relationship with Ngāti Hikairo and to a lesser degree Ngāti Kurauria and Ngāti Turangitukua.

Mr Green explained the situation with regard to Ngāti Tūwharetoa prior to 1987:

> Until this time the message from Kaumatua and iwi was to deal with the Trust Board rather than the hapu. I acknowledge this has significantly changed.[180]

The second thing we note is that consultation involves time costs and money costs and is not well resourced.

Mr Wood, an experienced resource manager from Ngāti Rangi, elaborates:

> My experience to date, in working with DOC and with the section 4 responsibilities under the Conservation Act 1987, is that we are still only at the 'glossy words stage', and the real mahi of providing resources and access to real tangata whenua management of the conservation estate is yet to be realised. Personally, I find that we as Māori continue to be asked to participate at our own cost in many areas of central and local government management. All I see is words and no action from the Crown.

Mr Wood expressed his discontent:

Sir Hepi Te Heuheu leading Ngāti Tūwharetoa in a haka to celebrate the centenary of Tongariro National Park, 1987

> We are bombarded by requests for consultation and inputs regarding DOC projects within our rohe (which is great for information sharing) but there are very limited resources to realistically participate and be involved in DOC management at the ground floor. The grass roots DOC staff we work with are often embarrassed to see the amount of work that is put in by tangata whenua to ensure that our taonga are protected, especially when they are being paid and we are not.[181]

Mr Green and Doris Johnston, DOC's acting general manager (policy), were both questioned about the use of Vote Conservation to pay for consultation. Ms Johnston replied:

> The Department's policy for consultation is that we do not pay parties' costs when we consult with them and that's set out in the . . . consultation guidelines. . . . Certainly if parties raise issues about the costs of consultation [we] might seek to support them to assist them with transport and we certainly pay koha if we attend any meetings on marae, but we don't pay people for their time that is involved in consulting with us.[182]

As its understanding has widened, DOC has endeavoured to consult with hapū as well as iwi, but the distinction is often blurred, the reasons for consultation unclear, and the terms of reference ill-defined. A distinction was implied, but the nature of this was not made clear when Mr Green acknowledged 'a relationship with Ngāti Hikairo and to a lesser degree Ngāti Kurauria and Ngāti Turangitukua' and indicated a willingness to engage with Ngāti Tamahaki, Ngāti Tamakana, Ngāti Uenuku, and 'additional hapu [that] are now advising manawhenua status in respect of Tongariro National Park'.[183]

All the parties involved – DOC, Ngāti Tūwharetoa, Ngāti Rangi, and each of the other hapū and iwi – have been on an important learning curve with regard to the

recognition of iwi and hapū. Rākeipoho Taiaroa, the secretary of the Tūwharetoa Māori Trust Board, provided important insights when he told the Tribunal, in the presence of iwi and hapū as well as DOC:

> The Trust Board plays an advocacy role on behalf of Ngāti Tūwharetoa with respect to dealing with DOC, although I should point out that this is not necessarily a role that the Trust Board willingly shoulders. To some extent, the Trust Board gets treated as a 'one stop shop' by the Crown and other agencies because it is easier from their point of view to deal with one agency, but the Trust Board has no desire to usurp the mana of the hapu and for their part the hapu are very clear that they wish to be directly involved on issues that affect their mana whenua.[184]

Mr Taiaroa expanded on the practical implications of this from a Ngāti Tūwharetoa vantage point in 2006:

> Accordingly, we ask DOC or any other agency that approaches us to liaise directly with the hapu with mana whenua with respect to any particular issue. By way of example, when DOC approached us regarding the draft National Park Management Plan, we advised DOC to liaise directly with Ngāti Hikairo as the hapu that holds ahi kaa in the National Park.[185]

Other claimant groups report more fraught relationships with DOC. Rangi Bristol, who presented evidence as a designated leader of Te Iwi o Uenuku, complained that, despite 22 years of effort on Ngāti Uenuku's part, their relationship with DOC was virtually non-existent. There had been one brief meeting, for half an hour, in their solicitor's office:

> The meeting only occurred after our solicitor lodged an Official Information Act request with the Tongariro Conservancy. We were entering into a relationship based upon a Memorandum of Understanding with the Whanganui Conservancy and wanted something similar to happen here.
>
> Paul Green told us that it was impossible. Apparently, the political climate was not right. He informed us that no Memorandums of Understanding were to be entered into. This was like a kick in the teeth to us.[186]

Soon after that meeting, Te Iwi o Uenuku was contacted by the Whanganui conservancy. The memorandum of understanding with DOC in Whanganui, previously 'written up and agreed to', would not be signed.[187] Letter after letter has been sent to DOC at Tūrangi seeking a meeting, but no meeting has been held.[188]

Mr Green, reporting more generally, clarified the position with respect to memoranda of understanding. As the Tongariro–Taupō conservator, he does not have the authority to enter into one:

> I have on occasion pointed out that we may be able to achieve the same results by working together informally at a local level without putting a formal MOU in place. That is quite different to saying that no more MOUs will be signed . . .[189]

We were given a number of explanations for these tensions beween DOC and mana whenua. Mr Bristol was the most succinct: 'I believe that DOC deal with people they get on with, or who are easier to deal with'.[190] Tyronne Smith from Ngāti Hikairo brings a wider perspective:

> At a local level, there are a lot of dedicated and committed staff and the relationship between the Department and Tangata Whenua is quite strong, but due to managers having to abide by national policies created by the Crown, that relationship quite often becomes very stretched and strained. The common perception is that the Department's primary role is to visitors into the National Parks, which increases pressures upon the environment, rather than the responsibility to protect native flora and fauna.

DOC has an important resource, available at national level, which can be used to enhance partnerships with tangata whenua at the Tongariro National Park level. Te Kete Taonga Whakakotahi, developed by kaupapa atawhai managers in consultation with tangata whenua, is a kit-set to assist those involved in building partnerships to achieve conservation outcomes.[191] Explaining it to the

Tribunal, Ms Johnston set out some of the parameters for partnerships:

> Partnerships may be site specific, issue specific, statutory or non-statutory. The Department and tangata whenua may choose to have either a partnership arrangement which is recorded in written form, or an unwritten partnership based on common understandings. Both types of arrangement are based on mutual good faith, co-operation and respect.[192]

It is evident, in this context, that consultation does not equate to joint decision-making or co-management. At the end of the consultation process, there is one agency responsible for the task of making the decisions. For recognition to become tangible, and relationships shaped, there need to be face-to-face meetings and joint action on the ground.

It is in this context that we add our own guidelines: where broader policies or wider management issues are to be addressed, DOC should work with iwi; where particular sites, particular taonga species, or particular restoration projects are involved, there is a need for a relationship with hapū as well as iwi.

Capacity needs to be built up within DOC and matching capacity is needed within iwi and hapū. There is, at present, a massive imbalance in the resources available to build relationships in a situation where both parties have very limited budgets. DOC allocates resources to fund the Crown side of the relationship but, despite the Treaty requirements of section 4 of the Conservation Act, allocates no budget to fund consultation or build up the capacity of the Treaty partner.[193] The Crown, through the Local Government Act 2002, requires district and regional councils to provide resources to assist iwi and hapū to build up the capacity needed to engage with local government.[194] The Crown, on its own part, fails to provide equivalent support for iwi and hapū in the conservation and national park contexts. In the absence of support for consultation and joint decision-making, section 4 of the Conservation Act is seriously constrained. We are entitled to see that as a reflection of the value the Crown places upon the relationship.

The toolbox Te Kete Taonga Whakakotahi is a work in progress that has the potential to be an important resource enabling DOC staff to build relationships with iwi and hapū in the Tongariro context. Its value is curtailed by the lack of clear policy and operational guidelines about whom to consult and to what end, and by the unwillingness of the Crown to address the resource issues that surround capacity building.

The evidence before us in the policy documents, in the submissions by Crown and claimant resource managers, and in the cross-examination of senior DOC managers is that the quality of consultation achieved to date does not allow iwi and hapū to provide substantial inputs into decision-making, let alone engage in shared decision-making. There is a reluctance on the part of DOC to share the power to make decisions with iwi and hapū in the Tongariro National Park context. DOC managers were careful to point out that management plans must be consistent with other legal and policy instruments.[195] These documents make it clear, DOC submitted, that the ultimate authority rests with the Minister of Conservation in some cases and with the director general of conservation in others. TNPMP does not provide for shared decision-making.

(2) *The benefits of economic enterprise*

The hapū and iwi who live under te kāhui maunga have a richness of cultural association with the park lands but a lack of land and resources which has resulted in poverty, unemployment, and out-migration.[196] The iwi o te kāhui maunga have been limited in their opportunities to participate in pastoral farming, horticulture, and agriculture. At the same time, they have strong cultural associations with the national park, and an involvement with tourism which predates the establishment of the park. We examine the extent to which the income generated by the park is shared between the Crown on the one hand, and iwi and hapū on the other.

Ngaiterangi Smallman from Ōtūkou Marae gave evidence on behalf of Ngāti Hikairo. He told the Tribunal how his people had exercised rangatiratanga over the resources of lake and forest when whanaunga from around the whole of Ngāti Tūwharetoa came to hunt and

fish and to share the local resources.[197] Those who came enjoyed the bounty and they recognised the mana whenua of Ngāti Hikairo.[198] Mr Smallman contrasted that with the poverty of Ngāti Hikairo today:

> The current situation for Ngāti Hikairo is bleak. Less than 1% of Ngāti Hikairo ki Tongariro continue to live within their rohe with a significantly larger number living in Turangi or other centres around the country.[199]

Ngāti Hikairo has limited land, insufficient to provide a livelihood for more than a handful of its people.[200] A large proportion of their traditional rohe is now national park. Unemployment, drug use, poor health, and low levels of education lead to disillusionment and an erosion of self-esteem.[201] Mr Smallman continued:

> The Department of Conservation is one of the largest tourism operators through its management of the Tongariro National Park. Where tupuna such as Wairehu Te Huri once played host to those visiting the maunga, Ngāti Hikairo Ki Tongariro is now being denied the right to develop its own property and resources to take advantage of the recreational use of its traditional whenua. The concessions process used by the Department of Conservation means that Ngāti Hikairo Ki Tongariro continues to be excluded.[202]

This appears to be inconsistent with the designation of the park as a world heritage site with cultural and natural values. Mr Smallman was adamant that the park's environment should include the social well-being of the tangata whenua with close cultural associations.

Other hapū have had parallel experiences. Graeme Everton, for example, gave evidence from a Ngāti Waewae vantage point. He noted that 'because so many of our lands in the Park area are lost, many of our people have left the region'.[203] He added that DOC was 'doing little or nothing to promote hapū business or commercial activity within the park'.[204] This, he said, was

> galling when you consider the sheer number and volume of concessions that [have] been granted to outsiders who are predominantly European and not from our rohe. It seems to me that when it comes to obtaining licences and concessions DOC sits back and deals with whoever appears before it. This tends to mean that they sit and just wait for those individuals or companies who might have a particular vision, the capital or financial support and business know-how to put together a proposal. In contrast I think DOC should be trying to promote hapū involvement in business in the park.[205]

Tongaririo National Park is a substantial generator of regional income in the central North Island. A number of estimates have been made for the economic returns from park activities. Ms Johnston, for example, provided evidence collected by the New Zealand Tourist Industry Institute that the ski fields alone provided 2,142 jobs and generated a regional output of $19 million and a ski field output of $26.5 million in the 2001 season.[206] The park is visited by up to a million people a year and generates considerable income for the national and regional economies. Whakapapa village for example, located on the slopes of Mount Ruapehu, is the focal point for a wide range of park activity and receives some 300,000 visitors per year.[207]

We listened carefully to the evidence of Ms Johnston and Mr Green to gain a DOC perspective on commercial concessions and, in particular, DOC's experience in working with iwi and hapū to enable them to participate more effectively in commercial operations related to Tongariro National Park. Ms Johnston, presenting from a head office perspective, did not address this. Mr Green's evidence was sparse in terms of information about DOC encouragement for iwi and hapū to take up commercial concessions in fields that are culturally significant or in places, such as the Tongariro alpine crossing, that have high cultural and spiritual significance. Mr Green acknowledged iwi discomfort with the present arrangements for concession activities, including guiding on the Tongariro alpine crossing.[208] The focus of his evidence was on the constraints posed by the legislation, the TTCMS and the TNPMP, and the practicalities of consultation with iwi and hapū to ensure that no new concessions had adverse cultural impacts. Nor was attention given to the manner in which DOC might encourage iwi to take an active role

in recreational guiding and the interpretation of cultural world heritage values.[209]

We have earlier highlighted the situation of Ngāti Hikairo and Ngāti Waewae as two examples of hapū who have a long association with the national park taonga and now live in straitened circumstances. The presence of poverty, unemployment, and outmigration from communities where Māori and DOC live and work in close proximity is not unique to the Tongariro–Taupō conservancy. In the 1980s Ngāti Kuri at Kaikoura in the South Island faced a similar configuration of problems. Māori had limited land resources, local fisheries were in decline, and jobs were lost in Kaikoura when the railway was corporatised and the public service restructured.[210]

In 1988 Ngāti Kuri, the local Ngāi Tahu hapū, turned to the resource they knew best, the ocean, and piloted a whale watching tourist venture. They purchased and refurbished the local railway station and began operation with four small vessels.[211] Business boomed, the enterprise expanded, larger boats were purchased and the local Kaikoura economy, Māori and Pākehā, became prosperous.[212] Importantly, from our perspective, Whale Watch Kaikoura and Ngāti Kuri, backed by the Ngāi Tahu Māori Trust Board, mounted a legal challenge that was to clarify the responsibilities of DOC towards iwi and hapū in the context of commercial tourism.

Matters came to a head in the early 1990s. DOC, exercising its responsibilities under the Marine Mammals Protection Act 1978, had issued 15 permits for the viewing of mammals in Kaikoura waters.[213] Two of these were for viewing sperm whales from boats. Ngāti Kuri, through Whale Watch Kaikoura, owned the first of these and had recently purchased Kaikoura Nature Tours from the other licensee.[214] Given the success of Whale Watch Kaikoura and Kaikoura Nature Tours, other operators were eager to obtain licences. DOC, keen to be fair and even handed, advertised for further applications.[215] Ngāi Tahu appealed against this move to the High Court in 1993 and the Court of Appeal in 1995.[216]

The specifics of the case are unique to Ngāti Kuri, Kaikoura, and whale-watching, and the Court of Appeal was at pains to point out that its judgment did not create a wider precedent. That said, the judgment teases out important issues. Four aspects of the finding are of special interest in the Tongariro National Park context:

- The director-general of conservation's claim that his obligations under section 4 of the Conservation Act 1987 had been met by consultation was rejected. Active protection of Māori interests requires more than this.
- Māori have had a long history of interest in tourism: guiding visitors to see the natural resources of the country has been a natural role for Māori.
- In the context of modern tourism, Ngāi Tahu had a right to participate in development. Such right, however, is not necessarily exclusive of other interests.
- Any preference given to Māori was essentially communal: the whale watching activities were essentially tribal, rather than those of individual Māori.[217]

The Court of Appeal found neither for Ngāi Tahu, nor for the director general of Conservation. Rather, the court provided guidelines for the manner in which the director general should approach such decisions, and referred the decision back to him:

> In the light of the positive duty there recognised, and of the statutory incorporation of the principles of the treaty in the conservation legislation, it is plain that on the particular facts of this case a reasonable treaty partner would not restrict consideration of Ngai Tahu interests to mere matters of procedure. The iwi are in a different position in substance and on the merits from other possible applicants for permits. Subject to the overriding conservation considerations that we have mentioned and to the quality of service offered, Ngai Tahu are entitled to a reasonable degree of preference.[218]

Iwi and hapū, in the Kaikoura Whale Watch context, were entitled to, and eventually received, a reasonable degree of preference.

We have found very little evidence, in the policy documents or in the DOC evidence, that a reasonable degree of preference has been contemplated in the Tongariro–Taupō context. The associations with conservation lands and resources of Tongariro National Park are substantial,

the involvement of Māori with tourism is longstanding, and the needs for enterprise opportunity and employment are great. Despite the promotion and recognition of Tongariro National Park as a world heritage site with cultural as well as natural importance, the Crown has not ensured that ngā iwi o te kāhui maunga are able to share and benefit from economic enterprises which operate within the park.

We have, in our analysis of TNPMP, noted that there are some essential services which may, in future, be contracted out.[219] Examples of services which may be of interest to iwi range from snow clearing, to the Eruption Detection System designed for the protection of the public.[220] Opportunities for tangata whenua to work on the mountains, maintaining and monitoring the natural environment, or ensuring the safety and well being of those who visit, would go some way to restoring customary relationships and, at the same time, provide them with income and sustenance from the national park.

We have also noted in TNPMP, a number of concessions, including domiciled guiding services and transport on the Bruce Road, which are contemplated as sole operator concessions. Some or all of these have the potential to be provided by iwi and hapū. Greater involvement of iwi in park services will have important benefits from a range of perspectives: it will enable tangata whenua to provide for and protect visitors (manaakitanga); it will give tangata whenua a greater role in the management and protection of their environment (rangatiratanga and kaitaikitanga); it will enable iwi and hapū to provide employment and economic opportunity for their own people (economic development).

We will return to this topic when we report on parallel experience in Canada and the allocation of concessions in Gwaii Haanas National Park.

(3) *Protecting ngā taonga o te kāhui maunga*

The failures of the Crown to protect ngā taonga o te kāhui maunga in the century between 1887 and 1987 have been traversed in chapter 11 and are set out in greater detail in the commissioned evidence of Dr Brad Coombes.[221] The Crown established the national park and delegated management to the park board without any requirement that Māori values would be taken into account and Māori taonga protected. Alongside that, the Crown failed to provide the board with an adequate budget between 1922 and 1952. In this situation, the efforts of successive boards to fund their work by leasing lands and offering permits for the construction of huts and lodges on the mountains have left a detrimental and lasting legacy.

Seeds of this legacy were laid in the 1920s when the Crown restructured the park board and opened the way to private interests willing to invest time and money in the park (see chapter 11, section 11.5.4(1)(ii)). Park land was leased to individuals and companies willing to build substantial accommodation for tourists at the base of the mountains, and permits were granted for sports clubs to erect huts high on the mountains.[222] The balance of recreational interest shifted from summer sports to winter sports when interest in skiing expanded in the 1920s and 1930s and the first ski tow was erected in 1938.

These structures, and the people they housed and provided recreational opportunity for, had environmental impacts. The magnitude of these impacts increased sharply in the decades after the Second World War and was not diminished by the passing of the National Parks Act 1952 and the reconfiguration of the Tongariro National Park Board (see chapter 11, section 11.5.4(1)(iii)). There was minimal planning, minimal consultation with iwi, and minimal consideration of environmental impacts, as more ski tows were built from 1946 onwards, and more and more ski club huts were authorised.[223] The numbers of visitors escalated, the number of beds and toilets expanded, and the environmental impacts of more visitors, poorly planned development, and primitive rubbish and sewerage systems became fully apparent by the end of the 1950s, and intensified in the 1960s, 1970s, and 1980s.

DOC, with primary responsibility for governance and management from 1987 onwards, was faced with major challenges. There was overdevelopment on the mountains, especially at Whakapapa, Iwikau, and Tūkino. And there was minimal protection for the tapu areas in the national park. We propose to consider these under three headings: the peaks of te kāhui maunga; Te Waiamoe, the crater

Ski huts at Iwikau village. A number of huts are tucked into the mountainside above the road leading to the village.

lake on Ruapehu; and the problems of rubbish and sewage. In each case we ask if the failures that were evident in 1987 have been remedied with the implementation of the Conservation Act.

(a) *The peaks of te kāhui maunga:* The mountains as a whole have a high level of importance for ngā iwi o te kāhui maunga.[224] This tapu, this level of spiritual importance, is most intense for the peaks of Tongariro, Ngāuruhoe, and Ruapehu. Iwi have resisted developments which encroach into this tapu area.

We have compared the evidence brought to the Tribunal by Mr Green from DOC, and by the claimants from the various iwi and hapū. There is general agreement that the peaks should be protected but important variations about the nature and extent of this protection.

Mr Green acknowledges that the mountain peaks are 'of great significance to iwi' and points to the two pristine

areas identified in the TNPMP (see map 12.2). He notes that the pristine areas hold a variety of values: they include the 'gift' areas which constitute the beginning of the park; they have unique scientific and landscape values; and there is a pervading sense of solitude and quietness.[225] Mr Green told the Tribunal that Māori and non-Māori values are complementary in terms of respect for the mountains.[226] He then continued:

> The desecration feared by many could occur through overuse, overt commercial exploitation, and ignorance of the values of these areas, represented through inappropriate infrastructure development or waste left on the mountains.[227]

There are three issues that remain to be addressed. First, the pristine areas, identified in the management plan and shown in map 12.2 do not coincide with the 'gift' area of 1887 which constituted the beginning of the park; nor the 2,300-metre contour which has been used by DOC as a surrogate for the high alpine areas to be protected. Secondly, there are a number of structures at Whakapapa and Tūroa, authorised by the park board prior to 1987 and by DOC since 1987, which intrude into the 'gift' area (map 12.3). Thirdly, there are problems of noise, disruption, and pollution which result from the increasing numbers of trampers, in particular those making the Tongariro alpine crossing.

Rākeipoho Taiaroa, secretary of the Tūwharetoa Māori Trust Board, carefully set out the Ngāti Tūwharetoa position with respect to ngā maunga tapu:

> Ngāti Tūwharetoa continue to treasure and respect our taonga. Our role as kaitiaki has not changed since 1887, and nor has our commitment to ensuring that the mana and mauri of our taonga is protected.[228]

Mr Taiaroa was able to prioritise with respect to these Ngāti Tūwharetoa values:

> It is Ngāti Tūwharetoa's understanding that at the very least – the absolute bare minimum – protecting the mana and tapu of the 'peaks' (defined in terms of the 'Gift' boundaries) would require that the peaks be totally excluded from development. In fact, logically to respect the tapu you would have to exclude people from going to this area altogether.[229]

He goes on to note that DOC has defined the peaks, or exclusion zone, as the area above the 2,300-metre contour and comments on DOC's current view that development should not take place above this contour:

> The peaks are not free from development, however, as the Crown allowed the skifield lifts on Whakapapa to extend above the 'exclusion zone.' The draft Management Plan records that through the 1980s and 1990s Ruapehu Alpine Lifts Limited made periodic requests to expand the upper limit of the ski area, with lifts to be installed as far as 2365 metres . . . Ngāti Tūwharetoa was not approached regarding these requests, and certainly would not have approved them.[230]

Mr Taiaroa attached a map, similar to map 12.3, that shows three of the Whakapapa ski lifts extending inside the 'gift' boundaries as far as the 2,300-metre contour.[231]

Ngāti Tūwharetoa are firm but not inflexible in their positioning. Mr Taiaroa identifies areas where they are in agreement with DOC, and areas where they are not in agreement. We summarise:

- Both are in agreement that concession applications involving infrastructure developments within the pristine areas or above 2,300 metres should be declined.[232]
- Both are in agreement that the ski areas should not be expanded further.[233]
- Ngāti Tūwharetoa and DOC are not, however, in agreement about the presence of club houses on the mountains.

Mr Taiaroa explained:

> The Trust Board position is that there should be no further development on the mountains full stop. Much of the development that has taken place has taken place in an era before there was an active relationship between Ngāti Tūwharetoa and the Crown. For the last 30 years or more the Trust Board

The Tūroa ski-field in operation. Tūroa was built in the 1970s to relieve some of the pressure on the Whakapapa ski-field.

has opposed the clubhouses being present on the mountains, not only because Tuwharetoa did not authorise the structures being built up there, but also because the establishment of permanent infrastructure on the maunga does not treat them with the respect that was envisaged in 1887. The clubs on the maunga do not cater for everyone, they are exclusive clubs. There are enough facilities outside the National Park that can accommodate for these sort of facilities. People can go to Turangi or National Park or Ohākune or elsewhere. Tūwharetoa would like to see the clubhouses removed.[234]

Other iwi and hapū have parallel concerns. Mr Smith from Ngāti Hikairo, for example, was very specific.[235] He was concerned that the accommodation concessions for 59 ski lodges on Ruapehu had been granted until 2053 and that many of these lodges had been enlarged or made

more substantial. He was also concerned, like Mr Taiaroa, that skiing infrastructure in the form of tows and lifts had been erected within the 'exclusion zone'. Mr Smith summed up the current situation from a Ngāti Hikairo perspective:

> We are now in the unenvious position of, do we continue to accept what has been done over the past fifty years disregard our values and just try to form a relationship with the operators of the ski-field. Even in recent times, regardless of today's thinking there are a lot more people now realising the intent of keeping the 'exclusion zone' free from development, the exclusion zone has all of a sudden become the 2300 metre above sea level contour. The intent of the exclusion zones was to protect the mauri of the mountains, exclude infrastructure and to uphold the mana of the people. That in effect, has now halved the original area that was set aside to be protected.[236]

Nyree Nikora, from Ngāti Hāua, was briefer but equally firm about the presence of structures on Mount Ruapehu:

> The development of infrastructure and visitor facilities has had no regard to the protection of the mana and mauri of the maunga or the cultural and environmental concerns of the Ngāti Haua Tribe. Permanent structures have been erected on Mount Ruapehu. In fact, the commercial operations on Mount Ruapehu today pose the greatest threat to our Tino Rangatiratanga.[237]

Mr Taiaroa, Mr Smith, and Che Wilson each addressed the existing challenges. Mount Ruapehu has intense spiritual importance for Ngāti Rangi: it has its own mana and it contains the burial place of their people at Te Waiamoe; it is a place of prayer and a source of life for Ngāti Rangi and their Whanganui awa whanaunga.[238] Mr Wilson told the Tribunal:

> Today, we continue to go up to the maunga for karakia and to seek guidance from the kaitiaki on and around the maunga. Nowadays, I will also take my nieces and nephews to certain parts of the maunga to trample their whenua, and so they know their maunga. It is important that our feet have a relationship with our maunga and not just our hearts. We need to walk the land otherwise how else can it be a tūrangawaewae.[239]

The Tūroa ski field, built on the slopes of Ruapehu in the 1970s, posed spiritual challenges and opportunities to relate to the maunga in new ways. Ngāti Rangi is working through the pressures that these create. Mr Wilson explained:

> There are a number of Ngāti Rangi that have not been up the mountain because it is too tapu for them. For some, the only time people go up there is for karakia. For others, they will enjoy what Ruapehu has to offer and also take into account certain ceremonies to protect themselves and acknowledge the mana and tapu of Ruapehu.[240]

New relationships are being worked out between Ngāti Rangi and Ruapehu Alpine Lifts (RAL), and between Ngāti Rangi and the maunga. Members of Ngāti Rangi are now being employed by RAL and their kaumātua have an active role in spiritual protection for the mountain and for those who work on or visit the mountain. Mr Wilson shared an example:

> There was a new chairlift (High Flier Chair) opened to the east of the Giant. We went up there for a blessing and that is when Uncle Matt told me pointing up to the Mangaehuehu Glacier that he wāhi tapu tēnā and I now know why. It was a place that our old people used to go to, it is part of 'Te Ara ki Paretetaitonga'.[241]

Rangihopuata Rapana from Te Iwi o Uenuku shared the same dilemma at a very personal level: would he work on the mountain or stay away from the mountain? Mr Rapana described it in these words:

> I was taught that our tūpuna maunga is tapu tapu, and we should not go up there. I have always believed that. And it is because of this that my tūpuna maunga lives within me.
>
> But I have also found that I am always looked after when I have gone up there to work. It is as if I am being called up

Chronology of the Ruapehu Ski field Licences

1954 to 1977: Licences to operate the Whakapapa ski field on Ruapehu are issued to various entites, including Happy Ski Valley Limited and Stars Corporation. By 1989, these are held by RAL.

27 March 1987 to 10 October 1988: Initial claims relating to the Tongariro National Park are lodged with the Waitangi Tribunal (Wai 37, Wai 48, Wa i61, Wai 73, Wai 81, and Wai 221).

1989: RAL proposes further development of the Whakapapa skifield and applies for a licence which would give a longer tenure than previously authorised. At that time, section 14 of the Conservation Act 1987 made provision for 30 years.

30 December 1989: The regional conservator wrote a 'letter of understanding' to RAL confirming that 'the Licensor is prepared to amend the Licence by increasing the term of the Licence to the maximum allowed under any review of the Conservation Act 1987 that might be approved by 31 December 1990'.

1 January 1990: A deed of licence is signed, replacing existing licences and granting RAL a new licence for 15 years (to 31 December 2004), with the option of one right of renewal for a further 15 years.

10 April 1990: The Conservation Law Reform Act 1990 is passed. Section 8(1) amends section 14(1)(b) of the Conservation Act 1987 to allow leases and licences to be issued for a period not exceeding 60 years.

1 December 1990: A deed amending licence is signed which extends the ski field licence for RAL for 30 years with one right of renewal (extended to 31 December 2019, with a right of renewal to 31 December 2049), in the face of at least six claims already lodged by ngā iwi o te kāhui maunga with the Waitangi Tribunal.

13 March 1996: The previous provisions for leases and licences are expanded by the Conservation Amendment Act 1996. Concessions can be granted for 30 years or, where there are exceptional circumstances, for a term not exceeding 60 years.

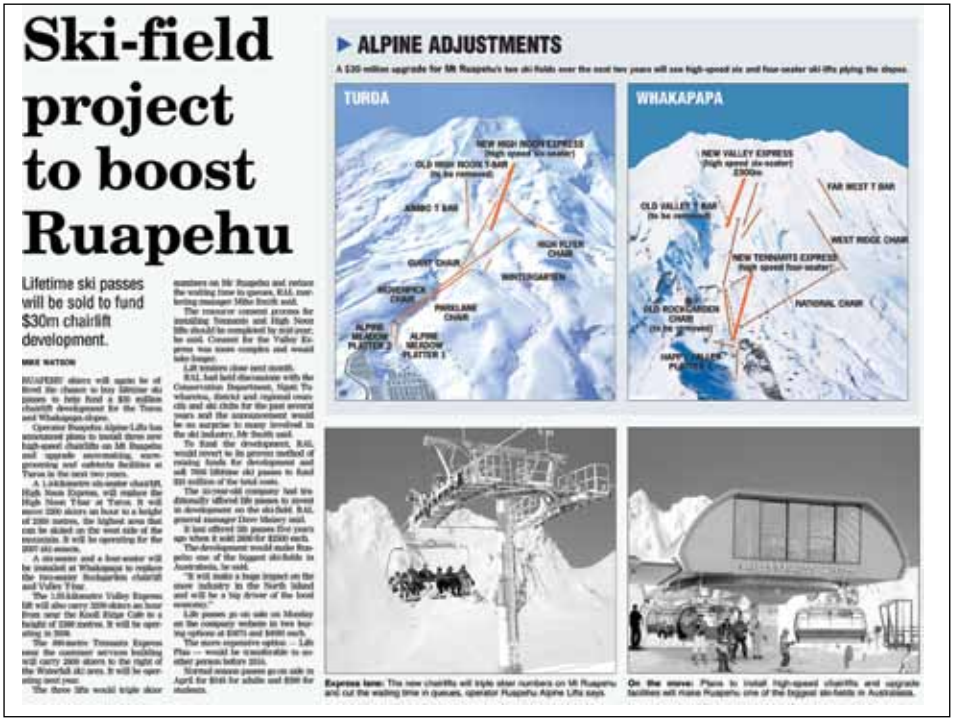
there by my tūpuna to keep an eye on what is happening up there. We are also here as caretakers of our maunga.[242]

Mr Rapana began work on the ski field in 1998 and has continued since: 'my tūpuna keep calling me back up there' he says. There is rubbish on the mountain which needs to be monitored and dealt with. Uenuku and its mokopuna are caretakers of their tūpuna maunga.[243]

Nicholas Bayley and Mark Derby, who were commissioned by the Waitangi Tribunal, presented evidence during the second week of hearings (13 to 17 March 2006), which suggested that there was now a close consultative relationship between DOC, RAL, and iwi.[244] The authors were very explicit about the upper limit of the ski field, noting that:

> requests by Ruapehu Alpine Lifts Ltd to expand the upper limit of the ski field have been rejected by DOC, which has kept the limit below 2300 metres. Not to do so would 'result in a significant alteration of the natural character of the landscape, will degrade the cultural values for which this site is managed and will have significant adverse effect on mountain users.'[245]

In his evidence, Mr Taiaroa pointed to the good working relationships between Ngāti Tūwharetoa and RAL and



Ski-field project to boost Ruapehu

Lifetime ski passes will be sold to fund $30m chairlift development.

MIKE WATSON

ALPINE ADJUSTMENTS

TUROA

WHAKAPAPA

'Ski-field Project to Boost Ruapehu.' On 10 March 2006, the *Dominion Post* announced that there was to be an upgrade of ski lifts on Ruapehu's Whakapapa and Turoa skifields, to be partly funded by the buying of lifetime ski passes.

gave examples of positive consultation outcomes.[246] He did, however, add a caution: 'We have a good relationship with them. Having said that, we have not had any input into the RAL concessions at all (this is a DOC issue).'[247]

On 10 March 2006 (just prior to the second week of hearings), the *Dominion Post* published an article on plans, about to be implemented, to create new and larger ski lifts at Tūroa and Whakapapa. T-bars would be replaced at Tūroa by a 1.4 kilometre six-seater chairlift and two smaller chairlifts at Whakapapa would be replaced by a new Valley Express ski lift. The item was very specific:

> The 1.05 kilometre Valley Express lift will also carry 3200 skiers an hour from near the Knoll Ridge Cafe to a height of 2300 metres. It will be operating in 2008.
>
> The 900-metre Tennants Express near the customer services building will carry 2800 skiers to the right of the Waterfall ski area. It will be operating next year.[248]

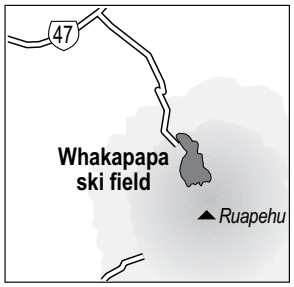
The developments publicised by RAL were to cost $30 million and would be funded, in part, by the sale of life passes for the ski field facilities: life passes were to go on sale on 13 March and would cost either $3,875 or $4,995 each.[249]

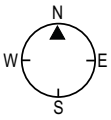
Mr Bailey, one of the joint authors of the scoping report, was questioned in some detail during week two and the Crown subsequently made available the contractual arrangements between DOC and RAL.[250]

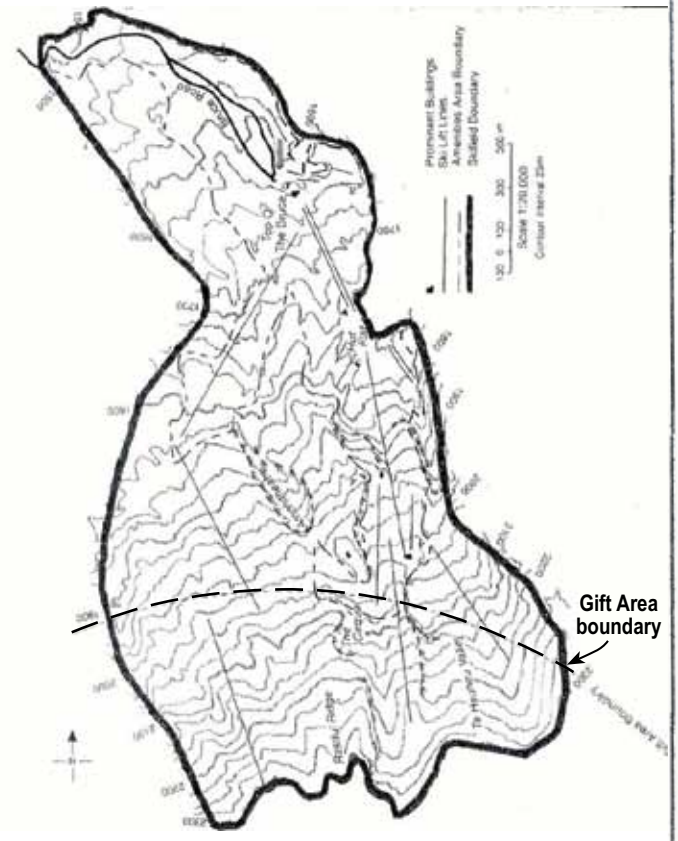
We have scrutinised the park management plan, the contractual arrangements between DOC and RAL, and the $30 million development proposals described in the *Dominion Post* article of March 2006. We reach a number of conclusions about the nature and scale of skifield operations.

First, DOC has, in the period between 1987 and 2007, progressively increased the security of tenure for the Whakapapa ski field licences. The licence with RAL in

Waitangi Tribunal, Nov2012, *NHarris*







Skifield Licence

Name: Ruapehu Alpine Lifts Ltd

Term:

Expires:

Area: 500 Ha

Legal Description: Whakapapa Ski Area. Mt Ruapehu

Cons Unit Name: Tongariro National Park

Cons Unit No: 60011

Local Authority: Ruapehu District Council

Land District: Wellington

NZMS 260: T20

Scale: 1:20,000

Aerial photo:

Number:
Date:

File Ref: COC 012

Department of Conservation
Te Papa Atawhai

Map 12.4: Map of Whakapapa ski field attached to the ski field licence, 1 January 1990

January 1990 was for 15 years with the right of renewal for a further 15 years.[251] This was expanded to 30 years with one right of renewal for 30 years in December 1990.[252] This takes it through to 2049. DOC gave RAL the security of tenure it sought but this action removed the specifics of ski field development from DOC management control.

Second, the ski fields make important contributions to Crown revenue. The licence fees for the ski fields have two components and are reviewed every three years. In 1994, for example, the park received a minimum winter fee of $150,000 for the Whakapapa ski field and additional fees, based on gross revenue, of 2.5 per cent up to $9,500, 5 per cent from $9,500 to $11,800, and 7.5 per cent over $11,800. The summer fee was 2.5 per cent of gross summer revenue.[253] Third, the contractual arrangements between DOC and RAL permit ski field infrastructure to intrude into the 'gift area'. Map 12.4 shows the extent of the ski field licence as attached to schedule B of the licence for Whakapapa ski field dated 1 January 1990.[254] The ski field is bounded, on its upper margin, not by the 'Gift Area Boundary' but by the 2,300-metre contour. Four ski lifts extended into the 'Gift' area in January 1990 when the map was prepared and the contract signed.

The proposed expansions to ski field capacity, described in the *Dominion Post* article, are within the ski field licence as described in the park management plan and the contracts between DOC and RAL. None of the new chair lifts would extend above the 2,300-metre contour. We do not have details of the nature or the scale of the infrastructure development which will be located at the 2,300-metre terminus of the Valley Express high speed chairlift. However, all of this implies new structures, some of which will intrude into the gift area. The claimants are unable to resist or negotiate developments which intrude into the enclave between the gift area and the 2,300-metre contour. On the evidence before us, DOC through its strategy documents, its management plans, and its contractual arrangements with RAL, has excluded the claimant iwi from participation in decision-making.

We have seen no evidence that DOC consulted iwi before it granted the ski field concessions and licences to RAL. Given that six Treaty claims had been filed in the two years before RAL proposed further development and longer tenure, failure in consult in such an environment was especially prejudicial to ngā iwi o te kāhui maunga.

Therefore, with the granting of the 30 year contract in January 1990 and the 60 year contract in December 1990 with RAL, DOC has not only closed the door to meaningful consultation, it has also prevented involvement of ngā iwi o te kāhui maunga in the major commercial activity on Ruapehu before 2049.

(b) *Te Waiamoe, the Ruapehu crater lake:* Ruapehu is an active volcano and Te Waiamoe, the crater lake, is reshaped each time there is an eruption. It is a place of great spiritual importance for the kaitiaki iwi and hapū, in particular Ngāti Rangi. Te Waiamoe, the sleeping water, is the physical and spiritual resting place for Ngāti Rangi tūpuna.[255]

Paul Green, a DOC conservator, set the context when he pointed to an important round of consultation, research, and decision-making which took place in the late 1990s and early 2000s:

> Following the 1995 eruptions of Mt Ruapehu scientists identified a build up of a tephra barrier at the outlet of the Crater Lake and a potentially large lahar that could cause damage to infrastructure such as the Main Trunk Railway line and the State Highway bridge at Tangiwai.[256]

The 1995 eruptions left a wall of ash deposits (the tephra barrier), and the crater lake began to fill slowly in the years following. There was potential for major loss of life and damage to property if the lake was filled, the rim breached, and a lahar similar to the Tangiwai event in 1953 happened at some time between 2000 and 2006.[257] There was considerable public interest and anxiety, and a wide range of responses were suggested ranging from early warning systems to high impact interventions by bulldozers, excavators, sluices or explosives.

DOC, as the government agency with primary responsibility for managing the crater lake, convened a multi-party working group which included iwi membership alongside government and local government membership. The agencies with most at stake provided funding for DOC to

Te Waiamoe, the crater lake on Mt Ruapehu. The lake is of particular significance to Ngāti Rangi because it is a physical and spiritual resting place for their tūpuna.

prepare a comprehensive report which included an assessment of environmental effects and set out the risks and the likely environmental impacts of a range of strategies. Preparation of the report included extensive consultation with iwi including hui-a-iwi, meetings with Ngāti Rangi and Tūwharetoa Māori Trust Boards, and site visits with kaumātua.[258] The options weighed up included option 1, which was to allow the lahar to happen naturally, with early warning and contingency plans in place. Options 4 and 5 were to excavate a trench and drain the crater lake: there were light and heavy bulldozer options, excavator options, aerial delivery of high explosives, sluicing, or 100 people digging by hand and working 60 hour weeks.[259]

The environmental effects assessment document, which was prepared in DOC's Tūrangi office under the leadership of Mr Green, is a carefully prepared and well-balanced resource. It provides the context of the task; it sets out natural, scientific, landscape, and cultural values; it describes the lahar hazard and identifies collapse scenarios; and it assesses the risks and impacts of a probable lahar, all in preparation for an assessment of six options. The options are then carefully evaluated. A number of agencies which participated in the working group, Transit New Zealand and the Ruapehu District Council among them, favoured high-impact engineering interventions. At this point in the document, DOC introduced its statutory conservation mandate and gave priority to the options that would not involve engineering interventions at the crater.

The environmental effects assessment and DOC's recommendations were controversial and strongly challenged by individuals and agencies that favoured direct intervention. Public submissions were invited, received, and placed in front of the Minister of Conservation. Dr Bayley and Mr Derby recorded the outcome:

> The Minister of Conservation decided finally not to intervene at the crater lake, instead opting for the construction of an early warning system and an embankment near the park boundary to prevent a lahar spilling over onto State Highway One and the Waikato catchment. Both these steps have been implemented and in April 2002 the Bureau of the World Heritage Committee 'welcomed decisions made by the Minister and hoped that all parties would accept them.'[260]

There are no explicit Treaty of Waitangi considerations in the public documentation that prefaced the decision or in the recommendation which DOC brought to the Minister of Conservation.[261] Mr Green told the Tribunal that iwi views, and the special relationship between tangata whenua and the peaks of Ruapehu, were an important part of DOC's decision-making.[262]

Iwi were not completely unanimous about the preferred options. Dr Bayley and Mr Derby interviewed Ngāti Tamakana who had travelled to Wellington in support of the Ruapehu District Council proposal to drain the water out of the crater lake. Counsel for Tamakana added: 'we were the only iwi group that took this position.'[263]

There were, however, substantial affirmations for the DOC processes by Ngāti Rangi, Ngāti Hikairo, and Ngāti Tūwharetoa.

Keith Wood, a founding member of the Ngāti Rangi Trust, was directly involved:

> As a trustee I worked as part of a Department of Conservation multi-disciplinary team that explored and developed options for mitigating [Ruapehu] Crater Lake lahar-risk. Our team developed non-interventionist alternatives to the earlier proposed engineering solutions at the Crater Lake. These alternative mitigation measures were developed to accommodate both tāngata whenua values (to recognise and provide for Ruapehu, as tūpuna maunga of Ngāti Rangi) and conservation values.[264]

Mr Smith, the secretary of the Ngāti Hikairo ki Tongariro Trust, also affirmed the way in which DOC went about this task:

> It was great that a mutual outcome was found between Ngāti Hikairo and the Department of Conservation with regard to the forthcoming Ruapehu Crater lake lahar. I believe that the non-intervention of the natural process of the lahar was not solely because of the values of Tangata Whenua but because any remedial works would have been a short term measure, concern for the safety of any workers that may have worked at the Crater rim, and because of the Dual status of the Tongariro National Park that was granted by the World Heritage Committee.[265]

Mr Smith summed up:

> The decision not to intervene at the Crater Rim and to construct the Early Warning System and the resolution to strengthen the infrastructure at the foot of Ruapehu is but one example where most parties involved were able to reach a mutual decision. For Tūwharetoa, the name Te Wai a Moe (Ruapehu Crater Lake) is in reference to the lake sleeping, but knowing that it will awaken.[266]

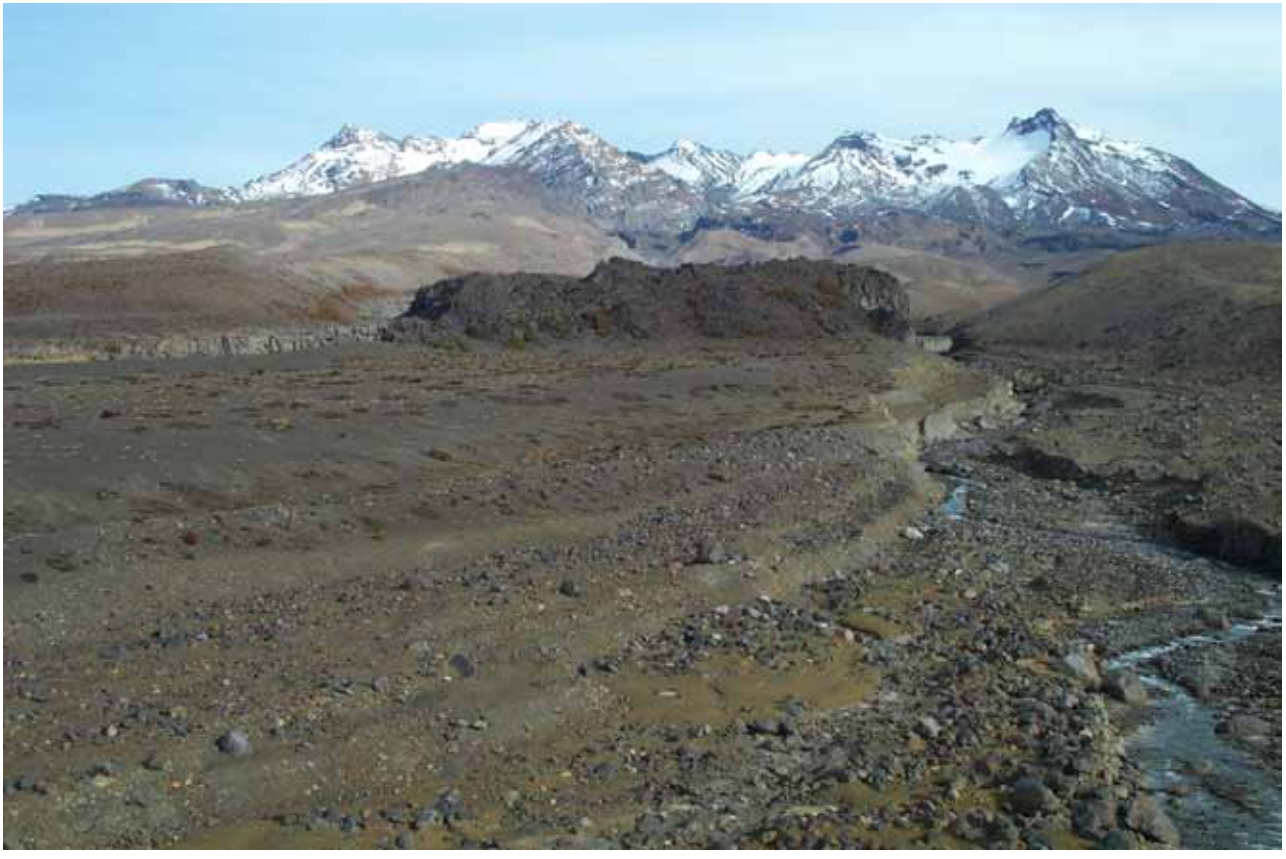
Napa Ōtimi, for the Tūwharetoa Māori Trust Board, made a parallel affirmation in an interview reported by Dr Bayley and Mr Derby:

> The lahar issue has gone well. Ngāti Rangi and Tūwharetoa said the crater lake should not be touched. We regard it as a traditional burial ground. Nature should be left to take its course. DOC supported us and have maintained that position.[267]

DOC, with the full support of the Minister of Conservation, has weathered the storm of public controversy and played a sustained, informed, and substantial role in the active protection of Te Waiamoe. And the larger

◄ Whangaehu warning bells. The bells are part of an early-warning system in the event of a lahar occurring on Mount Ruapehu.

▼ Lahar path in the Tūkino area



Lahar warning tower on the Whangaehu River, seen with the river at normal levels (left) and during a flood (right). The system was erected following the 1953 Tangiwai railway disaster and was designed to gauge the flow depth of water and send a warning 15 minutes before a lahar reached the railway bridge 11 kilometres down river.

public has not been disadvantaged: the anticipated lahar event took place on 18 March 2007, the early warning system worked as planned, the bund diverted the water and mud away from the Tongariro catchment, the lahar flowed safely down the Whangaehu valley and underneath the redesigned Tangiwai bridge.[268]

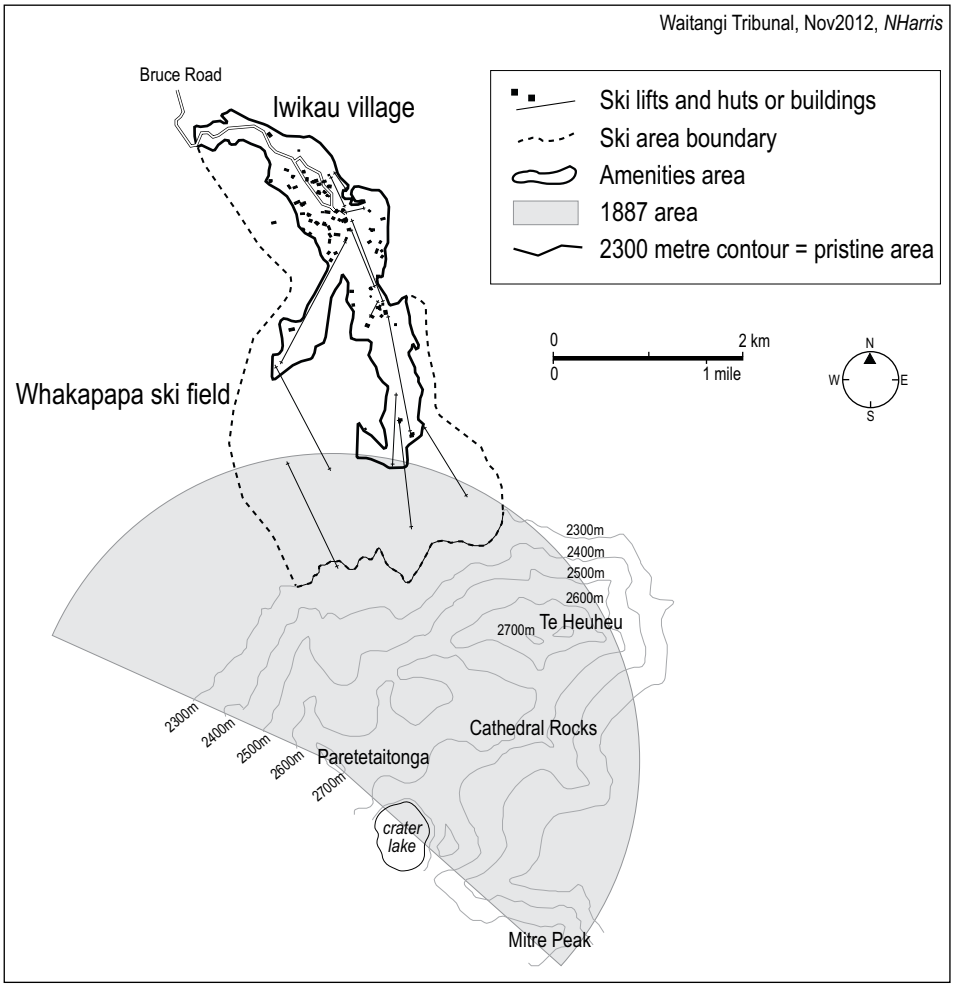
The protection of Te Waiamoe is an example of joint endeavour, involving careful consultation and a mutual encounter between different world views, at its best. We note that the task was specific and bounded, tangata whenua interests were clearly identified, Ngāti Rangi expertise was recognised and funded, and there was a convergence between conservation values and kaitiaki responsibilities. There was active protection.

But was there co-management? We have reflected carefully on the dynamic of decisionmaking. At the end of the process, it was the DOC officials who weighed up the evidence, and prepared the advice for for the Minister of Conservation to make the decision. Iwi were consulted, iwi perspectives were taken into account, and the decision made was a positive one from the perspective of iwi. But it was not a joint recommendation and not joint management.

(c) *Rubbish and sewage – protecting ngā maunga from pollution:* Problems of pollution have caused a high level of offence to the claimant iwi; in particular, the rubbish and erosion caused by excessive numbers of trampers on the Tongariro alpine crossing; the physical impacts and the pollution caused by ski field facilities at Whakapapa, Tūkino, and Tūroa; and the numbers of people in overnight accommodation at Iwikau.

Since 1987, DOC has expended considerable time and resources in addressing these problems. Mr Green, the current conservator, has been employed by the Tongariro National Park and by DOC since 1974 and has wide international experience.[269] He responded to questioning by making some international comparisons: 'I know of no protected area in the world that has the quality of methods of dealing with sewage as what exists in Tongariro.'[270] He went on to explain that the standards put in place by DOC at Tongariro National Park are considerably higher that those required under the RMA resource consent process. Aspects of Mr Green's evidence about pollution and the efforts of DOC to protect the mountain environment were strongly challenged by claimants.

The greatest concentration of ski field infrastructure,



Map 12.5: Iwikau Village and Whakapapa ski field

commercial and administrative buildings, and club lodges are that associated with the Whakapapa ski field and located within Iwikau Village (map 12.5). DOC, following the lead of the Tongariro National Park Board, opted not to remove ski and tramping lodges from the mountain. Instead, it addressed the pollution created by pit toilets and septic tanks by organising a comprehensive sewerage and collection system.

Mr Green summarised a large amount of sustained effort at Iwikau in one succinct paragraph:

For many years iwi and others expressed concern at the impacts of septic tank soakage on the Whakapapa ski field together with the direct discharge of treatment waste into the Waipuna Stream at Whakapapa Village. After a great deal of technical debate and cost, a proposal was agreed to pipe all effluent from the Whakapapa Ski Field to Whakapapa Village and to upgrade the treatment plant at that site and to then discharge treated effluent to ground soakage.[271]

Mr Green continued:

> This scheme was completed in 2004 at a cost in excess of $4m – a considerable sum for a small community. There was extensive consultation with iwi and although the project received no clear endorsement from tangata whenua, neither am I aware of any opposition to it. Recognition of World Heritage values, and iwi cultural concerns in particular, played a major part in this decision.[272]

The negotiations for the Whakapapa and Iwikau scheme were complex, involving iwi, RAL, the Ruapehu Mountain Clubs Association, the Manawatu–Wanganui Regional Council (Horizons), and the Ruapehu District Council.[273] DOC convened an inter-agency working group; organised research; consulted with iwi; consulted with other parties; received and evaluated public submissions. Broad support was provided by iwi in 1995 to proceed with a comprehensive scheme to collect sewage from the ski field and the mountain village and pipe it to a land-based disposal system outside the park.[274] DOC costed this proposal in 1998, but the figure of $5.75 million was more than the major parties were willing to pay. The 'out-of-park' scheme went into abeyance.[275]

Nevertheless, the problem was urgent, so DOC then developed an 'in-park' scheme involving land disposal of the effluent at Iwikau.[276] It included extensive waste conveyance pipelines, a treatment site located in the Whakapapa amenity area, a sludge plant, ultraviolet treatment of effluent, and disposal of residual liquid to a soakage area located on the site of a former airstrip.[277] Planning was completed, financial arrangements were brokered, and resource consent applications were made to Horizons. Public hearings were held and discharge consents were granted in September 2002. With planning and design already complete, work proceeded rapidly and the scheme was completed in 2004.[278]

Iwi and hapū support which had been gained for the 'out-of-park' proposal was muted and uneven when it became an 'in-park' proposal. Ngāti Rangi pointed to problems at Tūroa but were silent about Iwikau. Ngāti Tūwharetoa gave priority to the removal of lodges from the mountain. Nyree Nikora expressed the disquiet of Ngāti Hāua:

> Permanent structures have been erected on Mount Ruapehu. In fact, the commercial operations on Ruapehu today pose the greatest threat to our Tino Rangatiratanga. Pollution including the inappropriate and inadequate disposal of sewerage and wastewater remain culturally insensitive to Ngāti Haua Tribes. Especially the construction of the Iwikau Sewerage Treatment Plant.[279]

The sewage system at Whakapapa and Iwikau appeared to be adequate at the time of our hearings. The system at Tūroa is smaller and more rudimentary: toilet waste from the Tūroa ski field is transported to a storage facility, held for a time, then taken by truck to the Ōhakune township plant for treatment.[280] Claimants have expressed concerns about the nature of the system and the breakdowns which occur.

Che Wilson and Rangihopuata Rapana, both from Ngāti Rangi, have seen the problems at first hand. Both described them to the Tribunal. Mr Wilson was more measured:

> The issue of sewage treatment at Tūroa Ski Fields is a concern. It seems from the Ohākune Sewage Resource Consent Hearings in March 2005, which I participated in, that the Tūroa effluent that is brought down from the maunga has not been properly monitored in the past and therefore, excess volumes than that are permitted in the consent could possibly be dumped into the Ohākune Sewage Pond and therefore into the Mangawhero river.[281]

Mr Wilson is critical that there has been a lack of adequate monitoring by the regional and district councils:

> The sewage trucks just drop it off wherever and whenever and I still don't understand why between DOC, RDC, Horizons, Turoa and us, we can't find a system that is better than the one we've got. The only real excuse offered has been the lack of money.[282]

Mr Wilson has highlighted the problems at the foot of the mountain. Mr Rapana's evidence suggests that all is not well at Tūroa on the mountain:

Trampers on the Tongariro alpine crossing. The large numbers of people who walk the crossing each year and leave their rubbish and waste behind are having a detrimental effect on the alpine environment.

It wasn't until about 2001/2002 when the pipes were made to pipe the tūtae down into a shed.

So it is now trucked out off the maunga. But I have seen where the pipes leak and where the trucks leak on the way down too. The disgusting behaviour just continues. The shed just hides the mess.[283]

Mr Green acknowledges that there have been problems with the Tūroa system.[284]

DOC clearly understands the offense caused by human waste and has taken steps to remedy the problems caused by pit toilets and septic tanks in other areas of the park. Mr Green told the Tribunal that DOC has worked towards ensuring that all toilets within the park are closed vault and that waste is regularly removed by helicopter.[285]

We turn now to the pressure of numbers of trampers and tourists crossing the slopes of Mount Tongariro. Mr Smith set the context:

The ever increasing number of people tramping the Tongariro Crossing is acknowledged by Researchers as well as the Department of Conservation. They also appear to acknowledge that they are having a huge impact on the environment, yet the Department continually grants transport concessions to more and more operators which increases the pressures upon the Park and it cannot cope.[286]

Shelley Christensen, who has had extensive experience of working with and observing trampers on the mountain, is very explicit about the environmental problems on the Tongariro alpine crossing:

They have 2000 people a day in the middle of summer, and up there it can be a mess. There is one set of toilets every six hours, so you know what is happening in between them. We have been up to Ketetahi and pulled out bags full of rubbish and beer bottles.[287]

DOC has noted the pressures on the alpine crossing, but we received no evidence of adequate measures to address the problem. Mr Smith explained:

> The Department has approved new 'guiding' applications on Tongariro by omitting the 'Tongariro Crossing' name and then using the 'Northern Circuit' and the 'Round the Mountain' track names on the new concessions as a means of by-passing the 'Tongariro Crossing' name.[288]

Dr Brad Coombes, in his evidence to the Tribunal, commented upon the manner in which the park management plan addresses the very specific problems of the Tongariro alpine crossing.[289] He stated, 'DOC only offers the old prescription of monitoring with as yet undisclosed approaches to volume management to be imposed later'.[290] According to the policies in the TNPMP on managing visitor numbers on the crossing:

1. The department will monitor visitor numbers and the social, cultural, and environmental impacts of those visitors on the Tongariro Crossing.
2. The department will identify the carrying capacity of the Tongariro Crossing . . .
3. If limits on visitor numbers become necessary to achieve the objectives identified above, the department will impose controls to manage visitor flows, visitor impacts, and/or visitor numbers.[291]

The management plan for 2006 to 2016 does not call for immediate or decisive action to control visitor impacts.[292]

It clearly follows that these are ongoing issues to be resolved. To delay or to not address these issues would not only cause health and safety issues for the visiting public but also jeopardise the sacredness of the mountains, and thereby breach the principle of active protection for ngā iwi o te kāhui maunga.

(d) *Exercising kaitiakitanga within the park – environmental taonga:* We have previously explored access to environmental taonga. The focus now is on the exercise of kaitiakitanga over the environmental taonga, the wāhi tapu, and the cultural properties within the Tongariro–Taupō conservancy and the Tongariro National Park.

Mr Green described current DOC practice with regards to plants and plant materials, including tōtara wood:

> The Conservancy has had a positive relationship with iwi in respect to the use of cultural materials – in particular tōtara, flax, kiwi feathers and medicinal plants. I know of no requests for medicinal plants that have been declined and the Department has taken every opportunity to provide totara that has become available as the result of windfalls close to road ends or the Main Trunk railway line. The Department has in the past consulted with the Tuwharetoa Maori Trust Board or Ngāti Rangi who make the decisions as to the appropriateness of specific requests.[293]

DOC's practice was similar for wildlife. 'Where staff in the field come across dead birds, or hunters bring birds into the Department', explained Mr Green, 'feathers are made available to kaumātua'.[294]

The relationships between DOC and iwi have been more creative in areas of the Tongariro–Taupō conservancy outside of the Tongariro National Park. Keith Wood, Colin Richards, and Paul Green gave matching evidence about the Karioi Rāhui ecological restoration project.

Keith Wood from Ngāti Rangi is a tribal resource manager who works closely with regional and district councils, with resource consent applicants, and with DOC, to explain and assert Ngāti Rangi values and management priorities. He described the dynamic of kaitiakitanga from a Ngāti Rangi vantage point:

> Our values emphasise the interconnectedness of the natural world and people. Any adverse effects to the natural world will affect all our mokopuna. We are seeking to extend the environmental values base on which sustainable 'use' decisions are made. This is for the benefit of all our mokopuna, of Ngati Rangi and our wider community.[295]

One of the concerns of Ngāti Rangi has been to protect and restore indigenous flora and fauna in the face of depredation by possums and stoats. The late Colin Richards,

A possum. Much of the devastation to flora and fauna in the park is carried out by possums.

Possum damage to a tree in Tongariro National Park

in evidence prepared for the Tribunal, described how the relationship with DOC came about. Ngāti Rangi, concerned about the desecration of the Rotokura lakes on the southern slopes of Ruapehu, approached DOC. There was 'korero about a kawanata agreement between the iwi and DOC' in 1995 and 1996, and new development when one of the workers found a dead bat. This turned out to be a very rare short tailed bat and it opened up questions about other species in the Karioi and Rangataua area.[296]

A tribal hui-a-tau agreed to create a kawanata, in the form of the Karioi rāhui, to protect the spiritual and cultural values of the taonga. Keith Wood described the support given by DOC to advance this initiative:

> I also worked as part of a Department of Conservation multi-disciplinary team that developed a series of pest management regimes and ecological recovery programmes for a Ngāti Rangi-Department of Conservation joint management ecological restoration project. This project is known as the Karioi Rāhui Ecological Restoration Project. It was developed to specifically recognise and provide for our wāhi tapu and taonga in part of the Rangataua Forest.[297]

Mr Green described the same experience of working jointly:

> A management agreement with Ngāti Rangi has been developed for the Karioi Rahui – adjacent to Tongariro National Park at Rangataua. . . . The agreement came about following concern at the Department's use of 1080 to control possums in the Karioi Rahui. Following this concern a great deal of consultation occurred including field trips and

A metal band on a tree in the vicinity of the Rotokura lakes to protect the tree from possum damage

> inspections . . . Agreement was reached with Ngāti Rangi to restore both 'biodiversity' and 'mauri' in the forest.[298]

Mr Green explained further that DOC provided resources for pest management, and shared decision-making with iwi under the Karioi Rāhui. Tangata whenua were employed and education materials, including a 'hands on conservation' project at Ruapehu College, were developed in partnership.

There was wide support for the project but both Mr Green and Mr Richards expressed caution. Mr Green saw the lack of capacity of Ngāti Rangi as a constraint while Mr Richards pointed to constant changes in the guidelines and attributed these to misunderstandings about tikanga and lack of funding.

From Mr Richards' evidence it seems that DOC staff and iwi members working together on the ground often reached agreement, only to find that support was lacking at the senior management and government level:

> The government were using it as a key model at the Kawanata level and still do today as a primary example of cooperative management. However, we have always refuted this as Ngāti Rangi at a governance level, because we weren't able to fully participate as we were not fully resourced to do that.[299]

◄◄ A sign for the Whakapapa community trapping project. This venture between local schools, accommodation management, and the Department of Conservation is helping to protect kiwi and blue duck in the Tongariro National Park. it hopes to foster a greater interest in conservation among children and the local community.

◄ A trap box for rats and stoats on a Whakapapa walking track

▼ A North Island brown kiwi being released into Tongariro Forest, 1999. The survival of brown kiwi has increased since 'Operation Nest Egg', a programme to collect and hatch kiwi eggs.

Mr Green also reported on a kiwi restoration project at Tongariro Forest, adjacent to the national park. Mr Green made two brief comments: firstly, that DOC made every effort to involve Ngāti Hikairo and Ngāti Tūwharetoa kaumātua in the project; and, secondly, that juvenile kiwi have been removed to Maungatautari with the support and endorsement of both iwi.[300]

Mr Smith was much more expansive from a Ngāti Hikairo perspective. He described in detail the traditional uses of birds, the decline of bird numbers in the face of predators and habitat loss, and the extinguishment of customary rights.[301] Mr Smith then told the Tribunal about progress towards a partnership relationship with DOC, to be supported by a memorandum of understanding.[302] The draft memorandum of understanding recognised the responsibilities of each party: DOC has a statutory role in relation to protected species and Ngāti Hikairo has a role and responsibilities as kaitiaki; that the two parties would have equal status in decision-making and would cooperate in the implementation of the memorandum of understanding. It addresses such things as mechanisms for cooperation, the review of the agreement, consultation, and dispute resolution. The two parties would have worked jointly on the next management plan for Kiwi in Tongariro Forest (2005 to 2010).[303]

But this was not to be. Mr Smith continues:

> After the first draft was put together, Ngāti Hikairo were then advised that no formal agreements would be committed to unless they were checked off by the Department of Conservation's legal team and that it would probably not progress until after the Waitangi Tribunal hearings had completed.[304]

The Tongariro Forest Kiwi Protection Project has continued. Ngāti Hikairo are involved, but not as joint decision makers.[305] Kaumātua are called on to bless the kiwi breeding stock at the point where they are removed or returned to Tongariro Forest but DOC are firmly in control. The current dynamic of the project is described on the DOC website as teamwork between Massey University, the National Kiwi Recovery Trust, Warrenheip, Ngāti Hikairo, the Bank of New Zealand Kiwi Save the Kiwi Trust, the Tongariro Natural History Society, and DOC. DOC stresses that all of the groups concerned are working together cooperatively.[306]

The draft memorandum of understanding between DOC and Ngāti Hikairo offered the opportunity for progress at the conservancy level. The nature of the partnership relationship is clearly spelt out. We reflect on what followed. We have no problem with the referral of the draft to head office and the DOC legal advisers: all parties stand to benefit from such scrutiny. What follows, however, does no credit to DOC. If there was a partnership relationship, and the legal team disagreed with the specifics of the memorandum of understanding, the onus was on DOC to come back to Ngāti Hikairo and Ngāti Tūwharetoa to continue the dialogue. This was not done and DOC has proceeded with the project as if it was a DOC project carried out with the cooperation of multiple partners. This shows a failure to recognise the mana of its Ngāti Hikairo partner and a reluctance to continue the hard work of building a partnership relationship.

We turn now to wāhi tapu.

(e) *Exercising kaitiakitanga within the park – wāhi tapu:* Some wāhi tapu are highly visible, others are out of the limelight and the public gaze. We begin with Te Waiamoe, the crater lake close to the summit of Ruapehu. The peaks Ruapehu, Murimotu, and Paretetaitonga and the crater lake, Te Waiamoe, stand in close spiritual relationship. Te Waiamoe is a special part of this configuration. Che Wilson explains:

> Ruapehu is and always has been the focal point of Ngāti Rangi and it is of immense spiritual significance to our people. This is due to its own mana and our people's connection to it through: it being the burial place of our people at Te Waiā-Moe; a place of prayer (tuahu); and a source of life for us as Ngāti Rangi and the greater Whanganui confederation.[307]

Keith Wood and Mr Wilson each expand on the importance of Te Waiamoe. Mr Wood links it to an even larger spiritual configuration when he explains that the

mountain peaks, 'Te Rerenga Wairua', are the spiritual stepping stones for their departed spirits on the journey back to Hawaiiki.[308] Mr Wilson links it to more worldly uses, downslope, when he explains how the acidic waters (wai tōtā) are the sweat gland of Ruapehu, made evident in the Whangaehu River. These waters have a special role for cleansing and healing.[309] Mr Wood, in later evidence, expressed a sense of belonging to these ancestral waters and the manner in which this belonging interfaced with kaitiakitanga:

> We consider ourselves to be an integral part of the environment as whanaunga (relations). This connection is also the basis of our relationship of kaitiakitanga. It is from this relationship that our role as kaitiaki, as guardians and caregivers of our awa, comes from.[310]

There are other wāhi tapu, apart from the peaks and Te Waiamoe, which are of special importance for iwi. The most detailed and explicit evidence was that given by Ngāti Rangi in relation to tribal areas down-river from Te Waiamoe, the sacred staging point for kōiwi tūpuna.[311] Paul Green was explicit in his evidence on the pristine areas and the crater lake, and respectfully silent about wāhi tapu.

The decisions made by Ngāti Rangi to provide more specific evidence were not made lightly. Mr Wood explained that to visit these places 'is the most significant form of customary use'.[312] He told the Tribunal that the things relayed to them, 'in the language of our tupuna', were tapu and sacred:

> [We] are all now responsible for honouring that kōrero and protecting it for the spirit of our mountains, lands and waterways. You now share in our responsibility.[313]

The links to these places are physical, spiritual, and cultural, and are part of the essence of iwi, hapū, and whānau identity. Mr Wood expands:

> The ancient karakia, whakapapa connections and kōrero of our tūpuna have been shared with the Tribunal at Raketapaumu and form the foundations of our existence as Ngāti Rangi and our relationships with our mountains, land and rivers. We are part of them, they are part of us. This connection can never be broken and must be maintained for the sustainability of our environment.[314]

Mr Wilson describes the importance of Te Ara ki Paretetaitonga:

> Te-Wai-ā-Moe is a resting place for the people of Ngāti Rangi. Our river relations also had a special place down river. Te Ara ki Paretetaitonga is the path our old people took to Te-Wai-ā-Moe. This followed the Whangaehu and then crossed over to the round bush. From the round bush they went up the Maungaehuehu glacier to Te-Wai-ā-Moe . . . This journey would take two days.[315]

These are places which are also visited today for karakia, and for guidance from the spiritual kaitiaki.[316] The relationships are kept alive and passed on. We have already noted, for example, that Mr Wilson takes his nieces and nephews to spiritual places important for Ngāti Rangi.[317]

Mr Wood gave evidence about a further set of wāhi tapu, beside and close to the Whangaehu River. These are the sacred waters where his people have practiced their rituals.[318] The waters are used for healing and restoration, and the areas around the rivers are still used 'to bury the pito and whenua of our people'.[319]

There were some places, more obvious and visible, which were named in the evidence as wāhi tapu: Paretetaitonga; Murimotu; the Maungaehuehu Glacier; Ngarima Tamaka or 'Round Bush', the camp site which was an important staging point; Te Onetapu, the desert.[320] There are more places which have not been named or identified. All are part of the journey up, the spiritual preparation, the rest and the nourishment, the places for sharing specific spiritual knowledge.[321]

Are ngā iwi o te kāhui maunga able to exercise kaitiakitanga over their taonga? DOC is clearly aware of the value which Māori place on indigenous flora and fauna. It works to protect these taonga for Māori and make cultural materials available for customary purposes. DOC allows

kaumātua to exercise kaitiakitanga in the allocation of these materials.

The kaitiaki relationships with wāhi tapu have been continued by iwi, hapū and whānau in the decades since 1987, largely outside of the DOC purview. The evidence presented to the Tribunal has brought these relationships into a more public arena. The nature of wāhi tapu and their role in the wider set of relationships has been made explicit to the point where wāhi tapu, as a generic set, need to be recognised and provided for in plans and policy documents. The way in which this is done and the manner in which the location and the knowledge about individual sites is protected will require careful and sensitive cooperation between DOC and iwi.

We comment, in this context, on the customary evidence provided to the Tribunal by Ngāti Rangi. This is knowledge which they hold, for themselves and for their downriver whanaunga who make the same physical and spiritual journeys to Te Waiamoe. The Tribunal acknowledges the role which their evidence plays in the larger scheme of these hearings: Ngāti Rangi, by sharing things about their own wāhi tapu in more detail, have taken the pressure off other iwi to share information about their wāhi tapu in comparable detail.

We have examined the manner in which DOC has responded to the challenge posed by lahar outflows from Te Waiamoe. Park users, downriver communities, and transport infrastructure are protected. DOC and their iwi partners are to be commended for the outcome in terms of active protection. The management strategy is clearly set out and has been tested out by the response to a recent lahar outflow. Important working experience has been gained, and the opportunity exists for a greater level of co-management where the values, skills and knowledge of both parties are used in a mutually supportive manner.

DOC has widened the concept of partnership to embrace community and commercial organisations. The Tongariro Kiwi Sanctuary, discussed above, is one such example. There is no evidence on the DOC website item for this project that Ngāti Hikairo have a kaitiakitanga role in the management of kiwi in Tongariro, or that DOC and Ngāti Hikairo work jointly to co-convene the other parties in the venture. The draft memorandum of understanding has not been progressed and the partnership with Ngāti Hikairo is not in position.

DOC has acknowledged kaitiakitanga in its documentation. In some instances, such as the Karioi Rāhui ecological restoration project and the management of the lahar hazard at Ruapehu, DOC has worked with iwi in a mutually beneficial manner. Progress has been made, up to a point, but there are few instances over the 20-year period where DOC has made substantial provision for iwi and hapū to exercise kaitiakitanga. We reflect on a spectrum of four situations brought to us in the evidence discussed above:

- DOC has recognised the importance of cultural materials such as kiwi feathers, rongoā resources, and tōtara logs, and has given kaumātua substantial responsibility for the allocation of these materials. More work may be needed to secure and formalise these arrangements but kaitiakitanga is clearly recognised and effectively exercised.
- DOC and Ngāti Rangi have worked together to establish the Karioi Rāhui ecological restoration project. Both parties brought knowledge and resources to the task and DOC provided funding to increase the capacity of Ngāti Rangi to be fully involved. DOC points to this as an example of cooperative management. Ngāti Rangi does not accept that it provides opportunity for co-governance. Kaitiakitanga is exercised but the exercise of kaitiakitanga is constrained by the lack of a formal agreement.
- The relationship between DOC and Ngāti Rangi within the larger configuration of the lahar working group was a very positive one. Ngāti Rangi was able to make significant inputs into the common task and was resourced to do this. Ngāti Rangi values were fully taken into account in the final decision, made by the Minister of Conservation. But was Ngāti Rangi kaitiakitanga recognised and provided for? DOC, aware that the decision would be unpopular decided to shield Māori from an adverse public reaction. What could have been a joint recommendation to the Minister was not a joint recommendation.

Kaitikaitanga was recognised but was not exercised at the point where the crucial advice was given and the decision was made.

- The Tongariro Forest kiwi protection project, similarly, began with DOC recognising the kaitiaki role of Ngāti Hikairo. The possibility was for DOC and Ngāti Hikairo to enter into a memorandum of understanding. But this was not to be. No memorandum has been signed and the DOC website presents the kiwi restoration project as an initiative of DOC supported by multiple partners, including Ngāto Hikairo.[322] There is limited recognition of kaitiakitanga when kaumātua are called on to bless kiwi being moved from site to site, but there is no provision for the exercise of kaitiakitanga at the management and governance levels.

Experience to date in relation to kaitiakitanga has been variable. DOC staff have developed a greater awareness of Māori values and aspirations but are prevented by legislation from allowing Māori to make decisions within the conservation estate. Moreover, the Crown's policies of not providing funds for consultation or capacity building mean that iwi and DOC are unable to participate on equal terms, and gain the full benefits of a mutual relationship. Current policies and management practice allow limited opportunities for ngā iwi o te kāhui maunga to exercise kaitiakitanga over their environmental taonga and their wāhi tapu within the Tongariro National Park. We will return to this topic when we consider rangatiratanga.

(f) *Protecting lands and waterways:* Ngāti Hikairo have been concerned about the negative effects of 1080 (sodium fluoroacetate) use, the inaccuracy of aerial drops, the impacts of 1080 leachate into the ground on which rongoa grows, and the lack of consultation about where and when aerial drops will take place.[323] Shelley Christensen recounted incidents where 1080 pellets were dropped around Ngāti Hikairo homes, paths, waterways, and urupa.[324] Mr Smith recognised the need to protect biodiversity but expressed misgivings about the applications and urged a much more co-ordinated inter-agency approach to the task.[325]

Paul Green, giving evidence for DOC, said that little of the 1080 work within the Tongariro National Park was funded by DOC and added that DOC has targeted aerial 1080 operations to protect the Tongariro Kiwi Sanctuary at the Karioi Rāhui and the Ketetahi tōtara forests.[326] He added that most 1080 programmes are part of Animal Health Board initiatives to eliminate tuberculosis from dairy herds.[327] Mr Green referred to evidence that 1080 aerial operations, across the country, have produced good conservation benefits. Without aerial application, he suggested, less conservation land would be preserved from pests.[328] Alternative methods, such as bait stations, would be less effective.[329]

We are aware that levels of understanding and methods of application of 1080 have, in the past, been found wanting. The problem, as we see it, is not just in past practices but in the failure of DOC and other agencies to engage with iwi and hapū such as Ngāti Hikairo at the point where 1080 use is contemplated and planned. The situation, as described by claimants and Crown in 2007 was less than satisfactory.

Since our hearings in 2007, important moves have been made by Crown agencies. The Environmental Risk Management Authority (ERMA) has completed a substantial reassessment of 1080 use for pest control and provided detailed guidelines for DOC, regional councils, and the Animal Health Board.[330] All persons exercising powers under the Hazardous Substances and New Organisms Act 1996 are required to take into account the principles of the Treaty. The ERMA decision underlined the importance of the principle of partnership and agreed with iwi and Māori submissions that iwi be involved early on in the decision-making process.[331] Central and local government agencies have been asked to review their policies and provisions with regard to 1080 use to ensure that there is engagement with iwi at a strategic decision-making level.[332] ERMA has followed these recommendations with *Communications Guideline for Aerial 1080 Operations*.[333] These guidelines have a strong Treaty foundation, recognise the 'significant and unique relationship between iwi/Maori and publically administered lands', and emphasise the importance of early engagement and good consultation with Māori.[334]

(4) *DOC–iwi relationships and Treaty principles*

Consultation has been used by DOC as a substitute for shared decision-making but the processes of consultation between 1987 and 2007 have been uneven, partial, and incomplete. The manner in which DOC has consulted has fallen short of the principle of partnership. The root cause of the problem lies at the policy level: current policies do not make provision for partnerships in management and governance, and the resources needed for iwi and hapū to participate on an equitable basis are not provided by the Crown.

Ngā iwi o te kāhui maunga have not been given a share in the revenue from leases, licences, and concessions in Tongariro National Park. Nor have they been given a reasonable degree of preference in the tendering process for these commercial enterprises. The Crown has not recognised the principle of mutual benefit. National park iwi have been marginalised from past economic opportunities and are not provided for in present policies but must not be marginalised from future opportunities. There are some circumstances where they could operate concessions and provide services alongside other entrepreneurs. There are other circumstances where they are uniquely positioned to provide sole operator services. It is entirely reasonable for ngā iwi o te kāhui maunga to expect to gain livelihoods and operate commercial ventures that serve the needs of those who use and enjoy the park.

The level of active protection provided for the peaks of te kāhui maunga is, at this point, uneven. The park's management plans make provision for pristine zones but do not control or preclude public access to the peaks. DOC has made its own assessment of what, on balance, is appropriate and the decisions have not been made in a partnership manner. Māori spiritual and cultural values, and public recreational values are given unequal weight, and it is Māori who are disadvantaged. There is an article 2 breach and an article 3 breach: Māori taonga are not protected and Māori world views are not given the same respect as the world views of other citizens.[335]

The slopes of Tongariro maunga, traversed by the Tongariro alpine crossing, have not been adequately protected. The environmental problems caused by excessive use have been evident for at least three decades, and cannot be addressed by monitoring alone. The Crown's failure to control summer visitor numbers on the alpine crossing continues to be a breach of active protection. Active protection of the park landscape, traversed by the crossing, is not being achieved by the provisions of TNPMP and the current DOC administration.

The presence of recreational lodges on Ruapehu maunga, and the increased security of tenure given by the Crown since 1996, have triggered three Treaty breaches:

1. National policies designed to remove non-essential accommodation from national parks, and Tongariro–Taupō conservancy policies to encourage the provision of visitor facilities and accommodation in the towns adjacent to the park have been overridden. TNPMP contains clear policies to minimise buildings within the amenities zones and to encourage their location outside the park. But these policies are constrained by the 60 year leases. The extension of the leases and the failure to remove sources of pollution are clear breaches of the Crown's duty of active protection of Māori taonga.
2. Most importantly, these were intentional moves, made after the Conservation Act 1987 took effect, to provide greater security of tenure for club lodges.[336] The breach of active protection is thus compounded by a breach of good faith.
3. These actions have pre-empted the opportunities for ngā iwi o te kāhui maunga to participate with DOC in decision-making about the future of club lodges, and thus exercise kaitiakitanga over their landscape and their environmental taonga. There are thus breaches of partnership.

The intrusion of ski field infrastructure, including ski tows, into the 'Gift' Area, and the exclusion of iwi from decision-making processes about ski field licences, are Treaty breaches. Iwi have not been involved in decisions, and the Crown has failed to actively protect ngā maunga tapu. These breaches compound the Treaty breaches established in the chapters on the 'gift', and on the national park to 1987.

DOC, in its day-to-day operations, has provided opportunities for iwi and hapū to exercise kaitiakitanga over customary materials but no opportunities for the exercise of kaitiakitanga over wāhi tapu on conservation lands in the national park. DOC has gained insights into kaitiakitanga but has, in many instances, endeavoured to take that role itself. There are important instances of knowledge sharing and joint endeavour, but limited opportunities for iwi and hapū to exercise kaitiakitanga over their taonga.

(a) *Exercising rangatiratanga?:* We move towards an answer to the larger question: has the Crown now provided opportunity for ngā iwi o te kāhui maunga to exercise rangatiratanga over their taonga? In particular, does DOC now recognise the rangatiratanga of ngā iwi o te kāhui maunga? We preface this discussion with a link to the Treaty principles set out in chapter 1 and a consideration of the Treaty responsibilities of DOC.

DOC, as the government agency with responsibility for Tongariro National Park, has twofold responsibilities. It has kāwanatanga responsibilities which embrace the population at large, and it has more specific responsibilities to its Treaty partner, in this context ngā iwi o te kāhui maunga, to recognise their rangatiratanga over their possessions and their taonga. Recognition of rangatiratanga includes provision for iwi and hapū to exercise authority, kaitiakitanga and manaakitanga within the bounds of the national park.

Following the Treaty jurisprudence summarised briefly in chapter 1, we recognise that neither kāwanatanga nor rangatiratanga is absolute and unqualified. The genius of the Treaty is that each is in relationship with the other: there are balances to be struck and priorities to be acknowledged. Each situation to be addressed is different, and the circumstances of time and place should determine the weighting to be given to rangatiratanga and kāwanatanga.

We find it helpful to consider the range of situations which apply in the Tongariro National Park context and suggest the priorities that may be applicable in each case. In table 19 we identify some situations where the responsibility of DOC to exercise kāwanatanga outweighs any preferences of iwi, some situations where the rangatiratanga responsibilities of iwi and hapū should have priority, and a larger spectrum of situations where some form of partnership relationship is appropriate. In general terms, in a true Treaty partnership, we would expect rangatiratanga and kāwanatanga to coexist and work together.

With these things in mind we draw together our conclusions relating to rangatiratanga by building on the material in each of the preceding sections.

In terms of consultation with iwi and hapū, DOC has not demonstrated a sufficient awareness of the requirements of good consultation in the national park context. It has shown a willingness to consult where operational priorities and world views converge but a reluctance to continue in conversation when views diverge. Neither DOC nor any other Crown agency has provided the financial resources and information needed to enable ngā iwi o te kāhui maunga to engage with their Treaty partner on an even basis. Consultation is not well resourced, and consultation on its own is not a sufficient way to recognise rangatiratanga.

The Tongariro Forest kiwi protection project provides an example of project where rangatiratanga and kaitiakitanga can both be provided for. Kiwi protection is high priotity for tangata whenua and for the nation, and currently receives support from a number of agencies. A partnership arrangement, with governance and management shared between the Crown and Ngāti Hikairo, would meet the needs of both. DOC and iwi could work together to chair the meetings of the various partners and to present a project of national importance to the nation and to the international community.

Ngā iwi o te kāhui maunga have not been able to exercise their rangatiratanga by participating in economic activities based on the national park. Despite their close attachment to these mountains, their knowledge of these special places, their tradition of manaakitanga, and their long history of playing host to those who visit, ngā iwi o te kāhui maunga are marginal players in a tourist industry which brings substantial benefits to the regional and national economy. We have found little evidence that the claimant iwi are able to exercise their rangatiratanga within this important and dynamic component of

Kāwanatanga has priority	Kāwanatanga and rangatiratanga work in partnership	Rangatiratanga has priority
The park is open to New Zealanders to use and enjoy	Visitors are to be welcomed and kept safe	Wāhi tapu areas in the park are to be protected
The park is open to international visitors to use and enjoy	Taonga species are to be protected and invasive species are to be managed	The peaks of te kāhui maunga (in particular the 'Gift' area) are to be protected
	Hazards associated with Te Waiamoe are to be managed	
	Recreational lodges on the slopes of Ruapehu Maunga are to be reviewed	
	Recreational use of the slopes of te kāhui maunga (such as the Tongariro Alpine Crossing) are to be managed	
	Iwi participation in economic activities in the park	

Priorities for the exercise of kāwanatanga and rangatiratanga within the Tongariro National Park

the national park economy. We will return to this when we consider Canadian experience and the Gwaii Haanas National Park (see section 12.6.2).

There are opportunities for joint endeavour and co-management in Te Waiamoe lahar context. We have, in the discussion of Māori participation in the economic benefits of the park, pointed to ways in which iwi and hapū might have a role in monitoring and management of the crater lake (see section 12.5.3(2)). There are kaitiakitanga, manaakitanga, and employment related reasons why a closer working relationship between Ngāti Rangi, DOC, and the Institute of Geological and Nuclear Sciences would be beneficial in this context. Rangatiratanga and kāwanatanga can be meshed in together with the parties making distinctive contributions.

Rangatiratanga involves tribal control over tribal taonga. It also involves active protection of these taonga. The Crown has taken control of these taonga and continues to exercise its control through DOC. The failures of DOC to adequately protect the peaks of te kāhui maunga, and to deal with the encroachment of skifield infrastructure, commercial buildings, and club lodges in sensitive areas, undermine the rangatiratanga of the Treaty partner. Foremost in the failures of active protection are the problems relating to rubbish and erosion caused by trampers on the Tongariro alpine crossing, and the offence caused by sewage escaping downslope from the Whakapapa, Tūkino, and Tūroa ski fields and villages. At every place where the environment is degraded, the rangatiratanga of the claimant iwi is affronted.

Kaitiakitanga is an important dimension of rangatiratanga. In its policy documents and its face-to-face contacts with iwi and hapū, DOC has shown a growing awareness of kaitiakitanga and the role of tangata whenua in the protection of taonga species and wāhi tapu. There is also a growing awareness within DOC staff of Māori values and aspirations in relation to the environment. This awareness has not, in the national park context, been matched by the creation of new opportunities for ngā iwi o te kāhui maunga to exercise their kaitiakitanga role and to make decisions about the taonga within the conservation estate. Having regard to the provisions of the National Parks Act 1980, few DOC responsibilities have been delegated and very few situations have been created where DOC and iwi make decisions jointly. There is minimal opportunity for iwi and hapū to exercise kaitiakitanga within the park.

It is clear to us, in terms of things happening on the ground during the two decades between 1987 and 2007, that ngā iwi o te kāhui maunga have not been able to exercise their rangatiratanga within the national park or on conservation lands within the wider conservancy. DOC has not recognised and promoted 'the exercise by iwi of tino rangatiratanga over their land and resources and taonga of significance to them'.

(b) *Bringing together policy and action on the ground:* Why has DOC fallen short in Treaty terms? Why has the Crown failed to act as we would expect a reasonable Treaty partner to act?

We have scrutinised the actions of DOC staff on the ground and we have probed the great volume of documentation brought to us by DOC witnesses with management and policy responsibilities. We have also observed a growing level of respect between DOC staff and iwi, whether they are engaging with kaumātua, tribal environmental managers, or ordinary tribal members. The fruits of the kaupapa atawhai programmes, established in the 1990s, are evident in the growth in cultural understanding among DOC staff. There is goodwill on both sides and a growth in DOC's capacity to work with iwi and hapū on a day-to-day level.

It is clear to us that there are problems embedded within the mountain of documentation presented to us. The policy documents prioritise the kāwanatanga of the Crown and find little place for the rangatiratanga of iwi. Neither in the legislation, nor in the general policy documents, nor in the management plan for the Tongariro National Park, has the Crown made clear provision for ngā iwi o te kāhui maunga to exercise rangatiratanga over their taonga.

There is one 'almost exception' which turns out to be 'not an exception'. It is to be found within the TTCMS and the events surrounding its preparation.

The claim brought by the late Sir Hepi Te Heuheu and the Tūwharetoa Māori Trust Board in 1995 went to the nub of the issue. As discussed earlier (see section 12.5.2(2)), the major outcome was *He Kaupapa Rangatira* and an expanded and revised TTCMS. The common ground between the Crown and iwi has, however, been undermined by the way the principle of tino rangatiratanga is positioned and qualified within the larger document. We note the clear and unequivocal objective:

> To recognise and actively promote the exercise by iwi of tino rangatiratanga over their land and resources and taonga of significance to them.[337]

However, the objective which followed immediately lessened the otherwise favourable impact:

> To identify with iwi opportunities for them to exercise an effective degree of control over traditional resources and taonga that are administered by the department, where this is not inconsistent with the department's legislation.

We notice that the Treaty principles and Te Anga Tikanga Tuku Iho (the cultural framework), however, are positioned deep within very large documents, some distance removed from the key management principles which give direction to DOC staff.[338] The work done by the four plus four working group has become an important resource for the kaupapa Māori strand of DOC's work but it is largely detached from those portions of the TTCMS and the TNPMP that provide policy direction.

Taken as a set, the documents which guide DOC action on the ground are inconsistent with Treaty principles. They do not provide effective recognition of te tino rangatiratanga o ngā iwi o te kāhui maunga. Nor do they recognise the article 3 rights of the claimant iwi. Māori too are citizens. From a partnership perspective, Māori world views and environmental values deserve the same status and respect as the world views and the environmental values of the majority culture.

The conflicts in conservation values which are present in the policy documents are paralleled by conflicts and ambiguities within the organisational culture of DOC. Two world views and two conceptualisations of conservation co-exist in an uneasy relationship. One, inherited from the Yellowstone and Royal Forest and Bird traditions, gives priority to the intrinsic value of species and has a

strong preservation ethos. The other, resourced by tribal wānanga, by kaumātua, and by Māori and indigenous scholars, recognises mauri and kaitiaki and has a strong 'conservation for use' ethos.[339]

In situations where the two value systems support a common outcome, Māori values are supported and affirmed by DOC. This has been especially evident in the habitat restoration programmes for Karioi Forest and the non intervention strategies for the Ruapehu lahars. It is only partly evident when DOC deals with the disposal of human waste. It is not evident when DOC is asked to designate wāhi tapu as no-go areas.

The core Treaty breach is the failure of the Crown to recognise the rangatiratanga of ngā iwi o te kāhui maunga. Powers to care for wāhi tapu have not been delegated, and management or governance partnerships have not been created. The consequence of this is a lack of opportunity for tangata whenua to exercise kaitiakitanga and manaakitanga within Tongariro National Park. Both of these, the breach and the consequence, reflect the organisational culture as well as the legislative and policy frameworks. DOC, at this point in time and under the current frameworks, lacks the organisational confidence to participate in equitable and robust partnerships with ngā iwi o te kāhui maunga.

The relationship which promised so much when the mountains were gifted in 1887, and when the Conservation Act was passed in 1987, has delivered little in terms of the dimensions that are central to tribal identity. There are few provisions in the policy documents, the conservation strategies, the TNPMP, or the day to day management practices which enables ngā iwi and hapū o te kāhui maunga to exercise rangatiratanga over their lands, their resources, and their taonga.

Our analysis complete, we turn to examine if there is better way forward for the Tongariro National Park.

12.6 Towards a New Relationship

The mountains that make up the Tongariro National Park are a taonga of great importance for the claimants and the nation, and have World Heritage status. Horonuku Te Heuheu's vision was that te kāhui maunga be held jointly by the Crown and iwi.

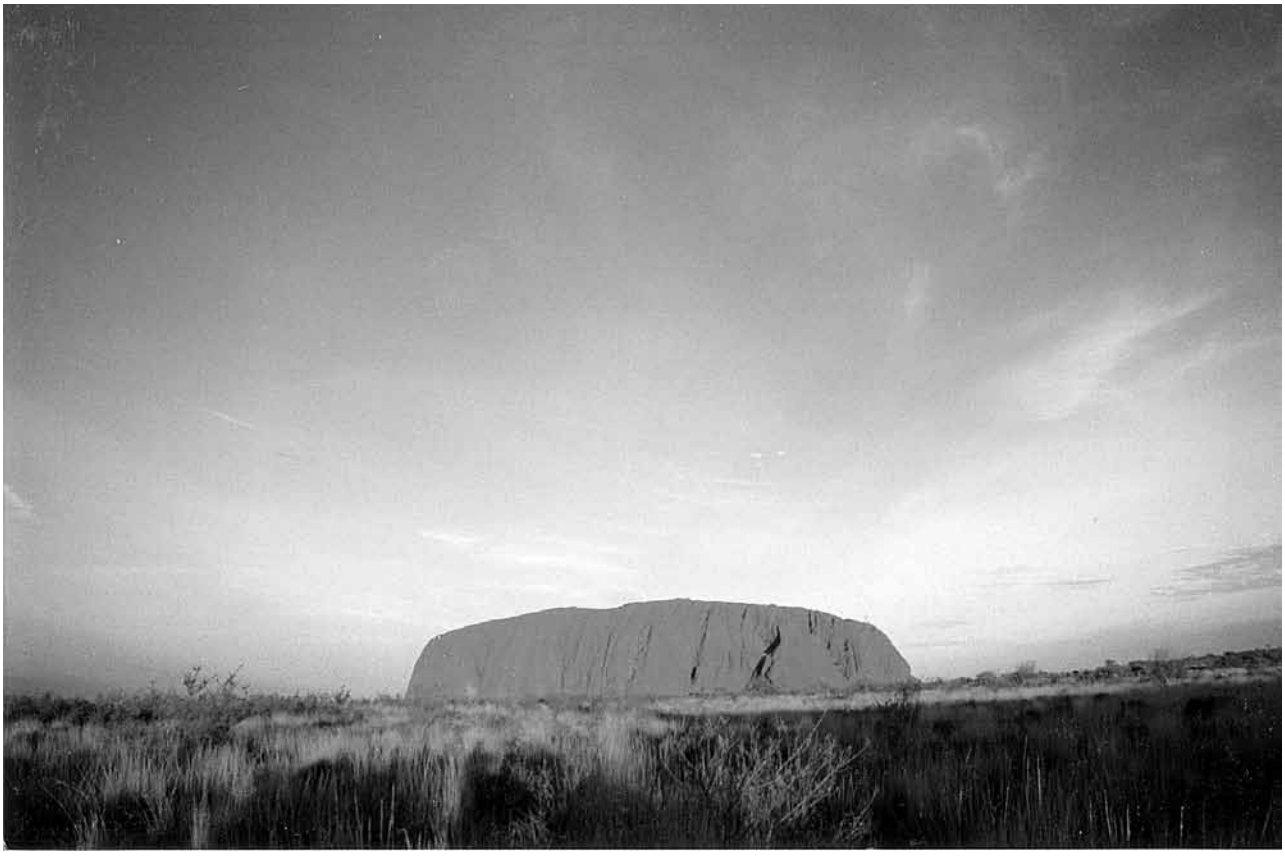
Claimants in evidence and submissions pointed to the potential for co-management of the Tongariro National Park. This relationship would enable iwi to exercise kaitiakitanga and for the Crown and iwi to work together in a partnership relationship, one which recognises the kāwanatanga of the Crown and the tino rangatiratanga of iwi and hapū.

We have been provided with an overview of collaborative management initiatives, prepared for Whanganui iwi and DOC in 1999.[340] Our attention has also been drawn to the co-management experience which has been gained in Australia and in Canada: in particular at the Uluṟu-Kata Tjuṯa National Park in Australia, and the Gwaii Haanas National Park in Canada. We will look at these two examples, then consider some very recent New Zealand experience with the Waikato River, before returning to the Tongariro National Park specifics.

12.6.1 Uluṟu-Kata Tjuṯa National Park

Uluṟu-Kata Tjuṯa National Park and Kakadu National Park in Australia have been held up as significant role models of protected natural areas which are managed jointly with the State as one party, and the customary owners as the other party (map 12.6). Terry de Lacy, writing from Charles Sturt University in 1994, describes the joint management model which evolved at the Uluṟu-Kata Tjuṯa and Kakadu parks:

> The Uluru/Kakadu joint management model aims to provide for conservation of the park's biodiversity, while maintaining its value to traditional owners. It attempts to recognise the interests of two cultures and the importance of both cultural and biological diversity. The model institutionalizes cooperation in both long-term planning and day-to-day management and use. It is characterised by a lease agreement setting out the rights and obligations of the Aboriginal owners and the conservation agency lessee, a board of management comprising a majority from the Aboriginal owners, and the requirement of a statutory management plan to provide the policy framework for joint management.[341]

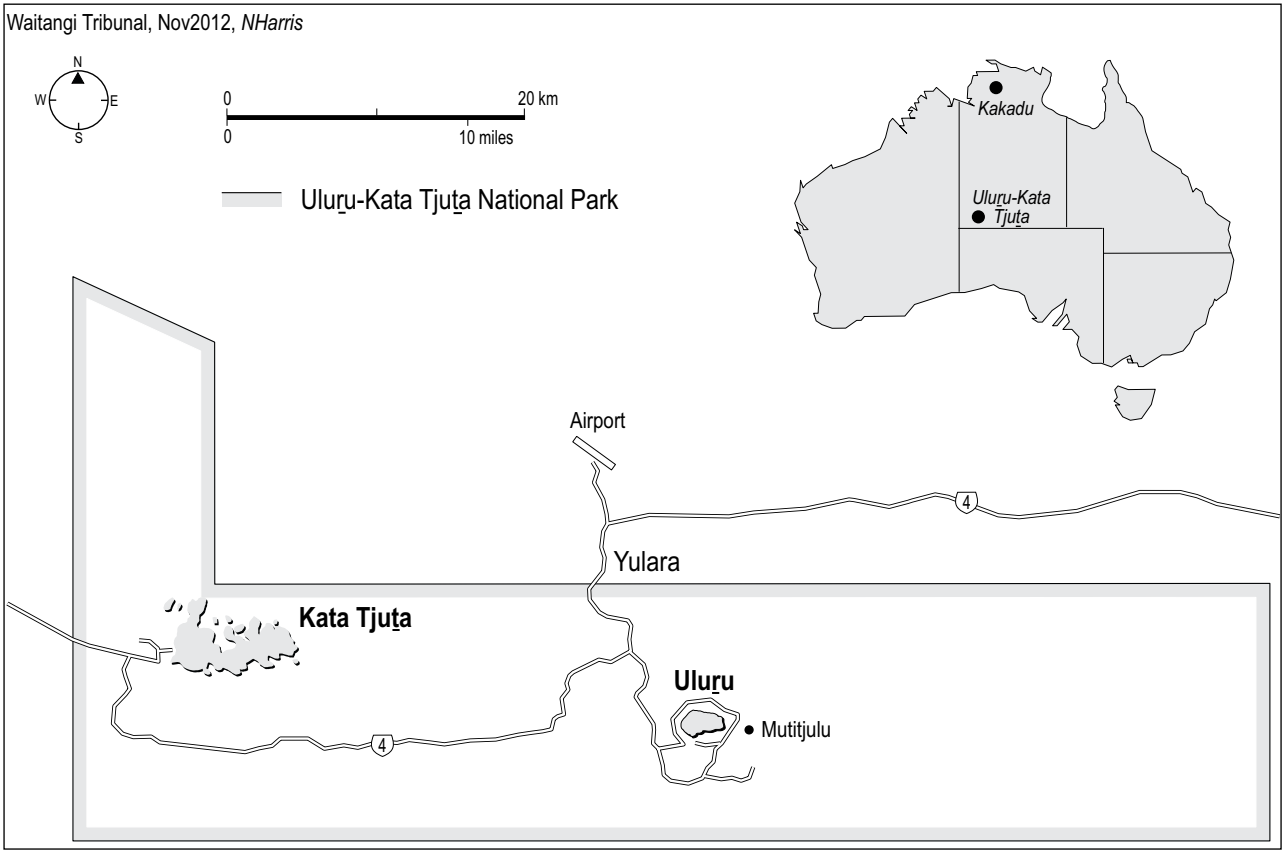


Uluṟu. The iconic formation is of spiritual significance to the Anangu Aboriginal people.

The 99-year lease agreement between the Uluṟu-Kata Tjuṯa Aboriginal Land Trust and the director of national parks provides for a board of management with an Aboriginal majority, specifies the responsibilities to be carried out by the director of national parks, and requires that an annual rental and a percentage of the entrance fees be paid to the traditional owners.[342] Those owners have the right 'to enter, use and occupy the Park, carry on traditional Aboriginal practices such as hunting and gathering, and to reside in the Park at the Muṯitjulu Community site'.[343]

The responsibilities of the director of national parks are set out in the National Parks and Wildlife Acts and in the lease. The director must give effect to the plan of management developed in conjunction with the board of management and must ensure that administrative and financial obligations are met and rents are paid. The director is also charged with the recognition and encouragement of Aboriginal culture within the park.

The Uluṟu model has generated Australia-wide and international interest. When the World Congress on National Parks and Protected Areas met at Caracas in 1992, it identified the world heritage sites at Uluṟu-Kata Tjuṯa and Kakadu as Australian success stories and affirmed the relationships between the traditional owners and the Australian National Parks and Wildlife Service.[344] John Cordell, speaking at the same meeting, was less sure about



Map 12.6: Uluru-Kata Tjuta National Park

this relationship.[345] He opened with a vivid image of tourist behaviour at Uluṟu:

> *Minga*, they call them. Little ants. That is how the tourists look to the Anangu as they rush out of their buses, forming long, winding trails up and down the face of Uluru – to have a look, to say they have done it, have been there, have stood on top and signed the visitor's book. It is an endless passage of aliens. More strangers come and go in a day than there are people in the entire community of Mutitjulu. They come from all over the world and all are intent on climbing to the top of the rock. Then they scramble back down and disappear into the coaches, never to be seen again.[346]

Mr Cordell compared the park authority's view with that of traditional owners: while the park authorities say that the swarms of tourists are a small price which the community pays for recognition and a voice in management, Aṉangu say the 99-year lease, is a denial of self determination.

Graham Griffin, also writing for an international audience, is positive about the Uluṟu-Kata Tjuṯa experience from a parks and visitor perspective but reveals the pressures that are faced by the Muṯitjulu traditional owners.[347] He identifies the issues which have arisen: the dramatic influx of visitors; the desire by visitors to photograph people and places; unauthorised entry into sacred sites; and

Please don't climb Uluṟu

We, the Aṉangu traditional owners of Uluṟu-Kata Tjuṯa National Park, have a responsibility to teach and safeguard visitors to our land. We feel great sadness when a person dies or is hurt on our land. We would like to educate people on the reasons we ask you not to climb and if you choose to climb, we ask that you do so safely.

Cultural reasons

We ask visitors not to climb Uluṟu because of its spiritual significance as the traditional route of the ancestral Mala men on their arrival at Uluṟu. We prefer that visitors explore Uluṟu through the wide range of guided walks and interpretive attractions on offer in the Park. At the Cultural Centre you will learn more about these and the significance of Uluṟu in Aṉangu culture.

Safety reasons

The climb is physically demanding and can be dangerous. Some 35 people have died while attempting to climb Uluṟu and many others have been injured. At 346 metres, Uluṟu is higher than the Eiffel Tower or as high as a 95-storey building. The climb is very steep and can be very slippery. It can be very hot at any time of the year and wind gusts can hit the summit or slopes at any time. Every year people are rescued by park rangers, many suffering serious injuries such as broken bones, heat exhaustion and extreme dehydration.

For your safety the climb is closed every day:

- OVERNIGHT - from half an hour after sunset to half an hour before sunrise
- SUMMER - from 8am during the Summer Seasonal Closure Period - December, January and February

The climb is also closed without notice:

- HEAT - from 8am if the forecast temperature is 36 degrees or above*
- HEAT - if the actual temperature at Yulara reaches 36 degrees or above*
- RAIN - when there is more than a 20 per cent chance of rain within three hours*
- RAIN - when there is more than a five per cent chance of thunderstorms within three hours*
- WIND - if the estimated wind speed at the summit reaches 25 knots or above*
- WET - when more than 20 per cent of the rock surface is wet after rain
- CLOUD - when cloud descends below the summit
- RESCUE - during rock rescue operations

The climb has been temporarily closed four times for important cultural reasons such as the death of a senior traditional owner.

* in consultation with the Bureau of Meteorology.

"That's a really important sacred thing that you are climbing. You shouldn't climb. It's not the real thing about this place. The real thing is listening to everything."

Traditional Owner

'Please don't climb Uluṟu'. Uluṟu-Kata Tjuta National Park, Australian government and World Heritage pamphlet setting out the reasons why people should not climb Uluṟu, as well as the safety precautions they should observe should they decide to climb the rock.

Tourists climbing Uluṟu. To those making their way up the rock, the people below appear as ants and the cars and buses as Matchbox toys.

appropriation of Aboriginal environmental knowledge.[348] The park is managed to high world standards, he concludes, but the traditional owners have profited little from the massive tourist industry that has besieged them and their homelands.[349]

Professor Terry De Lacey, an experienced Australian researcher and designer of training programmes for park professionals, continues to be supportive of the Uluṟu success. He reaches two main conclusions. The first is that the predominant world view has changed:

> The concepts of wilderness, naturalness, and pristineness that have dominated the national park culture in Australia are under strong challenge from the Aboriginalisation of national parks . . . It is a fact that the so-called natural landscapes in Australia . . . are truly 'Aboriginal cultural landscapes.'[350]

His second conclusion is that joint management is not only working well from the perspective of the National Parks and Wildlife Service but is also affirmed by the traditional owners:

> Joint management has emerged as one successful way of building a partnership between Aboriginal people and their Aboriginal land ethic with modern conservation land management . . . its greatest potential benefit is to provide a potent

symbol to all Australians of how we need to respect and care for country.

We received a very different perspective when Paul Green, conservator for Tongariro–Taupō, gave his evidence to the Tribunal and responded to questions. Mr Green has had three decades of experience working at Tongariro National Park and has carried out international assignments on parks in Australia, China, Argentina, and Fiji.[351] He met with park managers and traditional owners when he visited Uluṟu-Kata Tjuṯa in 2000. He made brief reference to Uluru and Kakadu in his formal evidence when he reported 'there is little evidence of close ongoing management liaison in spite of joint management'.[352] Under cross examination he elaborated:

> I visited Uluru and Kakadu and spent quite a bit of time there and whilst they have joint management in a statutory sense, my discussions showed me that the Aboriginal people and the government agency over there didn't have the same understanding of what the agreement was all about and their goals were so different that making progress on the ground in a sharing way and reaching each other's expectations was missing to a far greater degree than what I believe is happening at home.[353]

Counsel probed further:

> So your criticism wasn't on the basis that joint management or joint governance of a park should be avoided, it's just that what they are saying in Uluru and Kakadu, what they are actually [saying] and what's happening on the ground isn't actually happening.[354]

Mr Green replied: 'Exactly.'[355]

We have, in response to this exchange, searched for additional evidence about the Uluṟu-Kata Tjuṯa example. Trevor Power, writing in the *Environment and Planning Law Journal*, has drawn attention to a major investigation into the effectiveness of the community liaison at the Uluṟu-Kata Tjuṯa National Park at the end of the 1990s.[356] The research arm of Sovereign Health Care Australia was commissioned by Parks Australia North to carry out the investigation.[357] In effect, it addressed our question: 'is co-management working?' The resulting report is an internal document, not available in the public arena, but is summarised in Power's article. He gives us this overview of the findings:

> The Report paints a picture far different from the praise heaped on joint management of the Park by international and domestic observers, The main premise of the Report is that whilst the Park may represent a leading example of indigenous and western partnership in land management, the practical workings of joint management in the Park are seriously impeded by inadequacies in structure, process and personal relationships.[358]

The authors of the SCHA report and Mr Power himself are positive about the concept of co-management but adamant that the structural issues must be addressed in a holistic way.[359] The report addresses the larger question of statutory empowerment and the relationships between the park, the director of national parks, and Environment Australia (the successor to the Australian National Parks and Wildlife Service). It suggests that coordination and empowerment can best be provided by the establishment of a statutory authority to manage the Uluṟu-Kata Tjuṯa National Park.[360]

The report makes a strong case for structural changes at Uluṟu-Kata Tjuṯa. The present statutory framework is confused and inadequately defined. The traditional owners, Nguraritja, are absent from the board of management and the director of national parks is disempowered by ambiguous lines of responsibility.

In summary, the authors suggest that co-management by a statutory authority is the best option. Such a body would simplify coordination, enhance the powers of the co-management board, and provide a better way to pursue the vision of the park.[361] Management by a statutory authority would change the relationship with Parks Australia North and with Environment Australia. The authority would report directly to the Australian parliament, not through Environment Australia.

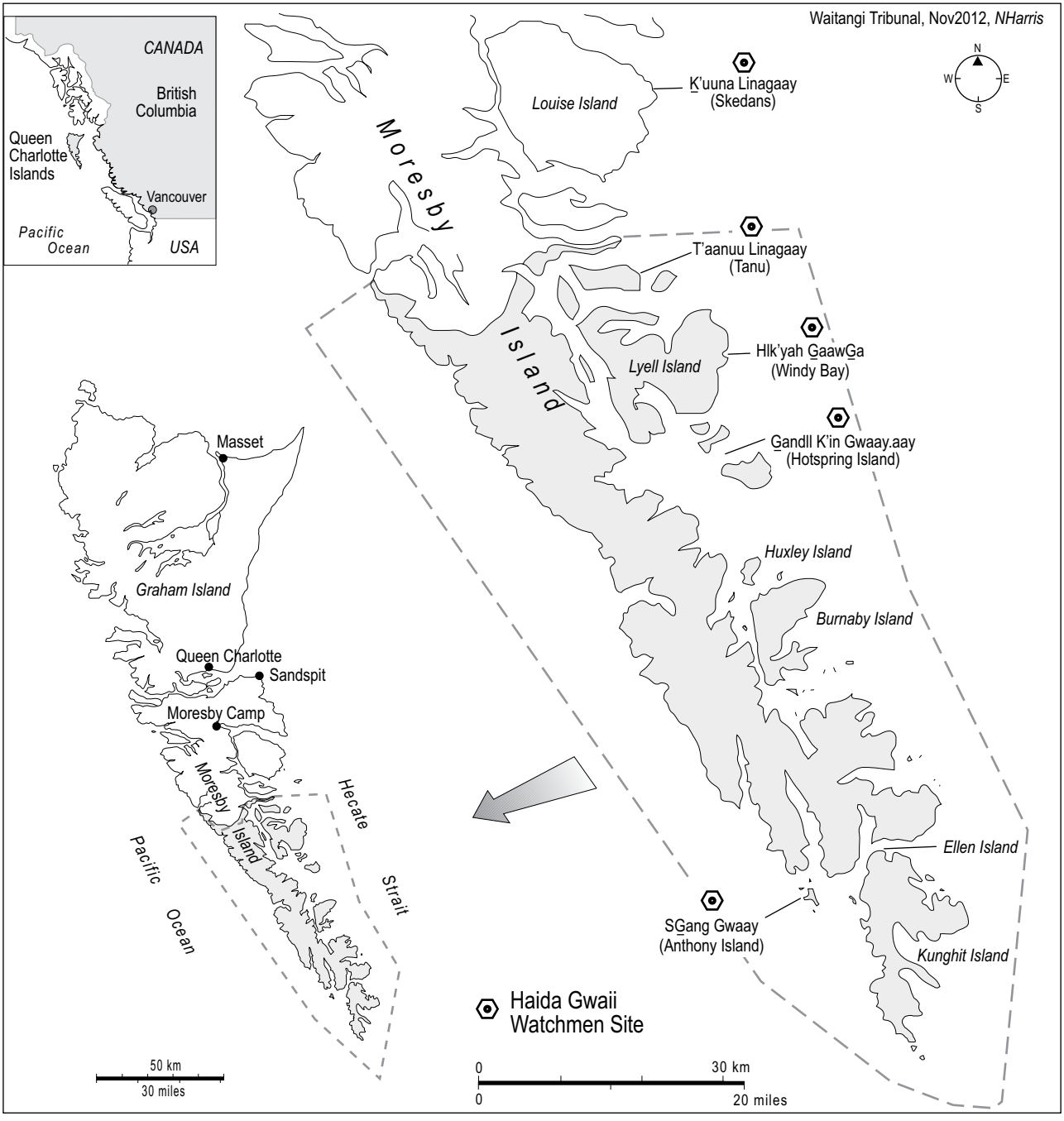
12.6.2 Gwaii Haanas and Haida

Co-management arrangements, involving governments and indigenous peoples, have been widely used in Canada during the past three decades. They have been scrutinised by indigenous and government participants, and by academics, and many of the insights gained have been applied in Canadian national park contexts.[362] Gwaii Haanas in British Columbia is one of the most recent examples.[363]

Gwaii Haanas is the traditional domain of the Haida Nation and embraces oceans, and islands 130 kilometres from the northern mainland of British Columbia and 640 kilometres north of Vancouver (map 12.7). It extends from deep ocean trenches to high mountain peaks. From a Parks Canada perspective, it embraces a wide range of ecosystems, terrestrial and marine: from a Haida perspective, it contains a diversity of resources and hundreds of places which are part of Haida culture.

Colonial contact, beginning with Cook's voyages in the 1770s, and recent history at Gwaii Haanas, have been characterised by resource extraction.[364] Haida were left

Gwaii Haanas National Park, Canada. The park became a heritage site in 1985 and a world heritage site in 1987.



Map 12.7: Gwaii Haanas National Park

with the impacts of encounter: smallpox epidemics and other diseases decimated the Haida population in the eighteenth and nineteenth centuries.[365]

A new round of threats emerged in the latter decades of the twentieth century. Applications by Rayonier Canada to clear cut Haida Gwaii forests in the 1970s were met by protests by environmentalists and by the Haida people.[366] Residents, with strong backing from environmental groups, formed an Islands Protection Committee (IPC) to oppose logging. The campaign was sustained and high profile, lasting from 1974 to 1987. In parallel to the IPC campaign, the Haida Nation expressed their own sovereignty in their own ways: they established a Watchman Program in 1984 to reconnect with and protect traditional sites; they designated Gwaii Haanas as a heritage site in 1985; and they gained Unesco recognition as a world heritage site in 1987.

In October 1985, when the British Columbian government approved cutting rights, the Haida Nation blockaded access. Thirty days of blockade and 72 arrests followed. The media presented the Haida case: 'we are loggers, fishermen, office workers, and the unemployed . . . a nation forced into civil disobedience to protect the only future we have'.[367] The pendulum of public support swung. There was strong local, national, and international pressure for the British Columbian and Canadian governments to find an alternative to logging. In 1986 the British Columbian government agreed to join in negotiations with Canada, the federal government, and in July 1987 a memorandum of understanding was signed between British Columbia and Canada. British Columbia would transfer responsibility for Gwaii Haanas to Canada, and Canada agreed to fund a $120 million package that would compensate the loggers, diversify the regional economy, and encourage tourism.[368] This was firmed into a memorandum of agreement in 1988.

It was an agreement that was met with approval by the IPC, but not by Haida who had been left out of the negotiations. Haida claims for sovereignty and land ownership went unrecognised in the agreement and Haida were not included in a Wilderness Advisory Committee which was set up. Negotiations between Haida and Canada stalled in 1987. Haida, meanwhile exercised control over Gwaii Haanas and made that control more explicit: they managed the park, they implemented a permit system, they introduced cost recovery fees, they conducted tours, and they closed off sacred spaces.[369]

Negotiations between Haida and Canada resumed in 1989 on a much more even basis: the logging had been stopped; the area had been designated as a 'Park Reserve'; and the two parties were agreed that an interim agreement about a park would not prejudice the Haida land claim, lodged but not settled. Areas of conflict and areas of commonality were identified and carefully separated.

A joint management agreement for Gwaii Haanas was thus established in advance of decisions to do with land title. The years between 1987 and 1993 were productive ones in terms of trust building, mutual respect and understanding, and preparations for a robust working relationship. In January 1993, a final agreement, nation-to-nation, was signed between Canada and Haida.[370] Haida are now fully involved in planning, managing, and operating their ancestral lands.[371]

In the five years following, the two parties worked together, and consulted with the wider public, to prepare the *Gwaii Haanas National Park Reserve and Haida Heritage Site's Management Plan for Terrestrial Area* (MPTA).[372] The MPTA sets out the relationship between Canada and Haida, identifies the park objectives, and gives strategic direction for management, use, and protection.[373] A major milestone was achieved in June 2010 when the Haida Nation and the government of Canada tabled a Bill to establish the Gwaii Haanas National Marine Conservation Reserve (the marine portions) and the Haida Heritage site (the land portions).[374] The co-management agreement recognises the cultural and spiritual significance of both the lands and the seas:

> The Haida's world view values Gwaii Haanas' natural and cultural elements as inseparable and that, protection of Gwaii Haanas is essential to sustaining Haida culture.[375]

The two areas, marine and terrestrial, will be planned and managed as one – 5,000 square kilometres of islands,

Protesters during the 'Support Haida Nation' blockades. These arose from proposals to clearcut Haida Gwaii forests in the 1970s. During the long sustained campaign, the Haida Nation blockaded access to the cutting areas for 30 days in October 1985. Canada took over responsibility for Gwaii Haanas in 1988, and in 1993 it signed a final agreement with Haida confirming the joint management of the area.

mountains, and waterways, extending from ocean trench to alpine mountain tops.[376]

The Gwaii Haanas Agreement, signed in 1993, was the foundation for the MPTA completed some five years later. The roles of the two partners are clear. Their viewpoints regarding sovereignty and ownership are expressed in parallel statements: the Haida Nation designates Gwaii Haanas as 'a Heritage Site under the authority of the Haida Constitution'; the government of Canada designates Gwaii Haanas Reserve 'for its outstanding natural and cultural heritage'.[377] Management is mandated to the Archipelago Management Board (AMB) made up of two members appointed by Haida and two by Canada. Decisions of the board are made by consensus; if there is no consensus, a decision is delayed.[378] The AMB is accountable to the Council of the Haida Nation and to the government of Canada.[379]

The introduction to the MPTA makes it clear that the agreed management arrangement is separate from the ongoing British Columbia Treaty Process. These foundations laid, the MPTA sets out the common objectives, the common vision, the guiding principles, and the

management goals for the park.[380] There are requirements to protect Gwaii Haanas from excessive visitor numbers: carrying capacity has been carefully assessed and mechanisms are in place to ensure that visitor numbers do not exceed 33,000 days or nights annually.[381] The management plan also provides for tourism opportunities for Haida. The intent is to balance tourism, protection of the environment, and local community needs. A business licensing system has been devised to ensure that commercial allocation for Haida owned and operated businesses is equal to that of existing commercial outfits.[382] There is thus an equal three way split between independent travellers, commercial operators, and Haida.

Julia Gardner has examined the practicalities of park management.[383] She affirms the training programmes which include mentoring, trainee exchanges with other parks, and a 'shadow management program' to enable Haida trainees to be prepared for middle management positions.[384] These programs are reinforced by preferential hiring policies, set out in the Gwaii Haanas Agreement.[385] Progress has continued: 50 per cent of those employed are now Haida and the current park superintendent, Ernie Gladston, is Haida.[386]

Dr Gardner sums up the Haida Gwaii cooperative management arrangement in these words:

> The decision-making structure of the Archipelago Management Board for Gwaii Haanas is set out as an equal process, in which a consensus decision is a recommendation to both governments, who, if necessary, seek authorization of the decision according to their respective governance structures. The Agreement does not place final decision-making authority in the hands of either the Canadian government or the Haida Nation. The Agreement is without prejudice to aboriginal rights or title . . . The requirement for both parties to agree to any proposed developments in the area results in a higher level of protection. If the Board fails to reach consensus, then no action is taken.[387]

Cindy Boyko, one of the Gwaii Haanas members on the AMB, provides an example of consensus decision-making at work. The government of Canada had expressed interest in building a warden station in the park at a time when there were no Haida employees in the Gwaii Haanas field unit. Haida made it clear that such a building would represent only the government of Canada. The AMB decided to let the issue sit. Later, when Haida employment increased, discussions resumed and the warden station was built.[388]

Trust, and a culture of mutual respect, an essential prerequisite for co-management and co-governance, are clearly evident in the Gwaii Haanas relationship.

12.6.3 Insights from wider experience

There are four conclusions which we would draw from these international examples:

1. Co-governance and co-management can be a positive way forward.
2. Co-governance and co-management require a legal framework, which establishes the rights, responsibilities and obligations.
3. Co-governance and co-management is a mutual learning process.
4. Successful national park administrations should be founded upon mutual respect and good faith.

Uluru and Gwaii Haanas each provide important insights for Tongariro National Park. The Uluru example has been operating over a longer time span and has been successful from the perspective of the majority culture and the global tourist industry. It looks good on paper but does not, in its present form, meet the needs and the aspirations of the Nguraritja traditional owners. The cooperative arrangements at Gwaii Haanas, established more recently and in a situation of conflict, provide a more equitable statutory framework for co-management, co-governance, and mutual learning. Crown and customary owners are able to meet on equal nation-to-nation terms and manage the park in a way that enables national and international visitors to understand and respect Haida culture and values.

12.6.4 Recent New Zealand experience

At this point, we return to New Zealand, and immediate current experience with Treaty settlements and collaborative management. The Treaty settlement process, as it has

unfolded in more recent years, provides new and larger examples. The Waikato River provides complex management challenges for Crown, iwi, and territorial authorities. The Waikato River, a prized taonga for Waikato-Tainui and a key component of regional and national income has been degraded and polluted.[389] The Crown and Waikato-Tainui, as part of their Treaty settlement process have negotiated and put in place a package which involves co-governance and co-management between Crown and iwi.[390]

The specific context, involving a river which flows through different tribal rohe and different local government authorities, and a $210 million clean-up fund provided by the Crown as part of the Treaty settlement, is very different from that involving te kāhui maunga and the Tongariro National Park. But the negotiating format and sequence, the type of relationships which have been brokered, and the manner in which they have been legislated bode well for the Crown and iwi in other places, including National Park.

The Office of Treaty Settlements and Waikato Tainui have worked steadily to craft and refine the instruments needed for a co-governance, co-management relationship which will ensure the health and well being of the Waikato River. An 'agreement in principle', signed in December 2007, and a 'Kingitanga accord' and 'Waikato River deed of settlement', signed in August 2008, were key staging points.[391] The emphasis has been on good faith engagement, consensus decision-making, and careful regard for the rights of related iwi.

Governance and management mechanisms were carefully set out in the initial deed of settlement. A 'Guardians of the Waikato River' group made up of five iwi members and five Crown members would create a 'vision' for the Waikato River and an operational 'strategy' to achieve this vision.[392] This governance group would, in other words, set the long-term directions and monitor the outcomes at five- and 10-year intervals. A 'Waikato River Statutory Board', with representatives from iwi and local authorities, would carry out the management tasks and broker relationships with territorial authorities and government departments.[393] It would work together with other agencies to achieve an integrated and holistic approach to the management of the river, and do this in a manner that was consistent with the vision and the strategy. A 'Guardians Establishment Committee' and a 'Board Establishment Committee' were to prepare the ground for the longer term tasks.

The establishment committees began work in 2008 and 2009. The guardians' work on the vision and strategy progressed well and the outcomes were endorsed by the Crown and Waikato-Tainui.[394] But the machinery, as set out in the Deed of Settlement, was unduly complex. The strength of the partnership relationship was evidenced in 2009 when the Crown asked, and Waikato-Tainui agreed, to seek 'more effective and economic approaches for delivering the overarching purpose'.[395] The revised Deed of Settlement, signed in December 2009, gives the highest level of recognition to the vision and strategy prepared by the guardians[396] and establishes a single governance body which merges the roles of the guardians and the Waikato River Statutory Board.[397] This new co-governance entity, to be known as the Waikato River Authority, will be made up of equal numbers of Crown and iwi appointed members, will be co-chaired by an iwi and a Crown member, will operate by consensus, and report evenly to each of the appointing bodies.[398]

Some components of the deed of settlement required statutory provision. The structures for co-governance and co-management, the resource management and the financial provisions, were legislated in May 2010 as part of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act.[399] The vision and strategy, as the primary document for the Waikato River, is reprinted in schedule 2 of the Act. The Waikato River settlement with Waikato-Tainui is the final piece in the Waikato settlement jigsaw.[400]

The capacity and the political confidence have been building up to achieve robust and equitable Treaty settlements. This recent New Zealand experience, equates to the best international experience. There has been a dynamic learning process, there is a culture of mutual respect, a willingness to draw evenly on both world views, and a confidence in consensus decision-making. We would reiterate the words of the Minister for Treaty Settlements

when he brought the Waikato-Tainui Bill to parliament, and referred to the new relationship between the Crown and Waikato Tainui which is embedded in it. He said, 'It is a mark of our maturity as a people and as a nation that we have come so far in a little less than 160 years.'[401]

12.7 Finding a Better Way Forward

With our findings set out in previous chapters, we now outline what we see as prerequisites for a better way forward for Tongariro National Park:

- One which recognises the intention of Horonuku Te Heuheu when he met with John Ballance to ensure that te kāhui maunga be protected by the Crown and iwi working in concert.
- One which recognises that important portions of the present Tongariro National Park were compulsorily acquired without prior consultation, consent or compensation.
- One which recognises the importance of Tongariro National Park for ngā iwi o te kāhui maunga, for all New Zealanders, and for the global community.[402]
- One which recognises the desire of iwi and Crown to work together in a co-management relationship which is based on the principles of the Treaty of Waitangi. This relationship should balance the kāwanatanga of the Crown and te tino rangatiratanga of ngā iwi o te kāhui maunga.
- One which recognises the article 3 rights of Māori to have their value systems and world view recognised alongside the value systems and world view of the majority culture.[403]
- One which opens the way to a new and evolving relationship between the Crown and ngā iwi o te kāhui maunga.

We have weighed up a number of options for the Tongariro National Park:

- the return of the park to iwi and lease in perpetuity to the Crown (the Uluṟu model, as used in Australia);
- the retention of the park by the Crown and the creation of a co-management agreement between DOC and iwi; and
- the creation of a new form of title that will enable the park to be owned jointly by the Crown and ngā iwi o te kāhui maunga and governed and managed jointly by a statutory authority comprising the Crown and iwi.

We have reviewed our findings in relation to the park, in particular: the intentions of Horonuku Te Heuheu, the taking of additional lands in the nineteenth and twentieth centuries, the manner in which DOC has interpreted the Conservation Act 1987, and the failure of DOC to give operational recognition of the rangatiratanga of ngā iwi o te kāhui maunga.

We propose the following arrangements as a response to the events surrounding ngā maunga tapu from 1886 until today. We are not arguing that this be a model for all national parks in New Zealand. The circumstances of te kāhui maunga are unique and demand a unique response. We recommend:

- That the Tongariro National Park be held jointly by the Crown and ngā iwi o te kāhui maunga and can never be alienated. This will require a new Tongariro National Park Act and a new form of title: we suggest a Treaty of Waitangi title which indicates that it is the result of a Treaty of Waitangi Tribunal process.
- The creation by this Act of a statutory authority, comprising the Crown and ngā iwi o te kāhui maunga, for the governance and management of the Tongariro National Park. This authority shall be responsible to the Treaty partners of the park and report directly and evenly to both.
- The specifics of this arrangement will be worked out as part of the Treaty settlement process.
- The world heritage status of the Tongariro National Park will be confirmed within the terms of reference of the statutory authority.

This new statutory authority will be outside of DOC. The door will be open to a mutually beneficial relationship between the Tongariro National Park and DOC. It may be, for example, that the parties negotiate a memorandum of understanding which will enable the Tongariro National Park to be promoted and publicised as part of the New Zealand National Park system.

We believe that these recommendations are symbolic of what was envisaged by Horonuku Te Heuheu Tūkino IV in 1887, and their implementation would serve to mark how far we have come as a nation. Te kāhui maunga is a taonga of great importance: one to be held in trust for ngā iwi o te kāhui maunga and all New Zealanders.

Notes

1. Conservation Act 1987, s 4
2. Waitangi Tribunal, statement of issues for the Tongariro National Park district inquiry, December 2005 (claim 1.4.2), pp 73, 77–78, 82–83
3. Claimant counsel, generic submissions on National Park management and environmental law, 15 May 2007 (paper 3.3.34), especially pp 4, 21–22, 30
4. Ibid, p 30
5. Counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), p 195
6. Ibid, pp 194, 196
7. Ibid, p 197
8. Claim 1.4.2, pp 73, 76, 77
9. Counsel for Ngāti Hāua, closing submissions, not dated (paper 3.3.39), pp 36–38; counsel for Ngāti Rangi, closing submissions, 15 May 2007 (paper 3.3.33), p 61
10. Claim 1.4.2, pp 79, 83–85
11. Counsel for Robert Wayne Cribb and others, closing submissions, 14 May 2007 (paper 3.3.19), pp 16–21; counsel for Uenuku, closing submissions, 14 May 2007 (paper 3.3.37), pp 133–135
12. Claim 1.4.2, pp 73–76
13. Claimant counsel, generic closing submissions on environmental issues, 14 May 2007 (paper 3.3.28), pp 2–6
14. Paper 3.3.43, p 199
15. Ibid, pp 199–200; National Parks Act 1980, s 4(1)
16. Claim 1.4.2, pp 74, 78
17. Paper 3.3.43, pp 206–207
18. Claim 1.4.2, pp 76, 83; counsel for Ngāti Hikairo, closing submissions, 14 May 2007 (paper 3.3.29), pp 52–54
19. Counsel for Ngāti Hikairo, consolidated statement of claim, 22 July 2005 (claim 1.2.2), pp 19–20, 28
20. Ibid, p 38
21. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 1, pp 18–19; ch 6, pp 6, 48
22. Paper 3.3.45, ch 1, p 19; ch 6, p 51
23. Claim 1.4.2, p 93
24. Paper 3.3.45, ch 9, p 3
25. Claim 1.4.2, p 93
26. Paper 3.3.45, ch 9, p 3
27. Ibid, p 4
28. Ibid, p 3
29. Ibid, pp 14–20
30. Ibid, p 3
31. Ibid, p 54
32. Claim 1.4.2, p 90
33. Ibid, p 89
34. Paper 3.3.45, ch 9, p 6
35. Claim 1.4.2, p 87
36. Ibid, p 88
37. Paper 3.3.45, ch 9, p 41
38. Ibid, ch 1, p 14
39. Ibid
40. Ibid, p 15
41. Ibid
42. Ibid, p 16
43. Ibid
44. Counsel for Ngāti Tūwharetoa, submissions in reply, 11 July 2007 (paper 3.3.60), p 18
45. Ibid
46. Counsel for Ngāti Rangi, submissions in reply to Crown closing submissions, 6 July 2007 (paper 3.3.61), p 4
47. Counsel for Ngāti Waewae, submissions in reply to Crown submission, 6 July 2007 (paper 3.3.53), pp 16–17
48. Counsel for Ngati Hāua, submissions in reply to Crown closing submissions, 6 July 2007 (paper 3.3.48), para 11
49. Claimant counsel, submissions by way of reply, 7 July 2007 (paper 3.3.58), p 25
50. Ibid
51. Paper 3.3.48, para 9.2
52. Paper 3.3.58, p 27
53. Ibid, pp 27–28
54. Ibid, p 28
55. Paper 3.3.53, pp 15–17
56. Counsel for Robert Wayne Cribb and others, submissions in reply, 6 July 2007 (paper 3.3.49), p 5
57. Paper 3.3.58, p 21
58. Counsel for Ngāti Hikairo ki Tongariro, submissions in reply, 6 July 2007 (paper 3.3.57), p 5
59. Counsel for Ngāti Hikairo, submissions in reply, 6 July 2007 (paper 3.3.52), p 5
60. Paper 3.3.57, p 5
61. Counsel for Ngāti Hikairo, reply to Crown closing submissions, 6 July 2007 (paper 3.3.56), p 7
62. Paper 3.3.58, p 21
63. Ibid
64. Paper 3.3.60, p 17
65. Ibid, p 18
66. Paper 3.3.61, pp 3–4
67. Jonathan Boston, John Martin, June Pallot, and Pat Walsh, eds, *Reshaping the State: New Zealand's Bureaucratic Revolution* (Auckland: Oxford University Press, 1991); Steve Britton, Richard Le Heron, and Eric Pawson, eds, *Changing Places in New Zealand: A Geography of Restructuring* (Christchurch: New Zealand Geographical Society, c 1992)

68. Boston et al, *Reshaping the State*, p 6; Robert McClean and R Smith, *The Crown and Flora and Fauna: Legislation, Policies and Practices, 1983–98* (Wellington: Waitangi Tribunal, 2001), pp 18–21; D Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin: University of Otago Press, 2004), pp 206–211
69. United Nations World Commission on Environment and Development, *Our Common Future* (Oxford: United Nations General Assembly and Oxford University Press, 1987)
70. Paul McHugh, *The Māori Magna Carta: New Zealand Law and the Treaty of Waitangi* (Auckland: Oxford University Press, 1991), pp 283–285; M Henare and E Douglas, 'The Pursuit of Partnership, Good Faith and Mutual Trust', in Royal Commission on Social Policy, *The April Report: Future Directions*, 4 vols (Wellington: Royal Commission on Social Policy, 1988), vol 3, pp 112–122; McClean and Smith, *The Crown and Flora and Fauna*, p 22
71. McClean and Smith, *The Crown and Flora and Fauna*, p 281; McClean and Smith provide an overview of the manner in which the conservation legislation was developed: pp 281–365.
72. These Acts include the Native Plants Protection Act 1934, the Wildlife Act 1953, the Wild Animal Control Act 1977, the Reserves Act 1977, and the National Parks Act 1980.
73. McClean and Smith, *The Crown and Flora and Fauna*, p 324. McClean and Smith have investigated the manner in which the Conservation Act was drawn up: pp 323–331.
74. The list has been expanded since 1987: see the Conservation Amendment Act (No 2) 2010, sch 1.
75. Doris Johnston, brief of evidence on behalf of Department of Conservation, 10 November 2006 (doc H2), p 9
76. Officials were not convinced that section 4 of the Conservation Act 1987 applied to the Acts listed in the first schedule and administered by DOC. It was left to Māori to take this to the courts, initially in *The Police v Whetu Marama Mareikura* in 1989, and more comprehensively in *Ngai Tahu Maori Trust Board v Director General of Conservation* in 1995. The 1995 decision made it clear that the provisions of section 4 of the Conservation Act apply to all the acts listed in the first schedule of the Conservation Act. McClean and Smith, *The Crown and Flora and Fauna*, pp 484–485.
77. The director-general of conservation hired Tipene O'Regan as a consultant during the initial planning phase, Piri Sciascia was appointed as deputy director general. McClean and Smith, *The Crown and Flora and Fauna*, p 368. See also Eru Manuera, Tumu Te Heuheu, and Kevin Prime, 'The Conservation Estate, the Tangata Whenua' in Jim Birckhead, Terry De Lacey, and Laura Jane Smith, eds, *Aboriginal Involvement in Parks and Protected Areas* (Canberra: Aboriginal Studies Press, 1992), p 337; doc H2, pp 5–7, 28
78. McClean and Smith, *The Crown and Flora and Fauna*, pp 369–370; citing Manuera et al, 'The Conservation Estate, the Tangata Whenua', p 337
79. The title of kaupapa atawhai manager, used at conservancy level, has since been changed to pou kura taiao.
80. Document H2; see also Department of Conservation, *Conservation General Policy* (Wellington: Department of Conservation, 2005) (doc H2(b)); New Zealand Conservation Authority, *General Policy for National Parks* (Wellington: Department of Conservation, 2005) (doc H2(c))
81. Document H2(b), p 15
82. Supreme Court Act 2003, s 3(2). For further discussion, see Petra Butler, 'Human Rights and Parliamentary Sovereignty in New Zealand', *Victoria University of Wellington Law Review*, vol 35, no 2 (2004), p 341, or Dame Sian Elias, 'Administrative Law for "Living People"', *The Cambridge Law Journal*, vol 68, no 1 (March 2009), pp 47–66, doi 10.1017/S0008197309000026, pp 1–21; see also *Rothmans v Attorney-General* (1991) 2 NZLR 323, 324–331.
83. *Ngai Tahu Maori Trust Board v Director-General of Conservation* unreported, 23 December 1994, Neazor J, High Court, Wellington, CP841.92; *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA), 557–558
84. Department of Justice, *Principles for Crown Action on the Treaty of Waitangi* (Wellington: Department of Justice, 1989)
85. These are elaborated on in Te Puni Kokiri, *He Tirohanga ō Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as Expressed by the Courts and the Waitangi Tribunal* (Wellington: Te Puni Kōkiri, 2001) and in Janine Hayward, 'The Principles of the Treaty of Waitangi', in Alan Ward, *National Overview*, 3 vols, Waitangi Tribunal Rangahaua Whānui Series (Wellington: GP Publications, 1997), vol 2, pp 475–494.
86. 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), vol 1, p 324. That Tribunal recommended that the CGP and the GPNP be amended to reflect the full range of Treaty principles that apply in law and that Crown–Māori relationship instruments be similarly enlarged: p 372.
87. Document H2(b), pp 16–17; doc H2(c), pp 16–17
88. Document H2(b), p 16; doc H2(c), p 16
89. Document H2(b), pp 33–34; doc H2(c), pp 35–36
90. Document H2(b), pp 35–38; doc H2(c), pp 37–42
91. Document H2(b), pp 39–41; doc H2(c), pp 43–45
92. This would have particular implications for Tongariro National Park where previous management regimes had encouraged the provision of commercial accommodation at the base of the mountains, and club huts and lodges high up on Mount Ruapehu.
93. Document H2(b), p 57; compare doc H2(c), p 65
94. Document H2(b), p 58; compare doc H2(c), p 65
95. Compare document H2(b), p 15, with document H2(c), p 15.
96. See chapter 9 and, in particular, Jane Thomson, *Origins of the 1952 National Parks Act* (Wellington: Department of Lands and Survey, 1976).
97. A Gillespie, 'Environmental Politics in New Zealand/Aotearoa: Clashes and Commonality between Māoridom and Environmentalists', *New Zealand Geographer*, vol 54, no 1 (1998), pp 19–26; U Klein, 'Belief-views on Nature – Western Environmental Ethics and Maori World Views', *New Zealand Journal of Environmental Law*, vol 4 (2000), pp 81–119; K Mills, 'The Changing Relationship between Māori

and Environmentalists in 1970s and 1980s New Zealand', *History Compass*, vol 7, no 3 (2009), pp 678–700

98. For international perspectives, see Patrick C West and Steven R Brechin, *Resident Peoples and National Parks: Social Dilemmas and Strategies in International Conservation* (Tucson: University of Arizona Press, 1991); Stanley Stevens, ed, *Conservation Through Cultural Survival: Indigenous Peoples and Protected Areas* (Washington DC: Island Press, 1997); Svein Jentoft, Henry Minde, and Ragnar Nilsen, eds, *Indigenous Peoples: Resource Management and Global Rights* (Delft: Eburon Academic Publishers, 2003).

99. Maori Marsden, *The Woven Universe: Selected Writings of Rev Maori Marsden*, ed Te Ahukaramu Charles Royal (Otaki: Estate of Rev Maori Marsden, 2003); Mere Roberts, Waerete Norman, Del Wihongi, Nganeko Minhinnick, and Carmen Kirkwood, 'Kaitiakitanga: Maori Perspectives on Conservation', *Pacific Conservation Biology*, vol 2, no 1 (1995), pp 7–20

100. See doc H2(b), p 57; doc H2(c), p 65. Both are similar in length but the latter is more expansive in substance.

101. Document H2(h) contains a copy of those which were current in May 2006 and were adhered to by the Department of Conservation.

102. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 1, pp 322–325, esp p 323

103. The Tongariro–Taupō configuration held when the evidence was presented and cross-examined in 2006. Since then, in December 2010, the Tongariro–Taupō conservancy has been merged with the Whanganui Taranaki conservancy to form the Tongariro Whanganui Taranaki conservancy. The conservancy boards remain separate.

104. Nicholas Bayley and Mark Derby, 'Tongariro National Park Management from 1980 to the Present: A Scoping Report' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc A6), pp 9–10; Paul Montague Green, amended brief of evidence on behalf of the Department of Conservation, 22 February 2007 (doc H3(k)), pp 12–13; counsel for Wai 480 claimants, statement of claim, 1 March 1995 (claim 1.1.12)

105. Claim 1.1.12, para 5

106. Department of Conservation, *Tongariro/Taupo Conservation Management Strategy, 2002–2012* (Tūrangi: Department of Conservation, 2002) (doc D3), pp 103–105

107. The preliminary list of priority concerns was included in section 3.7.5, p 108 of the TTCMS.

108. Document D3, p 13

109. Ibid

110. Ibid, pp 14–20. The authors stress that the six principles should be 'read in their entirety' and interpreted alongside the policies that are set out in the larger document.

111. Ibid, p 17

112. Ibid, pp 22–25

113. Tongariro–Taupō conservancy team, *Tongariro National Park Management Plan – Te Kaupapa Whakahaere mo te Papa Rēhia o Tongariro, 2006–2016*, Tongariro/Taupō Conservation Management Planning Series 4 (Tūrangi: Department of Conservation, 2006) (doc H4)

114. Our copy of the *Tongariro National Park Management Plan, 2006–2016*, provided by the Crown as document H4, is unsigned and the date of approval is not filled in. The publication date is shown as October 2006 and Paul Green in his evidence indicates that the plan was approved on 12 October 2006: see doc H4; doc H3(k), p 14.

115. Tyronne Andrew Smith, brief of evidence on behalf of Ngāti Hikairo ki te Tongariro, 28 September 2005 (doc G24), pp 10–11. Discussions had been ongoing for 18 months without mention of a time line for submissions. Mr Smith was informed on 28 October that submissions had to be in by 7 November.

116. Ibid, p 12. The submission was dated 28 September and was made available to the Crown on that date.

117. Tyronne Smith, under cross-examination by Jason Pou, Ōtūkou Marae, 12 October 2006

118. Ibid

119. Te Hokowhitu A Rakeipoho Taiaroa, brief of evidence, 4 October 2006 (doc G45), p 6

120. Ibid

121. Document H3(k), pp 14, 17

122. Ibid, p 14. It is not clear, from Mr Green's evidence, if 12 October was the date when approval was given by the Tongariro–Taupō Conservation Board or the New Zealand Conservation Authority, or if it was the date when it was signed off by the three parties – Kerry Marshall for the NZCA, Alex Wilson for the TTCB, and Paul Green, conservator for the Tongariro–Taupō Conservancy.

123. Paul Green, under cross-examination by Karen Feint, Returned Services Association Working Men's Club, Ōhakune, 1 December 2006 (transcript 4.1.12, pp 458–462)

124. Ibid (p 458)

125. Ibid (p 460)

126. Ibid

127. Document H4, p 4

128. Ibid, p 19

129. Ibid, pp 25–27

130. Ibid, pp 38–40

131. Ibid, p 43

132. Ibid. The plan notes that many people have 'a deep affinity for this special place' and give 'tens of thousands of hours' on a voluntary basis.

133. Ibid, p 44

134. Ibid

135. Ibid, p 230

136. Ibid, pp 159–163

137. Ibid, p 247

138. Whakapapa, established at an earlier stage of the park's history, has a much greater concentration of club lodges and recreation support facilities. Tūroa, established in the 1960s, has access to accommodation and recreation support facilities located in Ōhakune, just outside the park.

139. Document H4, p 245

140. Ibid, p 246

141. Ibid, pp 39–44

142. Ibid, p 41
143. Ibid, p 51
144. Ibid
145. Ibid, p 61. Cultural take is defined in the glossary, somewhat inadequately, as 'historic use of plants or animals by tangata whenua'. Iwi see cultural take as something which embraces past, present, and future generations.
146. Ibid, p 19
147. Ibid, p 28. There is a footnote added which reports that Ngāti Uenuku has asked that its status as tangata whenua be recognised alongside the other named iwi.
148. Ibid, p 75. The wording used here runs parallel to the wording in section 77(1)(c) of the Resource Management Act 1991 and section 6(e) of the Local Government Act 2002.
149. Ibid, pp 75–76. There was an awareness here that important and related issues were before the Wai 262 Tribunal claim hearing evidence on mātauranga Māori.
150. Ibid, p 93
151. Ibid, p 94. The plan continues, quaintly, to say that the site is culturally important for 'tau iwi', described in the glossary as 'a strange tribe, a foreign race'. Cross-cultural communication is a fragile thing.
152. Ibid, p 95
153. Ibid, p 19
154. Ibid, p 40
155. Ibid, pp 47–48, 54, 73–75
156. Ibid, pp 120–121. An exception has been made for the Tūroa ski area, which extends up to 2,325 metres.
157. National Parks Act 1980, s 12
158. The base information is provided in map 12.3 and document H4, p 123.
159. Ibid, pp 42–44
160. Compare map 11 in document H4, p 203.
161. Document H4, p 173. Provision for 30-year licences, with the right for a 30-year renewal, was contained in the Conservation Law Reform Act 1990, which amended section 14(1) of the Conservation Act 1987.
162. Principle 11 on existing legal agreements is part of the same set as principle 5 on giving effect to the principles of the Treaty of Waitangi: doc H4, pp 39–44.
163. Tūroa, more recent and more carefully controlled, has just one club lodge. Residential accommodation for skiers and other visitors has to be outside the park: doc H4, p 173.
164. Ibid, pp 40–41, 47–53
165. We are aware of instances, in the wider conservancy, where agreements have been reached with specific iwi or hapū, and arrangements akin to cooperative conservation management put in place. See, for example, arrangements for the reintroduction of bird species. Experience has been gained which can be incorporated into park management.
166. Document H4, p 51
167. Ibid, p 75
168. Ibid, p 50
169. Ibid
170. Ibid, pp 93–99, including maps
171. Burial places, at particular places on the mountain, are examples of places which can best be protected by non-disclosure of their location.
172. For the discussion on the Treaty principle of economic development, see section 1.6. *He Maunga Rongo* has an expanded discussion in chapter 13 on 'Treaty standards and development' and considers, in particular, *Ngai Tahu Maori Trust Board v Director General of Conservation* [1995] 3 NZLR 553 (CA).
173. *Air New Zealand and others v Wellington International Airport* unreported, 6 January 1992, McGechan J, High Court, Wellington, CP403/91, reported as *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 (CA)
174. Ibid, pp 7–8 (pp 672, 675)
175. Ibid, p 8 (p 675)
176. This description was used initially by Justice McGechan in *West Coast United Council v Prebble* [1988] 12 NZTPA 399, 405 and repeated as a succinct summing up in *Air New Zealand and others v Wellington International Airport* unreported, 6 January 1992, McGechan J, High Court, Wellington, CP403/91, p 8, reported as *Air New Zealand and others v Wellington International Airport Ltd* [1993] 1 NZLR 671 (CA), 675. It is widely cited by other writers and is incorporated into best practice by local government agencies. See, for example, Christine Cheyne, 'After Consultation: The Challenge Facing Democratic Governance' in *Political Science*, vol 50, no 2 (1999), pp 209–224; and Parliamentary Commissioner for the Environment, 'Public Participation in Environmental Decision Making', discussion paper, 1996.
177. Cheyne, 'After Consultation', p 214
178. This date was important, Mr Green suggested, because in 1985 the Chief Ranger and the Tūwharetoa Māori Trust Board combined to select three high school pupils to prepare for a Diploma in Park Management course at Lincoln University: doc H3(k), p 9.
179. Document H3(k), pp 11–12
180. Ibid, p 27
181. Keith William Paetaha Wood, brief of evidence, 10 February 2006 (doc A64), pp 13–14
182. Doris Johnston, under cross-examination by Tom Bennion, Returned Services Association Working Men's Club, Ōhakune, 1 December 2006 (transcript 4.1.12, p 408)
183. Document H3(k), pp 27–28
184. Document G45, pp 2–3
185. Ibid, p 3
186. Rangi Joseph Bristol, brief of evidence, 5 May 2006 (doc D40), pp 5–6. Mr Bristol's description of his claimant group is 'the peoples within the embrace of Uenuku and their constituent hapu and whanau'.
187. Ibid, p 6
188. Ibid
189. Document H3(k), p 10
190. Document D40, p 9
191. Doris Johnston described Te Kete Taonga Whakakotahi as an

investment in good relationships and a source of practical advice to Department of Conservation staff working with Māori: doc H2, pp 29–30. Paul Green appended earlier versions of this resource in documents H3(i) and H3(j). The draft document has been very influential and is widely used, but has not, as far as we can ascertain, been confirmed or published: Department of Conservation, 'Publications About Getting Involved in Conservation', Department of Conservation, http://doc.govt.nz/publications/getting-involved, accessed 1 July 2011.

192. Document H2, p 29

193. The Department of Conservation does provide koha and meets logistical expenses when meetings with tangata whenua are held on marae.

194. Local Government Act 2002, s 81(1). For a fuller discussion, see Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, pp 414–418, 470–475, 488. That report finds that the intent and the mandate for capacity building are there but the resources are insufficient. Central government funding is needed to complement local government funding.

195. In particular, the National Parks Act 1980, the 2005 *General Policy for National Parks*, and Department of Conservation, *Tongariro/Taupo Conservation Management Strategy, 2002–2012*, TT Planning Series 1 (Wellington: Department of Conservation, 2002): see doc H4, p 6.

196. See David Ian Pool, *Te Iwi Maori: A New Zealand Population, Past, Present and Projected* (Auckland: Auckland University Press, 1991), especially chapters 9 and 11; Sholeh A Maani, 'Why Have Maori Relative Income Levels Deteriorated over Time?', *The Economic Record*, vol 80, no 248 (2004), pp 101–124; and P White, J Gunston, C Salmond, J Atkinson, and P Crampton, *Atlas of Socioeconomic Deprivation in New Zealand* (Wellington: Ministry of Health, 2008), map of the North Island, p 36, map of Waikato DHB, p 76, map of Lakes DHB, p 89, map of Whanganui DHB, p 119; compare doc A22.

197. Ngaiterangi Smallman, brief of evidence, 28 September 2006 (doc G19), p 3

198. Ibid, pp 3–4

199. Ibid, p 13

200. Ibid

201. Ibid, p 14

202. Ibid, pp 14–15

203. Graeme Everton, brief of evidence, 29 September 2006 (doc G36), p 10

204. Ibid, p 11

205. Ibid

206. Department of Conservation, *The Value of Conservation: What Does Conservation Contribute to the Economy?* (Wellington: Department of Conservation, 2006) (doc H2(e)), p 11. There is no break-down in the evidence as to how these jobs are shared between local and overseas workers, or Māori and non-Māori.

207. Document H4, p 243

208. Document H3(k), pp 22–24

209. See doc H4, p 170, policy 9

210. Britton et al, *Changing Places in New Zealand*, pp 260–261; Geoff Butcher, John Fairweather, and David Simmons, *The Economic Impact of Tourism on Kaikoura*, Tourism Research and Education Centre Report 8 (Lincoln: Lincoln University, 1998), pp 2–4, 27–28

211. Aroha Pohorama, Merepeka Henley, Ailsa Smith, John Fairweather, and David Simmons, 'Whalewatch: Background and Evolution' in *The Impact of Tourism on the Maori Community in Kaikoura*, Tourism Research and Education Centre Report 7 (Lincoln: Lincoln University, 1998), pp 25–31; Garth Cant and Russell Kirkpatrick, eds, *Rural Canterbury: Celebrating its History* (Wellington: Daphne Brasell Associates, 2001), pp 158, 169

212. Nick Taylor, 'Kaikoura Becomes a Tourist Town', in Heather McCrostie Little and Nick Taylor, 'Farming People and Rural Society', in Cant and Kirkpatrick, eds, *Rural Canterbury*, p 169. For more detail, see Butcher et al, *The Economic Impact of Tourism on Kaikoura*.

213. The Marine Mammals Protection Act 1978 is one of the Acts listed in the first schedule of the Conservation Act 1987 and is administered by the Department of Conservation in a manner similar to the National Parks Act 1980.

214. Kaikoura Tours Limited, owned jointly by Ngāti Kuri and Ngāi Tahu was renamed Whale Watch Kaikoura. New Zealand Nature Watch, developed by two overseas persons who were employed as consultants to Ngāti Kuri, was sold to Ngāti Kuri at the point where the licencees left New Zealand. The Ngāi Tahu Māori Trust Board, Wiremu Solomon, Whale Watch Kaikoura Limited and Nature Watch Kaikoura were the four appellants when the cases came to court. *Ngai Tahu Maori Trust Board v Director General of Conservation* unreported, 23 December 1994, Neazor J, High Court, Wellington, CP841.92; and *Ngai Tahu Maori Trust Board v Director General of Conservation* [1995] NZCA 18/95, reported as *Ngai Tahu Maori Trust Board v Director General of Conservation* [1995] 3 NZLR 553 (CA).

215. *Ngai Tahu Maori Trust Board v Director General of Conservation* [1995] NZCA 18/95, pp 6–7, reported as *Ngai Tahu Maori Trust Board v Director General of Conservation* [1995] 3 NZLR 553 (CA)

216. The Court of Appeal used the umbrella term 'Ngai Tahu' to embrace the four appellants.

217. *Ngai Tahu Maori Trust Board v Director General of Conservation* [1995] NZCA 18/95, pp 6–7, reported as *Ngai Tahu Maori Trust Board v Director General of Conservation* [1995] 3 NZLR 553 (CA), 560–561

218. Ibid, pp 561–562

219. Document H4, p 266

220. We are aware, from the evidence presented by claimants and by government scientists, of the close and effective working relationship between iwi and the Institute of Geological and Nuclear Sciences.

221. See section 11.5.4(i); Brad Coombes, 'Tourism Development and its Influence on the Establishment and Management of Tongariro National Park' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2007) (doc I1), chs 3–6

222. The board protected the interests of those providing accommodation for tourists and visitors by requiring the clubs to build their huts at altitude. Dr Coombes cites examples of some clubs which were

required to site their huts above 5,000 feet and others above 7,000 feet (doc I1), pp 242–247.

223. Dr Coombes identifies two building booms – the first between 1948 and 1953 and the second, more focused on the Whakapapa ski field, between 1955 and 1959: doc I1, pp 308–327, 332–337.

224. See, for example, Chris Winitana, brief of evidence, 20 April 2005 (doc G1), pp 9–10; Chris Tamihana Winitana, brief of evidence, 23 September 2006 (doc G25), pp 5–6; doc G24, p 4; Hineumu Daisy Curran, brief of evidence, 28 September 2006 (doc G20), p 4; Toroa Karatea, brief of evidence, 28 September 2006 (doc G26), pp 7–9; Robert (Boy) Cribb, brief of evidence, 5 May 2006 (doc D27), pp 3–4; Turuhia (Jim) Edmonds, brief of evidence, 5 May 2006 (doc D29), pp 14–15; Edwyna Moana, brief of evidence, 4 September 2006 (doc F3), p 14; Ariki Piripi (Alec Phillips), brief of evidence, 12 September 2006 (doc F10(a)), pp 7–9; Che Philip Wilson, brief of evidence, 10 February 2006 (doc A61), pp 5–6, 12–15; doc A64, pp 17–20

225. Document H3(k), p 18. Mr Green is quoting directly from the management plan, a document he played a major role in drafting.

226. Ibid, p 19

227. Ibid

228. Document G45, p 6

229. Ibid, p 7

230. Ibid

231. Ibid. Counsel for Tūwharetoa looked at map 12 in the *Tongariro National Park Management Plan* for the Whakapapa ski area and pointed to five chairlifts or T bars that extended across the 'gift area' boundary: see doc H4, p 209.

232. Document G45, pp 7–8

233. Ibid, pp 8–9. Mr Taiaroa pointed to two examples where Ngāti Tūwharetoa had been contacted by Ruapehu Alpine Lifts: the first related to a chairlift to the summit above Te Heuheu Valley and the second to a proposal to link the Tūroa and Whakapapa ski fields. In each case Ngāti Tūwharetoa's position has been explained, and the application was not continued. Mr Taiaroa underlined the good relationship between Ngāti Tūwharetoa and Ruapehu Alpine Lifts.

234. Ibid, p 8

235. Document G24, pp 15–16

236. Ibid, p 16. Mr Smith also provided appendices, sourced from the Department of Conservation which gave a summary overview of the concessions granted by the department. He tabulated 258 in all, including 59 accommodation concessions and 28 guiding concessions: doc G24, appendix C.

237. Nyree Leiana Ngaroana Nikora, brief of evidence, 14 August 2006 (doc E22), p 11

238. Document A61, pp 5–6

239. The literal and positive meaning of 'trample' applies to 'tread under foot' (doc A61), p 6

240. Ibid, p 14

241. Ibid. Uncle Matt was Matthew Marino Marutuna Mareikura, kaumātua and mentor for the young Che Wilson: p 3.

242. Rangihopuata Rāpana, brief of evidence, 5 May 2006 (doc D37), p 5

243. Ibid, pp 5, 7

244. Document A6, pp 29–33

245. Ibid, p 30

246. Document G45, p 8

247. Ibid

248. 'Ski-field Project to Boost Ruapehu', *Dominion Post*, 10 March 2006, p A8 (doc B1)

249. The more expensive ones could be transferred to another person before 2016. The sale of 7,000 lifetime passes would yield $25 million of the total costs (doc B1).

250. Various contractual arrangements between Ruapehu Alpine Lifts and the Crown are included in the ROI as documents D5 and D6.

251. 'Deed of Variation of Licence', 25 May 2000 (doc D5), p 1, and schedule A, p 3; 'Deed of Variation and Licence', 1 December 2003 (doc D6)

252. 'Deed Amending Licence', 1 December 1990, pp 2–3 (doc D5)

253. 'Rental Increase', deed between Minister for Conservation and Ruapehu Alpine Lifts Ltd, 27 April 1994 (doc D5)

254. 'Licence – Tongariro National Park, Whakapapa Skifield, Ruapehu Alpine Lifts', 1 January 1990, 'Schedule B' (doc D5)

255. Compare Tongariro–Taupō Conservancy, *Environmental and Risk Assessment for Mitigation of the Hazard from Ruapehu Crater Lake* (Tūrangi: Department of Conservation, 1999) (doc D9), pp 126–127; doc A61, pp 6–7; doc A6, p 27

256. Document H3(k), p 32

257. The crater wall had burst on Christmas Eve 1953 and the night express train from Wellington to Auckland was engulfed in a flood of mud, ice, and ash. Some 151 lives were lost. See Eileen McSaveney, Carol Stewart, and Graham Leonard, 'Historic Volcanic Activity: Ruapehu and the Tangiwai Disaster', in *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/historic-volcanic-activity/page-5, last modified 13 July 2012.

258. 'Overview of Consultation with Iwi on Crater Lake issue by Department of Conservation', not dated (doc D10), p 1

259. Department of Conservation, *Environmental and Risk Assessment for the Mitigation of the Hazard from Ruapehu Crater Lake: Assessment of Environmental Effects*, tbl 1. Risk mitigation options are contained in doc D9, p 16.

260. Document A6, p 26

261. The Executive Summary, the Recommended Action, Departmental Submission, the Minster's Paper to the Cabinet Policy Committee, and the format of the Ministerial Approval are contained in doc D10. The approval signed in December 2001 is not included.

262. Document H3(k), p 32

263. Document A6, p 27

264. Keith William Paetaha Wood, brief of evidence, 18 August 2006 (doc E30), p 2

265. Document G24, p 10

266. Ibid

267. Document A6, p 27

268. 'Lahar Could Have Been Much Worse', *New Zealand Herald*, 18 March 2007, available at http://www.nzherald.co.nz/nz/news/article.

cfm?c_id=1&objectid=10429432, accessed 28 June 2011; New Zealand Government, 'Ruapehu Lahar Goes According to Plan', press release, 18 March 2007, available at http://www.scoop.co.nz/stories/PA0703/S00346.htm, accessed 28 June 2011

269. Document H3(k), pp 2–3

270. Paul Green, under questioning by Judge W W Isaac, Returned Services Association Working Men's Club, Ōhakune, 1 December 2006 (transcript 4.1.12, p 454)

271. Document H3(k), p 33

272. Ibid

273. Department of Conservation, 'Whakapapa/Iwikau Sewerage Scheme: Assessment of Environmental Effects and Resource Consent', September 2001 (doc D7), pp 21, 32–34

274. 'Synopsis of Consultation 1979 to 1998' (doc D7, app 3)

275. Ibid, p 15

276. The naming of this sewage complex as 'Iwikau' is inappropriate.

277. Document D7

278. Two lodges, located outside of Iwikau, were not linked into the scheme and continue to use septic tanks. Mr Green, questioned in some detail by counsel for Tūwharetoa, was unwilling to speculate about their future. He indicated that it could be reviewed when the Management Plan and the licences came up for review: Paul Green, under cross-examination by Karen Feint, Returned Services Association Working Men's Club, Ōhakune, 1 December 2006 (transcript 4.1.12, pp 464–465).

279. Document E22, p 11

280. Document H3(k), p 33

281. Document A61, p 17

282. Ibid

283. Document D37, p 6

284. Document H3(k), p 33

285. Ibid. This is one of a small number of circumstances where helicopter flights are authorised.

286. Document G24, p 14

287. Shelly Christensen, brief of evidence, 4 September 2006 (doc F8), p 15

288. Document G24, p 13. Mr Smith added that all three tracks encompass Tongariro which Ngāti Hikairo see as a 'back door' approach.

289. Document I1, pp 445–446

290. Ibid, p 452

291. Document H4, p 157; doc I1, p 452

292. As a first step, Dr Coombes suggests that the department meet regularly with the Ketetahi Trust to address common concerns: doc I1, p 452.

293. Document H3(k), p 29

294. Ibid, p 30

295. Document E30, p 8

296. Colin Richards, replacement brief of evidence, 22 February 2006 (doc A62(a)), p 2

297. Document E30, p 2

298. Document H3(k), p 31

299. Document A62(a), p 3

300. Document H3(k), p 30

301. Document G24, pp 17–21

302. Ibid, pp 20–21

303. Ibid, app D

304. Ibid, pp 20–21

305. The Department of Conservation has a carefully composed overview of the project titled 'Tongariro Kiwi Sanctuary', Department of Conservation, http://www.doc.govt.nz/conservation/native-animals/birds/land-birds/kiwi/kiwi/docs-work/tongariro-kiwi-sanctuary, accessed 1 July 2011.

306. See Department of Conservation, 'Tongariro Kiwi Sanctuary', p 3. Warrenheip, near Cambridge, is a pest-proof sanctuary on a property owned by David and Juliette Wallace. It is home to a number of 'Operation Nest Egg' kiwi, relocated from other sites.

307. Document A61, p 5

308. Document A64, pp 6–7

309. Document A61, p 10

310. Document A64, p 24

311. Ibid, pp 4–9; doc A61, pp 5–7, 14–15

312. Document A64, p 7

313. Ibid

314. Ibid, p 4

315. Document A61, p 6

316. Ibid

317. Ibid

318. Document E30, p 6. Some of these sites will be within the National Park, others in the wider Tongariro–Taupō Conservancy.

319. Ibid, pp 6–7

320. Document A61, pp 5–6; doc E30, p 5

321. Document E30, pp 4–7; compare Karen Sinclair, *Prophetic Histories: The People of the Maramatanga* (Wellington: Bridget Williams Books, 2002), pp 68–69 and 95–102 where she describes particular journeys, taken in 1942 and 1962, in considerable detail.

322. Department of Conservation, 'Tongariro Kiwi Sanctuary', p 3

323. Counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), pp 156–158

324. Document F8, p 18

325. Document G24, p 17

326. Document H3(k), p 35

327. Ibid

328. Ibid, pp 35–36

329. Ibid, pp 36–37

330. Environmental Risk Management Authority, 'Application for the Reassessment of a Hazardous Substance under Section 63 of the Hazardous Substances and New Organisms Act 1996: Application Number HRE05002', amended ed (Wellington: Environmental Risk Management Authority, August 2008), http://www.epa.govt.nz/publications/1080-decision-document-with-amendments.pdf

331. Ibid, p 27

332. Ibid, p 28

333. Environmental Risk Management Authority, *Communications Guidelines for Aerial 1080 Operations* (Wellington: Environmental Risk

Management Authority, 2009), http://www.epa.govt.nz/publications/erma-1080-guidelines.pdf

334. Ibid, pp 3, 14–17

335. The *Tauranga Moana* report makes clear the article 3 guarantees – the Crown is required 'to treat Māori and non-Māori equally, impartially and fairly' and it must ensure that Māori cultural heritage receives 'equivalent protection to Pākehā cultural heritage': Waitangi Tribunal, *Tauranga Moana*, vol 2, p 631.

336. Section 4(2)(a) of the National Parks Act 1980 and section 6(e) of the Conservation Act 1987 provide the general guidelines, and section 17U(4) of the Conservation Act adds to the specifics. These are taken up in section 9(d) of *General Policy for National Parks* which limits accommodation and related facilities to those that cannot reasonably be provided outside the park. Taken together, these would point to a relocation of accommodation facilities on the Tongariro mountains to areas adjacent to the park. The extension of leases for lodges to 40 years and the insertion of policy 11 into the policy guidelines for Tongariro National Park ensure that 'existing legal agreements will be honoured' and 'no change can be contemplated': see doc H4, p 44.

337. Document D3, p 105

338. The management principles are on pages 13 to 20; the Kaupapa Māori chapter containing to principles of the Treaty of Waitangi is on pages 103 to 108 (doc D3).

339. See, for example, Waitangi Tribunal, *Ko Aotearoa Tēnei*, *Te Taumata Tuatahi*, pp 105–106, 111–112, 125–126, 233–235

340. Charlotte Sunde, Todd Taiepa, and Peter Horsley, *Exploring Collaborative Management Initiatives between Whanganui Maori and the Department of Conservation* (Palmerston North: School of Resource and Environmental Planning, Massey University, 1999) (doc D28(g)). The New Zealand examples include Motatau Forest Scenic Reserve in Northland and Whenua Hou Nature Reserve in Foveaux Strait. The Australian and Canadian examples discussed below are more comparable in size and complexity to the Tongariro National Park.

341. Terry de Lacey, 'The Uluru/Kakadu Model – Anangu Tjukurrpa: 50,000 Years of Aboriginal Law and Land Management Changing the Concept of National Parks in Australia', *Society and Natural Resources*, vol 7 (1994), pp 479–480

342. Trevor Power, 'Joint Management of Uluru – Kata Tjuta National Park', *Environment and Planning Law Journal*, vol 19, no 4 (2002), pp 288–290

343. Ibid, p 288

344. Elizabeth Kemf, ed, *The Law of the Mother: Protecting Indigenous Peoples in Protected Areas* (San Francisco: Sierra Club Books, c1993)

345. John Cordell, 'Who Owns the land? Indigenous Involvement in Australian Protected Areas', in Kemf, ed, *The Law of the Mother*, pp 104–113

346. Ibid, p 104

347. Graham Griffin, 'Welcome to Aboriginal Land: Anangu Ownership and Management of Uluru Kata Tjuta National Park', in Dawn Chatty and Marcus Colchester, eds, *Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement and Sustainable Development*, Studies in Forced Migration, vol 10 (New York: Berghahn Books, 2002), pp 362–376

348. Ibid, p 370

349. Ibid, p 371

350. De Lacey, 'The Uluru/Kakadu Model', p 495. This conclusion is supported by references from The Royal Commission into Aboriginal Deaths in Custody, the Commonwealth House of Representatives Standing Committee on Climate Change, Environment and the Arts, and the Australian Conservation Foundation.

351. Document H3(k), pp 2–3, 10

352. Ibid, p 10

353. Paul Green, under cross-examination by Richard Boast, Waitangi Tribunal offices, Wellington, 14 February 2007 (transcript 4.1.13, p 12)

354. Ibid

355. Ibid, p 13

356. Power, 'Joint Management of Uluru – Kata Tjuta National Park', pp 284–302

357. Sovereign Health Care Australia, 'Report of the Evaluation of the Community Liaison Function at Uluru-Kata Tjuta National Park on Behalf of Parks Australia North and the Uluru-Kata Tjuta Board of Management' (commissioned research report, Darwin: Parks Australia North Branch, 2001)

358. Power, 'Joint Management of Uluru – Kata Tjuta National Park', p 290

359. Ibid, p 294

360. Ibid, p 299

361. Ibid

362. See, for example, Lars Carlsson and Fikret Birkes, 'Co-management: Concepts and Methodological Implications', *Journal of Environmental Management*, vol 75 (2005), pp 65–76; Fikret Berkes, 'Evolution of Co-management: Role of Knowledge Generation, Bridging Organizations and Social Learning', *Journal of Environmental Management*, vol 90 (2009), pp 1692–1702.

363. Karen Lesley Sadler, 'A Comparative Study of Co-Management Agreements for National Parks: Gwaii Haanas and Uluru – Kata Tjuta' (MA thesis, University of Manitoba, 2005); Suzanne Hawkes, 'Gwaii Haanas Agreement: From Conflict to Cooperation', 1 January 1996, http://www.thefreelibrary.com, accessed 29 June 2011; Julia Gardner, *First Nations Cooperative Management of Protected Areas in British Columbia: Tools and Foundation* (Vancouver: Canadian Parks and Wilderness Society and Ecotrust Canada, 2001); Susanne Porter-Bopp, 'Colonial Natures? Wilderness and Culture in Gwaii Haanas National Park Reserve and Haida Heritage Site' (MA thesis, York University, 2006)

364. Joel Martineau, 'Otter Skins, Clearcuts, and Ecotourists: Re-resourcing Haida Gwaii', in M Miller, J Auyong, and N Hadley, *Proceedings of the 1999 International Symposium on Coastal and Marine Tourism: Balancing Tourism and Conservation* (Seattle: Washington Sea Grant Program, 2002), p 238

365. The population decline was catastrophic. Estimates by historians, geographers and demographers range from 90 per cent to 97 per

cent mortality and a population as low as 500 people at the nadir: see Martineau, 'Otter Skins, Clearcuts, and Ecotourists', p 240.

366. Ibid, pp 241–245

367. Unnamed Haida protestor, *Vancouver Sun*, 31 October 1995; Porter-Bopp, 'Colonial Natures?', p 59

368. Porter-Bopp, 'Colonial Natures?', p 66

369. Ibid, pp 71–73

370. Sadler, 'Co-Management Agreements for National Parks', pp 69–70

371. Hawkes, 'Gwaii Haanas Agreement: From Conflict to Cooperation'

372. Archipelago Management Board, *Gwaii Haanas National Park Reserve and Haida Heritage Site's Management Plan for Terrestrial Area*, Parks Canada, not dated, http://www.pc.gc.ca/pn-np/bc/gwaii-haanas/plan/plan1.aspx, accessed 20 October 2011

373. The initial focus was on the land area but the co-management arrangement includes the seas as well. This part of the process took five more years to complete. Legislation to establish the Gwaii Haanas Marine Park was passed in 2010. Canadian Parks and Wilderness Society (CPAWS), 'Great News! Gwaii Haanas Marine Conservation Area Approved by Parliament', CPAWS, http://www.cpawsbc.org/campaigns/marine/gwaiihaanas.php, last accessed 29 June 2011.

374. The Bill was introduced, from the Haida side by Guugaaw, president of the Haida Nation and from the government side, by Jim Prentice, Minister of the Environment, responsible for National Parks, with the support of the Minister for Fisheries and Oceans.

375. Sadler, 'Co-Management Agreements for National Parks', p 74

376. Parks Canada, 'Gwaii Haanas National Marine Conservation Area Reserve and Heritage Site', Parks Canada, http://www.pc.gc.ca/progs/amnc-nmca/cnamnc-cnnmca/gwaiihaanas/index_e.asp, accessed 29 June 2011; Andrew Zaloumis, 'MPAs and Indigenous Peoples: Co-Management as a Means of Respecting Traditional Culture and Strengthening Conservation', *MPA News*, vol 12, no 2, September – October 2010, available at http://depts.washington.edu/mpanews/MPA116.htm, accessed 29 June 2011; Turtle Island Native Network's Forum, 'Protecting Marine Ecosystems of Gwaii Haanas', Turtle Island Native Network, http://www.turtleisland.org/discussion/viewtopic.php?f=14&t=7584, accessed 29 June 2011

377. Archipelago Management Board, *Management Plan for the Terrestrial Area*, p 3

378. Archipelago Management Board, *Management Plan for the Terrestrial Area*, p 3; Julia Gardner, *First Nations Cooperative Management of Protected Areas in British Columbia: Tools and Foundation* (Vancouver: Canadian Parks and Wilderness Society and Ecotrust Canada, 2001), p 23

379. Archipelago Management Board, *Management Plan for the Terrestrial Area*, pp 3, 5

380. Archipelago Management Board, *Management Plan for the Terrestrial Area*, pp 3, 9

381. Sadler, 'Co-Management Agreements for National Parks', p 83

382. Ibid, p 80

383. Gardner, *First Nations Cooperative Management of Protected Areas in British Columbia*

384. Ibid, p 31. Dr Gardner is citing an internal report, for Parks Canada, prepared by Isabel Budke in 1999.

385. Ibid. These figures were provided by Steve Langdon, Director, Aboriginal Affairs Secretariat, Parks Canada.

386. Zaloumis, 'MPAs and Indigenous Peoples'; Media Relations, Parks Canada/Parcs Canada, news release/communique, 17 March 2011

387. These conclusions are based on extended interviews with Russ Jones, from the Council for Haida Nation, and Steve Langdon, from Parks Canada, in April and May 2000. Gardner, *First Nations Cooperative Management of Protected Areas in British Columbia*, p 23.

388. Cindy Boyko, 'On Ensuring the Gwaii Haanas Management Partnership is Balanced', in Zaloumis, 'MPAs and Indigenous Peoples'

389. Chris Finlayson, 6 May 2010, NZPD, 2010, vol 662, p 10842; Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010, preamble (17)(e) to (l) inclusive

390. For a Crown summary of the Deed of Settlement, see Christopher Finlayson, 'Waikato River Deed of Settlement Signed', 17 December 2009, http://www.beehive.govt.nz/release/waikato-river-deed-settlement-signed-waikato-tainui, accessed 29 June 2011; for a Tainui summary see Tainui, 'Waikato River Claim Agreement in Principle', December 2007, http://www.tainui.co.nz/he_paanui.htm, accessed 29 June 2011. For the legislation, see Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

391. All three documents were brought to the Māori Affairs Select Committee in February 2009 and are available at http://www.parliament.nz/NR/rdonlyres/8A8CF161-4D6F-4A13-85B0-0ED7368F937E/127352/49SCMA_ADV_00DBHOH_BILL8792_1_A13898_Intialbriefin.pdf, accessed 28 October 2011.

392. Her Majesty the Queen and Waikato–Tainui, 'Deed of Settlement in relation to the Waikato River', 22 August 2008, p 93

393. Ibid, p 149

394. The Vision and Strategy, prepared by the Guardians Establishment Committee, are contained in schedule 2 of the Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

395. Christopher Finlayson, 'Waikato River Deed of Settlement Signed', 17 December 2009, http://www.beehive.govt.nz/release/waikato-river-deed-settlement-signed-waikato-tainui, accessed 29 June 2011

396. The Vision and Strategy for the Waikato River are recognised as National Policy Statements under section 52 of the Resource Management Act 1991, as Statements of General Policy under section 17B of the Conservation Act, as Policy Statements under other legislation, and become part of the Waikato Regional Policy Statement. See Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010 sections 9 to 17.

397. Her Majesty the Queen and Waikato–Tainui, *Deed of Settlement in Relation to the Waikato River*, pp 124–136

398. The Kingitanga Accord style of working, involving good faith engagement, open sharing of information, and consensus

decision-making is repeated in schedule 1 of the Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

399. Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010

400. The first pieces were put together in 1995 when the historical grievances, apart from those relating to the Waikato River, were settled and the Waikato Raupatu Claims Settlement Act 1995 was passed.

401. Chris Finlayson, 6 May 2010, NZPD, 2010, vol 662, p10843

402. Tongariro National Park was inscribed on the Unesco World Heritage List as a significant natural and cultural landscape, a status which underlines the important Māori cultural and spiritual associations as well as its outstanding volcanic features. Department of Conservation, 'World Heritage Areas', Department of Conservation, http://www.doc.govt.nz/publications/about-doc/concessions-and-permits/concessions/conservation-revealed, accessed 29 June 2010

403. See Waitangi Tribunal, *The Petroleum Report* (Wellington: Legislation Direct, 2003); Waitangi Tribunal, *Tauranga Moana*.

Page 891: Department of Conservation statutory framework
Source: Document H2(g), app 1

Page 897: Section 3.7.2 of the TTCMS – Principles of the Treaty
1. Department of Conservation, *Tongariro/Taupo Conservation Management Strategy, 2002–2012*, TT Planning Series 1 (Tūrangi: Department of Conservation, 2002) (doc D3), p103

Page 926: Chronology of the Ruapehu Ski field Licences
Sources: Document D5; Conservation Act 1987, s14; Conservation Law Reform Act 1990, s8(1); Conservation Amendment Act 1996

Page 928: Map 12.4
Source: Document D6, sch B

Downloaded from www.waitangitribunal.govt.nz

CHAPTER 13

WATERWAYS AND CUSTOMARY FISHERIES

13.1 Introduction

The waterways and customary fisheries of our inquiry district are of vital importance to ngā iwi o te kāhui maunga.[1] Since 1840, however, the Crown has acquired possession of and authority over many of these waterways. Customary fisheries within those waterways have also been damaged. Claimants alleged that Crown actions and omissions with respect to these taonga were in breach of the principles of the Treaty. In this chapter, we assess these claims and determine how it is that Māori no longer possess so many of the waterways that they regard as taonga. We also determine if any Crown actions or omissions adversely impacted the district's indigenous fisheries and whether Māori have been prejudicially affected as a result.

Te kāhui maunga form the source of many of the district's waterways. From the heights of Ruapehu, for example, flow the Whangaehu and Wāhianoa Rivers, and the Whakapapanui Stream. It is likewise from the peaks of Ruapehu, Ngāuruhoe, and Tongariro that nationally significant rivers, such as the Whanganui, Waikato, and Tongariro, derive. A number of lakes are also inextricably linked with the mountain giants. Lake Rotoaira is, for instance, situated between Mount Tongariro, Mount Pīhanga and Kakaramea, while Te Wai Whakaata o Te Rangihīroa (commonly known as the Blue Lake) is found on the upper slopes of Tongariro. To the south, Te Waiamoe (the Crater Lake) is located near the summit of Mount Ruapehu. Variously described as life blood, ancestral waters, and wai tapu,[2] the streams, rivers, and lakes of the National Park are not only of cultural, historical, and spiritual significance, but traditionally provided for the physical needs of the district's inhabitants. It was, for instance, in certain parts of these rivers that warriors bathed after battle and mothers washed following childbirth. It was also from these streams, rivers, and lakes that hapū drank and gathered food, both for themselves and for any visitors to their rohe. Waterways thus occupied a central position in the everyday lives of ngā iwi o te kāhui maunga.

Fisheries contained within the district's waterways were also regarded as taonga by ngā iwi o te kāhui maunga. Traditionally, the streams, rivers, and lakes of the inquiry district were teeming with aquatic life, including species such as kōaro, kōura, tuna, īnanga, and kākahi. Some waterways were particularly renowned for their abundant fisheries. Rotoaira, for instance, was recognised as a food basket of the Ngāti Tūwharetoa people. Fisheries not only formed an important food source but could also be used as a medicine for the sick or elderly and were the subject of many traditions and tikanga. Indeed, the

Mountain streams. The Tongariro mountains give rise to many streams and rivers, like the Whakapapa-iti, and these have played a significant role in the lives of Māori.

fear that declining customary fisheries would be accompanied by a loss of traditional knowledge was a major concern for the claimants.

During the hearings, the Tribunal heard considerable claimant evidence describing customary usage, and the traditions and tikanga surrounding waterways and customary fisheries.[3] This evidence is crucial to how the Tribunal will assess the issues in this chapter. In part I, we consider how so many of these waterways passed out of Māori ownership and control, and whether the passage of these waterways from Māori hands to the Crown met with their free, willing, and fully informed consent. In part II of this chapter, we examine the species of fish traditionally important to Māori, together with the traditions, tikanga, and fishing methods associated with them. We then turn to question whether actions or inactions of the Crown affected both the fishery itself and tangata whenua.

It is important to emphasise that our analysis in this chapter should be read in light of the report as a whole. For example, we draw on the conclusions of chapters 6 and 7 when we assess how the beds of so many of the district's waterways came to vest in the Crown. Similarly, chapter 13 provides vital context for chapter 14, which examines claims regarding the Tongariro power development (TPD).

Previous Tribunals have considered claims regarding waterways and customary fisheries that relate to those before us. We, therefore, use their findings to inform our own. Of particular note are *The Whanganui River Report* and *He Maunga Rongo: Report on Central North Island Claims*.

At this point, we also acknowledge that the *Whanganui River Report* was comprehensive in its treatment and analysis of claims associated with the Whanganui River. The

river is, however, discussed on account of its source being located in the Tongariro National Park.

Before delving into our analysis of these issues, however, we will summarise the relevant submissions made by counsel for both the claimants and the Crown.

13.2 Claimant Submissions

Generic submissions on waterways and customary fisheries were filed by counsel for Ngāti Tūwharetoa,[4] and adopted and complemented by other counsel.[5] Counsel for Ngāti Rangi argued that the claimants 'exercised mana whenua and rangatiratanga over their waterways, which were taonga guaranteed to them under the Treaty'.[6] Extinguishment could only be 'effected with the agreement, consent, and knowledge' of tangata whenua.[7]

13.2.1 Rangatiratanga

The claimants stressed that the Māori translation of article 2 guaranteed that tangata whenua would retain rangatiratanga over their land and taonga for as long as they wished to retain them. The Crown has breached this promise by failing to protect Māori rangatiratanga and by expropriating waterways in a non-Treaty compliant manner. Counsel for Ngāti Hikairo further submitted that in doing so the Crown also breached the principle of active protection.[8]

The claimants submitted that as at 1840 the iwi of the inquiry district exercised rangatiratanga, mana whenua, and kaitiakitanga over the natural and physical resources of the region, doing so in accordance with tikanga Māori.[9] These resources included waterways, over which iwi control was comprehensive.[10]

13.2.2 Waterways

(1) *Expropriation of title*

Counsel for Ngāti Tūwharetoa submitted that the operation of the law has undermined Māori possession and tino rangatiratanga over waterways in two ways. First, via the expropriation of certain ownership rights and, secondly, through the loss of control and authority over waterways when the Crown used legislation to vest in itself the governance of water resources and the ability to allocate water use rights.[11] This was 'an active disregard of Treaty rights' as opposed to merely an 'inadvertent breach'.[12]

The claimants argued that as at 1840 they held title over the waterways in the inquiry district. Although Māori concepts of ownership differ from those of Europeans, analogies have been drawn between the exercise of mana and Māori understandings of possession and European concepts of property rights and ownership.[13] It is also submitted that Māori title to their waterways was not extinguished in a Treaty-compliant manner: extinguishment of title, whether by legislative provisions or common law, needs the agreement of tangata whenua.[14]

(a) *Navigable rivers and streams:* The claimants pointed to the various legislative provisions which, according to the Crown, served to extinguish Māori customary title over the waterways within the inquiry district. Such provisions include those contained in the Coal-mines Act Amendment Act 1903, the Water and Soil Conservation Act 1967, and the Resource Management Act 1991 (RMA), which vested the beds of all navigable rivers in the Crown.[15] The Coal Mines Act 1979 (a successor to the Coal-mines Act Amendment Act 1903) has now been repealed, but the effect of the provision has been preserved by subsequent Acts, the most recent being section 354(1)(c) of the RMA.[16]

Counsel for Ngāti Tūwharetoa submitted that the Crown's expropriation of the iwi's rangatiratanga and kaitiakitanga over their waters in this manner was in breach of the Treaty. While it was acknowledged that the extent to which ownership and customary property rights have been lost is a 'somewhat murky legal issue', counsel argued that where this has occurred it amounted to a 'clear breach' of the guarantee contained in article 2. It was further submitted that the raft of legislation enacted in respect of navigable rivers interfered with 'Maori rights of tino rangatiratanga over, and possession of, their waterways in . . . complex and subtle ways'.[17]

(b) *Non-navigable rivers and streams:* Counsel also argued that the application of the common law rule *ad medium filum aquae* had the effect of alienating customary

waterways.[18] They contended that the application of this doctrine was in breach of Treaty principles and the rule itself is inconsistent with tikanga Māori.[19] In contrast to European understandings, which separate waterways into various parts that can and cannot be owned, Māori have a holistic understanding of waterways, conceptualising them as single, indivisible entities. Accordingly, it was submitted that the rule could not apply in the inquiry district and therefore could neither remove Ngāti Tūwharetoa's interests in their waterways, nor to extinguish the iwi's rights upon their sale.[20] Counsel for Ngāti Tūwharetoa further argued that, if the *ad medium filum aquae* rule were held to apply, ngā iwi would never have contemplated that either the investigation of title or the sale of land could result in the loss of the riverbeds contained within that land, as well as the land itself. In their submission, such a rule would have been 'utterly alien to tikanga Maori'.[21]

(2) *Ownership and control*

(a) *Effects of legislative and regulatory regimes:* Counsel for Ngāti Tūwharetoa added that the matrix of legislative and regulatory provisions have had effects beyond the extinguishment of Māori ownership. The Crown usurped the authority and control that tangata whenua exercised over water resources and how their waters could be used.[22] Similarly, counsel for Ngāti Hikairo submitted that, along with the ownership of customary fisheries and waterways, they have lost access to, and customary knowledge of, these resources.[23]

(b) *Failure to protect Māori taonga:* Claimant counsel submitted that the Crown breached the article 2 guarantee that taonga would be protected and that Māori would retain rangatiratanga over their taonga.[24] One of the counsel for Ngāti Hikairo submitted that this article conferred a duty on the Crown to 'ensure that both the spiritual and physical elements of those things which are taonga . . . are protected and preserved'.[25] Counsel consistently affirmed that the waterways contained within the inquiry district are taonga.[26] A number of submissions emphasised the particular importance of Rotoaira, which was described as 'amongst the most treasured taonga'.[27] Despite the Crown vesting the lake bed in the Lake Rotoaira Trust on behalf of its Ngāti Tūwharetoa beneficial owners, the retention of their ownership became subject to the trust, whereby they forfeited all 'right to compensation for the use of the lake'.[28]

(c) *Importance of restoring the mana and rangatiratanga of Māori:* Counsel emphasised the importance of restoring tribal mana over traditional natural resources, including water, describing this as critical to the future development of iwi.[29] They also submitted that tangata whenua are uniquely positioned to manage water resources. The claimants submitted that the Crown breached its promise to safeguard Māori rangatiratanga by usurping tangata whenua management and control over waterways. Counsel for Ngāti Tūwharetoa stressed the claimants' desire for the Crown to give greater recognition to their Treaty interests and quoted the following passage from the government's cabinet paper on the subject of sustainable water programmes with approval:

> Many Māori . . . consider that their Treaty interests go beyond solely ownership of water resources – extending to the protection of Māori cultural values in water, equitable access to the use of water for economic and cultural benefit and a role in decision-making about water allocation.[30]

Counsel argued that the Crown guaranteed Māori rangatiratanga over their possessions and that rangatiratanga is therefore not to be qualified by a balancing of interests. Citing passages from the *Whanganui River Report*, counsel stated that this guarantee was 'not conditional, but was expressed to be protected, absolutely'. Instead, they said, it is the Crown's governance that should be 'qualified by the promise to protect and guarantee rangatiratanga for as long as Maori wish to retain it'.[31]

13.2.3 Customary fisheries

The claimants submitted that the fisheries, like the waterways, were regarded as a taonga.[32] Crown actions and inactions have also adversely affected customary fisheries.[33]

One such action was the introduction of trout into waterways, such as Rotoaira.[34] This took place despite the opposition of local Māori, who 'petitioned the Government in 1905 to prevent trout from being introduced into Lake Rotoaira'.[35] Trout brought about the decline of native species, such as the kōaro, that had been an invaluable food for Māori.[36] The Crown, however, failed to recognise the importance of protecting indigenous species until the 1970s. It is thus argued that the Crown breached its duty of active protection.[37]

The claimants also alleged that Crown actions interfered with customary fishing practices. When species on which iwi historically relied were wiped out, iwi such as Ngāti Hikairo 'have had to adjust their fishing practice'.[38] In making such adjustments, iwi have met with legal difficulties.[39] In practice, counsel submitted, 'the depletion of indigenous species by introduced species has rendered the customary right to them virtually symbolic in nature only'.[40] Ngāti Hikairo also referred to the way in which the iwi's authority over Rotoaira's fishing resource has been usurped by the Crown. Despite the lake bed vesting in the iwi, the Crown has restricted Ngāti Hikairo's 'ability to exercise customary fishing practices in the lake'.[41]

It is submitted that the curtailing of customary practices and rangatiratanga has been effected mainly through the enactment of environmental legislation and the development of licensing regimes. In 1938, the Crown enacted the Native Purposes Act 1938, section 22 of which, in counsel's words, granted Ngāti Tūwharetoa 'the exclusive right to take both indigenous fish and trout' from Rotoaira. Counsel for Ngāti Hikairo submitted, however, that since this time these rights have been steadily eroded.[42] With the enactment of the Maori Purposes Act 1959, for example, those seeking to take trout from Rotoaira were required to hold a trout fishing licence for the Taupō fishing district under section 4(2). In this way, trout fishing has become more difficult and, owing to the diminished number of indigenous species as a result of predation by introduced species, customary fishing rights are almost purely symbolic.[43] In addition, the claimants consider the existing statutory and regulatory regimes confusing, uncertain, and contradictory.

Ngāti Hikairo submitted that the principle of active protection requires Māori to have greater involvement in management of the environment. They view this as implying not only 'rights of control and authority over the resource, but also obligations to conserve, nurture and protect the resource'. Legislation that affects their ability to manage such resources should be clear and made in good faith.[44] Given that trout have also come to form an important part of their diet, as a result of the degradation of customary fisheries, Ngāti Hikairo view their exclusion from the management of this resource as a further breach of Treaty principles.[45]

Ngāti Hikairo claimed that the Crown continues to ignore 'the issue of effective Maori control over fisheries' and to identify the non-application of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 to freshwater fisheries as part of the problem. These regulations were designed to 'provide a framework for Maori management of the fishing resource for customary purposes' by tangata whenua, but they do not apply to freshwater fisheries and they do not cover Rotoaira.[46]

Counsel claimed that the Conservation Act 1987 provides that Māori have a customary right to fish but do not have any ability to control or manage the fishery.[47] Māori are thus excluded from the management of the fishery resource, are forced to navigate their way through a labyrinth of statutory provisions, and are restricted in their use of the resource itself.[48]

13.3 Crown Submissions

13.3.1 General comments

The Crown argued that the evidence presented to the Tribunal is insufficient to support a 'comprehensive inquiry' on waterways issues. It is specifically submitted that there is a lack of evidence concerning the background and development of relevant legislation such as the Coal-mines Act Amendment Act 1903, and no evidence illuminating the understandings and intentions of parties who engaged in land sales and the consequent impacts on the ownership of waterways.[49] The Crown likewise argued that, with the exception of the Tongariro River, the claimants failed to

prove that each of the waterways within the inquiry district is taonga.[50]

It is also the Crown's position that the Tribunal does not have the jurisdiction to determine questions of law. The Crown held that the Tribunal must be 'cautious in taking up the invitation to express any views on the law'. The Crown specified that inquiring into the *ad medium filum* rule and whether it has been rebutted, where there is a lack of specific evidence, would require such caution.[51]

13.3.2 Rangatiratanga

The Crown rejected the claimants' assertion that rangatiratanga be unqualified on account of its absolute protection under article 2. Citing the Court of Appeal, the Crown argued that '[t]he rights and interests of everyone in New Zealand, Maori and Pakeha and all others alike, must be subject to that overriding authority' that is the Crown's right to govern (article 1 kāwanatanga).[52]

13.3.3 Waterways

(1) *Expropriation of title*

The Crown's submissions confirmed its position vis-à-vis the ownership of the beds of waterways. First, counsel affirmed that section 14 of the Coal-mines Act Amendment Act 1903 vested the beds of navigable rivers in the Crown. Secondly, in respect of non-navigable waterways, there is the presumption that the property rights of the owner of the riparian land extends to the centre of the waterway.[53] Crown counsel cited *In re the Bed of the Whanganui River* in support of their position that this principle applied to land sold by Māori.[54]

(a) *Navigable rivers and streams:* The Crown discussed the means by which ownership of navigable rivers was determined under English law both before and after the introduction of the Coal-mines Act Amendment Act 1903.

Prior to the 1903 enactment, the common law rule *ad medium filum aquae* applied not only to non-navigable streams and rivers but also to the non-tidal sections of navigable waterways. The English Laws Act 1858 affirmed the application of the common law in New Zealand 'so far as applicable to the circumstances of the said Colony'[55] and, in the Crown's submission, dictated that title to riverbeds would pass with the title to adjoining parcels of land. The Crown contended that careful attention must therefore be paid to the timing of land sales in the region when considering the application of the 1903 Amendment Act.[56]

The Crown asserted that prior to the enactment of the 1903 amendment a large proportion of land had already passed out of Māori ownership and, with it, title to the riverbeds adjoining these parcels of land. It is therefore submitted that the Act had no effect on the waterways contained in areas that had already been alienated. With respect to areas that were still in Māori ownership when the 1903 Act came into force, the Crown submitted that 'no evidence has been presented as to whether these areas contain navigable rivers'. Such evidence should include 'the physical nature of the river in question'.[57]

Quite apart from these questions, it is the Crown's submission that section 14 of the Coal-mines Act Amendment Act was not in breach of the Treaty. They argued that its enactment was, instead, a 'legitimate exercise' of the powers conferred by article 1.[58]

(b) *Non-navigable rivers and streams:* The Crown commented again on the *ad medium filum aquae* presumption, arguing that this rule was not applied to 'disentitle anyone from his or her property rights', but rather as 'a method of resolving any ambiguity as to the boundaries'. The Crown stressed that in some cases Māori may retain title to the beds of non-navigable rivers within the National Park. Such cases include where tangata whenua 'still possess title in the surrounding or adjacent land' and where 'the ad medium filum presumption is rebutted'. In the latter situation, it would be necessary to consider individual transactions in order to establish whether or not Māori understandings of what was being sold aligned with those of the contracting party.[59]

(2) *Ownership and control*

(a) *Water and Soil Conservation Act 1967:* The Crown refuted the suggestion that the Water and Soil Conservation Act 1967 vested the ownership of the water resources of the district in the Crown and holds that it has not expropriated

Māori rights. The effect of the Act, the Crown argued, was rather to vest 'the regulation of the use of natural water' in the Crown. The Crown held that the legislation was a 'legitimate exercise of its kawanatanga under Article 1 of the Treaty' and stressed that the regulated control of natural water is in the national interest.[60]

The Crown also responded to the claimants' allegation that section 21 of the Water and Soil Conservation Act 'abolished the doctrine of riparian rights'. The Crown argued that the claimants failed to specify which riparian rights they perceive as being abolished by the passage of this provision. The Crown also submitted that rather than removing riparian rights, both section 21 of the Water and Soil Conservation Act 1967 and section 14 of the RMA go a long way towards codifying these rights and allowing their continuation. However, the Crown argued that these riparian rights exist only 'in circumstances where Maori are the owners of adjoining land'. The Crown accepted that 'as at 1967, Maori would still have owned significant areas of land that encompassed waterways', but argued that no evidence was presented on this score, nor on 'the impact of this codification on Maori'.[61]

(b) *The use and control of water:* The Crown was of the view that flowing water is 'incapable of ownership' and that access to such is a 'public right'. The Crown therefore rejected the claimants' assertion that their customary rights in lakes and rivers gives them not only riparian rights, but also rights as to the use and control over the water. Such assertions are, in the Crown's view, inconsistent with general understanding of the public's rights.[62]

(c) *The right of development:* The Crown refuted claimant counsels' submissions in respect of development rights over water. The Crown noted the claimants' attempt to 'distinguish the Court of Appeal's findings in *Te Ika Whenua*', surmising that this was on the basis that these dealt with 'the "relatively conservative doctrine" of aboriginal title, whereas the Tribunal is focussed on Treaty rights'.[63] The Crown made two points in response. The first was that this approach ignores President Cooke's statements in *Te Runanganui o Te Ika Whenua v Attorney-General*, where he says that 'however liberally Maori customary title and Treaty rights may be construed, one cannot think that they were ever conceived as including the right to generate electricity by harnessing water power'.[64] The second was also a reference to the words of President Cooke, that while 'the Treaty of Waitangi is to be construed as a living instrument', it cannot reasonably be understood as safeguarding rights to generate electricity today. The Crown concluded that there is no 'development right in relation to the generation of electricity from water' and, moreover, that the Water and Soil Conservation Act did not confiscate or fail to protect any rights in this respect.[65]

13.3.4 Customary fisheries

The Crown began their submissions on the topic of customary fisheries by making a number of acknowledgements. First, the Crown recognised that 'Lake Rotoaira and its tributaries once contained a population of native fish taken by local Maori for food'. It also conceded the likelihood that Cecil Whitney of the Auckland Acclimatisation Society did introduce trout fry into Rotoaira in September 1918, and possibly earlier in 1900 and 1906.[66]

The Crown submitted that there is no customary right to fish for trout. While the Crown acknowledged that the introduction of rainbow trout into the waterways of the inquiry district flourished 'at the expense of' of native fish species, counsel stressed that trout have always been subject to a separate statutory regime and the only fishing rights are those available under those provisions'. In support of their position, the Crown pointed to the Court of Appeal decision in *McRitchie v Taranaki Fish and Game Council*, which held that it was never contemplated that 'Maori customary fishing rights would extend to the new species'.[67]

The Crown also rejected the claimants' allegation that the legislation governing the 'management and fishing rights in Lake Rotoaira and its tributaries is confusing, ambiguous or contradictory'.[68] In support of their submission, the Crown cited provisions from the Conservation Act 1987, the Taupo Fishery Regulations 2004, and the Rotoaira Trout Fishing Regulations 1979 in order to emphasise their clarity. It was stressed by counsel for the

Crown that section 26ZH of the Conservation Act 1987 'provides that nothing in Part 5B (Freshwater Fisheries) "shall affect any Maori fishing rights"' and that the Conservation Act's requirement for a licence is distinct from those entry permits issued under part 1 of the Rotoaira Trout Fishing Regulations 1979. Under these regulations, the Crown stated, it is the role of the Rotoaira Trust trustees to issue entry permits 'entitling the holders thereof to enter in and upon the Lake and to fish for or take trout or other fish of any kind in or from the Lake'.[69] The Crown said that form 1 of the Rotoaira Trout Fishing Regulations makes it clear that while the permit described above allows access to the lake, it does not confer a right to fish unless the bearer has a 'current fishing licence issued pursuant to the Taupo Trout Fishing Regulations 1971 and pursuant to the condition of issue of that licence"'.[70] The Crown conceded that the form has not been updated to reflect the fact that the Taupo Trout Fishing Regulations have been superseded by the Taupo Fishery Regulations 2004. However, in Crown counsel's view, it remains clear that 'the prohibition in s26ZI of the Conservation Act on taking sports fish without a licence applies in addition to (and is not satisfied by) an entry permit under the Rotoaira Trout Fishing Regulations 1979'.[71]

Rather than focus exclusively on the negative consequences of the introduction of trout, the Crown emphasised the benefits that have flowed from introduction of trout into the region. These include the resulting 'economic, social and recreational opportunities' and '[t]he availability of trout as a food source for local Maori, albeit subject to regulation'. The Crown also questioned the nexus between the introduction of trout and the demise of indigenous ecosystems by suggesting that at the time there was a dearth of scientific evidence on this score.[72]

13.4 Submissions in Reply

13.4.1 Rangatiratanga

The claimants maintained that the right of kāwanatanga, granted to the Crown in article 1 of the Treaty, is not an absolute right. Ngāti Hāua, for example, described the Crown's exercise of kāwanatanga as 'fettered by the solemn guarantees in article two'.[73] Ngāti Tūwharetoa endorsed this view, pointing also to the '*Whanganui River Report*'s exposition of the principle that the Crown's kawanatanga powers are subject to Article 11 guarantees'.[74] Counsel for Rangiteauria Uri elaborated on these submissions, paraphrasing the *Turangi Township Report*'s finding that,

> if the Crown is ever to be justified in exercising its right to govern in a manner that overrides tino rangatiratanga, then it should only be in exceptional circumstances and as a last resort in the national interest.[75]

In their submission, it would be inadequate or 'insufficient' to apply any test that is weaker than the standard set by that Tribunal. Counsel further argued that, before the Crown takes such a step, it must subject the matter to very careful consideration and actively engage with the hapū that will be affected.[76]

Counsel for Rangiteuria Uri stated that the Crown's duty of active protection is heightened where the vulnerability of taonga can be attributed to Treaty breaches committed by the Crown.[77] In Ngāti Hāua's words, 'where prejudice flows from a Crown Treaty breach, the obligation of the Crown in respect of that prejudice and breach is heightened and increased'. Counsel emphasised that this is particularly relevant in respect of the 'Kahui Maunga and the tupuna awa, Whanganui' River.[78]

Ngāti Hikairo furthermore accused the Crown of failing to directly respond to their closing submissions on environmental issues.[79]

13.4.2 Ownership and control

A number of points are made in response to the Crown's submissions on the ownership of the district's waterways. Counsel for Rangiteuria Uri, for example, stressed that the Whanganui River Tribunal had 'clearly found that the Crown's acquisition of rights in respect of the Whanganui River under the application of the Coal-Mines Act, the *ad medium filum* principle or otherwise was in breach of the principles of the Treaty'.[80] Secondly, counsel submitted that irrespective of who now owns them, the waterways retain their mauri and their status as taonga. The relationship of

Whanganui iwi and Ngāti Rangi with these waterways, said counsel, will continue despite changes in their legal ownership and that 'the Crown's obligation of active protection cannot materially be affected or diminished by the legal ownership of the waterways'.[81] Finally, it was argued that where acts or omissions of the Crown in breach of the Treaty have caused Māori to lose their legal interests, 'the Crown cannot reasonably benefit from the fact and effects of the breach, by suggesting that a different, potentially lesser set of Treaty obligations consequently applies to the waterways in question in terms of any subsequent Crown actions or omissions'. Counsel argued that the principle of redress should apply.[82]

Counsel for Ngāti Tūwharetoa refuted the Crown's allegation that the claimants did not present any evidence on the ownership of waterways and failed to prove that 'the waters of Te Mataapuna are taonga to Tuwharetoa'. In support of this position, counsel pointed to the extensive evidence presented in regard to whakapapa, the significance of waterways and the way in which they were named and used by tangata whenua, and the tikanga which is applied.[83] If the Crown did not understand or accept the evidence provided, they were free to subject it to cross-examination: the Crown did not avail themselves of this opportunity, however. Ngāti Tūwharetoa said that along with the lake, all of the rivers, streams, and their tributaries are taonga. They view it as impossible to draw distinctions between these waterways and to rank them according to their 'specialness'. These waterways as all 'related by whakapapa' and as 'Te Mataapuna, the rivers that flow from the sacred maunga Tongariro and thenceforth to Taupō-nui-a-Tia and through Te Awa Whanganui'.[84]

Ngāti Tūwharetoa also expressed concern that Crown submissions on the ownership of flowing water evaded some of the issues that they had raised. It is their submission that while the Crown set out the 'orthodox' common law position, they failed 'to address the issue of whether the Treaty guaranteed rights to water at Maori law'.[85]

13.4.3 Customary fisheries

Rejecting the Crown's arguments, Ngāti Hikairo reiterated their stance that the statutory regime surrounding the management of Rotoaira and its fishery is confusing and complex. They further submitted that the 'divisive approach to freshwater fisheries', which they say is engendered by the regime, is inconsistent with 'Maori conceptions of their customary fishing rights'. Ngāti Hikairo also reiterated the fact that the legislation has left them uncertain of the rights that they now hold in respect of Rotoaira.[86]

In Ngāti Hikairo's view, the Crown has failed to consider the ways in which the introduction of trout and the confusing legislative regime have impacted on their ability to exercise 'their customary fishing rights in their own lake'. It is submitted that this failure amounts to a breach of the Crown's duties of good faith and active protection.[87]

While Ngāti Tūwharetoa argued that, to an extent, the trout has now come to be something of a customary fish, they stress that it is not a simple case of 'replacing one fish with another'. Cultural impacts, such as a loss of mana and cultural knowledge of the 'rituals associated with those fish' commonly described by Ngāti Tūwharetoa as 'kai rangatira' also need to be considered. Ngāti Tūwharetoa also expressed concern at the fact that the Crown had not responded to evidence that 'the fishery in Lake Rotoaira had been severely [and] detrimentally impacted upon by the introduction of the TPD'.[88]

13.5 Waterways – Tribunal Analysis

Our analysis of those claims raised in respect of the district's waterways focuses on the following questions:

1. What is the significance of waterways to ngā iwi o te kāhui maunga? How were they used traditionally?
2. How has possession and authority over these waterways passed out of Māori hands?
3. Did Māori in the inquiry district knowingly and willingly cede possession and authority?

We turn now to the first of these.

13.5.1 The significance and traditional use of waterways

As noted in chapter 2, the mana of ngā iwi o te kāhui maunga over the inquiry district was comprehensive. They managed and controlled many of its natural and physical

A mountain torrent. Bodies of water like Lake Rotoaira and rivers that existed in bleak and sometimes extreme mountainous conditions were valued for their particular properties and for the way in which they could support plant and bird life.

resources, including the lakes, rivers, streams, and springs, and all that lay within them. Indeed, the harshness of the mountainous terrain encouraged the exploration of these waterways and the use of their unique properties and the flora and fauna that they supported. We have previously commented that ngā iwi o te kāhui maunga's physical occupation of the land, whether permanent or seasonal, was necessary to obtain mana and kaitiakitanga over the district's natural resources, which included its lands and waterways. Over centuries, ngā iwi o te kāhui maunga forged myriad ties to these awa, puna, and roto. These connections were founded in occupation and strengthened by whakapapa, kaitiakitanga, and the consumption of resources. Their mark was also stamped on the landscape by the names that they attributed to these waterways, many of which refer to traditional histories and important ancestors. Thus, while individual freehold rights did not exist in traditional Māori society, their interests in the land and its waterways are undeniable.

We turn now to examine the interests of ngā iwi o te kāhui maunga in greater detail, beginning with an investigation of how the possession, use, and control they exercised over their waterways aligns with British conceptions of ownership.

(1) *Notions of ownership and possession*

Prior to the arrival of Europeans and the signing of the Treaty of Waitangi in 1840, Māori did not consider themselves to own either land or natural resources. They instead thought in terms of possession and control.[89] Indeed, Māori rights, whether they were in land, water, or waterways, were founded on 'usage and possession, from which, according to the law as settled in the Native Land Court, ownership derives'.[90]

While the land itself was viewed holistically, different parts were set aside for various uses by different individuals or group members.[91] Consequently, there was often a complicated network of 'overlapping rights to the resources of the local forests, rivers, lakes, swamps, ocean fishing grounds, lagoons and cultivations'; rights which were 'distributed amongst individuals and groups'. These intersecting rights and interests could result, for example, in one group possessing a right to take berries from a certain area, while another had a right to cultivate kūmara, another to take fish from a certain stream, another to hunt pigeons at certain times of year, and others to reside in the area, cross the land, or take water.[92]

In its study 'Māori Custom Law and Values in New Zealand', the New Zealand Law Commission also touched on the question of customary tenure and the various interests it comprises. In its words:

> New Zealand in its entirety was once held by Māori under their own customary tenure. This tenure is generally agreed to be a "collective" one, in that the land belonged to all members of a defined group (usually a hapū). No individual interests in the land were discernible, though the group might allocate particular functions and productive activities to individuals as their right. The relationship between Māori and the land was not one of ownership in the Western sense; Māori saw themselves as belonging to the land, rather than the land belonging to them.[93]

Under customary tenure, it was possible for rights to be transferred within a group without title passing. In addition, when use rights were to be transferred beyond that group, it was necessary to obtain a general group sanction. To elucidate the concept, Chief Judge E T Durie likened Māori tenure to an 'ancestral trust estate of indefinite magnitude vested in hapu but with internal use rights distributed amongst such ancestral descendants and incorporated outsiders who used them'.[94] In another publication he stated that

> There was, consequentially, no concept of land sales, and no concept that an individual could use land freed of specific and continuing obligations to the associated ancestral group. There was no division of the land as to parcels according to metres and bounds, save for the definition of resource areas. The concept that the total use rights in a prescribed land parcel could accrue for the exclusive benefit of a few defined owners was foreign.[95]

It should be noted, too, that previous Tribunals, such as the Whanganui River Tribunal, have explored the nuances of the terms 'possession' and 'authority' and have concluded that the distinction between them is so fine as to be unimportant.[96] While no single English term corresponds exactly to this Māori idea of possession and authority, other tribunals have said that they see 'ownership' as coming closest. The central North Island (CNI) Tribunal, for instance, stated that

> the Treaty protected these taonga not as mere Treaty interests but as resources that Maori possessed. The closest expression known to English law to describe the nature and extent of their possession would be ownership. That ownership was expressed through Maori law and tenure . . . These complex systems often involved intersecting rights and obligations, Maori were promised in the Treaty that they could exercise their own autonomy, authority, and control over their taonga in accordance with their own cultural preferences.[97]

In the recent urgent inquiry into the national freshwater and geothermal resources claim, the Tribunal noted there was in fact agreement between the Crown and the claimants that 'Maori customary law does not conceptualise Maori rights as English-style property rights' but found that the point was 'not fatal' to the claim.[98] Indeed,

the Whanganui River Tribunal had earlier deemed that that which Māori possessed must be determined by what they possessed *in fact* and not by what was (and was not) capable of being possessed under English law.[99] This is an important point and will be discussed in greater detail below.

(2) *Control and authority and tikanga Māori*

As stated above, Māori exercised control and authority in accordance with their customary laws and practices: that is, in accordance with tikanga Māori. Within the National Park inquiry district, ngā iwi o te kāhui maunga applied these laws and developed traditions pertaining to the use and history of their waterways, thus highlighting the authority and control that they wielded in the region. The imposition of rāhui, the delineation of use boundaries, the enforcement of tikanga, and the exercise of kaitiakitanga are all examples of the control and authority exercised by tangata whenua.

(3) *Traditions*

That waterways occupied a central position in the lives of ngā iwi o te kāhui maunga is further evidenced by the wealth of traditions surrounding these lakes, rivers, and streams. One thread that runs through each of these histories is the affirmation that the awa are born from te kāhui maunga. While there are numerous histories associated with the waterways contained within our inquiry district, we have chosen to highlight just a few.

This Tribunal was presented with a number of traditions pertaining to the Whanganui River. When Ngāti Rangi speak of the Whanganui River, for example, there is a tendency to speak of teardrops.[100] This reference comes from the oral traditions surrounding the genesis of this mighty river. These traditions begin with the love triangle that existed between Taranaki, Tongariro, and the 'majestic and beautiful mountain Ruapehu'. Ruapehu was the beloved wife of Mount Taranaki. However, one day, when Taranaki was away hunting, Tongariro, 'who had always admired Ruapehu, courted and won her'.[101] When Taranaki returned at the end of the day, he apprehended the pair. A battle ensued, in which Taranaki was ultimately defeated. Crushed, he took off; heading towards the west coast in the knowledge that wherever daylight hit him was where he would remain. As Taranaki left the Central Plateau, he left a trail of tears behind him. These 'filled the river and all the tributaries and created the Whanganui River and in doing so . . . also created life sustenance for man, beast and bird'.[102]

Another version of events was also provided by the claimants. In this account, the mountain gods Tongariro, Taranaki, Pūtauaki, and Tauhara were engaged in a fight over the beautiful Mount Pīhanga. In this battle, Tongariro was again victorious and wounded Taranaki as he turned to leave for the west coast.[103]

Whetumārama Mareikura presented yet another history of the Whanganui and Tongariro Rivers on behalf of his father, Matiu Mareikura. In this tradition,

> Ruapehu was given the supreme mana to call on the gods. Ruapehu subsequently asked Ranginui for some companions and was given two teardrops in response: one was the Whanganui River, the other the Tongariro. As time went on, he asked for more companions and was given the mountains Tongariro and Taranaki.[104]

Although there are differences between traditions, the centrality of the Whanganui River to all Whanganui Māori is undeniable.

The battle between Tongariro and Taranaki also resulted in the creation of Lake Rotoaira. According to Chris Winitana's account, before Taranaki left the Central Plateau he took one last stab at Tongariro, puncturing him in the side. Wounded and battle weary, 'Tongariro appealed to Rangi-the-sky for advice and was told to let the essence from his wound flow forth to fill the hollowed basin where Taranaki had once sat'. By doing so, Tongariro would 'ensure that Taranaki would never return'. Rangi also suggested that Tongariro produce a spiritual guardian from within his 'furnace core' as a further precaution against Taranaki's return. This guardian was duly created and named Aorangi. He remains in Rotoaira to this day and continues to both tend to its mauri and ensure its prosperity. According to Mr Winitana, the presence of

A stream trickles through forest and scrub away from Mount Ngāuruhoe. Streams and other waterways in National Park played an important sustaining, cleansing, and healing role in the lives of the region's inhabitants.

Aorangi extinguished 'Taranaki's occupationary rights' forever.[105]

As mentioned in chapter 2, Ngāti Rangi understand Te Waiamoe as a reference to waters where one sleeps (see section 2.5.2(2)).[106] The name reflects traditions surrounding the Crater Lake, which indicate Te Waiamoe as being 'the final resting place of key Ngāti Rangi ancestors'.[107] According to Che Wilson it is also the place from which ngā iwi o te kāhui emerged and to which they will one day return.[108]

The Whangaehu is described by Keith Wood as 'precious'. The high regard in which the Whangaehu is held stems in part from the fact that the stream comes from their 'tūpuna maunga'. Its waters, he said, originate 'from Te Wai-ā-Moe (Crater Lake) and the springs that rise from Ruapehu (Mātua te Mana), bringing their spiritual

The Tongariro River. This important river plays a major role in the inquiry because of its location, its size, and its noted fishing grounds, and for the part that it played in the hydroelectric development scheme.

sustenance to our people'.[109] The sulphuric waters of the Whangaehu are understood as the sweat gland of Ruapehu and are prized for their health giving properties.[110]

The Waikato River also has its origins in the mountains of the Tongariro National Park. According to Mr Winitana, traditional histories relate how

> the well spring source which produced the waterways of the Waikato-iti, the Tongariro River, Lake Taupō and the Waikato River was called up from within the bosom of the earth and caused to flow by our ancestor Tongariro.[111]

The story begins with the friendship between a man named Tongariro and a woman named Taupiri, who had grown up together in the Taupō district. When Taupiri was grown, her hand was sought by a Tainui chief. She accepted and subsequently moved to be with her husband in the Waikato. Once she had arrived there, however, she

became unwell and, although wise men and doctors tried, no one was able to cure her. Taupiri then recalled 'a secret water spring back in her native homelands in Taupō' and that Tongariro had once told her of its medicinal properties 'able to cure all ailments'. Taupiri promptly sent a slave back to the Central Plateau, requesting that Tongariro provide them with water from the sacred spring.[112] As soon as Tongariro learned of Taupiri's illness, he leapt into action. He led the slave to a place at the side of Mount Tongariro and, once there, intoned special prayers. Following these, he touched his staff against a special boulder, causing water to flow out. According to Mr Winitana, what began as a trickle soon became a torrent of water that rushed down the mountain slope, forming the Waikato-iti and then the Tongariro River. The water, childlike and playful, then 'dashed forward and poured out into a huge basin, an old volcano crater', thus forming Lake Taupō before 'slosh[ing] its way out at Nukuhau and . . . [speeding] on towards Rotorua'.[113]

Taupiri's slave ran alongside the streaming water, throwing stones ahead of the torrent to cut off its path. The water turned this way and that, but the stones constantly pulled it back into line. When the flow reached Hineura, however, it could hear the waves breaking at Hauraki and raced towards them. Unable to hold the flow back any longer, the slave filled the calabash and returned to Taupiri.[114]

As soon as Taupiri drank of the water, 'the spark returned to her eyes'. Following this miracle, everyone wanted to partake of Tongariro's waters. It was at this stage that the slave revealed that Tongariro had not sent a mere calabash, but a whole river. When Taupiri learned of this, she 'chanted to the winds which carried her words to the waiting ears of Tongariro'. Tongariro responded by calling to Ruaimoko, the god of earthquakes, 'to awaken and shake the land to form cliffs and gulleys to block the path of the river'. Ruaimoko obeyed Tongariro's call and stopped the waters.[115] Taupiri's slave then

> pulled it back on course throwing his stones ahead as he went. The torrent of water flowed past Taupiri's forefront and the undulating land allowed it to spread out and slow down. It meandered its way out to the west coast where it joined with the sea. Thus was born the final stretch of water, the mighty Waikato River of a hundred bends caused by its dipping and diving on its journey from Tongariro mountain.[116]

This story not only explains how Lake Taupō and the Tongariro and Waikato Rivers came to be, but also illuminates the fact that waters were recognised as having rongoā properties from the beginning. In addition it reveals that the names of places, such as the Waikato, may not only refer to their properties and usages, but also their histories. This is discussed in greater depth below.

(4) *The importance of names*

The names given to waterways refer not only to their characteristics, but also to their origins – their histories. The vocabulary used moreover points to the importance of the awa and moana to the hapū of the inquiry district. The meanings behind the Whanganui, Waikato, Whangaehu, and Mangaturuturu Rivers illustrate this point.

The Whanganui River has also been known as 'Te Wera o Tongariro'. This name, meaning the 'warm waters of the Tongariro', was used for the upper section of the river from its source down to the point at which it meets the Ōhura River. While the name 'Whanganui' (meaning 'big bay' or 'big river mouth') highlights the connection with the Whanganui people right down to the coast, it is a more recent innovation.[117] Phrases such as 'te wai-tukukiri', 'te wai-herunga', 'te wai-kaukau' and 'awa tupua' are also used to describe the Whanganui, and are names not used lightly. The significance of these descriptions derives from the way in which they 'identify our spiritual and physical connection to our waterways that connect back to Te Kāhui Maunga and . . . to our origins as a people'.[118]

Kevin Hikaia provided the Tribunal with another account of the names given to the Whanganui River. He explained that the source of the Whanganui is Ruatupua – 'our sacred spring'. Broken into its constituent parts, Hikaia stated that 'The term "Tupua" is a variant form of the word, "Tipua", and implies the indwelling of a certain supernatural power.' 'Rua', on the other hand, 'is a personified form of knowledge'. In this account, it is from

The Whanganui River at Te Pōrere. The north-west boundary of the National Park inquiry area is formed by the meeting of the Whanganui and Whakapapa Rivers near Kākahi. This Whanganui is most closely connected with the Whanganui people.

Ruatupua that the original name of the Whanganui River – Te Wainui-a-Ruatupua or Te Wainui a Rua – derives. According to Mr Hikaia,

> these references are a strong statement of tribal and personal identity, are a symbol of social stability, and are an important source of emotional and spiritual strength to all Uri O Te Kahui Maunga ki Tangaroa.[119]

While the source of the river is Ruatupua, the name 'Whanganui' itself originates from the tūpuna named Hau. The pursuit of his wife, Wairaka, and her lover took Hau south along the west coast of the North Island. The mouth of the first river he came across was 'so big that he had to wait for the tide to go out in order to cross it' and he accordingly named it 'Whanganui'.[120]

'Waikato' is the name given to the longest river flowing through the North Island. Mr Winitana explained that the name is significant for two reasons. In the first explanation, the word is broken in two. The first syllable, 'wai', means water. The second part of the name, 'kato', 'refers to the backing up or the "grabbing back" of the waters as the volumes pour back on themselves such as is seen at the water fall end of Huka Falls'. His second explanation is more specific: the word is broken into three – Wai-ka-tō – and, taken together, means 'the water-torrent-that-was-pulled-along'.[121] Both of Mr Winitana's detailed explanations refer, quite pointedly, to the story behind the river that we recounted above.

According to Turuhia Edmonds, 'Whangaehu' literally means "in surges". Although the evidence is a little unclear on this point, it could be that this refers to the surges of acidic water that flowed down from Te Waiamoe into the Whangaehu. As the acidity of the water increased and became 'too toxic' 'all those living things would shift out into the clear waters in the side streams'. In time, however, the toxicity would decrease and life would return to the clear water streams of the Whangaehu.[122]

The Mangaturuturu stream begins its life 'on the western slope of Mount Ruapehu directly behind Raetihi and Rongokaupo'. It then runs in a westerly direction until it joins the Manganuioteao. Its name is made up of two words: –manga, meaning stream, and turuturu which is the term for a type of support used with snares. Mr Edmonds explained that a turuturu is the mechanism by which snares were held in place, or, in the case of kiore snares, that was used to hold the front of the trap upright.[123] The name of this stream is thus indicative of the activities associated with it.

(5) *Māori conceptions of waterways*

The importance of the waterways as a taonga to ngā iwi o te kāhui maunga is reflected by the way that Māori

The Mangatururu River. The river, which arises on the western slopes of Mount Ruapehu before joining the Manganuioteao, forms the southern boundary of the Waimarino land block.

conceptualise their relationship with and connection to these waterways. In the words of Matiu Mareikura, 'the river is the beginning, the beginning for our people from the mountain to the sea. It ties us together like the umbilical cord of an unborn child'.[124] This relationship is echoed in their belief that when their rivers suffer, the tangata whenua suffer too: 'Our Ngāti Rangi world view is a holistic one meaning that when our tūpuna awa . . . are negatively affected – so are we as a people'.[125]

The claimants frequently referred to the lakes, rivers and streams of the inquiry district as 'ancestral waters', hinting at the way in which Māori whakapapa back to these waterways. As Keith Wood explained, 'Ranginui and Papatuānuku are the original parents from whom all life is sourced'. It is from these primeval parents, Mr Wood elaborated, that tangata whenua trace their ancestry and from whom water is sourced. In this way, genealogical links are forged between the people and their waterways.[126] In the Māori worldview, waterways are also ancestral due to the involvement of the ancestors in their creation. Indeed, Chris Winitana views the ancestors as 'solely responsible for the birth of all the waterways in the region'.[127] Waterways thus take on yet another layer of significance. Of the Whanganui River, for example, Kevin Hikaia repeated the words of a kaumātua at the 1989 Planning Tribunal hearing about the Whanganui River flow:

> Every part of the river and its environs is sacred to Whanganui Maori . . . we are part of the river and the river is part of us. The water which moves in the water and its tributaries is not just water, but also the blood of our ancestors . . .[128]

The Whanganui River Tribunal strongly affirmed this point. As they saw it, 'the relationship, for Maori, is first and foremost genealogical'. Put simply, ancestral ties were

perceived to be the glue that bound the people and the Whanganui River.[129] This is no less true of the waterways contained within the National Park inquiry district, of which the Whanganui River is one.

An appreciation of the traditions behind the waterways and the way that people are linked with the maunga, moana, and awa of the inquiry district augment our understanding of the assertion that the tangata whenua are exactly that – the people of the land and very much 'part and parcel of the environment'.[130]

A duty of kaitiakitanga also flows from these relationships. Toni Waho declared that 'the significance of our rivers [is] that they are part of us and as important as any family member is, we are obliged and have the responsibility to care for our family members in the best way that we can'.[131] Keith Wood saw it as Māori 'belonging' to the ancestral waters of te kāhui maunga. However, he also said that the hapū consider themselves 'an integral part of the environment as whanaunga (relations)', which puts them in a 'relationship of kaitiakitanga' with it. It is this relationship, said Mr Wood, that gives them their role 'as tāngata tiaki, as guardians and caregivers of our awa'.[132] We shall return to the issue of kaitiakitanga later but for the time being we note the close identification of river and people, which Che Wilson summed up as follows:

> The waters that flow from Matua te Mana (Ruapehu) and the greater Te Kāhui Maunga grouping of mountains, confirm our relationship to the natural environment. To elaborate, the relationships with and obligations we have to the natural environment are emphasised through the following Whanganui whakatauākī; 'Ko au te awa, ko te awa ko au – I am the river and the river is me'.[133]

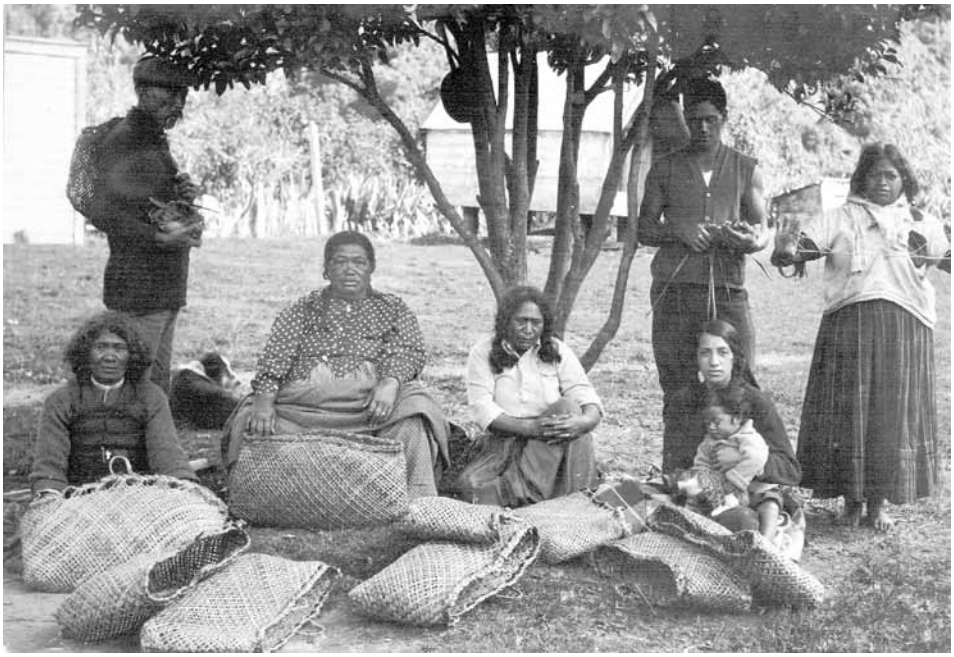
Harakeke or flax. When grown near water, harakeke was a valuable resource for customary weaving, and when in flower, it provided food for birds.

(6) *Customary use of waterways*

Waterways provided tangata whenua with both physical and spiritual sustenance.[134] It is for these reasons, too, that waterways occupied such a central place in the lives of those hapū living within the National Park inquiry district.

Among the abundant resources emphasised by ngā iwi o te kāhui maunga were kōaro, kōura, kākahi, and īnanga.[135] Tuna, too were mentioned, together with the bird life that the waterways supported. A profusion of watercress could also be found on the banks of some waterways, such as the Tokaanu River, and, in this way, rivers, lakes, and streams could be relied upon to provide both a reliable source of protein and a 'staple green vegetable . . . rich in iron and vitamins'.[136]

Waterways were also crucial to providing other important materials. For example, the harakeke growing along



Group displaying kete and other items woven from flax

the banks of waterways was important in terms of customary weaving. Some pools were especially used for dyeing purposes. Tiaho Pillot, for instance, described the mud pool that was located at the western side of their section. This reputedly contained 'the best quality black mud (paru pango) in the area' and was regarded as special by 'the local women who would come here to dye their flax'.[137]

Then, too, waterways were an important source of drinking water in days gone by. Ariki Piripi, for example, remembered how they used to drink from Rotoaira when the water was clear. Even, when it became covered in green weed, water could still be taken from the puna. Unfortunately, however, it is no longer possible to take water from either the lake or the puna: Rotoaira suffers from algal bloom and the rise in its water levels has rendered the puna impossible to locate.[138]

Due to their provision of food and water, it is understandable that tangata whenua described waterways, such as Rotoaira, as of 'central spiritual and cultural value'. In the case of Rotoaira, they said it was 'once a source of life giving water and food not only for the immediate hapu but also for the wider population of Ngati Tuwharetoa.'[139]

Claimants also testified to the fact that waterways enabled movement both within and beyond the inquiry district.[140] Indeed, the proximity of hapū to so many waterways inevitably meant that waka were of great importance.

While claimant evidence pointed to the fact that many of the district's waterways were used for healings and blessings, certain waterways were given particular emphasis. These included Lake Rotokura and the Whangaehu and Mangawhero Rivers.[141]

The acidic waters of the Whangaehu were particularly prized in this regard. Indeed, its healing properties caused tangata whenua to regard the river as a close friend, whom they loved and respected.[142] Keith Wood described its significance thus:

> The Whangaehu is precious to us as she derives from our tūpuna maunga, her waters originating from Te Wai-ā-Moe

The Whangaehu River at Tangiwai. The river originates from Mount Ruapehu's crater lake and its sulphuric waters are said to heal skin conditions.

> (Crater Lake) and the springs that rise from Ruapehu (Mātua te Mana), bringing their spiritual sustenance to our people. For centuries our people have practised our rituals in her sacred waters. Her water is highly mineralised and carries a distinct mix of health giving qualities.[143]

The sulphuric waters of the Whangaehu were particularly important in the prevention and treatment of skin conditions, such as hakihaki (also described as 'school sores') and burns.[144] Te Rato Waho, for instance, recalled that those living near the stream would 'never have sores, [and] . . . would swim there daily'.[145] Those who were afflicted with hakihaki made their way to the awa, but, as tikanga governed the use of the awa, special preparation and karakia were required before bathing. Colin Richards explained that, when anyone was ill, the elderly would 'wānanga together to look for the reasons for the illness'. Sometimes the wānanga would take days and at other times the reasons for the illness would be known immediately. It was only once the reason for the illness was understood, that the person affected would 'go down to the awa or the puna to whakanoa'.[146] Likewise, Toni Waho stated

The Mangawhero River. The Mangawhero is another river that, when its waters turned milky white, was said to have healing properties.

that when he went down to the Tomotomo Ariki (near Tirorangi) with his aunt, she observed the tikanga that she had been taught. In accordance with these traditions, his aunt 'dipped a branch of leaves into the puna, recited karakia and then brushed the soaked branches over me'. Following this ritual, Mr Waho said that the personal issue he had been grappling with 'was alleviated and cleared'.[147]

Anecdotal evidence of parents taking home barrels of Whangaehu water highlights again the stock placed in the medicinal properties of the stream and the people's reliance on it.[148]

Lake Rotokura was also noted for its medicinal properties and was variously described as the 'healing waters of Rotokura' and the 'sacred healing waters of Ngāti Rangi'.[149] The lake's health-giving properties made Rotokura especially important to Ngāti Rangi, who would go there 'to karakia and to drink the water'.[150] In the words of Raana Mareikura:

> From what I have been told and what I know from experience, Rotokura was a place of cleansing, a place of physical and spiritual healing. We use the east side of the lake for

[immersions] and cleansing and this is where the water flows out of Rotokura itself.[151]

The rongoā properties of Rotokura were not (and are not) widely known of, outside of Ngāti Rangi, and there is nothing at the lake to indicate to tourists or Pākehā in general that the lake is used for healing.[152]

The Mangawhero was also utilised on those occasions when its waters turned a white milky colour. At such times, Che Wilson said that his mother's generation 'would bathe in the Mangawhero . . . to cure hakihaki'. He admitted, however, that this has not occurred during his lifetime.[153]

Waterways had curative effects beyond the prevention and treatment of skin ailments, too. Evidence was presented of certain streams and flows being used for massage purposes, as well as to help heal broken bones.[154]

We turn now to examine the cultural and spiritual significance of waterways in greater detail.

Ngā iwi o te kāhui maunga fervently believe that their waterways are possessed of mauri, a property commonly translated as life force or life essence. In te ao Māori, all things are imbued with mauri, irrespective of 'whether it is the maunga, the awa, the whenua or any other living things' and believe that this mauri is God given.[155] Keith Wood explained that water has significance over and above other entities, however, on account of the way in which its mauri brings 'spiritual and physical well-being and vitality to all life it encounters along its journey', including those individuals who interact with it.[156] This is reinforced by the evidence of Colin Richards, who explained that '[t]he life essence of our waters goes back to the beginnings of time', as does the relationship of the hapū with their tūpuna awa. The primacy of water amongst the elements derives from the fact that 'without it there can be no life sustenance of Papatuanuku'.[157]

It is the mauri of the water and the need for tangata whenua to maintain it that fuels the obligations and responsibilities that iwi and hapū have as kaitiaki. In Mr Wood's words, 'Our role as tāngata tiaki is to sustain the integrity and flow of this connective life force within all aspects of our tūpuna awa.'[158]

Claimants appearing before the Tribunal made it clear that tribal identity is derived in part from their ancestral waters. While this may be difficult for Pākehā to grasp, for tangata whenua their sense of self is tied to their environment. In its study of Māori custom and values in New Zealand, the Law Commission noted that 'land was and remains integral to group identity and wellbeing' and further explained that Māori descended from the land and consider the stories of their ancestors to be 'carved in it'.[159] As but one example of this in the National Park district, we have already recorded the story, handed down through the generations, of how Rotoaira exists as a result of the love triangle between three tūpuna: the maunga Tongariro, Pīhanga, and Taranaki (see section 13.5.1(3)). Te Rata Waho also spoke of such connections and their relevance to ngā iwi o te kāhui maunga when she said 'The tūpuna awa that flow from Ruapehu are our identity . . . they are the life force of our existence; without our maunga and awa who are we?'[160] The evidence of Puruhi Smith echoed these sentiments and emphasised that these unique relationships continue to this day:

> Our people still have strong relationships with our rivers and lakes, especially the Rangitikei, Whangaehu, and Lake Rotoaira. Our old people still say we are 'river people'.[161]

The ability to use resources as their ancestors used them also reinforces a sense of hapū identity. For Matthew Howell, ancestral customary fishing areas included Rotoaira and its surrounding waterways, such as the Wairehu Stream and Te Whaio. In his words:

> My Father, Grandparents, and the ancestors before me, used all these places for fishing. Our tupuna fought and died for this whenua. We are kaitiaki. Using the same sites for fishing today is part of our cultural identity.[162]

Previous Tribunals have accepted that waterways are profoundly linked to the identity of ngā iwi o te kāhui maunga. *He Maunga Rongo*, for instance, endorsed Ben White's conclusion that 'lakes were imbued with great metaphysical importance and that they were to varying

extents a component of Maori identity'. This significance is not limited to large waterways either. That Tribunal concluded that springs 'can be a taonga of significance to the identity of a hapu or iwi, equal to the significance of the Whanganui River to the lives and identity of Te Ati Haunui a Paparangi'.[163]

Moving to matters of a more spiritual nature, we have already noted that approaching waterways for healing purposes was in itself regarded as a spiritual act, which needed to be preceeded by appropriate karakia. Water had a ritualistic significance in other contexts, too. In the words of Chris Winitana, 'Water is the conduit of both the sacred and the profane. It was an absolute requirement in most, if not all, major ritualist ceremonies.'[164] As Toni Waho explains it, water has the ability to 'remove the presence of disturbing spiritual forces'. Indeed, many Māori still regard wai as imperative if one is to 'maintain harmony within the environment'.[165] Thus, bathing in waterways or sprinkling oneself with water can also be used as a means of cleansing oneself after significant life events, to remove tapu.

One example of using water in this way was provided by Don Robinson, who recalled how his grandfather used to tell him 'if you work on the maunga [which were regarded as highly tapu] you must go and wash yourself in the Mangawhero, or one of the other rivers, afterward, to cleanse yourself'.[166] Similarly, following contact with death, wai māori (fresh water) is seen as having the ability to remove the hazardous elements of tapu, thus rendering the item or person safe.[167]

In some instances, those having bathed at a site or carried out a ceremony there, whether for physical healing or spiritual purposes, might also seek to take a container of wai tapu back to their whare, so as to be able to continue to benefit from its special properties afterwards.[168] We are reminded here of similar practices at places like Lourdes, in France, where pilgrims not only take, or bathe in, the waters but also buy vials to take home with them.

Special sites were also set aside for the use of newborns and their mothers. Morehu Wana explained that the Hapuwhenua Stream, located in the Raetihi block, was one such site. The stream was

> used by mothers and new born babies as a cleansing area only after childbirth. It was taputapu and the whenua, the placenta, were placed in special trees up on Te Puke Raetihi. This was a symbol of the enduring link between Papatuanuku and her descendants and signified our ahikaa in the region. I feel sure that my yearning to come home is linked to this practice. The special significance of the Hapuawhenua stream is that it only flows as far as Tohunga Rd where it becomes noa and flows into the Taonui stream, one of our main kaituna areas.[169]

Water was also a significant feature of baptismal rites. Such rites involved the dedication of children to the appropriate guardian. A girl might be dedicated to a goddess such as Arahutu, a daughter of Whatitiri-the-thunder-goddess and reputedly the most beautiful woman ever created. Boys, on the other hand, were likely to be dedicated to Tumatauenga, the war god. Mr Winitana specifically mentioned a sacred spring named Te-iringa-ariki (literally, the 'baptismal place of chiefs), where 'the high-born were dedicated'. This spring is found at Tūtū-kārangaranga, just outside the Waihī village.[170]

In te ao Māori, it is held that every waterway has its kaitiaki. Some, like the Waikato River, for instance, are believed to have a taniwha or kaitiaki at every turn. Kaitiaki have a protective role, protecting the people and the environment to such an extent that they have been described as being 'guardians for all things'. For Māori, said witnesses, 'Kaitiaki are a very natural and very integral part of our well-being'.[171]

Kaitiaki may take many forms. Aorangi, the taniwha of Rotoaira, for example, takes the form of a tōtara log. Whangaipeke, on the other hand, was a taniwha in the Whanganui River. Local tangata whenua believe that

> Whangaipeke travelled up the Whanganui River from his lair. When he reached the confluence of the Whanganui and Whakapapa Rivers, he turned back to his lair. The place where he turned around is the place we call the 'whirlpool'.[172]

Kaitiaki have functions beyond the protection of waterways, however. Indeed, claimants suggested that they also serve as indicators of their waterway's health and symbolic

indicators of the health of the tribe as a whole.[173] Tyronne (Bubs) Smith pointed to Aorangi as an example of this phenomenon. In the not-too-distant past, Aorangi could be seen 'swimming upwind and against the current as he continuously circumnavigated his surrounds'. Today, however, the claimants describe him as a mere 'shadow of his former self'. Indeed, Mr Smith depicts Aorangi as having 'hauled himself up out of the water' and as not only sick, but 'dying'. Mr Smith ended by wondering whether that is what would become of the people living a Rotoaira, too.[174]

Alongside these supernatural kaitiaki are the tangata whenua who, as we noted earlier, also see themselves as having a kaitiaki function in relation to the natural environment. Indeed, some individuals, such as Merle Ormsby's parents, were (and are) formally appointed to be kaitiaki. As kaitiaki of the Tokaanu River, Mr Ormsby's father would monitor who came and went from the river, 'who came to fish and gather food' and, as part of this, ensured that they did not take excessive amounts. In his capacity as kaitiaki, he also ensured that the awa was treated with respect and was charged with reprimanding those who did not. An example recounted by Mr Orsmby related to the owners of a butchery and grocery store who had been disposing of their 'rubbish and offal in the River'. After going to their stores and speaking to them, Mr Ormsby's father 'made them come and pick it up for a bit'.[175] Such practical steps all contribute to ensuring the health and continued well-being of the awa for future generations.

We conclude that the waterways of the inquiry district have always been of significance to ngā iwi o te kāhui maunga. For these people, the waterways are a taonga and their significance is manifold. As a kaumātua once remarked: as a taonga, the Whanganui River is 'many things; both present and past, physical and metaphysical, real and unreal, at once precious possession and a source of sustenance, a means of communication with the Gods, the Tupuna, and the Kaitiaki (Taniwha)'.[176] The evidence before us underlines the truth of this statement, not only with respect to the Whanganui River, but to all of the waterways of the inquiry district. For generations, the streams, rivers, and lakes provided for the physical needs of those living locally; providing fresh drinking water, kai, a place to wash, and, in some instances, a means of travelling around the district. They were also of cultural and spiritual significance. As noted previously, there are a wealth of traditions surrounding waterways, such as Rotoaira, the Tongariro River, the Whanganui River, and the Waikato River. The relationship of ngā iwi with the awa, puna, and moana of the district is further highlighted by the names that have been ascribed to them, the conviction that these are ancestral waters, and the reverence with which they are treated.

We have also spoken of control and authority, and of use and possession. As we have seen, however, these concepts are overarched by something more: the sense that ngā iwi o te kāhui maunga are intrinsically connected with the environment of the inquiry district, of which the waterways are an essential part.[177]

In the face of all the evidence presented to us, it is clear that ngā iwi o te kāhui maunga 'possessed' their waterways in the fullest sense possible. We must therefore concur with the view of Ika Whenua rivers Tribunal – a view recently endorsed by the Tribunal hearing the urgent inquiry into the national freshwater claim – that Māori were

> entitled, as at 1840, to have conferred on them a proprietary interest in the rivers that could be practically encapsulated within the legal notion of the ownership of the waters thereof.[178]

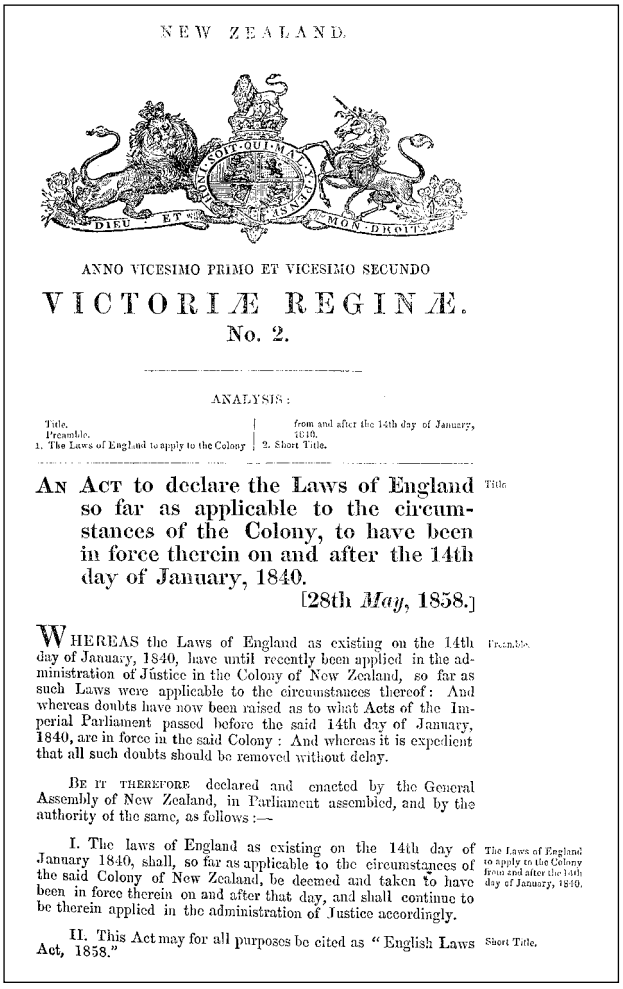
We note that the national freshwater and geothermal resources Tribunal also went on to say:

> while there might be a general expectation of access [by non-Māori] and use for non-commercial purposes, access would be on Maori terms until such time as they chose to make a Treaty-compliant alienation. And Maori could say 'no'. Otherwise there was no point to the Article 2 guarantee. But they could not say 'no' unreasonably. It is fundamental to the Treaty that each partner was expected to act reasonably and co-operatively towards the other and with the utmost good faith.[179]

13.5.2 Possession and authority over waterways

We turn now to the question of how Māori lost possession and authority over their waterways. This requires an examination of the role played by the English legal system that had been imported into New Zealand. Was the law, as one commentator has said, the instrument typically used by the Crown 'to secure control, and in many cases the ownership, of New Zealand's waterways' and, if it was, in what ways did that happen in our inquiry district?[180]

The English Laws Act 1858



NEW ZEALAND.

ANNO VICESIMO PRIMO ET VICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. 2.

ANALYSIS:

Title.
Preamble.
1. The Laws of England to apply to the Colony from and after the 14th day of January, 1840.
2. Short Title.

AN ACT to declare the Laws of England so far as applicable to the circumstances of the Colony, to have been in force therein on and after the 14th day of January, 1840. Title

[28th *May*, 1858.]

WHEREAS the Laws of England as existing on the 14th day of January, 1840, have until recently been applied in the administration of Justice in the Colony of New Zealand, so far as such Laws were applicable to the circumstances thereof: And whereas doubts have now been raised as to what Acts of the Imperial Parliament passed before the said 14th day of January, 1840, are in force in the said Colony: And whereas it is expedient that all such doubts should be removed without delay. Preamble.

BE IT THEREFORE declared and enacted by the General Assembly of New Zealand, in Parliament assembled, and by the authority of the same, as follows:—

I. The laws of England as existing on the 14th day of January 1840, shall, so far as applicable to the circumstances of the said Colony of New Zealand, be deemed and taken to have been in force therein on and after that day, and shall continue to be therein applied in the administration of Justice accordingly. The Laws of England to apply to the Colony from and after the 14th day of January, 1840.

II. This Act may for all purposes be cited as "English Laws Act, 1858." Short Title.

(1) *The application of British law to New Zealand*

The English Laws Act 1858 formally heralded British law into New Zealand and sought to clarify its status in the colony. The Act declared that English law, so far as it was applicable to the circumstances of the colony, applied from 14 January 1840,[181] that being the date on which William Hobson became New Zealand's first lieutenant-governor.

In a way, however, the passage of this statute merely formalised the status quo. Hitherto, it had generally been assumed, by the settler population at least, that with Britain's acquisition of sovereignty came 'the automatic application of British law'.[182] After all, article 1 of the Treaty conferred on the Crown the right of governorship – or, in the Māori text, kāwanatanga – which included the right to set up a system of law for the country.

The claimants alleged that it was by this law that they effectively lost possession of the waterways within their rohe and the authority and control they had once exercised over them. In the words of Matthew Howell:

> We've fought over our boundaries in the past and our land was never taken off us in battle by force. Now we find they are being taken away by the pen, through statues and regulations. To my mind, these rights have not been extinguished by us . . .[183]

On the Crown's side, Crown counsel's closing submissions specifically addressed the effects of the 1858 statute and the application of the common law doctrine *ad medium filum aquae*. Commenting particularly on the impact of the latter, counsel said:

> Under this presumption, and prior to the grant of any title, Maori as adjoining land owners would have owned the bed of the river as they owned the land on both banks. However, the sale of riparian land, under common law, would carry with it a presumption of change in ownership of the ad medium filum interest in the bed of the adjacent waterway.[184]

We turn now to examine the law in more detail as it affected water. Of particular importance here are the common law doctrine of aboriginal title and the rebuttable

presumption of the *ad medium filum aquae*, and statutes such as the Coal-mines Act Amendment Act 1903, the Water and Soil Conservation Act 1967, and the Resource Management Act 1991.

(2) *The common law*

(a) *Aboriginal title:* The doctrine of aboriginal title (also known as customary title and native title) is a creature of the common law. In the New Zealand context, it identifies Māori as the original inhabitants of the country and acknowledges that they 'held all land in New Zealand according to their customs and usages'[185] and were accordingly possessed of certain rights to land and water.[186] The doctrine seeks to protect these rights by recognising that although the Crown acquired radical title upon its assumption of sovereignty, this is held 'subject to Maori customary usages or native title until the Maori customary interest had been extinguished'.[187]

Customary title could be extinguished only if certain criteria were met. Extinguishment had to be explicit – that is, clearly or 'unambiguously' directed towards that end.[188] It needed to be lawful – in other words, extinguishment was required to be in compliance with all relevant law.[189] And finally, extinguishment needed either be effected by a deliberate Act of parliament 'authorised by law and unambiguously directed towards' the extinguishment of Māori customary title or to meet with the free and willing consent of Māori.[190] Whether Māori in fact voluntarily ceded their possession and authority over waterways will be investigated below, at which point these criteria will be of the utmost importance.

For the time being, it is useful to examine the way in which courts have interpreted the doctrine of aboriginal title. Some of the most commonly cited statements pertaining to aboriginal title are contained in the 1847 case, *R v Symonds*. Here, Justice Chapman asserted that the doctrine was one worthy of respect and stressed its protective element, suggesting that it places 'the Native race . . . under a species of guardianship':

> Technically, it contemplates the Native dominion over the soil as inferior to what we call an estate in fee: practically, it secures to them all the enjoyments from the land which they had before our intercourse, and as much more as the opportunity of selling portions, useless to themselves, affords. From the protective character of the rule, then, it is entitled to respect on moral grounds, no less than to judicial support on strictly legal grounds.[191]

Justice Chapman also stated:

> Whatever may be the opinion of jurists as to the strength or weakness of the Native title, whatsoever may have been the past vague notions of the Natives of country, whatever may be their present clearer and still growing conception of their own dominion over land, it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the Native occupiers. But for their protection, and for the sake of humanity, the Government is bound to maintain, and the Courts to assert, the Queen's exclusive right to extinguish it. It follows from what has been said, that in solemnly guaranteeing the Native title, and in securing what is called the Queen's pre-emptive right, the Treaty of Waitangi, confirmed by the Charter of the Colony, does not assert either in doctrine or in practice anything new and unsettled.[192]

In *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General*, President Cooke provided an overview of the modern position. In his words,

> Aboriginal title is a compendious expression to cover the rights over land and water enjoyed by the indigenous or established inhabitants of a country up to the time of its colonisation. On the acquisition of the territory, whether by settlement, cession or annexation, the colonising power acquires a radical or underlying title which goes with sovereignty. Where the colonising power has been the United Kingdom, that title vests in the Crown. But, at least in the absence of special circumstances displacing the principle, the radical title is subject to the existing native rights. They are usually, although not invariably, communal or collective. It has been authoritatively said that they cannot be extinguished (at least in times of peace) otherwise than by the free consent of the

native occupiers, and then only to the Crown and in strict compliance with the provisions of any relevant statutes.[193]

More recently, the Court of Appeal in *Ngāti Apa v Attorney-General* appears to have left the door ajar to consider the determination of such rights, stating:

> The common law as received in New Zealand was modified by recognised Māori customary property interests. If any such customs is shown to give interests in foreshore and seabed, there is no room for a contrary presumption derived from English common law. The common law of New Zealand is different.[194]

In the same judgment, Chief Justice Sian Elias stated:

> Any property interest of the Crown in land over which it acquired sovereignty therefore depends on any pre-existing customary interest and its nature . . . The content of such customary interest is a question of fact discoverable, if necessary, by evidence.[195]

While the decision in *Ngāti Apa v Attorney-General* was limited to the issue of customary interests in the foreshore and seabed, it does raise the question of the extent of pre-existing Māori rights and interests in water and the possibility of examining and determining these rights and their ongoing status.

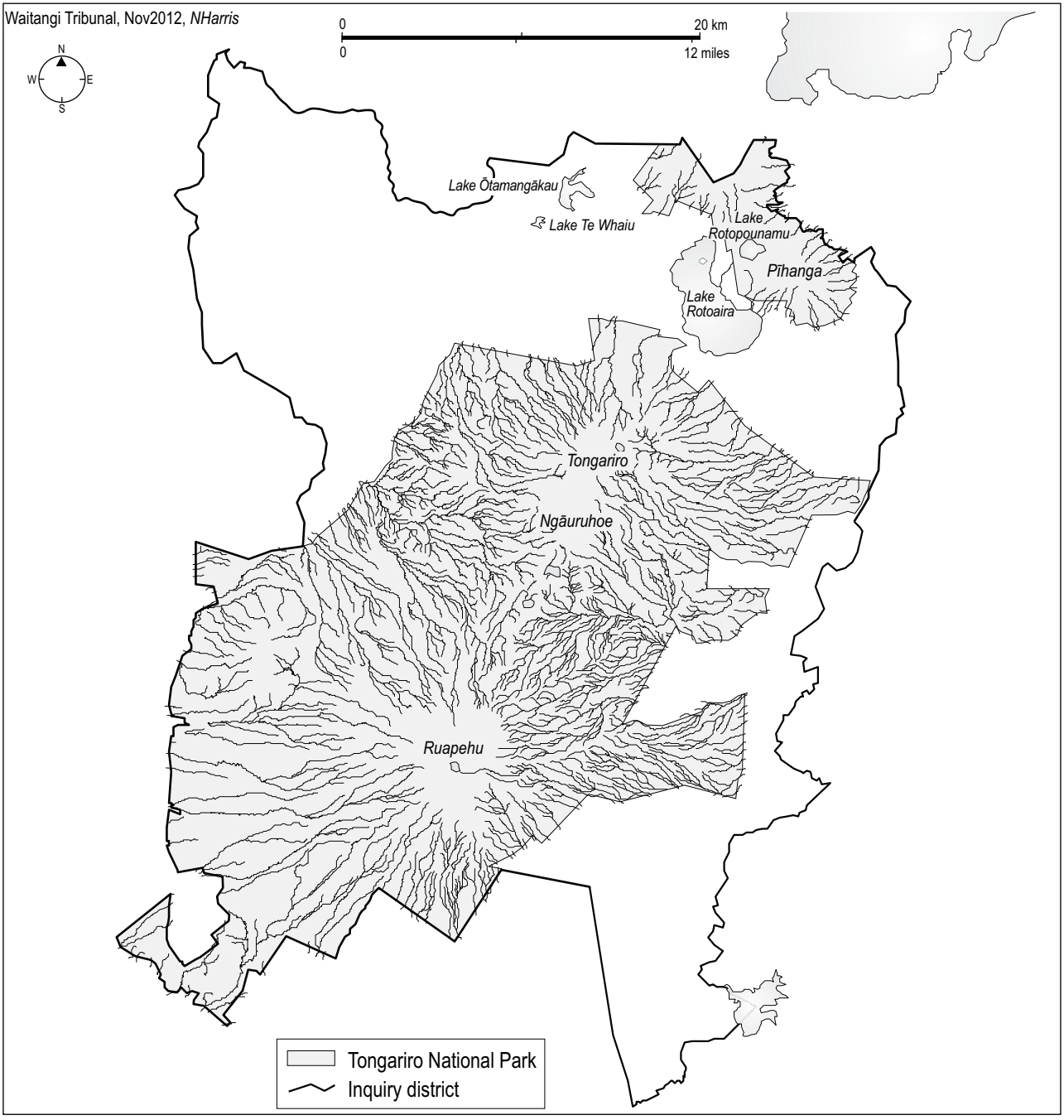
(b) *Ad medium filum aquae:* The *ad medium filum aquae* rule is a rebuttable presumption[196] that determines that the owners of riparian land may own to the centre line of a river or stream. The ability to own a water bed comes from the fact that the common law prises apart the various components of waterways, separating the water from the riverbanks and the riverbed. Thus, while the water itself is not capable of being possessed, the land over which it flows is.

However, the Coal-mines Act Amendment Act 1903 had the effect of modifying the application of the *ad medium filum aquae* doctrine. From this point onwards, the common law rule applied solely to non-navigable rivers and streams. The beds of navigable rivers were instead vested in the Crown.[197]

As noted in chapter 6, the Crown acquired land blocks in a variety of ways. Broadly speaking, land in our inquiry district was acquired through Crown purchasing, the operation of the Native Land Court, and through Horonuku Te Heuheu's transaction involving the peaks in 1887. The enactment of the Tongariro National Park Act 1894 also helped the Crown's cause, enabling the Crown to compulsorily acquire land in the inquiry district for the purpose of establishing a national park.[198]

This acquisition of land blocks affected the ownership of rivers and streams. In a number of blocks, waterways formed one or more of the boundaries of the parcel of land. This was the case, for example, in the section of the Waimarino land block that falls within our inquiry district. The Whakapapa River formed the northern boundary of this block, while the Mangaturuturu River formed its southern boundary. As described in chapter 6, the Crown's purchase of the Waimarino block culminated on 5 April 1887 with the purchase of the interests of 821 of its owners[199] and the addition of its 5,965 acres to the National Park in 1907 (see section 6.5.1(2)(b)). Consequently, under the *ad medium filum aquae* rule, the Crown could be presumed to own to the centre of the Mangaturuturu River and to the centre of the Whakapapa River. However, because the Crown also acquired title to Mahuia (an adjoining land block), the Whakapapa riverbed came to vest entirely in the Crown.[200] Likewise, the Crown's acquisition of those sections of the Urewera block required for the National Park in 1904 resulted in the Crown owning this section of the Mangaturuturu riverbed (see section 8.2.4(1)(e)).

Frequently, streams and rivers were also contained within land blocks. The Rangipō North 8 block, for instance, includes a section of the Wāhianoa River, as well as a number of tributaries that feed into the Tokiāhuru Stream, the Ōmarae Stream, and the Mangaheuheu Stream. As noted in chapter 7, this block was acquired by means of the compulsory proclamation provision contained within the Tongariro National Park Act 1894 (see section 7.11.1) and when title to the block passed to the



Map 13.1: Waterways in the Tongariro National Park

The Whakapapa River. This waterway in the Whakapapa Scenic Reserve forms a natural northern boundary for the Waimarino block.

Crown, ownership of the beds of these streams and rivers also passed.

The application of these principles within the National Park district was affirmed by Justice O'Malley on 16 February 1955. Presiding over the Native Land Court's investigation into title to Rotoaira, Justice O'Malley confirmed that the principles governing the ownership of creeks and streams were that:

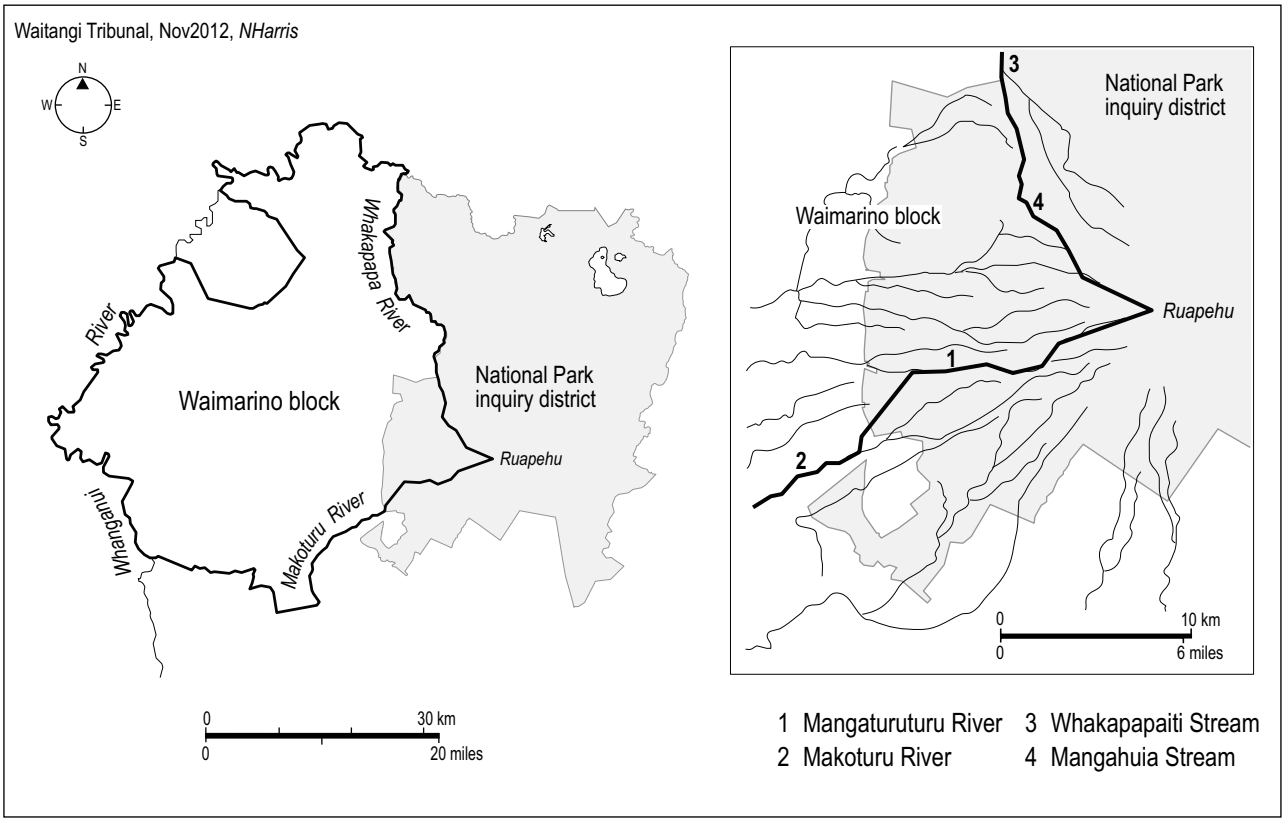
- where a small non-navigable stream falls within a block it belongs to the owner of that block; and
- where a stream or creek lies on a boundary, the owners of each respective block own to the centre of that stream.[201]

(3) *The Coal-mines Act Amendment Act 1903*

While the Coal-mines Act Amendment Act of 1903 received a lot of attention in counsel submissions, it is of questionable relevance to our inquiry. As we have already indicated, the Act vested the beds of navigable rivers in the Crown, but could any of the rivers or streams in our inquiry district be deemed navigable?

Section 14(2) defined as 'navigable' any river that was

> continuously or periodically of sufficient width and depth to be susceptible of actual or future beneficial use to the residents, actual or future, on its banks, or to the public for the purpose of navigation by boats, barges, punts, or rafts.[202]



Map 13.2: Waterways in the Waimarino block

Existing case law supports an interpretation whereby what was envisaged was 'something of the character of usage for commercial purposes'.[203]

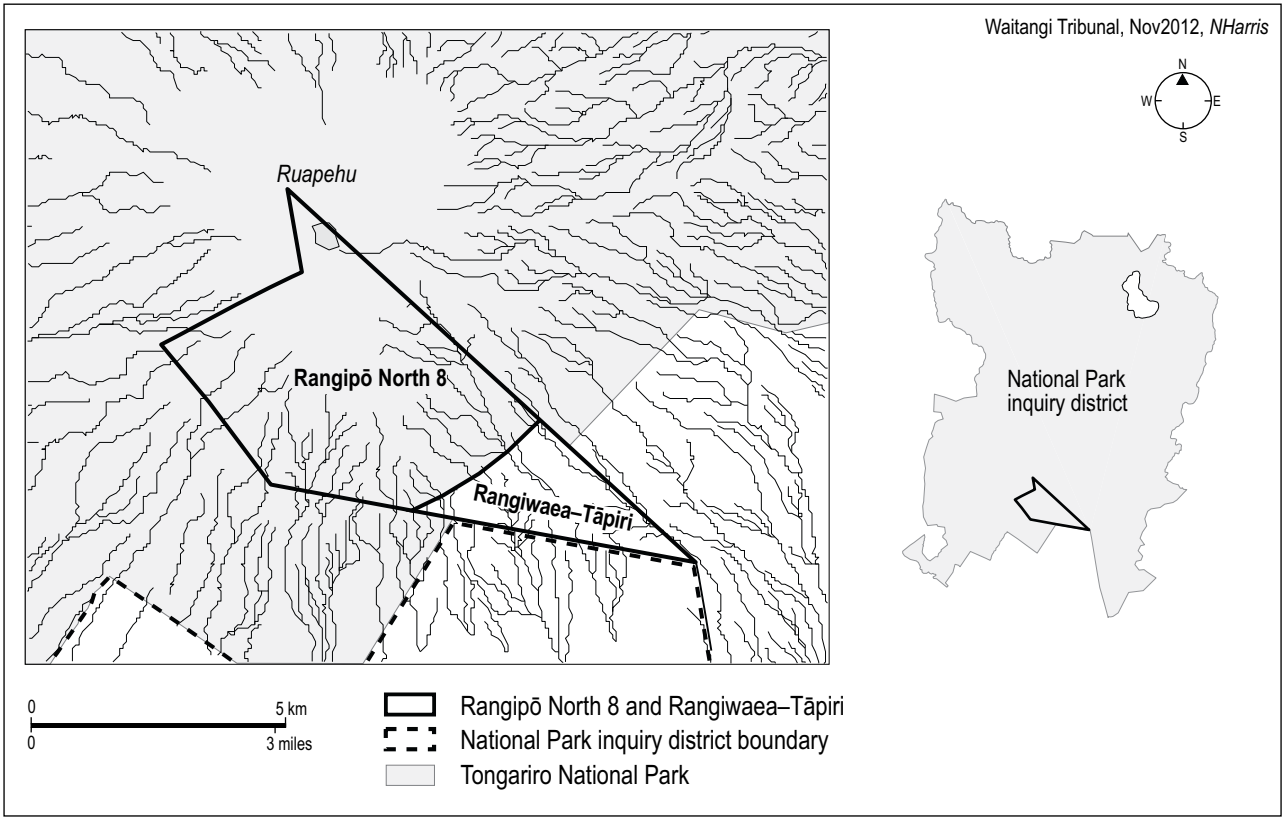
The recent Supreme Court decision in respect of *Paki and Others v Attorney-General* reinforced this position and found that 'navigable', as defined by section 14, contemplated connections for either transport (in the sense of a public highway) or trade. In addition, the Supreme Court considered that navigability ought to be determined with respect to particular stretches of a river, and that 'slight, intermittent and restricted use' would not render a river navigable for the purposes of the 1903 Act.[204]

This being the position, we think it unlikely that ownership of any river or stream beds within the inquiry boundary would be deemed to have passed to the Crown under the 1903 legislation. For that reason, we leave aside the question of the Act's Treaty compliance or otherwise as not relevant to this inquiry.

We turn now to the question of how the *ad medium filum acquae* rule applied to the waterways of the inquiry district. As indicated above, the common law rules tended to accompany the passage of riparian land ownership.

(4) *The ownership of the lakes of the inquiry district*

The *ad medium filum aquae* doctrine can also apply to lakes that border two or more blocks of land. Whereas in the case of rivers or streams the rule vested title to the centre of the riverbed in the riparian owners, when



Map 13.3: Waterways in the Rangipō North 8 block

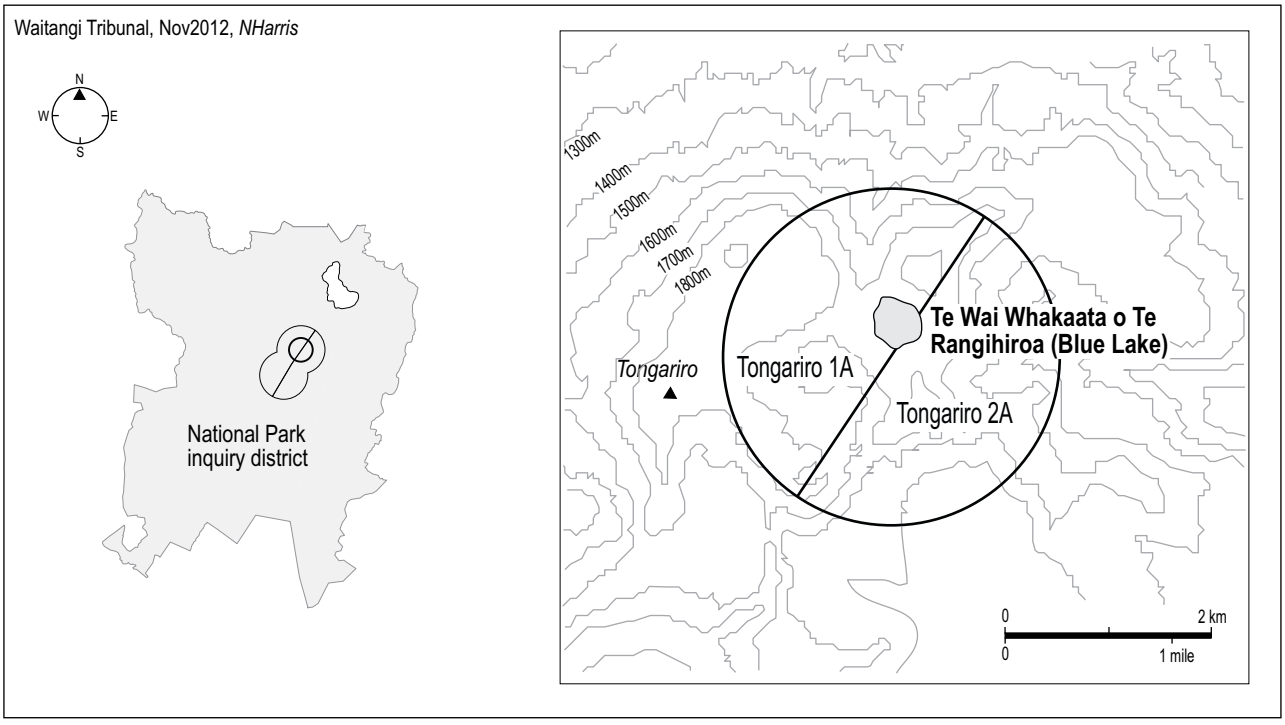
applied to lakes the rule determines that owners of adjoining land owned to the centre point of the lake bed. Where the surrounding land is owned by a number of owners, each share or interest is therefore 'a wedge-shaped piece of land with its apex at the centre of the lake.'[205]

In the authoritative treatise *Land Law in New Zealand*, Dr George Hinde discusses the position where a lake is contained within a single block of land:

> Where a lake is situated wholly within the boundaries of a particular piece of land the presumption is that the bed of the lake is vested in the registered proprietor of the land unless the lake bed is excluded from the certificate of title or computer register. The reason is that there is a presumption that the bed of a lake within the boundaries of land granted by the Crown was included in the grant.[206]

The application of these rules within the National Park inquiry district thus saw the possession Te Wai Whakaata o Te Rangihīroa and Lake Rotopounamu pass out of the hands of ngā iwi o te kāhui maunga.

(a) *Te Wai Whakaata o Te Rangihīroa:* Te Wai Whakaata o Te Rangihīroa[207] (literally translated as 'the looking glass of Te Rangihīroa' but popularly known as the Blue Lake) lies between two blocks: Tongariro 1A and Tongariro 2A. Had those blocks been vested in different owners, each would have owned the lake bed to its centre point. However, the



Map 13.4: Te Wai Whakaata o Te Rangihīroa (the Blue Lake)

Crown acquired ownership of the whole lake when the two blocks were vested in it by the Native Land Court on 24 September 1887.

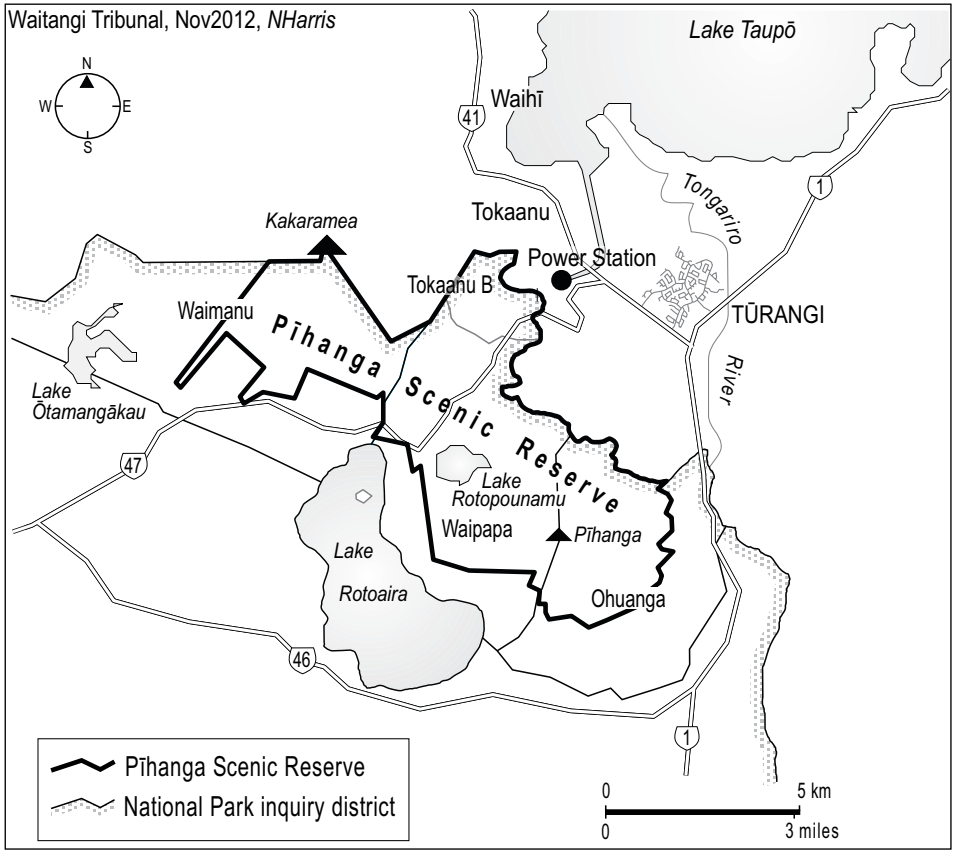
(b) *Lake Rotopounamu:* Unlike Te Wai Whakaata o Te Rangihīroa, Rotopounamu is contained entirely within one block, namely the Waipapa block. Located in the northern section of the Tongariro National Park, Waipapa is now owned by the Crown and forms part of the Pīhanga Scenic Reserve. According to Dr Robyn Anderson, the land comprising this reserve was acquired through a combination of negotiation, the purchase of interest, and the recovery of survey debt.[208]

As a small lake located entirely within a block of land owned by the Crown, the bed of Lake Rotopounamu is vested entirely in the Crown.

(c) *Lake Rotoaira:* Rotoaira can be distinguished from Rotopounamu and Te Wai Whakaata o Te Rangihīroa on the basis that the Lake Rotoaira Trust holds the lake on trust for its Ngāti Tūwharetoa owners, who were awarded title to the lake bed in 1956. Their retention of Rotoaira has come at a price, however. Under an agreement that was forged between the Crown and the trust on 30 November 1972, not only have the owners forfeited the right to compensation but they have lost much of their control over how the lake is used. This will be discussed in detail in chapter 14, where we investigate the operation and effects of the TPD.

The story of Rotoaira and the way in which the iwi has retained a degree of rangatiratanga over the lake is certainly one worth recording. It should be noted, however, that, while title to Rotoaira now vests in the Lake Rotoaira

***Blue Lake, Mount Tongariro; Red Crater, Ngaruhoe Volcanoe, and Ruapehu*, 1921. The Blue Lake was acquired by the Crown in 1887.**



Map 13.5: Lake Rotopounamu and the Pīhanga Scenic Reserve

Trust, which holds it on behalf of its 11,310 beneficial owners, title was hard won, having been awarded only after 19 years of litigation.[209]

Ngāti Tūwharetoa's legal journey began on 8 September 1937, when an application for investigation into title to the lake was lodged with the Native Land Court. When the first recorded hearing occurred on 1 December, the Crown opposed the application and claimed the lake bed itself. The Crown alleged that native custom did not envisage ownership of lake beds; that the beds belong to the Crown as an attribute of sovereignty; and that the Crown is owner of some of the lands abutting on the lake and claimed the right of a riparian owner.[210]

After a number of adjournments, the matter again came before the court on 28 September 1943. At this stage in the proceedings, the Crown effected a major turnaround and withdrew its objections to the application. In doing so, however, Crown counsel made sure to 'put on record that such action should not be taken as a precedent in respect to the beds of inland waters'.[211] This concern was reiterated in 1954, when Mr Whibley, appearing for the Department of Lands and Survey, emphasised that the Crown's attitude towards Rotoaira was specific to that lake and was by no means an acknowledgment that all New Zealand lakebeds were Māori customary land.[212]

Despite the fact that the Crown withdrew its opposition in 1943, however, it was over a decade before the lake bed formally vested in the Lake Rotoaira Trust.[213] Indeed,

Lake Rotopounamu. Lying on the slopes of Mount Pīhanga in the Waipapa block, the lake is surrounded entirely by native bush and is a significant part of the Pīhanga Scenic Reserve.

it was not until the final hearing on 12 April 1956 that a freehold order was issued. This vested the bed of the lake in the Lake Rotoaira Trust on behalf of the owners of the Waimanu, Ngāpuna, Ōkahukura, Rangipō North, Waipapa, and Motuopuhi blocks, with individual shares awarded 'in the proportion that the frontage of each of the blocks . . . bears to the total frontage of 1074 chains'.[214]

Since 1956, the number of beneficial owners has increased exponentially from approximately 3,500,[215] to 11,310 as at 13 July 2012.[216]

The court went to considerable effort to correctly identify the beneficial owners of Rotoaira. This process, which took several years, involved the court calling for lists of owners for each of the six blocks abutting the lake. These

Lake Rotoaira. This lake was of immense importance to Ngāti Tūwharetoa and related hapū because it was a rich and plentiful supply of food.

lists were then checked at at least two sittings of the court in 1954 and 1955. There was first a preliminary check, during which the lists were read aloud and objections were heard and noted. There followed a final checking and settling of the lists.[217]

As a result of these processes, there were several iterations before the list of owners was finalised. The court went to lengths to ensure that those with an interest in the lake attended these sittings, even going so far as to advertise the sittings in the 'News in Maori' broadcast.[218] Struck by the large crowds that subsequently attended the courts and the level of interest in these processes, Judge O'Malley also stressed the usefulness of the submissions that were made, all of which he considered 'reasonable and responsible':

> This . . . was a great assistance to the Court, for no Court can hope to adjudicate fairly, if those persons who are bound by its decisions neglect to attend before it.[219]

As a footnote, we observe that the 11 trustees were each recorded as representing a hapū of Ngāti Tūwharetoa.[220]

We presume that this disposition was intended to reflect the kin groups regarded as having customary interests in the lake.

(5) *The Native Land Amendment and Native Land Claims Adjustment Act 1926*

The Crown also acquired waterways via the operation of statutes, such as the Native Land Amendment and Native Land Claims Adjustment Act 1926. Section 14 of this statute is best known for its codification of the agreement whereby the bed of Lake Taupō vested in the Crown. However, the Act also had implications for waterways within the National Park inquiry district, as subsection (4)(a) provided the Governor-General with the power to proclaim the bed of any river or stream flowing into Lake Taupō to be Crown land. Upon the issue of such a proclamation, the Act declares that that land would be 'freed from the customary or other title of Natives, and the Crown shall have the right to use and control the waters flowing over such bed'.

A proclamation was subsequently made on 7 October 1926. This affected 13 rivers and streams (either whole or in part) and included two waterways within the ambit of our inquiry: namely, the Poutū Stream and the Tongariro River.[221]

Under this proclamation, the bed of the Tongariro River from Lake Taupō to the junction of the river with the Whitikau Stream[222] was vested in the Crown. Part of this length forms the eastern boundary of the district.[223]

The 1926 proclamation likewise vested in the Crown the section of the Poutū Stream running from the confluence of the stream with the Tongariro River to the Waimarino-Tokaanu road bridge.[224] The Poutū Stream ran in an easterly direction from Rotoaira,[225] before winding north and connecting with the Tongariro River. This portion of the stream is contained entirely within the inquiry district. The precise extent to which the stream bed vests in the Crown is, however, unclear due to uncertainty as to the location of the Waimarino–Tokaanu road bridge referred to in the proclamation.

The ownership of these streams, together with the beds of Lake Taupō and the Waikato River, continued to be a bone of contention for many years. The matter was finally settled by a deed of agreement signed by the Crown and the Tūwharetoa Māori Trust Board on 28 August 1992 and confirmed by the trust board on 4 February 1993. Under this agreement, the 1926 proclamation was revoked and the beds of a number of waterways vested in the trust board. These included 'the beds of certain rivers and streams flowing into Lake Taupo', as well as the lake itself,[226] and specifically those contained in the schedule to the proclamation made on 7 October 1926.[227] The portion of the Tongariro River described above and the Poutū Stream were therefore among those returned to Ngāti Tūwharetoa to 'preserve and enhance its tribal mana and rangatiratanga'.[228] While the 1992 deed has since been revoked, this provision has been restated in subsequent deeds. The 2007 deed of settlement, for example, affirms that the beds of those rivers and streams flowing into Lake Taupō that were subject to the 1926 proclamation should be vested in the board to be held on trust for 'the members of the Ngāti Tūwharetoa hapū who adjoin such rivers or streams'.[229] The provision is also mentioned in the text of the *Deed in Relation to Co-governance and Co-management Arrangements for the Waikato River*, signed by the Tūwharetoa Māori Trust Board and the Crown in 2010.[230]

(6) *The Water and Soil Conservation Act 1967*

Māori authority over their customary waterways was removed by the passage of the Water and Soil Conservation Act 1967. It vested the sole right to allocate the use of water in the Crown. It soon became apparent that the Crown had effectively nationalised rights to water. The Act preserved the ability to take reasonable quantities of water for domestic and fire fighting purposes and to provide for the needs of animals, but vests in the Crown 'the sole right to dam any river or stream, or to divert or take natural water, or discharge natural water or waste into any natural water, or to use natural water'.[231] The *Mohaka River Report*, for its part, declared that the Act was 'in breach of the letter and principles of the Treaty to the extent that it conferred on central government exclusive control over the waters of the Mohaka'.[232]

It is also worth noting that previous tribunals have criticised the Water and Soil Conservation Act 1967 not only for its assumption of control and authority over water, but for its failure to provide for Māori rights and interests. As the Whanganui River Tribunal observed:

> The rivers where Maori retained significant interests in terms of the Treaty of Waitangi had not been determined before this legislation was passed, as would have been necessary to fairly protect those interests.[233]

Rather, as the Motunui–Waitara Tribunal commented, under the legislation 'the Maori interest is merely an aspect of the general public interest'.[234] For reasons such as these, the Kaituna River Tribunal recommended that

> the Water and Soil Conservation Act 1967 and related legislation be amended to enable Regional Water Boards and the Planning Tribunal properly to take into account Maori spiritual and cultural values when considering applications for grant of water rights, the renewal thereof or objections to such applications.'[235]

The Mohaka River Tribunal also commented on the downstream effect of the legislation in the courts, saying, 'The Act makes no reference to the principles of the Treaty of Waitangi or to Maori interests and the judicial response on their relevance has been variable'. In terms of managing water, for instance, the Tribunal observed that the courts (as at 1992) seemed to judge the Treaty as being relevant to one purpose of the Act – namely, the granting of water use rights – but not to the Act's second purpose which was the granting of water conservation orders.[236]

Overall, the lack of any reference to Māori rights and interests has led some to refer to the Act as 'monocultural legislation'.[237]

(7) *The Resource Management Act 1991*

When the Resource Management Act (RMA) was enacted in 1991, it effectively took over the functions of the Water and Soil Conservation Act. Indeed, the primary difference between the two statutes is the terminology used – more specifically, 'water rights' have transformed into 'water permits'. Section 14 of the RMA largely echoes section 21 of the Water and Soil Conservation Act 1967. Under this section, the taking, using, damming, or diverting of any water is prohibited unless it is expressly permitted by way of a 'national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent'; or if it is required to fulfil an individual's 'reasonable domestic needs' or 'the reasonable needs of an individual's animals for drinking water'; or is needed for fire fighting purposes. Such use must not have an adverse effect on the environment.

While the 1967 Act made no reference to the terms and principles of the Treaty, it is worth noting that the RMA does. The 1991 Act includes several clauses that recognise Māori interests. Section 6, for example, requires authorities to 'recognise and provide for . . . the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga'.[238] Section 7 similarly calls for 'particular regard' to be paid to kaitiakitanga[239] and section 8 requires decision makers to 'take into account the principles of the Treaty of Waitangi'.[240]

Despite the potential for recognition of Māori interests, however, claimants voiced their frustration at their concerns not being heard and their rights not being recognised.[241] It was also argued that the formulation of sections 6(e), 7(a), and 8 of the RMA serve merely to include Māori interests alongside other matters (such as amenity values and the benefits to be gained from the use and development of renewable energy[242]) to be weighed in the balance by the decision maker when determining whether, for example, a resource consent should be granted. In Nyree Nikora's words:

> As a result, one of the major difficulties we face in dealing with councils is that under the RMA we are relegated to presenting our issues largely as an interested party like sports clubs, tramping associations, conservationists and other similar groups. While we have nothing personal against these groups and acknowledge their concerns, our whakapapa, history, stories and for many of us our way of life are all deeply

> connected to our awa, Whanganui, tributaries, the Kahui maunga, surrounding lands and other sites of significance. Because of these connections, which our people have fostered and developed from time immemorial, it is deeply offensive and insulting for our concerns to be dealt with in this way. There is no partnership or meaningful relationship with the councils. We are repeatedly forced to present our concerns in the public forum and the public submissions process.[243]

George Asher also criticised the consents process under the RMA, which he described as 'effectively usurp[ing] the traditional role of Ngati Tuwharetoa as the stipulator and regulator of use rights'. In his view, the resource consents obtained by the power companies from the regional council heavily regulate the rights of Ngāti Tūwharetoa to exercise kaitiakitanga or management rights over their taonga.[244]

Most of the criticisms levelled at the Water and Soil Conservation Act 1967 therefore remain valid and were consequently reiterated in claimant evidence pertaining to the provisions of the RMA.

We return to RMA issues in chapter 14 when we consider the regulatory regimes that have been in place for TPD water use since 1994.

13.5.3 A knowing and willing cession of possession?

Having considered how ngā iwi o te kāhui maunga came to be deprived of the possession and authority they once wielded over the waterways of our inquiry district, it is necessary to question whether such deprivation met with their consent. In other words, did Māori knowingly and willingly cede such possession and authority over their streams, rivers, and lakes?

Crown counsel submitted that the issue of consent may need to be examined on a case-by-case basis and commented, too, on the need for caution where there is a lack of evidence.[245] We acknowledge these concerns, but note that the evidence in this inquiry is such that it is possible to identify instances in which ngā iwi o te kāhui maunga did not relinquish possession and authority over their waterways either knowingly or voluntarily. For those instances where there is an evidential gap in the documentary record, we must bear in mind Māori conceptions of waterways as single, indivisible entities with whom they are intrinsically connected. In our view, these conceptions are of the utmost importance when assessing whether Māori knowingly and willingly ceded possession and authority.

(1) *Common law not common to all*

It is important to note at the outset that following the signing of the Treaty the law operating in New Zealand was to be sourced 'to two streams': namely, English law (comprising both common and statutory law) and Māori customary law. The Whanganui River Tribunal commented on this, noting that the Treaty of Waitangi stands as authority for this duality and that the English Laws Act 1858 made it possible for the two traditions to stand side by side.[246] The drawing together of these traditions should have been sufficient to recognise and respect Māori interests.

One must therefore consider, as the Whanganui River Tribunal did, what Māori had in mind when they parted with riparian land. In other words, we must gauge whether ngā iwi o te kāhui maunga conceived land transactions in terms of Māori custom, or in terms of the English legal system.[247] It is necessary to bear such questions in mind as we examine how Māori lost possession and control of the district's waterways.

Applying the common law understanding to all land transactions is problematic. Indeed, while the 'common law' may have certain connotations, these may be neither entirely accurate nor valid when applied to the New Zealand context. The phrase may, for example, conjure up notions of a legal system that is 'normal' or 'ordinary', one that is quite literally 'common to all' and has been 'derived from centuries of use'. For the British, this may be true. However, the common law would have been quite alien to Māori. For them, it was a code derived by people of another culture, in another context, and in another country. The rules that it embodied were unknown to them and, in some cases, incomprehensible.[248] Take for instance the presumption that determined the ownership of so many of the waterways in the Tongariro National Park: *ad medium filum aquae*.

(2) *The common law and conceptions of waterways*

As previously noted, the division of waterways into water, beds, and banks was possible under the English common law. Indeed, the *ad medium filum aquae* doctrine operated to separate out these elements and enable riparian landowners to own to the imaginary centre point or centre line of a waterway. Similar concepts apply where a waterway – such as a small lake or a non-navigable river or stream – is contained within a single block of land. Here, too, the landowner would own the bed of that waterway, but not the water flowing over it. This would have been an alien concept to Māori, for whom waterways – their ancestral waters and wai tapu – were single, indivisible entities. The notion that ownership, together with their rights of control and use, could pass with the sale or alienation of adjoining land was equally foreign, as past judicial decisions and Tribunal reports have acknowledged.[249]

In 1929, for example, Judge Acheson presided over a case in which the ownership of Northland's Lake Ōmāpere was at issue. His comments in relation to the Māori conception of the lake have been described as 'instructive'[250]:

> The bed of any lake is merely a part of that lake, and no juggling with words or ideas will ever make it other than part of the lake. The Maori was and still is a direct thinker and he would see no more reason for separating a lake from its bed (as to the ownership thereof) than he would see for separating the rocks and the soils that comprise a mountain. In fact in olden days he would have regarded it as a rather grim joke had any strangers asserted that he did not possess the beds of his own lakes.
>
> A lake is land covered with water, and it is part of the surface of the country in which it is situated, and . . . it is as much part of that surface and as capable of being occupied as is land covered by forest or land covered by a running stream.[251]

Russell Kirkpatrick, Kataraina Belshaw, and John Campbell have also noted the disparity between the traditional Māori view and that of the common law:

> The traditional view of Māori ownership is vastly different from the common law meaning. A river is a taonga which carries a mauri; it is usually guarded by Taniwha who act as Kaitiaki. There is no separation between banks, rivers, margins or waters. The physical and metaphysical aspects of waterways in the Māori world view are inseparable, giving rise to their status as taonga.[252]

These accounts reflect the position of ngā iwi o te kāhui maunga, whose legal counsel consistently argued that the streams, rivers, and lakes encompassed by the inquiry district were considered single, indivisible entities.[253] Claimant counsel further submitted that Māori would never have contemplated that ownership of the rivers would pass with the sale of land, and that such a rule would have been 'utterly alien to tikanga Maori'.[254]

Similar arguments were put to the Whanganui River Tribunal, who considered the 'Crown's application of the common law doctrine *ad medium filum aquae* to assume ownership over parts of the river . . . to be in breach of the Treaty of Waitangi'.[255]

This position has been reiterated in several forums. In a commentary on the Treaty of Waitangi, for instance, former Chief Judge Joe Williams described the application of the *ad medium filum aquae* presumption as inconsistent with the Crown's obligations arising out of the Treaty:

> the Crown [is not] entitled to rely on *ad medium filum aquae* to justify the extinguishment of Maori customary title to inland waterways. The Tribunal has found that for the Crown to rely on such an esoteric rule to acquire a taonga of Maori, without their knowledge, was clearly unjust and in breach of Article 11 of the Treaty.[256]

In the *Te Ika Whenua Rivers Report*, the Tribunal reached a similar conclusion:

> It is inescapable that the major factor in the loss of title and te tino rangatiratanga over the rivers is the application of the *ad medium filum aquae* rule. By operation of that rule of law, title to the middle of the rivers passed to the purchasers of riparian lands. In the *Mohaka River Report 1992*, the Tribunal found that this was an operation of the law inconsistent with the principles and guarantees under the Treaty. We agree. *At*

> *least with the majority of the Te Ika Whenua land sales, the vendors would have had no idea of this law*. Although the riverbeds passed on the sale of riparian lands, this could hardly be said to be a voluntary sale or relinquishment of tino rangatiratanga. It is significant that the Crown did not even endeavour to argue voluntary relinquishment based on transfer of title under this principle. [Emphasis added.][257]

These statements all regard the need to obtain the free and willing consent of Māori as a responsibility that flows from both the actual text of the Treaty (particularly article 2) and the principle of active protection. We agree with these conclusions and reiterate that extinguishment of customary title necessarily involves an agreement to which both 'the Crown and Maori subscribe and of which both are fully sensible'. Indeed, the Whanganui River Tribunal described this requirement as a 'governing rule'.[258] As previously stated, the Treaty of Waitangi and the English Laws Act 1858 provided for the recognition that these give to Māori customary law. The Crown was therefore required to take into account a number of factors, including Māori perceptions of waterways, their understandings of the effects that alienation would have on customary waterways, and the traditional relationship of ngā iwi o te kāhui maunga with these taonga.

(3) *Onus of proof*

Given the discrepancies between British and Māori understandings of waterways and the effects that the alienation of land would have on Māori possession and authority, we are of the view that the Crown was under an obligation to ensure that ngā iwi o te kāhui maunga fully understood the implications of these transactions. Accordingly, we believe that the onus of proof should shift to the Crown. It should be the Crown that needs to prove, on a case-by-case basis, that Māori knowingly and willingly relinquished possession and control over the district's waterways. This approach is consistent with the *contra proferentem* principle, which holds that, where there is ambiguity, an agreement or contract should be 'construed against the party which prepared it'.[259] Land sales in our inquiry district were overwhelmingly initiated by the Crown. Thus, for our purposes, it is appropriate that any ambiguities in those deeds of sale (and other means of alienation) should be construed in favour of ngā iwi o te kāhui maunga.

Indeed, this accords with the approach taken by the Mohaka River Tribunal. That Tribunal viewed the application of the *contra proferentem* rule as both appropriate and just:

> Applying the rule does we think produce a just result because Ngati Pahauwera should not be deprived of their taonga unless all or part of the river was clearly and unambiguously included within the terms of the deed.[260]

Evidence presented to this Tribunal indicates that customary use of the district's waterways continued long after the beds had vested in the Crown *ad medium filum*.[261] In our view, this strengthens the conclusions drawn above.

(4) *Land purchasing practices*

Chapters 6 and 8 provided an overview of Crown policy and practice in land purchasing. Broadly speaking, the system put in place was designed to undermine the culture of collective decision-making and sought to acquire as much land as quickly as possible, thus accelerating the process of land alienation. Together with contributing factors such as survey liens, court costs, debts, poverty, and a desire to participate in the cash economy of Pākehā settlers, Māori were often pushed into parting with their customary lands. In light of this approach to land purchasing, we consider it highly questionable that land purchase officers ensured that ngā iwi o te kāhui maunga knew that upon sale, the waterways contained within and adjoining riparian land would pass to the Crown via the *ad medium filum aquae* rule. In our opinion, the onus is on the Crown to establish that Māori knowingly and willingly ceded possession of their waterways. On the evidence we have before us in this inquiry, we consider it not at all obvious that the Crown could do so.

Indeed in the following examples, in particular, we consider it to be demonstrated that Māori did not knowingly and willingly cede possession and control of their waterways in this district:

A mountain stream. Mount Ruapehu towers over a series of waterfalls as the stream cascades its way downhill.

- *Rangipō North 8:* The Rangipō North 8 block contains the source of two streams of significance to Whanganui Māori: namely, the Tokiāhuru and the Wāhianoa. The compulsory acquisition of this parcel of land by the 1907 proclamation (see chapter 7), coupled with the failure to identify the owners of this block at the time and the subsequent failure on the part of the Crown to compensate them, suggests that Māori consent was never sought, let alone given. That the owners neither knowingly nor willingly parted with their possession and control over the streams contained within these blocks is further indicated by Ngāti Rangi's continued use of these waterways in accordance with customary practices and that they 'maintain a customary relationship with the mountain [Ruapehu] despite the Crown's disturbance of [their] . . . title to it'.[262]
- *The peak blocks:* The peak blocks are the so-called 'gift blocks' centred around the peaks of Mount Tongariro, Mount Ngāuruhoe, and Mount Ruapehu.[263] While taonga in and of themselves, the blocks were also significant as the source of a number of important rivers and streams, such as the Whanganui River, the Whakapapanui Stream, the Whakapapaiti, the Whangaehu River, and possibly the Manganuioteao. The blocks also contain lakes, such as Te Wai Whakaata o Te Rangihīroa (the Blue Lake) and Te Waiamoe (the Crater Lake). As discussed in chapter 7, we believe that understandings of the transaction between Te Heuheu and the Crown differed considerably. The Crown understood it as a gift in the common law sense of the word, believing that it would vest sole ownership of the peaks in the Crown. Te Heuheu, on the other hand, saw the arrangement as a tuku. While he understood that this would necessitate a change of title, he expected that there would be shared authority and ownership, with title to the blocks and the responsibilities of kaitiakitanga resting jointly in himself and the queen. Our reasoning in relation to the waterways flows logically from this conclusion. Namely, if Te Heuheu had not anticipated that the transaction would vest title to the peaks solely in the Crown, it is impossible that he would have understood that title to the beds of those waterways located within those blocks would likewise pass solely to the Crown.
- *Lake Rotoaira:* Lake Rotoaira can be distinguished from many of the waterways in the inquiry district because the Lake Rotoaira Trust retains title to the lake bed.

13.6 Waterways – Tribunal Findings

Our findings are as follows:

- The waterways of the Tongariro National Park inquiry district are, and have always been, a taonga of

The Whakapapanui Stream. One of many streams on Mount Ruapehu, the Whakapapanui makes its way through native bush.

ngā iwi o te kāhui maunga. Because the waterways are found to be taonga, the Crown is bound under article 2 of the Treaty to actively protect customary ownership and use of the resource, until ngā iwi wish to relinquish it.

- Common law doctrines, such as *ad medium filum aquae*, and statutes such as the Water and Soil Conservation Act 1967 and the RMA vested the control, use, management, and regulation of rivers, streams, and lakebeds in the Crown.
- None of the rivers or streams contained within the inquiry district qualifies as navigable for the purposes of the Coal-mines Act Amendment Act 1903. This statute is therefore of no relevance to our inquiry.
- In line with the findings of the Whanganui River Tribunal, we consider that the *ad medium filum aquae* doctrine embodied concepts quite alien to Māori. As noted above, this common law rule separated waterways into constituent parts and vested

ownership of the waterbed in the person or persons that owned the adjoining land. This was in contrast to the Māori worldview, under which ngā iwi o te kāhui maunga viewed waterways holistically – that is, as single and indivisible entities. The Crown was under an obligation to ensure that Māori understood the full implications of land transactions and transfers. The Crown did not provide evidence of having done so. We are, therefore, not persuaded that Māori ownership and authority over their waterways passed to the Crown (if indeed it did) with the knowledge and consent of ngā iwi o te kāhui maunga.

- In further support of this finding, we identified two examples in the historical record where Māori–Crown understandings of land transfers did not align. On these occasions, it is clear that ngā iwi o te kāhui maunga did not fully appreciate the nature of these transfers, nor the operation of *ad medium filum aquae*.
- The Water and Soil Conservation Act 1967 and its successor, the RMA, enabled the Crown to assume the right to determine and allocate water use rights. We consider the Crown's assumption of these powers to be in breach of its duty to actively protect Māori in the possession, use, and enjoyment of their taonga. In doing so, we align ourselves with the findings of the *Mohaka River Report*, which found the 1967 Act to be in breach of both the text of the Treaty and its principles because it 'conferred on central government exclusive control' over waters that had been taonga of the tangata whenua.[264] We view this exclusive control to have been perpetuated by the RMA.
- We further find that despite the 1991 Act's express provision for Māori interests, in part II,[265] these are frequently not given the weight that they should be accorded by those making decisions under the Act.[266] This conclusion is, again, a reiteration of those reached by previous Tribunals. In the *Tauranga Moana Report* and the *Report on the Management of the Petroleum Resource*, for instance, the Tribunal commented that it was too easy for these otherwise Treaty-compliant provisions to be 'outweighed by other criteria'.[267] *Ko Aotearoa Tēnei*, the Tribunal's report into claims concerning law and policy affecting Māori culture and identity, similarly considered the RMA to have fallen short of its potential. We endorse their recommendation that 'the RMA regime be reformed, so that those who have power under the Act are compelled to engage with kaitiaki in order to deliver control, partnership, and influence where each of these is justified'.[268]

13.7 Customary Fisheries – Tribunal Analysis

We turn now to consider the claims that were raised in respect of another taonga: the customary fisheries of ngā iwi o te kāhui maunga. As in the above section, our analysis has been organised around three key questions:

1. Which customary fisheries were important to Māori traditionally?
2. Have Crown actions or inactions affected the fishery and, if so, how?
3. What have been the effects on Māori?

The following section addresses the first of these questions, specifically examining customary usage in the National Park inquiry district and the relationship between the fishery and ngā iwi o te kāhui maunga.

13.7.1 Customary fisheries of importance to Māori

The waterways of the National Park inquiry district hosted a number of species that traditionally comprised the customary fisheries of ngā iwi o te kāhui maunga. These fisheries were an important source of food in a harsh environment. They also represented an aspect of cultural identity, being dependent on the transmission of a wealth of traditional knowledge, developed over centuries.

A number of traditional species have been mentioned in chapter 2. We look at these in more detail here and examine their significance.

(1) *Kōaro*

Of particular note in our inquiry district were the kōaro: a small scaleless fish and one of 40 freshwater fish indigenous to New Zealand.[269] Kōaro have an 'elongated

The native kōaro. This small whitebait fish, which used to be plentiful in Lakes Rotoaira and Rotopounamu, was a staple food for Ngāti Tūwharetoa, especially during the winter months.

cylindrical body' and tend to be an olive-brown colour, with a lighter, fawn-coloured belly. These fish typically grow to between 230 and 270 millimetres in length.[270]

Within our inquiry district, kōaro were known to inhabit 'tributaries of the Whanganui River near Mount Ruapehu' but existed in their greatest numbers in the waters of Rotoaira and Rotopounamu.[271] Indeed, it is probably significant that Elsdon Best, in his work on Māori fishing throughout New Zealand, should refer to kōaro as 'a small fish taken at Roto-a-ira Lake'.[272] In spite of their small size, kōaro formed an essential part of Ngāti Tūwharetoa's diet. Historical accounts dating from 1918, for example, describe kōaro drying in their thousands.[273] Once dried, they could be stored and used during the winter months. At such times they would be drawn from the pātaka (storehouse) by cooks and thrown in as a kinaki (relish), when no other meat was available.[274] We were told that whānau at Te Māhia, for example, regarded the fishery as a staple.[275]

During our hearings, we received considerable evidence on the manner in which kōaro were caught. Biological consultant Charles Mitchell, for example, described how ngā iwi o te kāhui maunga would set hinaki overnight, particularly taking advantage of the knowledge that kōaro would congregate in the springs around the edge of Rotoaira (notably the Mapouriki, Ngāpuna, and Waione) in late spring and early summer.[276] Ariki Piripi remembered from his childhood fishing experiences at Rotoaira that kōaro enjoyed the weed that sat at the bottom of the lake. When the wind blew and the waters were stirred up, however, the weed would float to the surface. At this point, they could haul the weed out and the kōaro would be dried and eaten.[277] Nets were also used to catch kōaro. Ringakāpō Payne explained how nets, constructed from flax and fine wire netting, would be set in the lake ready for the kōaro. Once caught, they would be pulled out and laid out in the sun to allow the kōaro to dry.[278]

The abundance of kōaro in Rotoaira was graphically demonstrated when the TPD's Tokaanu intake was opened, allowing 'water to flow down from Lake Rotoaira to the turbines at the Tokaanu Power Station'.[279] Huge numbers of kōaro were sucked into the conduit along with

the water and spilled out at the other end. George Asher quoted his father's description of this event as something he would never forget:

> The water between the Tokaanu traffic bridge and the powerhouse was black and teeming with Koaro. I was standing with Clark Wynward, Bob Livesey and many other workers at the Tokaanu Powerhouse . . . and we witnessed the sad spectacle of these indigenous fish using every means possible to swim back up the front walls of the powerhouse in an effort to return to Lake Rotoaira. The wall was absolutely black and moving. Any small streams of water seeping from the north or east side of the wall was choked with teams of koaro.[280]

The account represents evidence of a significant fish stock, and the TPD's considerable impact on this hapu food source.[281]

Claimants told us that Rotopounamu is now 'the last area where kokopu and koaro remain in significant numbers', but that the kōaro population there is no longer sufficient to support customary fishing practices.[282] Official reports are graver still: in 1993 the Ministry for the Environment reported that kōaro were thought to be extinct in Rotopounamu.[283]

(2) *Kōura*

Kōura is the name given by Māori to the freshwater crayfish that once resided in waterways such as the Tokaanu River, freshwater tributaries of the Whangaehu, the Mangawhero River, and a number of the rivers flowing from the western and southern slopes of Mount Ruapehu.[284] As previously indicated in chapter 2, a number of claimants explained how their people used to go bobbing for crayfish. Tiaho Pillot, recalled the way in which the women, particularly, always knew 'exactly where to find the "crayfish nests" situated along . . . the muddy banks of the Tokaanu River'.[285] They would wade through the water searching for kōura with the handles of their kete (basket) lodged firmly between their teeth. Once a nest had been found, they would reach inside, grab the kōura around its back and swiftly deposit it in their basket.[286] James Biddle and Dulcie Gardiner discussed the plentiful supply of kōura in the Mangakōura Stream and Tokaanu River. In both of their accounts, kōura were caught by attaching a piece of meat to the end of a stick or branch, usually taken from a mānuka tree. This method made the most of the kōura's poor eyesight and strong sense of smell. Smelling the meat, the kōura would cling to the stick and could then be grabbed and transferred quickly to a bucket.[287]

Claimants described how fishing for kōura was often a communal activity and one that afforded an opportunity for traditions to be passed on to younger generations. In her evidence, Ms Gardiner described the strong sense of community that accompanied the summer nights spent at their papakāinga on the banks of the Tokaanu River – aptly named Te Whare o Kōura. Locals would come every year and sit around the two large crayfish holes, fishing until their kerosene buckets were full to overflowing. Ms Gardiner described how much she 'loved the laughter, the chatter, the friendship and the whanaungatanga that filled those summer evenings'.[288] She noted, too, that it was on such evenings that '[w]e learned our stories, waiata and our whakapapa from our grand-uncles, grandfathers, uncles and aunties who came to fish on that stream'.[289] James Biddle had similar memories.[290]

Kōura populations have now declined. Claimants were of the view that this decline can, in part, be attributed to the changing river environment. Lois Tutemahurangi, for instance, noted that the pools where she 'used to catch koura . . . and go swimming have all disappeared'.[291]

(3) *Īnanga*

Broadly speaking, īnanga is a freshwater whitebait that tends to be found in open waters and typically swims in 'smallish, roving shoals, in pools and runs of lowlands, rivers and in wetlands'.[292] It is important to note, however, that some ambiguity surrounds the definition of īnanga. According to John Te Herekiekie Grace's book, *Tuwharetoa*, there are two distinct types of īnanga: those captured at the mouths of rivers flowing into the sea and those located in lakes such as Taupō, Rotorua, and Rotoiti. He describes the latter as the young of *Galaxias brevipinnis*: the scientific name for kōaro. Grace then goes on to

◄ Kōura or freshwater crayfish. Found in particular rivers and streams in the Tongariro area, kōura used to be an important food source, but their numbers have since declined.

▼ Māori fishermen hauling in a catch of kōura. Apart from food gathering, kōura fishing was beneficial to Māori because the community spirit could be strengthened and family stories exchanged and learned.

The common smelt. Smelt is one of a number of indigenous fish that live in the district's waterways.

note that when smelt was introduced into inland waterways, they looked very similar to the fry of kōkopu. Both, he says, came to be known under the generic term 'īnanga'.[293] Other sources give the scientific name of īnanga as *Galaxias maculatus*, thus distinguishing it from kōaro (*Galaxias brevipinnis*) and smelt (*Retropinnia retropinna*).[294] The evidence presented to this Tribunal did not provide sufficient detail to identify which species the claimants were referring to, and like the CNI Tribunal, we accept that there has likely been confusion as to the names attributed to the whitebait species. In the discussion that follows, we therefore adopt a broad view of the term. Due to the uncertainty, however, we will make no findings on īnanga specifically.[295]

A Ngāti Tūwharetoa tradition suggests that the īnanga was a species of note for the tribe:

> Tūwharetoa oral history records that Ngātiroirangi brought Ikatere, the god of fish, with him as a guardian to ensure their safe crossing of the mighty Pacific Ocean. When he arrived in Taupō, Ngātiroirangi tore shreds off his kaitaka cloak and Ikatere helped him to turn them into whitebait īnanga.[296]

Claimant testimony is that īnanga were amongst those species of native fish that were plentiful prior to the introduction of trout,[297] being found in waterways such as the Rangitīkei River, Lake Rotoaira, the Tokaanu River, the upper reaches of the Whanganui River, and the Waimarino River. According to James Biddle, the latter was one of their spawning grounds.[298]

Īnanga were a seasonal food supply and were typically caught by being herded towards a net.[299] Once caught, īnanga could be dried out and added to a boil-up of watercress or else simply chewed.[300] Dried īnanga sometimes served as a trade commodity, being traded with coastal communities for items such as salt.[301]

(4) *Kākahi*

Kākahi, or freshwater mussels, 'are found in the mud of lakes, rivers and streams'.[302] Within the boundaries of the

National Park inquiry district, kākahi could be found at the margins of Lake Rotoaira and the streams running into it, particularly at Te Pahiko and the Tokaanu River.[303] While kākahi were reportedly 'never very plentiful', nor as actively sought as species such as kōura, they did form another food source for Ngāti Tūwharetoa and, like other shellfish, were eaten raw.[304]

(5) *Morihana*

Morihana, or carp, were not indigenous to the inquiry district but, once introduced, they were quickly appreciated by the tangata whenua. According to Bob McDowall, morihana were released into Lake Taupō by Sub-inspector Morrison of the Armed Constabulary in 1873. Morrison had brought the fish with him from Napier and were subsequently known to Māori as morihana – this being a transliteration of Morrison's name.[305]

Before long, morihana could be found in the Tokaanu River and Rotoaira and soon became a fish of significance to Māori, both as a source of food and a rongoā.[306] Tiaho Pillot explained:

> Whenever our elders became ill they would ask for family members to get some carp for them to be cooked and eaten. The liquid contents of its bladder seemed to get rid of all their chest infections.[307]

Morihana could also be used to heal infants. Indeed, both babies and the elderly would be 'fed . . . jelly from the morihana because it was rich in important nutrients'.[308]

The way in which ngā iwi o te kāhui maunga caught morihana was described by Tiaho Pillot:

> Before the introduction of fishing nets, the usual method we used for catching carp, was by forming two groups as a 'human barrier' across the river. Sometimes we would position ourselves across the river and in front of our homestead, or else nearby the inlet. It all depended on where the main school of carp could be found. This was usually in the warm and sometimes shallow waters of the inlet and where they would usually try to 'camouflage' themselves under the shadows of the rushes (raupo). The second group who had positioned themselves further up the river, would then gradually make their way towards us, forcing the carp to swim desperately in the other direction, to where we would be waiting.[309]

Merle Ormsby also mentioned how holding pens were constructed so that morihana could be easily obtained by the sick and the elderly.[310]

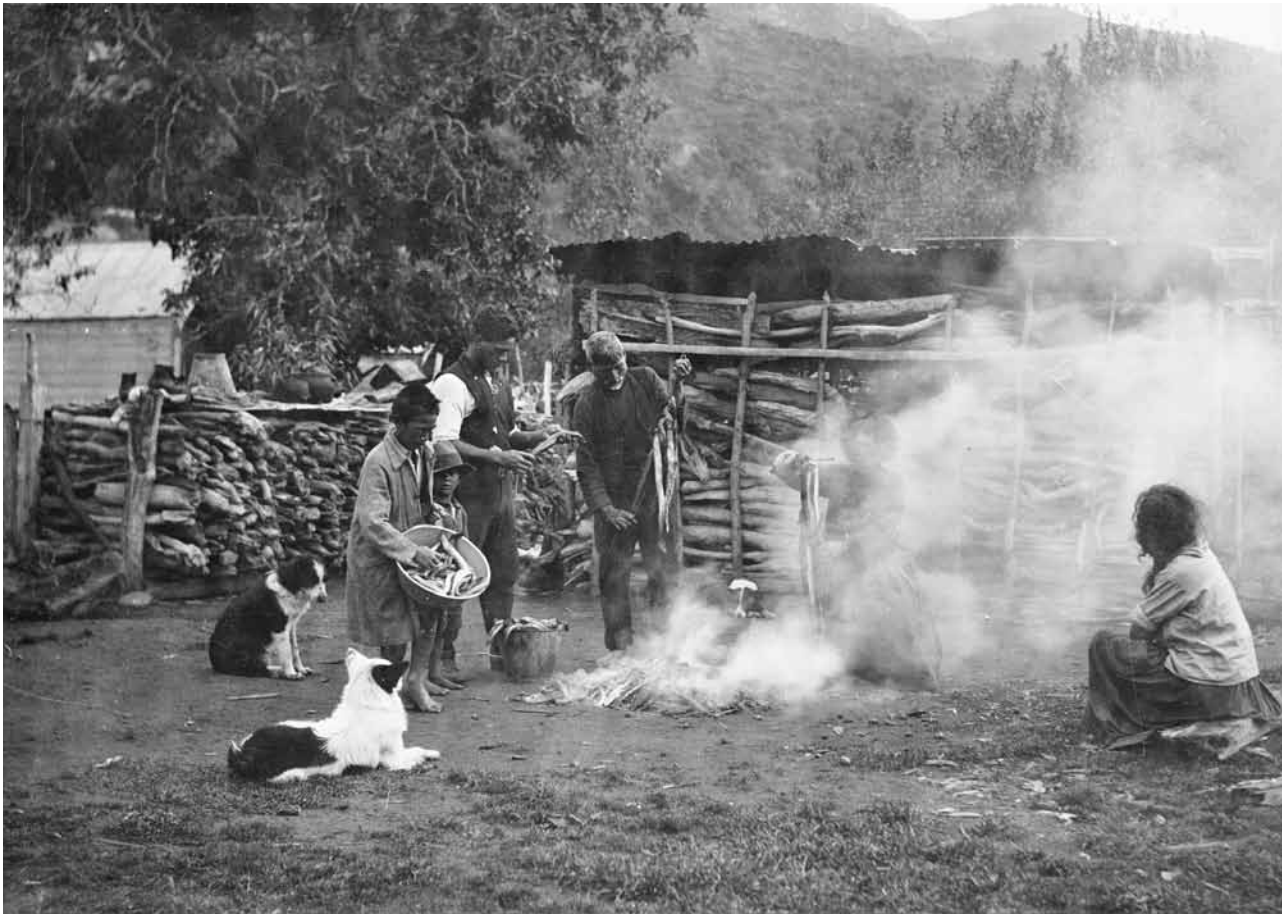
Although an introduced species, morihana, unlike trout, do not appear to have had a negative impact on indigenous fisheries. Indeed, morihana have effectively become part of the customary fishery and are now primarily caught by Māori.

(6) *Tuna*

Claimant evidence also stressed the importance of tuna (freshwater eels) to ngā iwi o te kāhui maunga and described their presence in many of the district's waterways. These included the Mangawhero, Taonui, Whangaehu, Manganuioteao, Whanganui, and Waimarino Rivers, as well as some smaller tributaries.[311] Small quantities are also reported to have been harvested from Lake Rotoaira.[312] The tuna contained within in these waterways were particularly important to Ngāti Tūwharetoa on account of the species' total absence from Lake Taupō.[313]

Claimants told us how the supply of eels used to be abundant. Jim Edmonds, for example, described the streams running into the Whangaehu at Karioi as 'teeming with eels' and explained that '[w]here there is plenty of fresh flowing water the tuna will be plentiful'.[314] Lois Tutemahurangi remembered that her father once caught an eel of truly mammoth proportions – over six feet long and approximately 10 inches in diameter – and on another occasion caught 50 tuna in just one hinaki.[315]

When large quantities of tuna were caught they were usually smoked.[316] Jim Edmonds remembers from his younger days that they used to add either brown sugar or golden syrup to the tuna before it was smoked, thus giving it a sweet flavour. He described tuna as a delicacy and expressed his particular love for those eel that had 'pink flesh and taste[d] like the crayfish from the creeks of the Whangaehu in Karioi'.[317]



Māori group smoking eels at Koroniti. Freshwater eels or tuna used to be an abundant food source in the region.

Witnesses also spoke of their kaitiaki responsibility for the resource, their evidence demonstrating a clear understanding of the various species' life cycles and habits. Raana Mareikura, for instance, told us that 'tuna at the base of the river are pa tuna, tuna in the middle of the river are piharau and tuna at the top level of the river are tuna heke'.[318] Tūrama Hāwira described how from the time of his 'paternal grandparents, who settled and cleared the land at Tuhiariki', his family has been responsible for 'monitoring our waterways and monitoring the taking of tuna'. On the Mangawhero, they 'monitor the different sites, the numbers of tuna migrating and the numbers of returning tuna. We often come together at different hui to discuss what we have observed since we last met and any concerns we may have. We continue to monitor our tuna today'.[319] Matiu Haitana similarly commented on the role of the tuna catchers, not only in catching the eel but in maintaining their environment. In his words:

> When I refer to Uncle Biddy as a Master Tuna catcher, I must emphasize that I mean much more than just catching Tuna. To catch them you must also look after them and their

> environment. It is much like the whangai relationship that I discussed earlier when talking about my whakapapa. If all the tuna die, then there can't be any Tuna catchers.[320]

Tuna were caught not only to benefit the individual, but often to benefit the wider community. Ms Tutemahurangi, for example, testified to the way in which her father 'caught fish and eels to help support our whanau, the wider group of relatives, and the marae when there were hui or tangi'.[321]

(7) *The significance of customary fisheries*

The inquiry district's waterways, with their supplies of kōura, kōaro, morihana, īnanga, and tuna were an important source of sustenance and protein, not only for those living immediately in the shadow of the mountains, where conditions were often harsh, but also for others farther afield. Tūroa Karatea of Ngāti Waewae, for example, described how in his childhood, fishing could help to make the difference between going hungry or not. In addition to making the most of resources in the rivers near his home in the Manawatu, he said many of his whānau 'fished up the Whangaehu'.[322] Arthur Smallman commented that fish from Rotoaira was 'food for the table during the depression years and World War II'.[323] Jim Edmonds, of Ngāti Rangi, said that even if families had money, there was 'nothing as good as being able to get [kai] yourself'. Getting tuna and crayfish from the Whangaehu and its tributaries was an integral part of his whānau's way of life, he told us.[324]

Then, too, the resources of rivers, lakes, and streams could contribute significantly to a tribe's ability to host visitors. Witnesses spoke of how the plentiful fish supply at Rotoaira, along with the population of wild ducks or pārera that the lake attracted, led to it being known as Te Pātaka Kai o Tūwharetoa.[325] This bounty enabled Ngāti Tūwharetoa to cater important hui and tangihanga[326] – a capacity which was not only a source of pride for the hapū gathering and supplying the food, but which contributed to the mana of the iwi overall. Other claimants, too, pointed to the importance of their fisheries in this context. Ida Taute commented that '[m]anaaki tangata (hosting visitors) was a key value and tāonga to Ngāti Rangi people', and said that whenever visitors were expected, 'fishing was a primary activity to ensure that we could provide for our guests'. That manaakitanga extended beyond social and cultural occasions: 'Even when we had shearing gangs working at home, our local freshwater kai was important for looking after our workers'.[327]

Memories of the abundance of the fish stock featured in the evidence of many witnesses. Ms Taute, for instance, recalled how a sack could be filled with fish, kōura, or tuna within a short space of time.[328] Te Rata Waho reinforced this, explaining that they could go to their tūpuna awa and 'catch kai whenever we wanted a feed'.[329] Dulcie Gardiner recalled that she needed only to throw bread in the river for the fish to come swimming.[330] Mr Edmonds, too, spoke of the many aquatic species to be found in the rivers and streams of the inquiry district. According to his evidence, the Mangawhero River and the Hapuawhenua, Taonui, and Mākōtuku Streams teemed 'with aquatic life such as tuna, koura, inanga and kokopu, which were fed by the crystal clear waters and which the rocks and bush helped to filter and maintain constant levels'.[331] His evidence makes a link between plentiful stocks and the health of the waterways. That link was also made by Ms Taute, who commented that the ability to provide plentiful amounts of fish to visitors was clear evidence that the hapū had been taking good care of their waterways, again contributing to their mana.[332]

There was also the sense of continuity and belonging that the activity of fishing engendered: being able to fish the same waterways as one's forebears, and employing, in the process, a knowledge of its fishery handed down from generation to generation, contributes to a sense of cultural identity. Mr Howell expressed this clearly when he spoke of the customary fishing areas in and around Rotoaira:

> My Father, Grandparents, and the ancestors before me, used all these places for fishing. Our tupuna fought and died for this whenua. We are kaitiaki. Using the same sites for fishing today is part of our cultural identity.[333]

Kevin Hikaia gave similar evidence for Ngāti Hāua. He said that there are:

> many places left today where Hinengākau [their tūpuna] would catch and hold the eels in the upper reaches of the Whanganui River, and other tributaries. The Waimarino is one within the National Park Inquiry District.[334]

Fishing for eels on these same rivers, using the same methods, provides an important link to the past. Extending that web of interconnectedness and belonging still further, Ida Taute, for Ngāti Rangi, described the act of fishing as part of sustaining 'our relationship with our tūpuna awa as whanaunga'.[335]

In some instances, fishing seems to have been an activity open to anyone.[336] In others, witnesses implied or stated that fishing lore and skills were taught only to certain people. Jim Edmonds, for example, said that it was the old people who 'often chose the food gatherers', and the role would then tend to 'stay with that family for two or three generations'. In the case of fishing, those chosen would not only be taught the practical techniques, but they also learned the Māori calendar so that they would know the best times to go out.[337] Then, too, there was the importance of ensuring that the correct rituals were performed. As noted by Elsdon Best and others, these were generally carried out by a tohunga and were intended to ensure a successful catch.[338]

Children could be initiated into fishing from a young age, learning that even though they might be 'bitten by eels or nipped by koura', the creatures to be found in the waterways were 'kai that [was] there for their benefit and something to be appreciated'.[339] Colin Richards agreed, adding that they were taught 'to always give thanks for the kai our awa gives us'.[340] We will return to such matters again below, when we discuss tikanga.

The importance of sharing was emphasised, too. Mr Edmonds told of how when they had caught and smoked tuna, they would take bundles to family members:

> Even if the family didn't stop at home, we would roll up two or three and take them over. This is what we would do, everybody shares their kai around. There is plenty to go around, you feed your family, and there is more than enough so you share it out.[341]

The sick and elderly received particular consideration.[342] As Mr Edmonds said, while you may be taking food to the elderly now, 'there comes another time when someone will bring kai to you'.[343]

Lastly, we were told that fishing teaches an awareness and appreciation of nature:

> You are aware of the changes in the seasons. If we lose these things, we will lose the value of life and why all those things are in our rivers in the first place. We will take those things for granted.[344]

(8) *Traditional technical knowledge*

Having looked at the nature and extent of the fishery and gauged its importance in Māori society in our district, we turn now to look at the technical knowedge associated with that fishery. Keith Wood, of Ngāti Rangi, told us:

> Our long historical association and close observation of these taonga . . . resulted in a vast and detailed knowledge base of the ecology of these waterways. Our use and practices reflected the natural seasonal flows and changes, and operated to preserve the natural ecological values.[345]

Mr Wood also gave to understand that the depth and breadth of traditional knowledge has often not been fully appreciated by others:

> There has been an historical dismissal of the depth and value of mātauranga and tikanga Māori. Even where attempts are made to value and respect them, there is often difficulty about how to apply them, and Pākehā technical and scientific expertise and commercial values are allowed to override as being superior to Māori scientific and technical expertise and the requisite cultural and spiritual values.[346]

Many claimants, from across the district, gave concrete examples of traditional knowledge handed down by their parents, grandparents, and their forefathers and we examine some of that evidence in this section.

First there was a knowledge of the habits of different species, both in terms of their seasonality and of the

A hinaki being woven. The man on the right taking notes is Te Rangi Hiroa. Traditional knowledge of fishing equipment and methods was passed down from generation to generation so that it was not lost.

best places to fish. We have already noted how kōaro were caught at times of the year when populations were known to concentrate in the streams surrounding Rotoaira, and Ngāti Tūwharetoa named other places, too. They likewise identified places for catching īnanga, kōkopu, and other species.[347] As to catching tuna heke (migrating tuna), years of observing the migratory patterns of these creatures taught tangata whenua that they travelled downstream at night, floating on the surface of the water, and following the froth on which they liked to feed at this stage of their life cycle. Bearing this in mind, said Jim Edmonds, tangata whenua looked for the froth when constructing their pā tuna so that they might use the knowledge to their best advantage.[348] Also in relation to tuna, Mr Edmonds commented that

> There are certain places that only a few of us know about, where the good kai is and they are for those occasions [tangi and hākari]. So the stock will be there for these times, especially because it is not as plentiful in the winter months.[349]

Knowledge about the best catching methods and equipment was also important. For tuna, it was the hīnaki, a woven trap often made from supplejack.[350] Kevin Hikaia told us his people used a special design passed down from generation to generation that has been attributed to Hinengākau, a tupuna famous throughout the Whanganui River tribes for her expertise both regarding the eels themselves and the weaving of hīnaki.[351]

We have noted other examples of specialist knowledge, in our sections on the individual species. James Biddle and Dulcie Gardiner, for example, described methods of catching kōura; Tiaho Pillot told us about the way her family used to catch morihana; and Ringakāpō Payne and Ariki Piripi gave evidence about techniques and equipment used for catching kōaro in and around Lake Rotoaira.[352] Other evidence from Ngāti Tūwharetoa adds the information that 'Inanga was netted in the daytime, crates used to catch them at night'.[353]

We have also already noted that part of the knowledge transmitted about fishing included the need to learn about

Māori fishing nets (kupenga) and traps (hinaki). The nets and traps were used to catch kōaro either in the surrounding springs or in Lake Rotoaira.

the Māori calendar. This determined the days on which it was best to fish. George Asher, for instance, spoke to the Tribunal of his father's successful fishing trips to Rotoaira, commenting that one particularly notable trip had resulted in him catching around 60 trout in just one afternoon. Mr Asher attributed this success to his father's adherence to the Māori calendar and his knowledge of seasonal changes.[354] Jim Edmonds also referred to the calendar and its role in customary fishing:

> Our people knew when to go out to fish. They followed the Māori calendar and the fishing was good. The Māori calendar starts in July, when new life begins. Our people knew the natural cycles as well. They knew how to survive wherever they were, what to do with eels, how to put them in a hole so they would stay there and when you want one, they'll be there. All those things, they are really neat.[355]

(9) *Tikanga Māori*

Customary fisheries were caught, treated, and managed in accordance with tikanga Māori. Translating approximately as 'the right way of doing things', 'tikanga' is the word most often used to translate the term 'customary law'.[356]

By regulating behaviour, tikanga Māori went some way to ensuring the sustainability of both the environment and customary fisheries. Mr Richards spoke, for example, of a 'strict code of conduct for gathering kai'. This code embodied a number of simple rules, such as always returning the first fish caught to the water and drawing a distinction between one's wants and one's needs, with one taking only what was needed for the purpose in hand.[357] Tikanga Māori also imposed restrictions on women, who were not permitted to gather food while menstruating.[358] Richards describes such tikanga as 'very simple values', but ones that are 'very respectful and very beautiful'.[359]

Tikanga also helped ensure the conservation of the fishery resource. As Tiaho Pillot explained:

> The River's food resources were all 'harvested', including the koura. The nests that had been 'harvested' the year before, were left untouched until the following year, so that every second year different areas of the river were 'harvested'. Our parents would always ensure that the traditional laws of caring for our stream were strictly obeyed, otherwise, if not, then that particular family was not allowed to return. We all knew how much food was to be taken home for a family meal, ensuring that there would always be enough left for the other local families. Depending on the season, it was a traditional monthly routine for those who came to our homestead.[360]

Ms Pillot also described the care that would be taken when collecting kōura during the mating season. At such times, it was 'quite common to see larger females with their eggs'. When these were caught, however, they 'would promptly be returned to the river'. She also described how, if tikanga were not observed, the punishment imposed could result in the perpetrator not being allowed to have access to the resource in the future.[361]

(10) *Previous Tribunals' findings on fisheries as taonga*

The ability of the fisheries resource to be conceived as a taonga has been accepted by many tribunals before us. It was, for instance, discussed at length by the Muriwhenua fishing Tribunal, whose comments have since been cited with approval in many reports, including the *Whanganui River Report* and the *Ngai Tahu Sea Fisheries Report*. They were also reproduced in claimant submissions received in this inquiry.[362]

The Ngāi Tahu sea fisheries Tribunal viewed the exposition provided by the *Report on the Muriwhenua Fishing Claim* as 'full and informative'.[363] We are of the same view and believe it holds true for the customary fisheries of ngā iwi o te kāhui maunga. One passage of the report is particularly worth quoting, despite its length:

> To understand the significance of such key Treaty words as 'taonga' and 'tino rangatiratanga' each must be seen within the context of Maori cultural values. In the Maori idiom 'taonga' in relation to fisheries equates to a resource, to a source of food, an occupation, a source of goods for gift-exchange, and is a part of the complex relationship between Maori and their ancestral lands and waters. The fisheries taonga contains a vision stretching back into the past, and encompasses 1,000 years of history and legend, incorporates the mythological significance of the gods and taniwha, and of the tīpuna and kaitiaki. The taonga endures through fluctuations in the occupation of tribal areas and the possession of resources over periods of time, blending into one, the whole of the land, waters, sky, animals, plants and the cosmos itself, a holistic body encompassing living and non-living elements.
>
> This taonga requires particular resource, health and fishing practices and a sense of inherited guardianship of resources. When areas of ancestral land and adjacent fisheries are abused through over-exploitation or pollution the tangata whenua and their values are offended. The affront is felt by present-day kaitiaki (guardians) not just for themselves but for their tipuna in the past.
>
> The Maori 'taonga' in terms of fisheries has a depth and a breadth which goes beyond quantitative and material questions of catch volume and cash incomes. It encompasses a deep sense of conservation and responsibility to the future which colours their thinking, attitude and behaviour towards their fisheries.
>
> The fisheries taonga includes connections between the individual and tribe, and fish and fishing grounds in the sense not just of tenure, or 'belonging', but also of personal or tribal identity, blood and genealogy, and of spirit. This means that a 'hurt' to the environment or to the fisheries may be felt personally by a Maori person or tribe, and may hurt not only the physical being, but also the prestige, the emotions and the mana.
>
> The fisheries taonga, like other taonga, is a manifestation of a complex Maori physic-spiritual conception of life and life's forces. It contains economic benefits, but it is also a giver of personal identity, a symbol of social stability, and a source of emotional and spiritual strength.
>
> This vision provided the mauri (life-force) which ensured the continued survival of the iwi Maori. Maori fisheries include, but are not limited to a narrow physical view of

> fisheries, fish, fishing grounds, fishing methods and the sale of those resources, for monetary gain; but they also embrace much deeper dimensions in the Maori mind.[364]

This passage reinforces many of the points that were made in the claimant evidence and which have been canvassed here. The excerpt, for example, stresses the importance of customary fisheries, both in terms of their economic and cultural value, as well as their ability to physically sustain the iwi living in the district. The passage highlights, too, the importance of traditional knowledge as regards the fisheries resource itself, and the ways in which it should be sustainably used and managed, so as to ensure its longevity. It hints at the spiritual dimension of the resource, suggesting that the fisheries taonga is far more than a resource merely there to be exploited. While we accept that attitudes do change over time, we believe that for many tangata whenua in our inquiry district the views expressed still resonate strongly. In a later section, we will turn to examining the impacts of losing customary fisheries and the associated traditional knowledge. First, though, we look at whether the Crown can be deemed to have played any role in the loss of customary species.

13.7.2 Effect of Crown actions or inactions on fisheries

Having established the importance of customary fisheries to ngā iwi o te kāhui maunga, we turn to examine whether any Crown actions or omissions have affected these fisheries.

(1) *The Waitangi Tribunal's jurisdiction*

We note at the outset of this discussion that the Waitangi Tribunal is not able to inquire into commercial fishing.[365] The Tribunal's jurisdiction does, however, extend to non-commercial Māori fisheries and includes issues pertaining to access.[366] In our inquiry district, the interests of ngā iwi o te kāhui maunga in rivers, lakes, and streams clearly extend to the customary fisheries within those waters, and these are interests which are not commercial. Rather, the fisheries were important as a source of sustenance for the people of the district, and as a source of mana, enabling them to provide appropriately for their guests. Then, too, the fisheries and the practices surrounding them connected the people to a collective past. Considerable bodies of associated knowledge were passed down through the generations, including knowledge of which fisheries resources could be drawn on for medicinal purposes. It is what happened to these customary fisheries that concerns us here.

(2) *Introduction of non-indigenous species*

It is the claimants' submission that the introduction of exotic species into the waterways of the Tongariro National Park has had an adverse impact on Māori customary fisheries. Particularly at issue was the introduction of trout and catfish (the latter not to be confused with carp or morihana).[367] Much of the evidence presented on this score related to Rotoaira.

Rotoaira, as we have seen, was without doubt the most productive fishery in the inquiry district. It provided those living locally (and indeed further afield) with a year-round source of protein and remains of great significance today. Many, over the years, have spoken enthusiastically about the provision of this lake, not only in terms of the original native species, but also, subsequently, as a source of high quality trout. The Marine Department's senior administration officer (a Mr Hobbs), for instance, praised the lake in 1958 as approaching 'the optimum for trout production.'[368] While his statement may be true, ngā iwi o te kāhui maunga say they never consented to the liberation of trout, and that the introduction of this foreign species came at a cost.[369]

Within our inquiry district, records show that the earliest liberation of trout fry was in 1898, when a private party released trout fry 'in various head streams of the Tongariro.'[370] Further introductions of trout fry into rivers followed. Letters between John Cullen (whom we have already encountered in chapter 11)[371] and the general manager of the Department of Tourist and Health Resorts reveal that 300,000 trout fry were transported from Rotorua to the rivers of the National Park in 1914, followed by a further 450,000 in September 1915. According to the correspondence between the two men, these actions were undertaken to ensure that the Waimarino and National

Trout fry being liberated, 1920s. Large numbers of fry were released into the region's waterways between 1914 and 1928.

Park rivers would be 'well stocked in a year or two'. Prior to 1928, Cullen also 'supervised the liberation of 25,000 trout fry into the Whakapapanui, Whakapapaiti and Mahuia streams'. These fry had been gifted to the park board by the Department of Internal Affairs.[372]

As to lakes, by 1906 rainbow trout had been liberated into Rotoaira, where their numbers soon ballooned. It was a different picture at Rotopounamu, where for many years trout failed to establish. Only after another illegal introduction in the 1980s did they really multiply there.[373]

(3) *The question of consent*

Although Cecil Whitney of the Auckland Acclimatisation Society maintained that local Māori had supported the introduction of trout into Rotoaira in 1900,[374] other evidence presented to this Tribunal puts his assertion in

doubt. We note, for example, the petition that was sent to the speaker and members of parliament on 22 July 1905. Signed by 138 Māori, it clearly expressed iwi objections to the introduction of exotic species:

> This is a prayer from us your petitioners, who are Maori of Taupo in the Colony of New Zealand, praying (you) to prevent (the introduction of) and not to rear European fish in our lakes: (ie) in Rotoaira. Let that Lake remain as a sanctuary for the beautiful fish of our ancestors, as all our (other) lakes and streams are now full of these Pakeha fish, (and) they have destroyed our fish which were assured to us by the Treaty of Waitangi; and we are prevented by law, and punished, if we go to kill these Pakeha fish, even though the lakes and streams in which these fish live are our own property.[375]

James Carroll responded, reassuring the petitioners that trout would not be released into Lake Rotoaira and promising that the lake would forever remain a haven for indigenous fish.[376] In light of the liberation of trout in 1906, however, it appears that this promise did not mean much in practice.

A speech that Sir Maui Pomare delivered to parliament in 1926 also highlighted a lack of consent:

> Some of our Acclimatization friends – I will not say who – went there [to Rotoaira] surreptitiously at night and put trout into the lake which had been reserved for native fish.[377]

Sir Maui's words point to the fact that in the case of Rotoaira the introduction of exotic species such as trout and catfish was done mainly at the hands of private individuals. It was also done surreptiously.

Deception was likewise hinted at by Sir John Grace, who later wrote that Ngāti Tūwharetoa had not wanted trout introduced but 'in spite of their objections an enthusiastic angler found his way to Rotoaira with trout fry'.[378]

Surreptitious action was not limited to trout, or to the early decades of the century. As Merle Ormsby recounted:

> In the 1980s my mother caught them walking past out house at night and asked them what they were doing. They were carrying buckets and again it was catfish. She asked them not to but they went ahead anyway and referred [to] a place in the USA where their introduction had been successful.[379]

Taken together, the evidence clearly demonstrates that failing to obtain Māori consent to the introduction of new species was not just a thoughtless oversight by those involved: rather, there was an awareness of Māori concerns and objections and a determination on the part of certain individuals to ignore them.

While these introductions can be regarded as occurring not because of Crown policy, but in spite of it, we contrast the lack of concern about potential impacts on the indigenous fishery with the protections accorded the introduced trout – a matter on which we shall comment further, below.

(4) *Effects*

The impact of introduced species on the native fishery has been far from benign. Not only do trout compete with indigenous species for food (doing so very successfully),[380] but they also feed on them. They are known, for example, to prey on creatures that dwell at the bottom of rivers and lakes, such as kōura.[381] The major victim of trout predation, however, is the kōaro, a fact which quickly became apparent after the trout's introduction: before 1923, for instance, Gilbert Mair had already observed that 'the introduction of trout was the death knell of the *koaro*' in the Rotorua lakes.[382]

As we have already established, the kōaro had been a fish of critical importance to Māori, especially over the winter months when dried kōaro would be pulled from the pātaka and used to compensate for the seasonal lack of other kinds of protein. Claimant evidence spoke of the trout's effect on their customary fisheries throughout the National Park area and in adjacent Lake Taupō. John Manunui, for example, noted that the liberation of trout into waterways such as the Whakapapa and Whanganui Rivers led to the depletion of native fish and fish life generally.[383]

The extent to which kōaro disappeared from waterways was highlighted, too, by anecdotal evidence presented by

A rainbow trout. These trout were successfully introduced into Lakes Rotoaira and Rotopounamu.

Patrick Piripi: 'We grew up thinking that trout was the native fish in the lake, until we were told that someone put the trout in there. It is the Koaro that is the native species.'[384]

In his expert evidence, Charles Mitchell also observed that 'The early prodigious abundance and growth of first brown trout and later rainbow trout in Lake Taupo . . . has been attributed to the former abundance of koaro.'[385]

Mr Mitchell went further still, explaining that the introduction of trout into Rotoaira led not only to the demise of customary fisheries – including species such as kōaro and īnanga – but also to a decline in the total harvest that could be taken from the lake. This decline is fundamentally a result of the food chain and the population levels that the lake is able to support:

> Why would the introduction of trout result in a drop in the total fish harvest possible from the lake? The answer lies in energy flows through food chains. At every link in the food chain, only about 10% of the biomass of the preceding step can be supported. Therefore in Lake Rotoaira, 100 tonnes of blue-green algae can only ever support 10 tonnes of chironomid midges. The 10 tonnes of midges can support 1 tonne of koaro. Should you desire trout then feeding your koaro stock to trout would give you 100 kg of trout. Whereas a tonne of koaro could be dried and stored, 100 kg would not get the

> whanau through the winter beneath the shadow of Ruapehu, even if you could preserve it somehow. Your fish harvest has just fallen by 90%.[386]

Mr Mitchell's evidence explained the decimation of kōaro in Rotoaira and showed why it is that adult kōaro can now be found only in certain areas. They are, for example, more likely to be found in 'forest catchment rivers and streams entering the lakes' and in the deepest, darkest depths of some lakes. The likelihood of kōaro existing in a waterway is consistently higher where that waterway is trout-free.[387]

Mr Mitchell also revealed why it was that the trout population, though healthy and abundant in the years following their introduction into the National Park, declined soon afterwards. One reason cited was the diminution in the kōaro stock on which it fed.[388] It is a phonomenon that had been remarked upon by Sir John Grace who commented in his book *Tuwharetoa* that, although trout released into the waters of nearby Lake Taupō initially reached 'phenomenal weights', with large numbers being caught by anglers, the newly introduced fish 'multiplied so rapidly that it soon overtook its food supplies and began to deteriorate'.[389] The decline of the trout fishery within our inquiry district was also corroborated by claimant evidence. Ringakāpō Payne, for instance, spoke of the Wairehu Creek, which once contained lots of trout. While they used to go down to this creek with a fork and catch both their lunch and dinner, Mr Payne stated that it was 'not the same now', with 'hardly any Trout there'.[390] These observations were echoed by Mr Piripi. He noted that

> the trout used to be about 14 pound and half a metre long. Now the biggest you can catch is only about 8 pound. I think that it is because all their food (the koaro), is gone from the Lake.[391]

The decline of this fishery is, however, the result not only of trout numbers exceeding the ability of the waterways to sustain them but also of other developments, most notably the TPD, as we shall discuss in chapter 14.

Concern about a decline in the quality of trout being caught did lead to some attempts at culling their numbers, at least in Lake Taupō, from about 1915.[392] However, the concern in official quarters was for the trout fishery, not indigenous species. By 1978, a study of New Zealand's indigenous freshwater fishes showed that there were no longer the numbers to support any sustained traditional fishing activity in the central North Island district.[393]

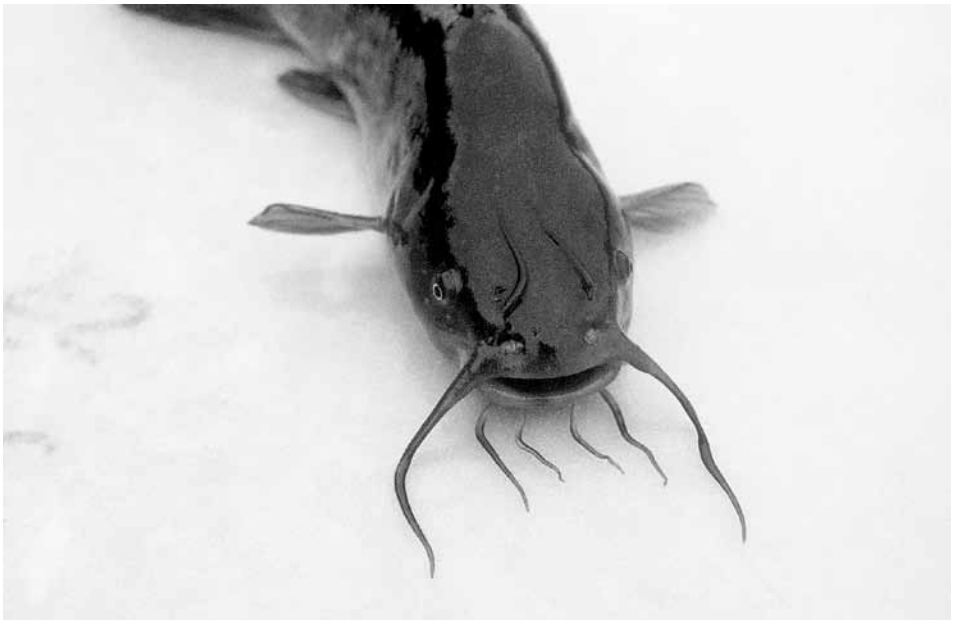
In 1993, it was reported that kōaro were probably extinct in Lake Rotopounamu.[394] Here, however, it is likely to have been the illegal introduction of a native species of common smelt between 1981 and 1991 that was responsible for the disappearance of kōaro. Commenting on the hypothesis, David Rowe noted that 'fish introductions are the only changes to the lake ecosystem that coincided with the disappearance of koaro'. The hypothesis is supported by the fact that introductions of native fish species elsewhere have been known to cause the extinction of existing native species in those places, coupled with the fact that kōaro are relatively abundant in lakes that are smelt-free.[395]

Introduced catfish, too, have been identified as impacting on populations of native aquatic fauna: the National Institute of Water and Atmospheric Research (NIWA), has found that kōura, for example, are susceptible to predation by both trout and catfish.[396]

Moreover, when one native species is affected there can be 'knock-on effects' for other native species. NIWA suggests, for instance, that the decline of kākahi may be linked to reduced populations of kōaro. Research conducted by Bob McDowall describes how the larval stage of a kākahi's development is parasitic on fish. More specifically, this stage involves the release of larvae (glochidia) from female kākahi. This would attach to the nearest fish (typically kōaro) and would remain there for a few weeks, after which the larvae would drop off. While there are a number of environmental factors that could also affect kākahi,[397] it is suggested that the decline of kākahi could be attributable to reduced numbers of kōaro, at least in part.[398]

(5) *Who was responsible?*

We have seen that a number of introductions of exotic species were carried out by pivate individuals, often



A catfish (*Ameiurus nebulosus*). Because catfish are omnivorous scavengers, once they were introduced into the Tokaanu River they threatened the local fish species and customary Māori fisheries. Indigenous plants and animals in national parks are now legally protected, while introduced species, like catfish, are destroyed.

surreptitiously. In some cases, however, exotic species were introduced by or on behalf of the Crown. We have already referred to John Cullen's role in assisting the introduction of trout. As part of that, he had supervised the liberation of 25,000 trout fry into the waters of the Whakapapanui, Whakapapaiti, and Mahuia Streams. Of significance is that they had been gifted to the Tongariro National Park Board by the Department of Internal Affairs.[399] A further example is the Wildlife Service's introduction of three-week-old catfish into the Tokaanu River.[400] That the Crown was aware of at least some of the 'private releases', too, is also clear. Yet it made no move to protect the indigenous fishery and indeed legislated instead to protect the fledgling trout and salmon fisheries.

It was not until the 1970s that the Crown recognised the importance of protecting indigenous species.[401] At this point, the government took steps to preserve Māori customary fisheries in the inquiry district. Rotopounamu was, for instance, proclaimed a 'faunistic' reserve and was subsequently brought within the Tongariro National Park. Legislative changes also took place. Most notably, the National Parks Act 1980 included section 4(2)(b), which required that within national parks native plants and animals be preserved as far as possible and introduced species be exterminated, except where the New Zealand Conservation Authority has determined otherwise. This provision, still in force, also covers the waterways contained in the parks, and thus requires the protection of indigenous fish and, conversely, the extermination of introduced species.[402]

The same section of the Act provides a loophole, however, by specifying that it is to apply '[e]xcept where the [Conservation] Authority otherwise determines', thus allowing the authority discretion in the matter. Given the abundance of statutory and regulatory protections accorded to the trout fishery, the clause is not without significance.

One example of the exemption clause being applied is in Te Urewera National Park, where sports fish and non-indigenous game birds have indeed been excluded from the requirement contained within section 4(2)(b). Instead, the area's management plan provides for the species in

question to be managed under a separate regime, as a recreational resource.[403] We have seen no evidence of whether a similar situation holds in the case of Tongariro National Park, but it would not surprise us if it did. In any case, the point is that the loophole exists.

Of interest, too, is policy 4.4(b) of the New Zealand Conservation Authority's *General Policy for National Parks*. On one level this is a rearticulation of section 4(2)(b) of the National Parks Act. However, it contains an important modification:

> **4.4(b)** Freshwater species, habitats and ecosystems within national parks should be managed to preserve as far as is practicable all indigenous freshwater fisheries and habitats and to protect recreational freshwater fish habitats including:
>
> . . . . .
>
> (iii) the prevention, eradication, containment or exclusion of *pest species*, and non-approved transfers of freshwater fish or aquatic life, in collaboration with other management agencies; [Emphasis added.][404]

'Pest species' clearly excludes trout, which are valued sports fish throughout New Zealand and in the inquiry district are a significant draw card for both local and international tourists.

Policies 4.4(c) and 4.4(d) of the *General Policy* are also relevant. The former states that a national park management plan can provide for the release of freshwater fish, including sports fish, or other 'aquatic life' where: the same species is already present in the waters; indigenous freshwater fisheries and the habitat of the national park are not adversely affected; and the protection of recreational freshwater species is not negatively affected. Under this policy, then, fresh releases of trout into waterways such as Rotoaira and the Tongariro River will be possible. Policy 4.4(d) provides some hope, however, in that it allows for national park management plans to

> identify waters from which the eradication and control of introduced species, including sports fish, will be a priority for the preservation of populations of indigenous freshwater fish and aquatic life.[405]

Such a provision could perhaps be used to good effect in Rotopounamu.

(6) *Other factors*

While the introduction of exotic species appears to have been the major cause of declining customary fisheries in the district, the claimants alleged that a number of other factors altered the river and lake environments and thus contributed to the depletion of native species. Causes cited by them included the discharge of sewage, the disposal of rubbish, the effects of deforestation, and the removal of gravel from riverbeds. On the evidence provided, however, we are unable to come to any firm conclusions over the extent and likely role of such factors. What is clear to us is that the Tongariro power development has brought dramatic change to the waterways of the inquiry district: river diversions, sedimentation, and the manipulation of water levels have all had their effect. Such matters will be discussed in detail in chapter 14, but we mention them here because they are changes that have also modified ecosystems and have, as a result, affected both the customary fisheries and populations of introduced species such as trout.

13.7.3 What have been the effects on Māori?

Here, we look particularly at the loss of indigenous species and at the loss of associated traditional knowledge, and consider what the impacts have been. We also compare what has happened at Lake Rotoaira with the situation at one or two other North Island lakes.

(1) *Loss of indigenous species*

The deterioration of customary fisheries has caused ngā iwi o te kāhui maunga to lose a major source of traditional food. One significant impact of this has been on their ability to provide guests with the full range of 'kai rangatira' from their region, which they see as having an effect on their mana. As a witness from Ngāti Tūwharetoa told us:

> The ability to provide the bounty of ones own to visitors is an age old tradition of Ngati Tuwharetoa . . . Tribes and their respective leaders were recognised not only for their wisdom,

Trout fishing from a waka in the Tongariro River, circa 1910. As traditional fish numbers declined, Māori had to adapt and fish for newer species.

> knowledge, leadership, judgment, strength and ability to ward off foes, they were also recognisable by the food they were able to lavish on guests. The loss of this ability brought grave consequences. . . . the loss of ones mana can bring about unbearable shame.[406]

Then, too, there is the loss of self-sufficiency, of skills, and of knowledge. Now, said Tūroa Karatea, the fishing and hunting practices that they thrived on as children have largely been lost, and instead of heading down to the river or lake to catch dinner, members of his hapū, Ngāti Waewae, hunt at 'KFC, McDonalds and all the other fast food outlets that society provides'.[407] That is of course a simplification of the situation, in that other factors, too, will have influenced the choices of the people concerned, but we take his point.

The introduced trout has of course offered an alternative food source, but claimants underlined that the change had

not been effected without a sense of loss: it was not 'simply a case of replacing one fish with another'.[408] Parliamentary debates dating from 1902 would tend to support their contention, showing that, for one thing, Māori did not always appreciate the flavour of the new species: Hone Heke, representing the Northern Māori District, articulated complaints from Taupō (and other) Māori that

> they cannot acquire the taste of the imported fish, and that it is nothing at all compared with the delicacy and taste of the whitebait and the crayfish, which is the original fish of these waters.[409]

Although the specific waters referred to were those of Lake Taupō and the Rotorua lakes, there is nothing to suggest that the sentiments expressed were not equally applicable in our own inquiry district.

Despite this initial reluctance, there is no doubt that trout did come to acquire widespread acceptance among Māori of the region. James Biddle, for instance, told us that trout even became 'a staple'.[410] Patrick Piripi reinforced this, explaining that the abundance of trout and the people's reliance on them even led younger generations, including himself, to believe that trout were indigenous to Rotoaira.[411] The decline of the trout fishery, following the decimation of the kōaro population on which they fed, and the later construction of the TPD, thus had a negative impact. So, too, did regulation of freshwater fisheries, which tended to distance Māori from the resource. We will discuss this in greater detail below.

Another issue in regard to dwindling fish stocks is that in te ao Māori, the poor health of a fishery (as with the health of the waterway itself) is seen as reflecting badly on those who are viewed as its kaitiaki, because the perception among other Māori will be that they have failed to care for their tribal environment. Paranapa Ōtimi, for instance, explained that '[t]he loss of food resources is considered to be the fault of the hapu and the fault of the people as kaitiaki of those taonga'.[412] A lack of fish was seen as an ominous sign pointing to deeper problems. As Matiu Mareikura commented, it was for this reason that the old people became concerned when they 'found that the fish didn't come any more'.[413] For ngā iwi o te kāhui maunga, the health of the fishery is not only a practical matter impacting on food supply but an issue of mana, kaitiakitanga, and rangatiratanga.

We note here that a link between the presence of fish species and the (physical) health of a waterway is recognised in government policy. Indeed, it forms one of the three components that are scored under the Ministry for the Environment's cultural health index, which has been described as 'a tool that Māori can use to assess and manage waterways in their area'. The mahinga kai component consists of four interlocking elements: the identification of those mahinga kai species present at the site, a comparison between the species present today and those that had traditionally been sourced from the site, an assessment of access to the site, and an assessment of whether tangata whenua would return there in the future.[414]

(2) *Loss of customary knowledge*

Discussion earlier in the chapter and in chapter 2 has demonstrated the wealth of tikanga, traditions, and practices that surround Māori fisheries, including: how to catch and care for these fisheries; where to find the various species; how they came to be; their uses; and their various properties. These bodies of knowledge have been honed over centuries and passed from generation to generation.[415] Many claimant witnesses testified to the sadness that loss of this knowledge causes.[416]

Maria Nepia, for example, pointed out that, when taonga are lost, the knowledge of tikanga associated with those taonga is weakened.[417] Fisheries, as we have previously established, were a taonga. If the fish are gone, however, there is little point in learning the customs related to the care and use of the fishery and these traditions of ngā iwi o te kāhui maunga risk being lost. This was a source of great regret to many of the claimants. Keith Wood of Ngāti Rangi, for example, said that his people would like to think that future generations would still be able to enjoy 'the relationship that our tūpuna once had with our awa'.[418]

The need to transmit traditional knowledge to present and future generations was highlighted by a number of witnesses, reflecting the fact that shared cultural

knowledge helps to maintain a sense of community: it is one of the ties that bind. Mr Wood, for one, described the exercise of traditional uses and practices as 'an important means of passing values down to upcoming generations'.[419] Paranapa Ōtimi similarly stated:

> The loss of food sources means the loss of knowledge . . . there were rituals and protocols to be observed with each of these foods, such as the way you collect them, or what you were to return . . . because the food is lost, we no longer maintain the ritual and the knowledge.[420]

There are those who have worked hard to prevent further cultural loss by telling the younger generations about the waterways and fisheries as they knew them, so as to preserve the knowledge associated with these taonga. Whetumārama Mareikura of Ngāti Rangi, for example, pointed us to his father's evidence to the Whanganui River Tribunal which described how the elderly still tried to teach the younger generations to catch fish 'the right way, the old way', even when the fish were not so plentiful, so that, if and when they did come again, 'you were prepared, you were ready'.[421] Such actions highlight the importance of both the fishery and the surrounding customs to ngā iwi o te kāhui maunga, and their determination to retain them.

We acknowledge, however, that the loss of the old way of life may not be purely a result of Crown actions and inactions. While it is undeniable that the decline of customary fish species, such as the kōaro and kōura, had a significant impact on the ability of ngā iwi o te kāhui maunga to practise, and to pass on, tikanga surrounding the taking of indigenous species, there were doubtless other factors at play, too. Ngā iwi did not exist in a void; rather, they were exposed to the pressures of modern life, including the need to participate in the cash economy and to respond to changes in both their natural and built environment. With the arrival of Pākehā and modernisation generally, there also came changes to the types of food available. Not only were trout and other edible species introduced into the inquiry district[422] but an ever-increasing variety of foodstuffs became available in the shops. Then, too, came restaurants and fast food chains.[423] It is inevitable that these changes impacted the daily lives of those living within the bounds of the inquiry district. However, the tangata whenua's need and desire to protect their waterways and their traditional way of life should not have had to be sacrificed to the extent that they were. The TPD in particular may have brought benefits to the region, including employment opportunities for the tangata whenua (see, for example, section 14.7.4(4)), but it also had a negative impact on the fishery, especially of kōaro. That impact could perhaps have been mitigated had the Crown consulted ngā iwi o te kāhui maunga during the planning stages for the project, to gain an understanding of what Māori were attempting to protect.

(3) *Lake Rotoaira compared to other North Island lakes*

Lake Rotoaira occupies a unique place in terms of fisheries taonga, and the owners went to considerable lengths to protect their ownership of it. By way of comparison, in this section we briefly consider the situation with three other North Island lakes: Lake Ōmāpere and Lake Waikaremoana (both well beyond our inquiry district) and Lake Taupō.

(a) *Lake Ōmāpere:* Lake Ōmāpere is the largest lake north of Auckland and has been a prized fishery for generations. Although Ngā Puhi was implicitly recognised as the owner of the lake for many years, attempts to lower the lake-level prompted Māori to have its title determined by the Native Land Court in 1913.[424] The case did not come before the court until 1929, however, when it was heard by Justice Acheson. His ensuing written decision has been described by the Whanganui-a-Orotu Tribunal as 'one of the most perceptive judgments in the legal history of our country'.[425] It is, moreover, a judgment that has been cited many times since it was issued on 1 August 1929.

The decision traversed the jurisprudence of the Native Land Court and questioned whether, for example, the court was bound by the Treaty of Waitangi and whether its provisions extended to the ownership of lakes. After posing and answering 11 such questions, the court concluded, significantly, that Lake Ōmāpere was Māori customary

land and that lakes clearly fall within the scope of article 2 of the Treaty.

The Crown appealed the decision of the Native Land Court. This appeal was lodged on 11 September 1929, but it was 24 years before title to Lake Ōmāpere was finally settled. On 27 October 1953, the appellate court sat again in order to hear the Crown's appeal. It was at this hearing that the Crown announced that it would be no longer pursuing its appeal, citing the lake's lack of value to the Crown as its reason. It particularly stressed that its decision not to proceed with the appeal was not to be taken as an admission of the correctness of Judge Acheson's decision.[426] The court recorded with some asperity:

> if the assigned reason for abandonment of the appeal, ie that the land involved is of no value to the Crown, is the real reason, there would appear to be no justification for the appeal or the delay of 25 years before abandonment. It would appear from the course of proceedings that the appeal may have been intended to be treated as a lever for negotiation for a settlement of some sort with the Maori owners. If that is so, it is reprehensible and an abuse of the process of the Court.[427]

(b) *Lake Waikaremoana:* Lake Waikaremoana, which lies in the Urewera Mountains, is of great importance to Ngāi Tūhoe, Ngāti Ruapani, and Ngāti Kahungunu. It was dammed by the Crown in the 1940s and its waters used to generate electricity at Tuai, Piripaua, and Kaitawa.[428] This lake is important to our discussion because we know that the Native Land Court delayed its decision in respect of Rotoaira until the fate of Lake Waikaremoana had been determined.

The investigation into the title to Lake Waikaremoana took place between 1915 and 1918 and culminated with Judge Gilfedder finding in favour of the Māori owners of the lake on 6 June 1918. Appeals were received in a matter of weeks. These were lodged by both the Crown and members of Ngāti Ruapani.[429] The Crown's appeals were grounded in their refusal to accept that the lake bed was Māori customary land. Ngāti Ruapani, on the other hand, objected to the inclusion of Ngāti Kahungunu among the owners of the lake. These appeals were not heard until 1947, when they were summarily dismissed by the Native Appellate Court.[430]

On 10 September 1947, the Native Appellate Court ruled that Lake Waikaremoana was the property of 354 Māori owners.[431] In the years that followed, two things happened. First, the owners took up the issue of compensation again. This was first raised in 1921, but was not considered by the government until 1947.[432] Secondly, the Crown commenced public works before the question of ownership had been definitively settled, and sought to make the Māori owners give up their rights to the lake.[433]

Attempts by the Crown to purchase Lake Waikaremoana were consistently rejected by the owners. It was not until 1971 that a compromise was reached.[434] Under the resulting agreement, the lake was leased to the Crown for a period of 50 years. Rent was fixed at 5½ per cent of the lake's value (deemed to be $143,000 in 1971). Rent was backdated to 1 July 1967 and was to be reviewed every 10 years. In addition, the Crown acquired a perpetual right of renewal.[435]

The full spectrum of issues to do with Lake Waikaremoana, in particular the question of whether this arrangement acknowledges Māori rangatiratanga, are being addressed by the Urewera inquiry.

(c) *Lake Taupō:* In *He Maunga Rongo*, the Tribunal recounted the negotiations between Ngāti Tūwharetoa and the Crown ahead of the lake bed vesting in the Crown in 1926. The results of these negotiations found expression in section 14 of the Native Land Amendment and Native Land Claims Adjustment Act 1926.[436] The content of this provision is of the utmost importance because it codifies the outcome of these negotiations and specifies the rights of both the Crown and Ngāti Tūwharetoa vis-à-vis Lake Taupō. However, the language in which the provision is couched is also instructive. Subsection (1), for instance, declares that the bed of Lake Taupō is from that point 'freed and discharged from the Maori customary title (if any) or any other Maori freehold title thereto' and vested in the Crown. By including the qualification 'if any' in

parentheses, the legislators convey a certain scepticism as to whether Ngāti Tūwharetoa ever had any claim to the lake bed. Indeed, this provision is at best an equivocal recognition of Māori rights and interests in the lake.

The Native Land Amendment and Native Land Claims Adjustment Act 1926 also modified the way in which Ngāti Tūwharetoa interacted with the fisheries in Lake Taupō. Section 14(2) provided that Māori could take indigenous fish from the lake, but stipulated that these could not be sold without the permission of the Tūwharetoa Trust Board. Later regulations were to specify that the right to take whitebait, lamprey or eel was not exclusive to Māori and, in 1981, legislation narrowed the definition of 'indigenous fish' to mean only those indigenous to the lake.[437] (We will examine the regulatory regime in greater detail below.)

Introduced fish species were even more tightly controlled by the 1926 Act. Members of Ngāti Tūwharetoa were, for instance, required to hold a current fishing licence in order to take trout from the lake. Under the Act, however, up to 50 free licences could be issued to individuals nominated by the board.[438] This was increased to 200 in 2003.[439]

Access to the lake was governed by section 14(3), which provided that a strip of land not exceeding one chain in width around its perimeter would be reserved to the public. The section further states that in the event of any dispute over the position or location of this right of way, the matter would be referred to the surveyor-general, whose decision on the matter would be final.

(d) *Assessment of Lake Rotoaira:* By comparison with the iwi experiences outlined above, it is clear that securing title to Rotoaira was no small victory. The Māori owners have retained title to the bed of the lake, which can be seen as recognition of their rangatiratanga and continuing interests in Rotoaira. Secondly, through the operation of the Lake Rotoaira Trust, the trustees control access to the lake and its fishery via the issue of entry permits. Thirdly, as we have already noted, the Crown provided the iwi with at least some rights to the fishery. Further issues, to do with the use of Lake Rotoaira for hydroelectric power, are addressed in chapter 14 on the TPD.

(4) *Statutory and regulatory frameworks*

Ngā iwi o te kāhui maunga also claim to have been affected by the development of statutes and regulations that govern both their customary fisheries and exotic species. In considering these, we will use as our reference point New Zealand's founding document: the Treaty of Waitangi.

New Zealand case law has established that customary fishing rights continue until they have been expressly extinguished or modified by statute. Of particular note is the landmark decision of the High Court in *Te Weehi v Regional Fisheries Officer*. In this case, Judge Williamson declared himself to be aligned with the Canadian courts in considering that customary rights are preserved unless they have been expressly extinguished. Such extinguishment must be clear and unambiguous. In the words of Judge Williamson, for example,

> If Parliament's intention is to extinguish such customary or traditional rights then it will no doubt do so in clear terms following its exploration of claims by Maori tribes to specific customary rights.[440]

In *Te Runanga o Muriwhenua Inc v Attorney-General*, President Cooke also discussed Māori customary fishing rights. Importantly, he stated that these may continue even where native title has been extinguished: 'In principle the extinction of customary title to land does not automatically mean the extinction of fishing rights'.[441]

The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 constituted the final settlement of Māori claims to commercial fisheries and extinguished Māori rights in commercial fisheries that fell outside the quota management system. The Act also clarifies the position vis-à-vis non-commercial fisheries. Section 10(a) supports the existence and continued operation of customary fishing rights and explicitly recognises the responsibilities incumbent on the Crown under the Treaty. It further states in section 10(b) that, in accordance with Treaty principles,

Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

10. Effect of settlement on non-commercial Maori fishing rights and interests—It is hereby declared that claims by Maori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983—

(a) shall, in accordance with the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations on the Crown; and in pursuance thereto

(b) the Minister, acting in accordance with the principles of the Treaty of Waitangi, shall—

(i) consult with tangata whenua about; and

(ii) develop policies to help recognise—

use and management practices of Maori in the exercise of non-commercial fishing rights; and

(c) the Minister shall recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade; but

(d) the rights or interests of Maori in non-commercial fishing giving rise to such claims, whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi, statute, or otherwise, shall henceforth have no legal effect, and accordingly—

(i) are not enforceable in civil proceedings; and

(ii) shall not provide a defence to any criminal, regulatory, or other proceeding,—

except to the extent that such rights or interests are provided for in regulations made under section 89 of the Fisheries Act 1983.

the Minister is required to both consult with tangata whenua and develop policies that help to recognise the 'use and management practices of Maori in the exercise of non-commercial fishing rights'. In the next breath, however, the Act qualifies these non-commercial customary rights because section 10(d) declares them to be not legally enforceable – adding, more specifically, that this means they are not enforceable in civil proceedings and cannot be used as a defence in any criminal, regulatory, or other proceeding. The exception is where these rights have been recognised in regulations made under the Fisheries Act 1983 and now the Fisheries Act 1996.

Non-commercial fishing statutes and regulations that existed prior to 1992 continue to apply to both those fisheries native to New Zealand and those that have been introduced, such as trout. In the following discussion, we will address both varieties, beginning with those that now regulate the species traditionally fished by ngā iwi o te kāhui maunga.

(5) *Statutory and regulatory frameworks – native species*

Within our inquiry district, different provisions apply to different areas and indeed sometimes apply only to specific communities. The simplest way of understanding these frameworks is to divide them into three broad categories:

1. those that apply specifically to Ngāti Tūwharetoa;
2. those that apply to the Tongariro National Park (and thus the majority of the inquiry district); and
3. those that are of more general application and cover those areas not otherwise regulated.

We will deal with each of these in turn.

(a) *The provisions that apply to Ngāti Tūwharetoa:* The Rotoaira Trout Fishing Regulations 1979 contain a provision that relates specifically to native fisheries found in Rotoaira and those adjoining waters that form part of the lake.[442] This provision (namely, regulation 47) stipulates that:

> 1. No person shall fish for, take, or kill in any manner whatever any species of whitebait, any crustacean of the genus *Paranephrops* (commonly called freshwater crayfish or koura), or any other fish indigenous to New Zealand, or the ova, young, or fry or any such whitebait, crustacean, or other fish as aforesaid in any stage whatsoever, or intentionally have in his possession or sell any such whitebait, crustacean, or other fish or the ova, young, or fry thereof taken or killed in the district.
>
> 2. No person who has authority under the Maori Land Amendment and Maori Land Claims Adjustment Act 1926 to take koura or indigenous fish shall take them by any method other than the traditional method in use as at the time that Act was passed.

This provision was of particular concern to the claimants, who considered it to sit 'uncomfortably with the customary right to fish for indigenous species established under the Conservation Act 1987'.[443] The provision that counsel appear to be referring to is section 26ZH of that Act, which states that nothing in that part of the Act shall affect 'any Maori fishing rights'.

But is there in fact dissonance between the 1979 regulations and the 1986 Act? Regulation 47 of the Rotoaira Trout Fishing Regulations 1979, as we have seen above, is composed of two parts. Read in isolation, the first does indicate that no one (presumably Māori or Pākehā) has the right to fish, take, or kill any fish or species that is indigenous to New Zealand, nor their ova, young, or fry. It is also illegal under this subclause to buy or possess any such fish if they are known to have been either taken or killed in the district. It is this part that would seem to be the cause of the claimants' concern. The second part, however, modifies and elaborates on the first. It appears to imply that the prohibition on taking indigenous species applies only to those who are not authorised to do so under the Māori Land Amendment and Māori Land Claims Adjustment Act 1926. Section 14 of that Act makes express provision for Ngāti Tūwharetoa to fish for indigenous species in the waters of Lake Taupō.[444] Since the Act is cited in the Rotoaira Trout Fishing Regulations, we must assume that that this provision also extends to Rotoaira, although any fish taken there must, under the Regulations, be caught using only traditional methods. Rangikamutua Downs, a trustee of the Lake Rotoaira Trust, clarified that Ngāti Hikairo, Ngāti Waewae, Ngāti Mātangi, Ngāti Pouroto, Ngāti Rongomai, Ngāti Tūrangitukua, Ngāti Kurauia, Ngāti Marangataua, Ngāti Pouroro, and Ngāti Parehuia are the Ngāti Tūwharetoa hapū listed on the court's 1956 vesting order for Rotoaira.[445] Thus, we take it that the Rotoaira Trout Fishing Regulations exclude all others from taking indigenous species from Rotoaira.[446]

The Taupō Fishery Regulations 2004 apply to streams and rivers that flow into Lake Taupō as well as Lake Taupō itself. Like the Rotoaira Trout Fishing Regulations, the contents of the Taupo Fishery Regulations have implications for customary fisheries in the Taupō fishing district and relate specifically to Ngāti Tūwharetoa. Under these provisions, no person is permitted to take, possess, or sell kōura, smelt, or any fish that is indigenous to New Zealand and found in the district's waterways.[447] As in the Rotoaira Trout Fishing Regulations, however, an exception is made for members of Ngāti Tūwharetoa. Tangata whenua of this iwi are able to take indigenous species, including kōura, kōaro, īnanga, toitoi (bullies), and kākahi, from the district's waterways, provided these are taken for their own use and not for sale.[448] There is overlap between the Taupō fishing district and the National Park inquiry district. Consequently, these regulations affect such waterways as the Oturere, Waihohonu, and upper Waikato Streams and the tributaries of the Tongariro River.

Neither the Rotoaira Trout Fishing Regulations 1979 nor the Taupō Fishery Regulations 2004 specify the quantity or the size of fish and shellfish that can be taken from these waterways. In addition, both fail to discuss their

relationship with those regulations that regulate customary fishing nationwide: the Fisheries (Amateur Fishing) Regulations 1986 and the Fisheries (Kaimoana Customary Fishing) Regulations 1998.

(b) *The provisions that apply to the Tongariro National Park:* The National Parks Act 1980 regulates the taking of fish and shellfish within the Tongariro National Park. The provision of greatest importance to this discussion is section 5, which prohibits any person from disturbing, trapping, taking, hunting, or killing any animal native to New Zealand where that animal is found within the bounds of a national park. 'Animal' is deemed to include any mammal, bird, reptile, amphibian, fish (including shellfish), crustacean, or related organism.[449]

The exception to this prohibition is where the prior written consent of the Minister of Conservation has been obtained (section 5(2)). Where the Minister, in his or her discretion, decides to grant consent, it may be possible for the applicant to take indigenous fish or shellfish from the park. Where the proposed activity will be inconsistent with the management plan of the park, however, this consent will not be given (section 5(3)). The *Tongariro National Park Management Plan, 2006–2016* does not specifically address Māori customary fishing rights. It does, however, provide an overview of a number of Treaty principles and the ways in which the Ministry of Conservation seeks to achieve the obligations that flow from them. The management plan also emphasises the importance of conservation, explaining that while 'recreational fishing is a valued and legitimate activity, its management must be subject to the requirements for preservation of indigenous fish populations'.[450] Therefore, while far from definitive on the question of customary fishing, the contents of the management plan indicate that permission to take indigenous species may be given in certain circumstances, where the Minister does not believe that the activity will adversely impact the fishery.

Only a small proportion of the inquiry district falls outside the national park – notably an area extending across the north-eastern corner of the district in the vicinity of Rotoaira, as well as various areas along the district's eastern boundary and another in its south-eastern extremity. In these areas, the clauses contained within the Fisheries (Kaimoana Customary Fishing) Regulations and the Fisheries (Amateur Fishing) Regulations will apply.

The Tongariro conservation area[451] is located to the north-west of the inquiry district and also falls outside the Tongariro National Park.[452] While this area is still managed by the Department of Conservation, it is not subject to any conservation management plan and, according to the *Tongariro–Taupo Conservation Management Strategy, 2002–2012*, a precautionary approach has been taken to use of the area. The department has, for instance, acknowledged certain activities in the area, including fishing.[453] The Amateur Fishing Regulations and the Kaimoana Customary Fishing Regulations also apply here.

(c) *The provisions that apply everywhere else:* As noted above, those portions of the inquiry district that are not covered by the Rotoaira Trout Fishing Regulations, the Taupo Fishery Regulations, or the National Parks Act 1980 are governed by the Fisheries (Amateur Fishing) Regulations 1986 and the Fisheries (Kaimoana Customary Fishing) Regulations 1998. These regulations are of general application throughout New Zealand and determine the ways in which Māori may exercise customary fishing rights and care for their customary fisheries.[454]

The Fisheries (Amateur Fishing) Regulations 1986 govern all non-commercial fishers taking or possessing any fish or aquatic life from New Zealand's fisheries waters, whether marine or freshwater (regulation 2). Among its provisions are restrictions on the size of fish and other aquatic species able to be taken and the size of the net mesh that can be used (regulation 6).

The means by which species may be caught are also circumscribed by the regulations. Tuna are included, with regulation 14 restricting those fishing for tuna to the use of only one hīnaki or 'fyke net' at a time – a fyke net being described as 'any net, fish trap, or part of a net that is used or is capable of being used to take eels', including a hīnaki.[455] We note here that the hīnaki is the chief means by which ngā iwi o te kāhui maunga traditionally caught

tuna. Regulation 6A provides that a person may take no more than six eels on any one day.

The Regulations provide Māori with a further opportunity to exercise their customary rights and, in some cases, to go above the limits imposed on other recreational fishers. Regulation 27A allows hapū and iwi to take fish for important events, thus recognising the manaakitanga traditions of tangata whenua and allowing them to 'honour guests by providing seafood at events like hui and tangi'.[456] These rights are however subject to whatever conditions may have been notified in the *Gazette*, and can be exercised only with the permission of an authorised representative.

Regulation 27 covers a slightly different scenario, enabling fish to be taken for 'traditional non-commercial fishing use' other than for the purposes of a hui or tangi. In order to take fish under this provision, however, such use must have been approved by either the chief executive of the Ministry of Fisheries or that executive's nominated delegate (subclause (1)). Delegates can include any Māori committee, any marae committee, and any kaitiaki of the tangata whenua (subclause (2)). Consequently, this provision can be regarded as providing Māori with some control over how the fishery is used. In addition, it is possible for both regulations 27 and 27A to provide an effective monitoring tool, as authorisation can be granted subject to the condition that the fisher report back on the numbers of fish taken, the size of the fish, and the methods that the fisher employed. The fisher may also be encouraged to provide an account of the state of the resource.[457]

The provisions contained within the Amateur Fishing Regulations seem to us, then, to go a good way towards accommodating the needs of the tangata whenua. There is still room for improvement, but we understand that iwi and the Ministry of Primary Industries are working together not only to increase awareness of the customary fishing regulations but also to increase the involvement of iwi and hapū in fisheries management in their areas.[458]

At the time of our hearings, freshwater fisheries were beyond the scope of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 – a fact that was heavily criticised by Ngāti Hikairo, in particular, in that it meant the regulations failed to cover fishing grounds such as Rotoaira.[459] The passage of the Fisheries (Kaimoana Customary Fishing) Amendment Regulations 2008 has since seen the extension of the regulations to include freshwater fisheries. However, because these amendments occurred following the completion of our hearings, we have not received any submissions on the changes and how they are working in practice. For this reason, we consider these regulations briefly and do not comment on their success (or otherwise) in the inquiry district.

For the purposes of this discussion, it is important to stress that under these regulations an individual can fish for indigenous species where those customary food gathering activities have been authorised by a tangata tiaki or tangata kaitiaki (regulation 11). However, the Kaimoana Customary Regulations are also significant because they provide a vehicle by which tangata whenua may manage their customary fisheries. The regulations seek to supply hapū with these management opportunities by providing for the appointment of tangata tiaki or tangata kaitiaki and the establishment of mātaitai reserves, which can have an effect similar to that of traditional rāhui.[460] The appointment of tangata tiaki or tangata kaitiaki is particularly important, as these are the individuals who will be responsible for authorising customary food gathering of kaimoana within those areas designated mātaitai reserves. Tangata tiaki and tangata kaitiaki will also have opportunities to participate in fisheries management and will be responsible for preparing a management plan for their rohe moana and bylaws to apply within the mātaitai reserve(s) for which they are responsible.[461]

(d) *Planning documents:* Tangata whenua can also get involved in the management of fisheries within their rohe by developing management plans or planning documents. One form that these can take is iwi planning documents. Planning documents that have been recognised by iwi have a number of advantages. Under section 35A(1)(b) of the RMA, for instance, local authorities are required to maintain a record of all such documents.[462] As with bylaws created by tangata kaitiaki in respect of mātaitai reserves, local authorities are required to take any relevant planning

document that has been recognised by an iwi authority into account when preparing and amending their district plan, regional plan, and regional policy statement (sections 61(2A)(a), 66(2A)(a), and 74(2A)).[463] Planning documents can 'be used for the development of sustainability measures for the fisheries in the area'.[464]

Under the Kaimoana Fishing Regulations, any tangata tiaki or tangata kaitiaki may prepare a management plan or strategy for the area over which he or she has authority. Once this has been agreed to and authorised by the local tangata whenua, the plan can be treated as a planning document under the RMA and, in addition, under regulation 16 it can be taken into account by the Minister of Fisheries 'for the purposes of section 10(b) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992'. Section 10(b) stipulates that in respect of claims made by Māori in relation to 'non-commercial fishing for species or classes of fish, aquatic life, or seaweed', the Minister must act in accordance with the principles of the Treaty. In doing so, the Minister is under an obligation to both consult with tangata whenua and develop policies that assist in the recognition of 'use and management practices of Maori in the exercise of non-commercial fishing rights'.[465]

We turn now to the statutory and regulatory regimes surrounding trout.

(6) *Statutory and regulatory frameworks – trout*

We have previously noted the degradation of customary species and their gradual displacement by introduced species such as trout. The statutory and regulatory frameworks that have grown around the trout fishery have also had an important impact on ngā iwi o te kāhui maunga. As we discuss further below, the Salmon and Trout Act 1867 was the first statute of significance and was enacted several years prior to the actual introduction of salmon and trout into New Zealand waterways. This was followed by a steady succession of both statutes and regulations. We note that whilst early statutes acknowledged Māori interests in the trout fishery, the later frameworks came to distance Māori from it.

The Crown stated that its control over trout was established from the very first.[466] The passage of the Salmon and Trout Act 1867 operated to protect the anticipated trout and salmon fisheries.[467] The Act also gave the Governor-General wide-ranging powers, which enabled the creation of such regulations as were deemed necessary to protect the resource.[468] Ever since then, the Crown has controlled the resource; allowing or prohibiting access to it, determining when and how one might fish for trout, and so forth. A brief overview of the more important of these provisions is provided below.

Within our inquiry district, a number of those statutes enacted applied specifically to Rotoaira and certain of the streams flowing into it. The Native Purposes Act 1931, the Native Purposes Act 1938, and the Māori Purposes Act 1947 made it clear that members of Ngāti Tūwharetoa had the authority to take both trout and indigenous species from Rotoaira.[469] The 1938 Act crystallised the situation further by stating that only members and descendants of Ngāti Tūwharetoa could take fish from Rotoaira and the Poutū Stream without a licence.[470] The 1947 Act, responding to flagrant breaches of the 1938 legislation, increased the penalty for those non-Ngāti Tūwharetoa who had contravened the provisions by fishing in the lake.[471]

The enactment of the Māori Purposes Act 1959 changed the regime again. Under section 4, it became necessary for those wishing to take fish from the lake to hold both a fishing licence and an entry permit, the latter to be issued by the Lake Rotoaira Trust. Under the Act, the trust is empowered to issue (or refuse) entry permits to applicants, impose conditions as it deems necessary, and charge such fees as it considers appropriate.[472] Since 1979, the issuing of these entry permits has been governed by the Rotoaira Trout Fishing Regulations, mentioned earlier. Alongside that, the Conservation Act 1987 makes it an offence for anyone to take a 'sports fish' without the appropriate licence.[473] Those who are caught are liable under section 26ZI for a fine not exceeding $5,000.

Only certain individuals are now able to fish the lake without first acquiring an access permit from the trust. As set out in section 4(7) of the Māori Purposes Act, those individuals include any trustee, warden, or employee of the trustees. Importantly, they also include any beneficial owner under the Lake Rotoaira Trust. In effect, this

entitles each of the 11,310 beneficiaries[474] to access the lake without a permit. Instead, they require only the written authority of the trustees, or a representative or agent thereof. It should be stressed, however, that the beneficiaries of the Lake Rotoaira Trust still require a fishing licence in order to fish for trout.

Between them, the Rotoaira Trout Fishing Regulations 1979 and the Taupo Fishery Regulations 2004 regulate both trout fishery and indigenous fisheries over much of our inquiry district.

(a) *Entry permits and the Rotoaira Trout Fishing Regulations 1979:* The Rotoaira Trout Fishing Regulations 1979 regulate the fishery in Rotoaira. As already noted, the Māori Purposes Act 1959 gave the trust complete discretion over the issue of entry permits, which under regulation 4 of the 1979 regulations entitle the person named on the permit 'to enter in and upon the lake and to fish for trout or other fish of any kind in or from the Lake'. While, under regulation 7, the trustees have the discretion to issue permits for any duration, there are four main types: daily, weekly, monthly, and annual.

Under section 5 of the 1959 Act and regulation 8 of the 1979 Regulations, the trust is also able to determine the cost of each permit. These fees are notified in the *Gazette* in the event of any modification.[475] According to the Tūrangi i-SITE Visitor Information Centre, the cost of an access permit varies depending on its duration and can change from year to year. In 2010, a permit covering the whole season (from 1 September 2010 to 30 June 2011) cost $45, while a week-long permit cost $22.50 and a daily permit $8. Permits are available from a number of vendors, including the Tūrangi i-Site Visitor Information Centre, the Tokaanu Hotel, the Lake Rotoaira Camping Ground, most sports and tackle stores in Tūrangi and the southern part of the region, and selected service stations.[476]

The advent of the entry permit regime had significant implications for ngā iwi o te kāhui maunga. According to the *He Maunga Rongo* report, Ngāti Tūwharetoa had been granted the exclusive right to fish Rotoaira in the 1940s. This included both indigenous species and those that had been introduced, such as trout.[477] It was a situation that largely preserved the tangata whenua's rangatiratanga over the lake's reasources even though, at the time, they had still not managed to secure formal ownership of the lake bed. That situation changed a decade later when, according to Stephen Asher, a Pākehā lawyer convicted of fishing in Rotoaira challenged Ngāti Tūwharetoa's exclusive rights to the fishery and won.[478] We have not been able to find the case in question, and it is not clear to us whether Mr Asher was implying a causal link between the incident and the Act that introduced the permit system. Be that as it may, we heard how the new regime brought about significant changes. The biggest of these was that the public now had the ability to access the lake, once they had secured a permit from the trust. Although this meant that the tangata whenua now had to share the lake's resources, a positivewas that the regime brought a welcome source of income for the trust, even enabling it to provide education grants and marae grants. The financial benefit did not last, however: according to the claimants, numbers of trout began declining with the advent of the TPD and permit sales dwindled. By 1999, said Mr Asher, the trust was 'struggling to keep its nose above water'.[479]

The number of trout able to be taken from the lake under the Rotoaira Trout Fishing Regulations 1979 has not been amended. It therefore remains possible under regulation 26 for any individual in possession of both a fishing licence and an access permit to take up to 10 trout from the lake each day, each of which needs to be at least 35 centimetres long.[480] The Rotoaira Trout Fishing Regulations also restrict the means by which licence holders can catch trout, in that each person is limited to the use of only one rod and line. He or she may, however, use a landing net to secure any trout caught in this way. The use of spears and wire lines is expressly prohibited, as is 'any form of spoon-bait having attached thereto more than one hook'.[481]

As to re-stocking, regulation 48 prohibits the release of new trout stock into Rotoaira, unless such actions have been authorised by the secretary for Internal Affairs in writing. This provision does contain one important exception, however: namely, that the trustees are entitled to release trout fry or ova into the lake from time to time. That said, John (Stephen) Asher gave us to understand

that the the business of raising the hatchlings was largely dependent on income from the access permits, so that when this flow of income dwindled, the viability of the business was seriously affected.[482] We shall return to this matter in our section on development.

(b) *Fishing licences and the Taupo Fishery Regulations 2004:* The Taupo Fishery Regulations 2004 cover the issuing of fishing licences in the Taupō region and work alongside the Rotoaira Trout Fishing Regulations 1979 to manage and regulate the fishery in Rotoaira. As already noted, under regulation 14 of the 2004 regulations it is necessary for anyone wishing to take trout from Rotoaira to hold a fishing licence. As at July 2011, the Department of Conservation listed the cost of adult fishing licences as ranging from $17 for a 24-hour permit to $90 for a permit for the entire season.[483] There are currently around 80 agents that sell fishing licences for the Taupō district. These are scattered throughout the North Island, from as far north as Auckland to as far south as Wellington.[484]

While the cost of fishing licences may not appear extravagant to most, it should be borne in mind that those living around the southern end of Lake Taupō and in the immediate vicinity of Rotoaira are among the most disadvantaged in New Zealand. Kirkpatrick, Belshaw, and Campbell elaborated on this, explaining that figures from the *Atlas of Socioeconomic Deprivation in New Zealand* (2006) revealed a large section of the Tongariro National Park and the area around Rotoaira to be amongst the most deprived quintile of the country.[485] The financial position of tangata whenua living in the area would both increase their reliance on naturally available food sources, and increase the significance of the $90 needed to purchase a fishing licence for the entire season.

In terms of income generated from the licences, it should be noted that while Fish and Game New Zealand (run on a non-profit basis) is responsible for the sale of fishing licences to most of New Zealand's waterways, it is the Department of Conservation that manages the sports fishery in the Taupō fishing district. As we understand it, any funds generated by the sale of fishing licences in the Taupō fishing district are distributed between Ngāti Tūwharetoa and the department.

A successful angler in the Tongariro River. The area is renowned for its trout fishing, which is a major tourist draw.

We note at this point that the Lake Rotoaira Trust is given a certain number of free licences each year and that their allocation is left to its discretion. *He Maunga Rongo*, published in 2008, noted that in recent years the number of free licences allocated to the Tūwharetoa Trust Board had increased to 200.[486] It appears, however, that these 200 licences are for the entire Taupō fishing district, as per section 14(9)(c) of the Māori Land Amendment and

Māori Land Claims Adjustment Act 1926.[487] We do not know how many of them go to the Lake Rotoaira Trust.

Ariki Piripi expressed reservations with the current system, arguing that the licences are not always allocated fairly. In his words:

> When the licences came in, some of the people who were living around the lake couldn't get a licence. They had to buy them. It really got up my nose that the local people had to pay for, and in some instances couldn't even get licences, while people from out of the area, over the hill or as far afield as Auckland, could.[488]

The CNI has already discussed the question of fishing licences, concluding that while the provision of a number of free fishing licences to Ngāti Tūwharetoa each year could be deemed a 'conferment of rights by Parliament', the matter needed to be considered as part of a wider picture. Although parliament 'claimed that it was enacting the rights of a negotiated agreement, in which both sides acted from an assumption of rights and authority', the Court of Appeal deemed the arrangements in respect of Rotoaira to be exclusively for the benefit of Ngāti Tūwharetoa and therefore exceptional. The Tribunal consequently concluded that

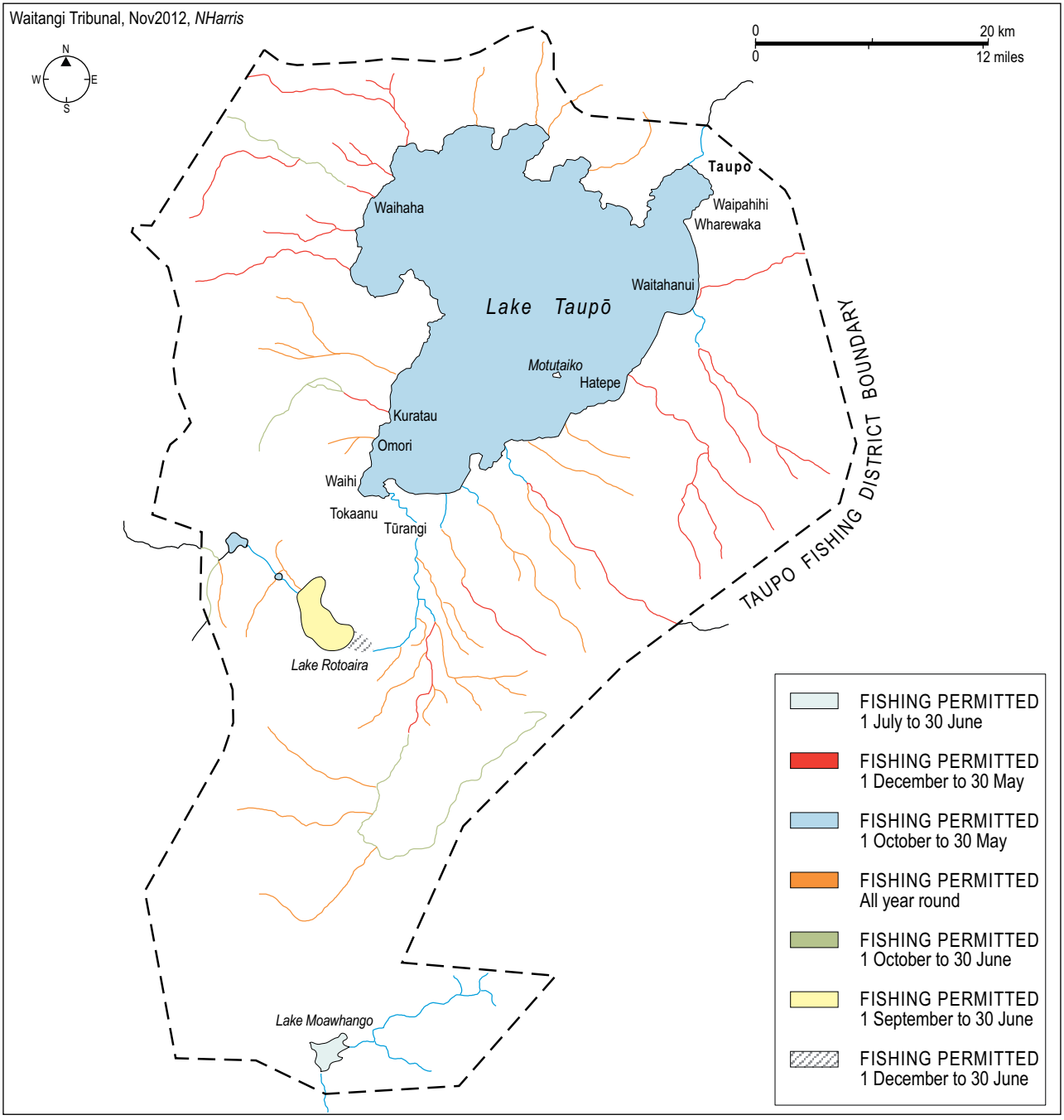
> the fact that they are seen as exceptional under the law, and that Parliament assumed sole authority over trout, its introduction, and its regulation without consideration of the impact on Tuwharetoa, . . . [was] a significant breach of the Treaty.[489]

It should be stressed that the Taupō Fishery Regulations have significance for a number of waterways within our inquiry district, not just Rotoaira. It is under these provisions, for instance, that trout fishing is completely banned in waterways such as the Oturere Stream, the Waihohonu Stream, and the upper Waikato Stream.[490] In those waterways where fishing is permitted, it is still to be undertaken in compliance with those restrictions set out in the regulations. The methods by which trout can be caught are therefore limited, as is the number of fish to be taken and the size able to be taken and kept by the person fishing.

It is worth noting here that the experience of Ngāti Tūwharetoa in respect of Lake Taupō differs markedly from their experience at Rotoaira, where the Lake Rotoaira Trust has the authority to control access to the lake and charge anglers for that privilege. While a similar dual licensing system did operate unofficially in and around Lake Taupō for a number of years, the Crown put a stop to it at the beginning of the twentieth century.[491] Until that point, however, the claimants had charged anglers for fishing from the banks of their rivers and in Lake Taupō, issued their own licences, cancelled government licences where anglers failed to purchase a Māori licence, and offered camping facilities and guiding.[492] In *He Maunga Rongo*, the Tribunal found the Crown's total removal of these opportunities to be an erosion of the claimants' rangatiratanga.[493]

(c) *Trout fishing beyond the Taupō fishing district:* The National Park inquiry district encompasses three fishing districts. Beyond the bounds of the Taupō fishing district, therefore, individuals wishing to take sports fish[494] will need to obtain the appropriate licence.[495] Such licences are issued by Fish and Game New Zealand, who is responsible for the 'management, enhancement, and maintenance of sports fish and game' under section 26B(1) of the Conservation Act 1987. Māori, as tangata whenua, have no role in the matter. Their only way to become involved would be on an individual basis, as a member of one of the local Fish and Game Councils.

Within our inquiry district, the Fish and Game Council responsible for the Auckland–Waikato region manages the trout fishery in waterways such as the Whanganui, Whakapapa, Whakapapaiti, and Whakapapanui. The Fish and Game Council charged with the running of the fishery in the Taranaki region also has jurisdiction over some of the waterways in the inquiry district, including the Mangawhero, Manganuioteao, and the Waimarino. In each instance, licence-holders are limited as to the means that can be used to take trout, the number that can be



Map 13.6: Taupō fishing district

taken per day, and the dates between which they can fish for trout.[496]

(d) *Customary fishing rights and trout:* Questions as to the scope of Māori fishing rights have been the subject of discussion in a number of Tribunal reports. In the *Report on the Muriwhenua Fishing Claim*, for instance, the Tribunal took a broad approach to fisheries. While the fisheries in question there were sea fisheries, its findings are useful when it comes to the interpretation of the term 'fisheries' as it appears in the Treaty of Waitangi. That Tribunal concluded that 'the tribal interest is not limited as to species of fish, the origin of fish, the location of fish or the purpose or use to be had of them'.[497] Instead, the Tribunal found that 'their fisheries' referred 'to their activity and business of fishing, and that must necessarily include the fish that they caught, the places where they caught them, and the right to fish'.[498] Were one to adopt such an interpretation, Māori fishing rights in the waterways of the Tongariro National Park would logically include introduced species, such as trout.

The question of Māori fishing rights to trout is one that has already come before the courts. In 1999, for example, it was considered by the Court of Appeal in *McRitchie v Taranaki Fish and Game Council*. While the majority concluded that Māori fishing rights were limited to those species existing in New Zealand as at 1840, Justice Thomas's dissenting opinion offered a different interpretation.[499]

The majority, comprising President Richardson and Justices Gault, Henry, and Blanchard, considered that the enactment of legislation protecting trout and salmon in 1867, prior even to their introduction into New Zealand waterways, indicates that parliament never intended for these to become part of the Māori fishery. They also viewed the succession of statutes and regulations since 1867 as confirming this position.[500] They concluded that 'trout are and always have been part of a separate regime exclusively controlled by legislation and the only fishing rights are those available under those provisions'.[501] The RMA continues this pattern by listing the protection of salmon and trout habitats as a matter to be given 'particular regard' under part II of the Act.[502]

Justice Thomas's minority judgment took a different track. While Justice Thomas did not venture to answer the question as to the nature and scope of the customary rights of the appellant's hapū and fishing rights under the Treaty of Waitangi, passing remarks he made in the text of his dissenting opinion indicate significant reservations about the decision of the majority. Noting, for example, the argument that Māori do not have rights to trout because that species was not present as at 1840, Justice Thomas remarked that 'There is something intrinsically unsatisfactory, if not semantic, about an argument where the ultimate answer depends on the initial assumption or starting point adopted.'[503]

Justice Thomas also commented on the Māori role in fisheries regulation. Within our inquiry district, Māori fished trout from the time of their introduction. The fact that they became an increasingly important resource was due to a number of factors, not least of which was the trout's predation on native species. Native fisheries, such as the kōaro, were an important source of food for ngā iwi o te kāhui maunga and the introduction of trout took place despite an increasing awareness of the impact of exotic species on such traditional fisheries (see section 13.5.5(5)). More pointed was Justice Thomas's comment that 'the authority or right to control or participate in control [of the fishery] does not disappear simply because trout have been introduced into the fishery'. At the same time, however, he acknowledged that it does not 'necessarily mean that Maori would have an unregulated right to fish for trout'.[504]

The majority decision in *McRitchie* was followed by that of the High Court in *Livingstone v Department of Conservation* in 2009. In that decision, Justice Potter likewise held that 'there are no Maori customary fishing rights in respect of trout that exist outside the separate regime exclusively controlled by legislation, currently the Conservation Act 1987'. The court also specifically addressed the question of whether there is a right to fish for trout where the waters are located on the landowner's land. In this case, they said, the right to fish for trout 'is subject to the terms and conditions specified in a notice under s 26ZL'.[505]

In *He Maunga Rongo*, the Tribunal accepted that the Court of Appeal's decision in respect of *McRitchie* was a statement of the law as it has developed in New Zealand: namely, that for the reasons that we have outlined above 'no customary right subsists in trout as a general proposition'.[506] In its opinion, however, the issue of whether this law is consistent with the Treaty of Waitangi is an altogether different matter.[507] The Tribunal went on to acknowledge and applaud the Crown's recognition that Ngāti Tūwharetoa should benefit from the fishery, but commented that the benefits that the iwi has received have not been as substantial as they might have been. It likewise considered that 'authority and control over fishing – the essence of tino rangatiratanga – has not been balanced appropriately with the powers of kawanatanga' and that this ought to be rectified.[508]

As this section demonstrates, the issue of whether Māori have a right to trout has been the subject of considerable debate. The majority decision of the Court of Appeal in *McRitchie* and Judge Potter's decision in *Livingstone* have concluded that there is no customary right to trout, and those decisions must be taken as a statement of the law as it stands. In spite of this, Judge Thomas' dissenting opinion and Tribunal jurisprudence do indicate that there may still be some room to question this conclusion on the grounds of its Treaty compliance.

In the course of our inquiry, the idea that the trout fishery could be considered a kind of taonga was also mooted. When one looks at this question in light of the exposition on the fisheries taonga provided by the *Report on the Muriwhenua Fishing Claim* (see section 13.5.4(13)), together with the depth and breadth of the concept and the requisite relationship of tangata whenua with the resource in question, however, it is clear that trout fall short of this standard. Added to this is the submission received from counsel for Ngāti Tūwharetoa, which itself stated that while trout had become important to the iwi it was not a matter of simply 'replacing one fish with another'.[509] Consequently, we do not consider that trout can qualify as a taonga, even of the compensatory variety.

We do believe, however, that, subject to statute, Māori were affirmed in their fisheries by the Treaty of Waitangi and their Treaty rights were guaranteed irrespective of whether a particular species is a taonga or was present in New Zealand waters when the Treaty was signed in 1840. As William Field, member for Ōtaki, commented in 1903:

> If it is true that the imported fish voraciously devour the native fish, then I am not sure the Natives ought not to be allowed to fish for imported fish in the same way as they do the native fish, without having to purchase licenses.[510]

A number of other members of the House supported him in this view.

Yet, while the Crown's statutes and regulations relating to trout initially accommodated Māori, many iwi members are now excluded from fishing for trout, or forced to pay for the privilege. It would appear, too, that the trout fishery itself suffered a decline, at least for a while, following the decimation of the kōaro population on which it fed and the later construction of the TPD.

(7) *Development opportunities*

We turn now to examine the development opportunities that the waterways and customary fisheries of the inquiry district did and could have offered ngā iwi o te kāhui maunga. As we noted in chapter 1, the right to development is a well established Treaty principle, flowing naturally from the Treaty itself, and has been the subject of detailed discussion in reports such as *He Maunga Rongo*[511] and the *Radio Spectrum Management and Development Report*.[512] The principle envisages that Māori will develop resources for their social, cultural, and economic benefit and anticipates progress beyond those uses that existed as at 1840. In the recent urgent inquiry into the national freshwater and geothermal resources claim, that Tribunal affirmed that the Crown's duty of active protection extended to Māori development rights in their water bodies.[513] In the context of customary fisheries, ngā iwi o te kāhui maunga therefore have a right to develop their fisheries and to take advantage of modern opportunities, such as tourism.

The historical development opportunities afforded by the district's waterways revolved around the national and

international interest in the trout fishery. Indeed, prior to the construction of the TPD, the sale of access permits had been the trust's primary source of income.[514] In those days, the trust operated a rather successful and productive fishery, the revenue from which enabled the trust not only to cover the cost of re-stocking but to create education and marae grants.[515] The income was also such that the Trust could afford to appoint a ranger and pay for the 'upkeep of . . . the Ranger Station and the petrol and maintenance costs for six boats that were available for hire on the Lake'.[516]

The revenue generated by the sale of entry permits is now, however, significantly reduced. Indeed, evidence presented by Tony Walzl demonstrated that in the space of just four years income reduced from $5,000 in the 1971 to 1972 period to just $183 in 1974 to 1975.[517] This in turn impacted the financial position of the trust. The sharp decline in permit sales would appear to be directly related to the declining trout fishery, which was itself the result of Crown actions: more than one claimant pointed to the decline in fish stocks following the introduction of the TPD and an ensuing decrease in the demand for entry permits. The reduced flow of revenue from this source has, they said, left the trust struggling to fulfil its kaitiaki role over the lake.[518]

According to Geoff Park, the order that vested Rotoaira in the Lake Rotoaira trust gave the trustees:

> powers to negotiate and alienate resources and contained provisions relating to fishing and waahi tapu. The Lake Rotoaira Trust could utilise, develop, and exploit the natural resources of the Lake for the benefit of the owners. This power included the right to grant and regulate fishing licences and concessions on the lake.[519]

Park's statement makes it quite clear that the vesting order gave the trust authority over the lake, together with legal title to its bed. Flowing naturally from this was a right to develop the lake and its associated resources, and the agreement accordingly ushered in an era where Ngāti Tūwharetoa regulated and gained profit from the issuing of fishing licences. However, this was later found to be a breach of section 89 of the Fisheries Act 1908, 'which prohibited the letting or sale of rights to fish in any waters'.[520] It was from this point on that the trust became involved, instead, in the business of selling access permits to the lake.

It is clear that the development of Rotoaira has been contemplated by ngā iwi o te kāhui maunga. John Koning, for example, noted that the trust was thinking of establishing a 'holiday and tourist complex on the shores of Lake Rotoaira' in the 1970s when the construction of the TPD intervened. These plans were put on hold while the Trust determined how water levels would be affected by the TPD.[521] The fate of the venture is uncertain, as it was only briefly mentioned in Koning's report, and we do not know whether it bears any relationship to the establishment of the 'Rotoaira Retreat' now located at the south of the lake. Indeed, we have no knowledge of whether the retreat has any Māori connection at all. What is certain, however, is there was potential for economic development based on the lake and its trout fishery.[522] Tūrangi's experience, while outside our inquiry district, demonstrates the vital role of tourism. In that instance, the tourists who are lured to the small town by the high quality trout in the locality are credited with keeping the town going.[523] That Rotoaira could have been a major draw card for tourists is indicated in a letter dated 24 April 1973. This letter, received by the then member of parliament Whetū Tirikātene-Sullivan stated that at that time Rotoaira was seen by 'tens of thousands of proud New Zealanders, both Maori and Pakeha every year, as well as many thousands of overseas tourists', who admired and appreciated its 'magnificent setting'.[524]

We conclude that the introduction of trout into the waterways of the inquiry district has been something of a mixed blessing for ngā iwi o te kāhui maunga. On the one hand, these introduced species provided tangata whenua with a substitute food source and opportunities for economic development through, for example, the sale of access permits and tourism. On the other hand, however, trout would not have been of such importance had it not been for their decimation of indigenous populations of species such as kōaro. In addition, we consider that subsequent Crown actions eroded many of the positive aspects

of their introduction. The question of lost economic opportunities is discussed in greater detail in chapter 14. These include a second strand of economic opportunity provided by waterways: the use of water to generate electricity. This became very important when the TPD was initiated in the 1950s.

13.8 Customary Fisheries – Tribunal Findings

We find as follows:

- Kōaro, kōura, īnanga, kākahi, and tuna are among the species that ngā iwi o te kāhui maunga fished customarily and are the subject of much traditional knowledge. We agree that these fisheries are their taonga.
- In light of the evidence presented to us, we consider that the introduction of species such as trout into the waterways of the inquiry district occurred without the consent of ngā iwi o te kāhui maunga, and thereby breached the principle of partnership. Our findings here are in accord with those already reached by the CNI Tribunal in their inquiry district.[525] That the Crown prioritised the interests of anglers in this way, over those of ngā iwi o te kāhui maunga, was also a breach of the principle of equity.
- The introduction of these species, without proper checks and balances, was also in breach of the Crown's duty of active protection. The liberation of trout into the waterways of the inquiry district, in particular, had a devastating effect on customary species and especially on the population of kōaro residing in Rotoaira. The introduction of smelt has also had an adverse effect on customary species, particularly in Rotopounamu.
- The Crown's failure to actively protect the customary fishery was then exacerbated by the continued introductions that took place despite increased awareness of the negative impact of exotic species on customary fisheries from the 1930s.
- Indeed, the Crown's failure to protect the customary fisheries of ngā iwi o te kāhui maunga amounted to a breach of the plain text of article 2 of the Treaty, the English text of which specifically guaranteed to Māori the

> full exclusive and undisturbed possession of their . . . Fisheries . . . which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession.

  The Māori text similarly guaranteed rangatiratanga over all their taonga.
- The decline of native species led in turn to an increased reliance on trout. The claimants' use of the trout resource is, however, circumscribed by the statutory and regulatory frameworks that have grown up around it. We nevertheless accept that these controls on the fishery are necessary to preserve the viability of the trout fishing sector.
- While the National Parks Act 1980 prohibits the taking of native species from waterways within the Tongariro National Park,[526] those who possess customary rights may take indigenous fish from other parts of the inquiry district subject to the rules and restrictions contained in the Rotoaira Trout Fishing Regulations 1979, the Taupo Fishery Regulations 2004, the Fisheries (Amateur Fishing) Regulations 1986, and the Fisheries (Kaimoana Customary Fishing) Regulations 1998. As in the case of trout, we consider that such regulation is necessary for the conservation of these native species and to ensure their sustainability moving forward. We note, too, the opportunities that these regulations provide for Māori participation in the management of the fisheries resource.
- We consider that the ability of the Lake Rotoaira Trust to control access to Rotoaira through the issue of access permits goes some way towards recognising the rangatiratanga of Ngāti Tūwharetoa and its associated hapū.
- The principle of redress requires the Crown to use its best endeavours to help restore the tribal base and mana of ngā iwi o te kāhui maunga, and provide a remedy that will resolve the grievance caused by the

Crown act or omission. In the case of fisheries, steps in this direction could include the re-introduction of indigenous fisheries and attempts to improve the health and ecology of waterways. Charles Mitchell, for example, suggested that it would be viable and realistic for Lake Rotopounamu to be cleared and for kōaro to subsequently be reintroduced into its waters.[527]

13.9 Summary of Tribunal Findings

We have examined the importance of the waterways and the customary fisheries in our inquiry district. Our findings are set out in sections 13.6 and 13.8. We have identified the species which ngā iwi o te kāhui maunga have fished for, and which are the subject of rich traditional knowledge. The failure of the Crown to protect the fisheries in Lake Rotoaira, and in the rivers and streams of this inquiry district, is a breach of article 2 of the Treaty of Waitangi. We have found that the waterways which flow from te kāhui maunga are, and have always been, a taonga of ngā iwi o te kāhui maunga. This last finding is important in its own right, and also serves as a springboard into our next chapter on the TPD scheme.

Notes

1. In this report, we use the term 'waterways' to refer to different types of water bodies, including lakes, rivers, streams, and springs.
2. Colin Richards, brief of evidence, 10 February 2005 (doc A63), p 2; Keith William Paetaha Wood, brief of evidence, 10 February 2006 (doc A64), pp 23–24
3. The customary use of waterways and the traditions that surrounded them were also covered in chapter two.
4. Counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), pp 208–258
5. Other sources follow: counsel for claimants, generic submissions on National Park management and environmental law, 15 May 2007 (paper 3.3.34), p 3; counsel for Ngāti Hikairo, closing submissions, 14 May 2007 (paper 3.3.29), pp 56–57; paper 3.3.43, p 256; counsel for Ngāti Rangi, closing submissions, 15 May 2007 (paper 3.3.33), pp 87–88; counsel for Ngāti Manunui, closing submissions, 14 May 2007 (paper 3.3.27), p 27.
6. Paper 3.3.33, pp 87–88
7. Ibid, p 83
8. Counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2007 (paper 3.3.42), pp 82, 196; paper 3.3.43, pp 209, 221
9. Paper 3.3.34, pp 2–4; paper 3.3.29, pp 8, 56–57
10. Paper 3.3.34, pp 2–4
11. Paper 3.3.43, pp 209–210
12. Ibid, pp 256–257
13. Ibid, pp 209, 213
14. Paper 3.3.33, pp 87–88
15. See, for example, section 261 of the Coal Mines Act 1979 and section 354 of the Resource Management Act 1991. See also paper 3.3.43, pp 229–231 (Coal-mines Act Amendment Act 1903), 235–237 (Water and Soil Conservation Act 1967), and 237–245 (Resource Management Act 1991).
16. Paper 3.3.43, p 229
17. Ibid, pp 256–257
18. *Ad medium filum aquae* is a rebuttable presumption that whoever owns land bordering a stream or river also 'owns the bed of the river to the middle line of the stream'. According to the author, however, it is possible that the title of the person who owns the adjoining land (and thus the river bed *ad medium filum*) 'may be subject to any unextinguished Maori customary title': G W Hinde, 'Title by Registration' (as at 3 July 2012), in G W Hinde, D W McMorland, N R Campbell, Peter Twist, and Thomas N Gibbons, *Hinde McMorland & Sim Land Law in New Zealand* (Auckland: LexisNexis, 2003), para 9.131(b).
19. Paper 3.3.43, p 226. This was also the finding in the Whanganui River report: Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), pp 232, 268 (paper 3.3.43, p 226).
20. Paper 3.3.43, pp 211–212
21. Ibid, p 227
22. We note that counsel for Ngāti Tūwharetoa acknowledged that the extent to which Māori rights in waterways have been lost or extinguished is 'a somewhat murky legal issue': ibid, pp 256–257
23. Counsel for Ngāti Hikairo ki Tongariro, opening submissions, 12 October 2006 (paper 3.3.13), p 10
24. Counsel for Robert Wayne Cribb and others, closing submissions, 14 May 2007 (paper 3.3.19), p 60; paper 3.3.43, p 209
25. Paper 3.3.42, p 83; paper 3.3.43, p 209
26. Counsel for Tamakana Council of Hapū and others, closing submissions, 23 May 2006 (paper 3.3.40), p 211; counsel for Ngāti Waewae, closing submissions, 28 May 2007 (paper 3.3.41), pp 123, 135; paper 3.3.42, p 151. Counsel for Robert Cribb and others referred to the decision of the High Court in *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC), which discussed what could and could not be considered taonga (see, for example, page 233 of the decision). In counsel's submission, the High Court concluded that the term 'includes intangible values', but also held that 'Maori ecosystems, people and communities, Maori natural and physical resources, amenity values and social, economic, aesthetic and cultural conditions which affect those' could be taonga: paper 3.3.19, p 60.
27. Paper 3.3.42, p 151; paper 3.3.29, p 59
28. Counsel for Ngāti Tūwharetoa, opening submissions, 11 October 2006 (paper 3.3.12), p 11

29. Paper 3.3.12, p 12. Ngāti Manunui (a hapū of Ngāti Tūwharetoa) also sought the restoration of their rangatiratanga over waterways and rivers: counsel for Ngāti Manunui, opening submissions, 13 October 2006 (paper 3.3.14), p 6.
30. Jim Anderton and David Benson-Pope, 'Cabinet Paper: Sustainable Water Programme of Action – Implementation Package', Ministry for the Environment, http://www.mfe.govt.nz/issues/water/prog-action/cabinet-paper-implementation-package.html, accessed 3 July 2012 (paper 3.3.43, p 246)
31. Waitangi Tribunal, *The Whanganui River Report*, p 329 (paper 3.3.34, p 7)
32. Counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), pp 114–115
33. Counsel for Ngāti Hikairo, opening submissions, 18 September 2006 (paper 3.3.10), pp 1–2; paper 3.3.13, p 6; paper 3.3.14, p 8; paper 3.3.41, pp 97–98; paper 3.3.40, pp 209–210
34. Paper 3.3.42, p 72
35. Paper 3.3.30, p 113
36. Ibid, p 112; paper 3.3.13, p 6
37. Paper 3.3.40, pp 209–210; claimant counsel, generic closing submissions on environmental issues, 14 May 2007 (paper 3.3.28), p 9; paper 3.3.27, p 21
38. Paper 3.3.30, p 112
39. Paper 3.3.10, p 9
40. Paper 3.3.30, pp 112–113
41. Paper 3.3.13, p 6
42. Paper 3.3.30, p 113
43. Ibid, pp 112–113
44. Ibid, p 114
45. Ibid, p 116
46. Ibid, pp 110–112
47. The Amateur Fishing Regulations enable Māori to take fish for 'important customary events such as hui at a marae': ibid, p 111.
48. Paper 3.3.30, p 111
49. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 13, p 22
50. Ibid, p 23
51. Ibid, p 26
52. *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553, 558 (CA) (paper 3.3.45, ch 13, p 25)
53. Paper 3.3.45, ch 13, pp 26–27
54. *Re the Bed of the Whanganui River* [1962] NZLR 600 (CA); paper 3.3.45, ch 13, pp 26–27
55. English Laws Act 1858, s 1
56. Paper 3.3.45, ch 13, p 29
57. Ibid
58. Ibid, pp 29–30
59. Ibid, pp 31–32
60. Ibid, p 35
61. Ibid, pp 35–36
62. Ibid, p 36
63. *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General* [1994] 2 NZLR 20, 24 (CA); paper 3.3.45, ch 13, pp 35–36. *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General* concerns Te Runanganui o Te Ika Whenua's (Te Ika Whenua) claims to the Rangitaiki River and the Wheao River and the dams that the Bay of Plenty Electric Power Board and the Rotorua Electricity Authority operated on these rivers. These claims were under consideration by the Waitangi Tribunal, who had issued an interim report recommending that the power schemes and water rights be protected and either retained in their present ownership or transferred into Crown ownership until Te Ika Whenua's substantive claim had been heard. Te Ika Whenua brought judicial review proceedings, seeking an interim declaration prohibiting the Minister of Energy from approving any plans to transfer the dams and from recommending that the Governor-General make an Order in Council providing for such a transfer. The High Court declined Te Ika Whenua's application for interim relief and Te Ika Whenua then appealed to the Court of Appeal. On appeal, Te Ika Whenua claimed that they had property rights in both rivers and that the transfer of the Aniwhenua and Wheao dams would prejudice these rights. These arguments were based on the doctrine of aboriginal title and were heard for the first time in the Court of Appeal. The court held that irrespective of how liberally aboriginal title and the Treaty rights of Māori were construed, they were never meant to include the right to generate electricity by harnessing water power. Likewise, the Court of Appeal held that no statute had ever preserved or assured Māori of the right to generate electricity through water power.
64. *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General*, p 25; paper 3.3.45, ch 13, pp 35–36
65. Ibid, ch 13, pp 36–37
66. Ibid, pp 18–19
67. *McRitchie v Taranaki Fish and Game Council* [1999] 2 NZLR 139, 148 (CA); paper 3.3.45, ch 13, pp 18–19
68. Paper 3.3.45, ch 13, p 21
69. Ibid, p 20; Rotoaira Trout Fishing Regulations 1979, reg 4
70. Paper 3.3.45, ch 13, pp 20–21
71. Ibid, p 21
72. Ibid
73. Counsel for Ngāti Hāua, submissions in reply, 6 July 2007 (paper 3.3.48), [p 2]
74. Counsel for Ngāti Tūwharetoa, submissions in reply, 11 July 2007 (paper 3.3.60), p 26
75. Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 285
76. Counsel for Rangiteauria Uri, submissions in reply, not dated (paper 3.3.59), pp 10–12
77. Ibid, p 7
78. Paper 3.3.48, p 2
79. Counsel for Ngāti Hikairo ki Tongariro, submissions in reply, 6 July 2007 (paper 3.3.57), p 18
80. Paper 3.3.59, p 6. In *The Whanganui River Report*, the Tribunal found 'that the legislative severance of one essential element of the Whanganui River, namely the bed, and the taking of the bed by the

Coal-mines Act Amendment Act 1903 and succeeding legislation, and as continued in force by section 354 of the Resource Management Act 1991, was and is inconsistent with article 2 of the Treaty and the Treaty principle requiring active protection of the Atihaunui ownership of the river and their authority over it': Waitangi Tribunal, *The Whanganui River Report*, pp 305–307.

81. Paper 3.3.59, p 6
82. Ibid, p 7
83. Paper 3.3.60, pp 25–26
84. Ibid, pp 26, 28
85. Ibid, p 28
86. Counsel for Ngāti Hikairo, submissions in reply, 6 July 2007 (paper 3.3.52), p 12
87. Ibid, p 13
88. Paper 3.3.60, p 25
89. Particularly so when under threat from 'other descent groups': Waitangi Tribunal, *The Whanganui River Report*, p 49.
90. Ibid. The Tribunal there stated:

> In brief, Maori 'rights' in either land or waterways can be seen to be based on usage and possession, from which, according to the law as settled in the Native Land Court, ownership derives. Under English common law, the reverse applies. Generally use rights flow from ownership. A modern Maori focus on 'property' and 'rights' reflects how they were forced to reconceptualise their customs to make them cognisable in English law.

91. E T Durie, 'Custom Law', Waitangi Tribunal discussion paper, January 1994, p 91
92. Ibid, p 68. Rotoaira can be seen as a working example of this sort of model. Here, the Lake Rotoaira Trust holds the lake bed on trust for its beneficial owners and controls access to the lake, while the trout fishery is regulated by the Department of Conservation, and the State-owned enterprise Genesis Energy operates the hydro-electricity plant, the Tongariro Power Development. This will be discussed in greater detail below and in chapter 14.
93. New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, study paper 9 (Wellington: New Zealand Law Commission, 2001), p 61
94. Durie, 'Custom Law', p 80
95. E T Durie, 'Custom Law: Address to the New Zealand Society for Legal and Social Philosophy', *Victoria University of Wellington Law Review*, vol 24, no 4 (1994), p 330
96. Waitangi Tribunal, *The Whanganui River Report*, p 49
97. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 4, p 1258
98. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wellington: Waitangi Tribunal, 2012), p 89
99. Waitangi Tribunal, *The Whanganui River Report*, p 50
100. Matiu Mareikura, submission to the Waitangi Tribunal, 1994 (Wai 167 ROI, doc B11), pp 2–3 (Whetumārama Mareikura, brief of evidence, 18 August 2006 (doc E31), app 1)
101. Alexander W Reed, *Reed Book of Māori Mythology*, revised ed (Auckland: Reed, 2004), p 319
102. Turuhia (Jim) Edmonds, brief of evidence, 5 May 2006 (doc D29), p 14
103. Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa: The Shadow of Ngati Tuwharetoa' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc G17), p 98
104. Matiu Mareikura, brief of evidence, not dated, p 3 (Te Whetumārama Mareikura, brief of evidence, 10 February 2006 (doc A65), app 1)
105. Chris Winitana, brief of evidence, 20 April 2005 (doc G1), p 19
106. Department of Conservation, *Environmental and Risk Assessment for Mitigation of the Hazard from Ruapehu Crater Lake* (Tūrangi: Department of Conservation, 1999) (doc D9), p 25
107. Che Wilson, brief of evidence, 11 August 2006 (doc E13), p 6
108. Che Wilson, brief of evidence, 10 February 2006 (doc A61), p 10
109. Keith William Paetaha Wood, brief of evidence, 18 August 2006 (doc E30), p 6
110. Ibid; doc A61, p 10
111. Document G1, p 17
112. Ibid
113. Ibid
114. Ibid
115. Ibid
116. Ibid, pp 17–18
117. John Manunui, brief of evidence, not dated (doc G27), p 8
118. Document E13, p 12
119. Kevin Hikaia, brief of evidence, 15 August 2006 (doc E24), p 2
120. Ibid, pp 3–4
121. Document G1, p 18
122. Document D29, p 15
123. Ibid, p 12
124. Wai 167 ROI, doc B11, pp 2–3 (doc E31, app 1)
125. Ida Rāhera Taute, brief of evidence, 18 August 2006 (doc E29), p 4
126. Document A64, p 24
127. Document G1, p 16
128. Document E24, p 23
129. Waitangi Tribunal, *The Whanganui River Report*, p 38
130. Toni Waho, brief of evidence, 11 August 2006 (doc E15), p 5
131. Ibid
132. Document E30, p 5
133. Document E13, p 4
134. Ibid
135. Te Rata Waho, brief of evidence, 18 August 2006 (doc E26), p 2; Rangimarie Ponga, brief of evidence, 5 May 2006 (doc D30), p 11
136. Dulcie Gardiner, brief of evidence, 22 April 2005 (doc G2), p 2
137. Tiaho Pillot, brief of evidence, 14 August 2006 (doc E21), p 11
138. Ariki Piripi (Alec Phillips), brief of evidence, 12 September 2006 (doc F10(a)), p 9

139. George Asher, brief of evidence, 6 October 2006 (doc G52(a)), p 3
140. Document G27, p 7; Lois Jean Tutemahurangi, brief of evidence, not dated (doc G29), p 7
141. Raana Virginia Mareikura, replacement brief of evidence, 16 February 2006 (doc A67(b)), pp 3–6; doc A64, pp 2–6
142. Document E29, pp 3–4
143. Document E30, p 6
144. Ibid; doc E29, pp 3–4; doc G2, p 7
145. Document E26, p 3
146. Document A63, p 6
147. Document E15, p 4
148. Te Nape Wood, brief of evidence before the Environment Court, 4 August 2003, p 4 (Neil Wood, brief of evidence, 18 August 2006 (doc E28), app, p 4)
149. Lake Rotokura is outside our inquiry district: doc A67(b), p 3; Colin Richards, replacement brief of evidence, 10 February 2005 (doc A62(a)), p 2
150. Raana Virginia Mareikura, brief of evidence, 11 August 2006 (doc E23), p 3
151. Document A67(b), p 5
152. Ibid, pp 3–5
153. Document A61, p 10
154. Ibid, p 11
155. Document E23, p 3
156. Document E30, p 4; Morehu Wana, brief of evidence, 5 May 2006 (doc D36(a)), p 7
157. Document A63, p 2
158. Document E30, p 4
159. New Zealand Law Commission, *Māori Custom and Values in New Zealand*, p 47
160. Document E26, p 2
161. Puruhi Smith, brief of evidence, 28 September 2006 (doc G31), p 5
162. Matthew Howell, brief of evidence, 4 September 2006 (doc F1), p 2
163. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1253, 1255
164. Document G1, p 21
165. Document E15, p 2
166. Don Edward Robinson, brief of evidence, 5 May 2006 (doc D48(a)), p 5
167. Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (Wellington: Huia Publishers, 2003), p 66
168. 'Bo' Virginia Huhana Rangi, brief of evidence, 18 August 2006 (doc E34), p 2
169. Document D36(a), pp 6–7
170. Document G1, p 21
171. Document A63, p 5; Patrick Piripi (Phillips), brief of evidence, 4 September 2006 (doc F4), p 8
172. Document G27, p 7
173. Tyronne Smith, brief of evidence, 28 September 2005 (doc G24), p 5; doc G1, p 19
174. Document G24, p 5
175. Merle Maata Ormsby, brief of evidence, 14 August 2006 (doc E20), p 2
176. Document E24, p 23
177. See, for example, ibid; doc E15, p 5.
178. Waitangi Tribunal, *Te Ika Whenua Rivers Report* (Wellington: Legislation Direct, 1998), p 124; Waitangi Tribunal, *Report on National Freshwater and Geothermal Resources*, pp 93, 102
179. Waitangi Tribunal, *Report on National Freshwater and Geothermal Resources*, p 105
180. Ben White, *Inland Waterways: Lakes*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1998), p 1
181. English Laws Act 1858, long title, preamble, s 1
182. White, *Inland Waterways*, p 3. White describes this as the 'orthodox view'.
183. Document F1, p 3. Reinforced by other claimant submissions, as well as the evidence of Chris Winiata, who described Lake Rotoaira as being 'summarily taken from us according to someone else's law': Chris Tāmihana Winiata, brief of evidence, 20 April 2005 (doc G1), p 10.
184. Paper 3.3.45, ch 13, p 29
185. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1259
186. Caren Wickliffe, Stephanie Milroy, and Matiu Dickson, 'Maori Land' (as at 3 July 2012), in *Laws of New Zealand*, ed John McGrath (Wellington: LexisNexis, 1993), para 5
187. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1259
188. Wickliffe, Milroy, and Dickson, 'Maori Land', para 5
189. Māori Appellate Court minute book 2010 1, 12 August 2009, fol 636
190. *R v Symonds* (1847) NZPCC 387, 390 (PC); *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General*, pp 23–24; *Faulkner v Tauranga District Council* [1996] 1 NZLR 357, 363
191. *R v Symonds*, p 391
192. Ibid, p 390
193. *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General*, pp 23–24
194. *Ngāti Apa v Attorney-General* [2003] 3 NZLR 64, para 86
195. Ibid, para 31
196. The presumption was, for example, rebutted by the Court of Appeal in *Mueller v Taupiri Coal-Mines (Limited)* (1900) 20 NZLR 89. In this case, the Court of Appeal held that the *ad medium filum aquae* presumption could be rebutted at common law, depending on the nature and circumstances of the river in question. It is useful to note at this point that section 14 of the Coal-mines Act Amendment Act 1903 (discussed at section 13.5.2(iii)) was enacted specifically to establish the Crown's title in respect of the beds of navigable rivers, as had been recognised in the 1900 case, *Mueller v Taupiri Coal-Mines (Limited)*.
197. Commented on in Waitangi Tribunal, *Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), p 296.
198. Tongariro National Park Act 1894, s 2
199. This amounted to 417,000 acres. The remainder of the block was partitioned into seller and non-seller reserves. See Crown Forestry

Rental Trust, 'Maps of the National Park Inquiry District', June 2005 (doc A48), pl 5, which also shows that the portion of the Waimarino block contained within the National Park inquiry district passed out of Māori hands in the 1880s.

200. As noted in chapter 5, Mahuia was purchased by the Crown in May 1886, and title awarded on 4 May 1887.

201. Tokaanu Native Land Court minute book 32, 16 February 1955, fols 106–107

202. It should be noted that there have been several iterations of this definition. The first is that contained in section 14 of the Coal-mines Act Amendment Act 1903, this was subsequently included as section 3 of the Coal Mines Acts Compilation Act 1905 and then the Coal Mines Act 1908. Section 206(2) of the Coal Mines Act 1925 amended the definition in some respects and it is this definition that was included as section 261 of the Coal Mines Act 1979. While that statute has now been repealed, section 261 is alive and well, having been preserved by section 354 of the Resource Management Act 1991. This section provides that the repeal of any statute, and specifically section 261 of the Coal Mines Act 1979, by either the Resource Management Act or the Crown Minerals Act 1991 will not 'affect any right, interest, or title to any land or water acquired, accrued, established by, or vested in, the Crown before the date on which this Act comes into force, and every such right, interest, and title shall continue after that date as if those enactments had not been repealed'. The beds of navigable rivers therefore continue to vest in the Crown.

203. Waitangi Tribunal, *Pouakani Report*, p 465; referencing the comments of Hutchinson J in *Hutt River Board v Leighton* [1955] NZLR 750 (SC), 770

204. *Paki and Ors v Attorney-General* [2012] NZSC 50 (SC), [56]-[70], [71], [76]

205. Tom Bennion, 'Introduction', in *New Zealand Land Law*, eds Tom Bennion, David Brown, Rod Thomas, and Elizabeth Toomey (Wellington: Brookers Ltd, 2005), pp 22–23

206. G W Hinde, 'Title by Registration' (as at 15 June 2012), in *Land Law in New Zealand* (Wellington: LexisNexis, 1979), para 9.132

207. Ariki Piripi (Alec Phillips), brief of evidence, 4 September 2006 (doc F10), p 7; Terrill Campbell and Georgina Poinga, brief of evidence, 4 September 2006 (doc F7), p 9

208. Robyn Anderson, 'Tongariro National Park: An Overview Report on the Relationship Between Maori and the Crown in the Establishment of the Tongariro National Park' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005) (doc A9), p 147

209. The number of owners was at 13 July 2012.

210. Mr Darby acted on behalf of the Crown. Tokaanu Native Land Court minute book 26, 1 December 1937, fol 198; Tokaanu Native Land Court minute book 34, 12 April 1956, fol 112.

211. Tokaanu Native Land Court minute book 34, 12 April 1956, fol 113

212. Ibid, fol 114; Tokaanu Native Land Court minute book 31, 18 February 1954, fols 14–33

213. The vesting order conferred a number of wide-ranging powers on the trustees. These pertained to such things as 'fishing, powers of negotiation, wahi tapu sites, and alienation'. The trustees could, furthermore, 'utilise, develop, and exploit the natural resources of Lake Rotoaira for the benefit of the owners'; powers which included the management of the fishery. The Deed clearly stipulates, however, that the trustees are unable to sell the lake: John Koning, *Lake Rotoaira: Maori Ownership and Crown Policy towards Electricity Generation, 1964–1972*, Waitangi Tribunal Research Series (Wellington: Waitangi Tribunal, 1993) (doc A14), p 4.

214. Tokaanu Native Land Court minute book 34, 12 April 1956, fols 115–116

215. Document A14, p 4

216. Lake Rotoaira and Part Lot 1 Deposited Plan 31506; Tokaanu Native Land Court minute book 34, 12 April 1956, fols 112–116. For the current number of owners see the MLIS system.

217. Tokaanu Native Land Court minute book 33, fols 69–111; Tokaanu Native Land Court minute book 34, 12 April 1956, fol 115

218. Tokaanu Native Land Court minute book 34, 12 April 1956, fol 115

219. Ibid

220. Document A14, p 4

221. 'Declaring Beds of Certain Rivers or Streams Flowing into Lake Taupo to be Crown Land', 8 October 1926, *New Zealand Gazette*, 1926, no 69, pp 2895–2896

222. The Whitikau Stream is located to the east of Lake Rotoaira and lies just beyond the National Park boundary.

223. 'Declaring Beds of Certain Rivers or Streams Flowing into Lake Taupo to be Crown Land', 8 October 1926, *New Zealand Gazette*, 1926, no 69, pp 2895–2896

224. Ibid, p 2896

225. The TPD has reversed the flow of the Poutū Stream. This will be discussed in greater detail in chapter 13.

226. Deed of Settlement between the Minister of Conservation and the Tūwharetoa Māori Trust Board, 28 August 1992, signed 4 February 1993, cls 1.7, 1.13, 2.1, 2.3; Tūwharetoa Māori Trust Board and Her Majesty the Queen, Deed in Relation to the Co-Governance and Co-Management Arrangements for the Waikato River, 31 May 2010, cl 2

227. Deed of Settlement between the Minister of Conservation and the Tūwharetoa Māori Trust Board, dated 28 August 1992, signed 4 February 1993, cls 1.7, 2.3; 'Declaring Beds of Certain Rivers or Streams Flowing into Lake Taupo to be Crown Land', 8 October 1926, *New Zealand Gazette*, 1926, no 69, p 2896

228. Deed of Settlement between the Minister of Conservation and the Tūwharetoa Māori Trust Board, 28 August 1992, signed 4 February 1993, cl 1.13

229. Her Majesty the Crown and Tūwharetoa Māori Trust Board, Lake Taupō deed, 2007, cl 1.3; Ministry for the Environment, 'Treaty Settlements or Deeds of Settlement that may have Implications for the Proposed National Policy Statement for Freshwater Management', Ministry for the Environment, http://www.mfe.govt.nz/publications/rma/nps-settlements-june09/html/page3.html, accessed 1 March 2012

230. Tūwharetoa Māori Trust Board and Her Majesty the Queen in Right of New Zealand, *Deed in Relation to Co-governance and Co-management Arrangements for the Waikato River*, 31 May 2010, cls 2, 4
231. Water and Soil Conservation Act 1967, s 21(1)
232. Waitangi Tribunal, *Mohaka River Report 1992*, 2nd ed (Wellington: GP Publications, 1992), p 66
233. Waitangi Tribunal, *The Whanganui River Report*, p 274
234. Waitangi Tribunal, *Motunui–Waitara Report* (Wellington: Waitangi Tribunal, 1983), p 32
235. Waitangi Tribunal, *The Report of the Waitangi Tribunal on the Kaituna River Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 33
236. Waitangi Tribunal, *Mohaka River Report*, pp 59–60
237. The Manukau Tribunal quoted this description with approval: Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), p 86; see also White, *Inland Waterways*, p 17.
238. Resource Management Act 1991, s 6(e)
239. Resource Management Act 1991, s 7(a)
240. Resource Management Act 1991, s 8
241. Nyree Nikora, brief of evidence, 14 August 2006 (doc E22), p 6
242. Resource Management Act, ss 7(c), (j)
243. Document E22, p 6
244. Document G52(a), p 16
245. Paper 3.3.45, ch 13, p 32
246. Waitangi Tribunal, *The Whanganui River Report*, p 264
247. Ibid, pp 263–264
248. As stated in Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1243–1244.
249. See, for example, White, *Inland Waterways*, pp 2–3, citing the judgment of Judge Acheson in relation to the ownership of Lake Ōmāpere; Russell Kirkpatrick, Kataraina Belshaw, and John Campbell, 'Land-Based Cultural Resources and Waterways and Environmental Impacts (Rotorua, Taupo and Kaingaroa): 1840–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A58), p 257; Waitangi Tribunal, *Te Ika Whenua Rivers Report*, p 100.
250. White, *Inland Waterways*, pp 2–3
251. Bay of Islands Native Land Court minute book 11, 1 August 1929, fol 259
252. Document A58, p 257
253. Paper 3.3.43, pp 211–212
254. Ibid, pp 224, 227
255. Geoff Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983* (Wellington: Waitangi Tribunal, 2001) (doc A20), p 180, citing Waitangi Tribunal, *The Whanganui River Report*, pp 338–339
256. Joe Williams, 'Treaty of Waitangi' (as at 17 April 2012), in *The Laws of New Zealand*, ed John McGrath (Wellington: LexisNexis, 1993), para 40
257. Waitangi Tribunal, *Te Ika Whenua Rivers Report*, p 100
258. Waitangi Tribunal, *The Whanganui River Report*, p 268
259. Paul Majurey and Christian Whata, 'Maori and Environmental Law' (as at July 2012), in *Environmental and Resource Management Law*, ed Derek Nolan, 4th ed (Wellington: LexisNexis, 2011), para 14.35
260. Waitangi Tribunal, *Mohaka River Report*, p 34
261. Indeed, as indicated in much of the claimant testimony recounted at section 12.5.1 and below at section 12.5.4, customary use of the waterways had taken place within the claimants' living memory and, in some instances, traditions are still practiced by ngā iwi o te kāhui maunga today.
262. Toni Waho, Che Wilson, Tūrama Hāwira, Esther Tinirau, and Hinurewa Poutū, 'Te Mana Whenua o Ngāti Rangi: Ngāti Rangi Customary Tenure Report' (commissioned research report, Ōhakune: Ngāti Rangi Claims Committee, 2006) (doc A69), pp 33–34
263. Tongariro 1A, 1B, 1C, 2A, 2B, and 2C, and the Ruapehu 1A, 1B, 2A, and 2B land blocks.
264. Waitangi Tribunal, *Mohaka River Report*, p 66
265. Particularly sections 6(e), 7(a), and 8.
266. We acknowledge that in some instances, decision makers do attribute appropriate weight to Māori values and interests when balancing competing factors under part II. Such was the case in *Unison Networks Ltd v Hastings District Council* [2011] NZRMA 394, for example, where the High Court took into account the adverse effects that the development of a wind turbine farm would have on both tangata whenua and their relationship with Te Waka Range, which they considered to be an outstanding natural landscape. These concerns led the court to uphold the decision of the Environment Court, *Unison Networks Limited v Hastings District Council*, 23 February 2009, Environment Court, W11/2009. That decision, presided over by Judge Bollard, was also quite expansive when considering the importance of Māori values. The court affirmed the decision of Lord Cooke in *McGuire v Hastings District Council* [2001] NZRMA 557 and went on to stress at paragraph 151 that

> in some cases the Maori dimension may be of a strength and nature as to, in effect, prevail in arriving at an ultimate judgment in the circumstances of the particular case that accords with the RMA's single purpose under s 5. In this context the need is always present carefully to analyse and assess each case on its merits, including the persuasiveness of the evidence directed to Maori values.

267. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, p 467; Waitangi Tribunal, *The Report on the Management of the Petroleum Resource* (Wellington: Legislation Direct, 2011), p 186
268. 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), vol 1, pp 285–286. Control, partnership, and influence are deemed to be part of the kaitiaki interest and are regarded as values that should be subject to a process that appropriately weighs them against other legitimate interests. Control, in this context, is defined as

'*control* by Māori of environmental management in respect of taonga, where it is found that the kaitiaki interest should be accorded priority'. Partnership envisages kaitiaki having a say in decision-making where it is considered appropriate. Finally, effective influence and priority should be given to 'kaitiaki interests in all areas of environmental management when the decisions are made by others'.

269. David Young, 'Rivers: Changes to River Environments', in *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/rivers/page-5, last modified 13 July 2012; Charles Mitchell, brief of evidence, 13 September 2006 (doc G9), p 2

270. R M McDowall, *New Zealand Freshwater Fishes: A Guide and Natural History* (Auckland: Heinneman Educational Books (NZ) Ltd, 1978), p 62 (doc G9, p 2); Bob McDowall, 'Freshwater Fish: More Galaxiids', in *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/freshwater-fish/page-4, last modified 13 July 2012

271. McDowall, *New Zealand Freshwater Fishes*, p 62 (doc G9, p 2)

272. Elsdon Best, *Fishing Methods and Devices of the Maori* (Wellington: Government Printer, 1986), p 228

273. Document G9, p 3; John Carne Bidwell, *Rambles in New Zealand* (London: W S Orr & Co, 1841), p 54 (Henry James Fletcher, 'The Edible Fish, &c, of Taupo-nui-a-Tia', *Transactions and Proceedings of the Royal Society of New Zealand*, vol 51 (1919), p 263)

274. Document G17, p 107

275. Ibid

276. Document G9, p 3. See also Fletcher, 'The Edible Fish, &c, of Taupo-nui-a-Tia', p 264, where he writes:

> There are three springs running into Roto-a-Ira which take their rise from springs gushing up out of the earth – the Mapouriki and Ngapuna from Tongariro, and the Waione from Kakaramea. These three were the best for *koaro*. The *hinaki* were pegged down, some with their mouths up-stream quite close to the source, and others alongside them with their mouths down-stream. The fish caught as they came out of the springs from the underground source were light-coloured, and spotted on the back; those caught ascending the stream were dark. The best month of the year for taking the fish was March. When they were caught they were spread out on stones in the sun to dry, and then stored in kits for future use.

277. Document F10(a), p 9

278. Ringakāpō Payne, brief of evidence, 29 September 2006 (doc G37), p 4; Fletcher, 'The Edible Fish, &c, of Taupo-nui-a-Tia', p 264

279. Document G52(a), p 5

280. Ibid. A photograph capturing scores of kōaro struggling to make their way up the concrete walls can be found at McDowall, *New Zealand Freshwater Fishes*, p 65.

281. Document G52(a), p 5

282. Document F1, p 2; Ngāti Hikairo, consolidated statement of claim, 22 July 2005 (claim 1.2.2), p 42

283. David K Rowe and Eric Graynoth, *Fish in New Zealand Lakes*, Lake Managers' Handbook Series (Wellington: Ministry for the Environment, 2002), p 11; David K Rowe, 'Disappearance of Koaro, *Galaxias brevipinnis*, from Lake Rotopounamu, New Zealand, following the Introduction of Smelt, *Retropinna retropinna*', *Environmental Biology of Fishes*, vol 36 (1993), pp 329–336

284. Document E20, p 9; doc E21, p 5; doc E24, p 15; doc D29, pp 16–17

285. Courage needed both because of the methods used to catch kōura and the risk of illness. Tiaho Pillot described catching kōura as 'one of the main causes of our mother's illness, ie constant chest infections': doc E21, p 5.

286. Ibid, pp 4–5

287. Document G2, p 2; James Biddle, brief of evidence, 26 April 2005 (doc G5), p 3

288. Document G2, pp 2–3

289. Ibid, p 3

290. Document G5, p 4

291. Document G29, p 8

292. Bob McDowall, 'Freshwater Fish – Galaxiids: Īnanga and Kōkopu', in *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/freshwater-fish/page-3, last modified 13 July 2012

293. John Te Herekiekie Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Auckland: Reed Publishing (NZ) Ltd, 1959), pp 511–512 (doc A12)

294. McDowall comments on the confusion surrounding the name of this species and indicates that as at the time of publication it had had at least 19 different scientific names. In his opinion, however, īnanga is relatively distinct from the other members of the *Galaxias* family, the one exception being the dwarf īnanga: McDowall, *New Zealand Freshwater Fishes*, pp 69–70.

295. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1283–1284, 1290. NIWA, too, notes the confusion that can sometimes surround īnanga and smelt, noting, for example, their tendency to frequent the same sorts of habitat: National Institute of Water and Atmospheric Research, 'Inanga', National Institute of Water and Atmospheric Research, http://www.niwa.co.nz/our-science/freshwater/tools/fishatlas/species/inanga, accessed 22 November 2012.

296. Document G1, p 21

297. Ibid

298. Document G17, pp 191, 204; doc G5, p 3

299. Document E21, p 7

300. Tūroa Karatea, brief of evidence, 28 September 2006 (doc G26), p 3

301. Document G17, p 389

302. Mere Whaanga, 'Mātaitai – Shellfish Gathering: Mussels, Oysters, Toheroa and Other Species', in *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/mataitai-shellfish-gathering/page-5, last modified 22 September 2012

303. Document E20, pp 9–10; Grace, *Tuwharetoa*, p 514 (doc A12); Fletcher, 'The Edible Fish, &c, of Taupo-nui-a-Tia', p 263; doc G9, p 3

304. Grace, *Tuwharetoa*, p 514 (doc A12)

305. Bob McDowall, 'Coarse Fish: Cyprinids – Goldfish, Carp and Others', in *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/coarse-fish/page-2, last modified 13 July 2012
306. Document E20, p 9
307. Document E21, p 4
308. Document E20, p 9
309. Document E21, p 4
310. Document E20, p 9
311. See for instance: Matiu Haitana, brief of evidence, 5 May 2006 (doc D33), p 10; Tūrama Hāwira, confidential brief of evidence, 11 August 2006 (doc E14), pp 3–4; doc A63, p 4; Robert (Boy) Cribb, brief of evidence, 5 May 2006 (doc D27), p 11; doc D30, p 11; doc D36(a), p 7; doc E13, p 7; doc G17, p 191; doc G26, p 3
312. Ann Williams and Tony Walton, *Early Landuse Patterns in the Lake Taupo Area* (Wellington: Department of Conservation, 2003), p 22
313. See Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 68, 91
314. Jim Edmonds, brief of evidence, 18 August 2006 (doc E27), p 2
315. Document G29, pp 8–9
316. Ibid, p 9
317. Document E27, pp 3, 4–5
318. Document E23, p 4
319. Document E14, p 3
320. Document D33, p 9
321. Document G29, p 9
322. Document G26, p 3
323. Document G17, p 101
324. Document E27, pp 3–4
325. Document G37, p 4; doc G17, pp 98, 128; doc G52(a), p 3; doc G21, pp 20–21
326. See, for example, document G17, p 101.
327. Document E29, p 3
328. Ibid
329. Document E26, p 3
330. Document G2, p 3
331. Document D29, pp 16–17
332. Document E29, p 3
333. Document F1, p 2
334. Document E24, p 17
335. Document E29, p 3
336. See, for example, doc A63, pp 4–5; doc E21, p 5; doc F4, p 3.
337. Document E27, pp 4–5
338. Document G17, p 218
339. Document E27, p 5; doc F4, p 3
340. Document A63, p 4
341. Document E27, p 5
342. See, for example, document E20, p 9.
343. Ibid, p 4
344. Document E27, p 3
345. Document E30, p 7
346. Ibid
347. Document G17, pp 222, 223, 226, 228
348. Document E27, p 3
349. Ibid, p 5
350. Document G17, p 121
351. Document E24, p 17
352. Document G5, p 3; doc G2, p 2; doc E21, p 4; doc G37, p 4; doc F10(a), p 9
353. Document G17, p 222
354. Document G52(a), p 4
355. Document E27, p 4. Note, too, Te Rangi Hiroa, 'The Maori Craft of Netting', *Transactions and Proceedings of the Royal Society of New Zealand*, vol 56 (1926), pp 597–646, and Elsdon Best's account. At one point, Best specifically discusses the application of the Māori calendar to the capture of tuna:

> The Maori ordered his eel fishing by means of his almanac, for his month was strictly a lunar one, and not the arbitrary time space of civilised folk. Thus all natives knew what nights it was advisable to select for taking eels.

Thus, by observing the phases of the moon, Māori knew which nights tuna would take the bait and the times of night that they would bite: Best, *Fishing Methods and Devices of the Maori*, p 109.
356. For a discussion of the meaning of 'tikanga', see Law Commission, *Māori Custom and Values in New Zealand Law*, Study Paper 9 (Wellington: New Zealand Law Commission, 2001), p 16
357. Document A63, p 4
358. Document E21, pp 6–7
359. Document A63, p 4
360. Document E21, p 6
361. Ibid, pp 6–7
362. Paper 3.3.30, pp 114–115
363. Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report* (Wellington: Brooker and Friend Ltd, 1992), p 97
364. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 3rd ed (Wellington: GP Publications, 1996), pp 180–181
365. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 provides for the full and final settlement of all claims pertaining to commercial fisheries.
366. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1266–1267
367. According to claimant evidence, catfish were first released in the 1880s and were reintroduced in the 1970s and 1980s. Tiaho Pillot recalled the Wildlife Service rangers who released three-week-old catfish into the Tokaanu River describing them as 'a new kind of game fish': doc E20, pp 10–11; doc E21, p 7. In the absence of evidence about the release of catfish or their effect on the waterways and customary fish species of the inquiry district, catfish are only mentioned in passing and are not subject to detailed analysis or Tribunal findings or recommendations. The introduced species of primary importance to the claimants was trout.
368. Tony Walzl, 'Hydro-Electricity Issues: The Tongariro Power

Development Scheme' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005) (doc A8), p 23

369. Document G9, p 3; doc A8, p 10

370. James Cowan, *The Tongariro National Park, New Zealand* (Wellington: Tongariro National Park Board, 1927), p 146 (Cecilia Edwards, 'Tongariro National Park: The Legislative Regime and Park Management, 1894–1952' (commissioned research report, Wellington: Crown Law Office, 2005) (doc A53), p 64)

371. In 1917, the *Evening Post* described John Cullen as 'ISO, honorary warden of the [Tongariro National] park and ex-Commissioner of Police, who has always taken a keen interest in the improvement of this great reserve': 'Tongariro National Park: Extensive Plantations', *Evening Post*, 7 November 1917, p 7.

372. Document A53, pp 123, 217

373. Document G9, pp 2–4

374. Whitney to Minister of Internal Affairs, 4 September 1936, IA1 76/69 pt 2, Archives New Zealand, Wellington (Tony Walzl, comp, 'Supporting Papers to "Hydro-Electricity Issues: The Tongariro Power Development"' (supporting papers, Wellington: Crown Forestry Rental Trust, 2005) (doc A8(a)), vol 2, pp 937–938); doc A8, p 10

375. Paurini and others, petition, 22 July 1905, IA1 76/69 pt 1, Archives New Zealand, Wellington (doc A8(a), vol 2, p 932); doc A8, p 8. The additions contained within parentheses form part of the original translation of the petition.

376. 'Unofficial Trout: Maoris have a Grievance', *Dominion*, 11 December 1920, IA1 79/69 pt 1, Archives New Zealand, Wellington (doc A8(a), vol 2, p 927) (doc A8, p 8)

377. Maui Pomare, 3 September 1926, NZPD, 1926, vol 211, p 289 (doc A20, p 495); doc G9, p 3

378. Grace, *Tuwharetoa*, p 515 (doc A12)

379. Document E20, pp 10–11

380. Document A20, p 186: 'the introduced fish competed so successfully with the indigenous species that the [Salmon and Trout] Act's effect on Maori was to legally endorse the annihilation of their native fisheries'.

381. McDowall, *New Zealand Freshwater Fishes*, p 96; Fletcher, 'The Edible Fish, &c, of Taupo-nui-a-Tia', p 264

382. Best, *Fishing Methods and Devices of the Maori*, p 229. Mair had died six years before the book was published in 1929.

383. Document G27, p 8

384. Document F4, p 4

385. Document G9, p 3

386. Ibid, p 4

387. Ibid, p 2

388. Ibid, pp 5, 10–11

389. Grace, *Tuwharetoa*, pp 516–517 (doc A12)

390. Document G37, p 4

391. Document F4, p 4

392. Grace, *Tuwharetoa*, p 517 (doc A12)

393. McDowall, *New Zealand Freshwater Fishes*, p 67 (doc A9, p 218)

394. Rowe and Graynoth, *Fish in New Zealand Lakes*, p 11

395. Rowe, 'Disappearance of Koaro', pp 330–333; Dave Rowe and Ian Kusabs, *Taonga and Mahinga Kai of the Te Arawa Lakes: A Review of Current Knowledge – Smelt*, NIWA Client Report HAM2007-022 (Hamilton: National Institute of Water and Atmospheric Research, 2007), pp 2–3

396. National Institute of Water and Atmospheric Research, 'Kōura', National Institute of Water and Atmospheric Research, http://www.niwa.co.nz/our-science/freshwater/tools/kaitiaki_tools/species/koura, accessed 5 July 2012

397. These include changes in lake levels, stratification of lake levels, increased sediment, pollution, and eutrophication: National Institute of Water and Atmospheric Research, 'Kakahi (*Hyridella menziesi*) in the Te Arawa Lakes', National Institute of Water and Atmospheric Research, http://www.niwa.co.nz/sites/default/files/import/attachments/kakahi.pdf, accessed 12 June 2012.

398. Bob McDowall, 'Decline of the Kakahi – Identifying Cause and Effect', National Institute of Water and Atmospheric Research, http://www.niwa.co.nz/publications/wa/vol10-no4-december-2002/decline-of-the-kakahi-identifying-cause-and-effect, accessed 12 June 2012

399. Document A53, pp 123, 217

400. Document E21, p 7

401. Paper 3.3.28, p 9; paper 3.3.27, p 21; corroborated by doc A9, p 218

402. Document A9, p 218

403. Department of Conservation, *Te Urewera National Park Management Plan* (Gisborne: Department of Conservation, 2005), p 85

404. Department of Conservation, *General Policy for National Parks* (Wellington: Department of Conservation for New Zealand Conservation Authority, 2005), pp 25–26

405. Ibid, p 26

406. Document G17, p 462

407. Document G26, pp 3–4

408. Paper 3.3.60, p 25

409. Hone Heke, 24 September 1902, NZPD, 1902, vol 122, p 605

410. Document G5, p 3

411. Document F4, p 4

412. Document G17, p 462

413. Wai 167 ROI, doc B11, p 6 (doc E31, app 1); doc G17, p 462

414. Ministry for the Environment, *Using the Cultural Health Index: How to Assess the Health of Streams and Waterways* (Wellington: Ministry for the Environment, 2006), pp 2–3

415. Document G17, p 462

416. Document E30, p 7. Interestingly, the effects that the decline of customary species was having on traditional knowledge were apparent as early as 1918. Reverend Fletcher, for example, wrote his account of the fishing practices of Māori in the Taupōnuiātia region in the past tense, 'for the old methods of catching fish are practically extinct. It is only some of the old men who can explain the use of their old implements': Fletcher, 'The Edible Fish, &c, of Taupo-nui-a-Tia', p 264.

417. Maria Nepia, brief of evidence, 4 October 2006 (doc G42), p 3

418. Document E30, p 7

419. Ibid, p 9

420. Paranapa Ōtimi, brief of evidence, 27 April 2005 (doc G6(a)), p 3 (doc G17, p 462)
421. Wai 167 ROI, doc B11, p 7 (doc E31, app 1)
422. The Crown admitted that '[d]eer, opossums and other species were introduced for recreational hunting and tourism, and also in some instances to provide additional food or revenue sources, such as local fur industry': paper 3.3.45, ch 13, p 13.
423. Document G26, pp 3–4
424. White, *Inland Waterways*, pp 214–215
425. Waitangi Tribunal, *Te Whanganui-a-Orotu* (Wellington: Brooker's Ltd, 1995), p 207 (White, *Inland Waterways*, p 233)
426. Auckland District Māori Appellate Court minute book 12, 27 October 1953, fol 338; White, *Inland Waterways*, p 241
427. Auckland District Māori Appellate Court minute book 12, 28 October 1953, fol 348
428. Work to seal the lake outlet and build control gates and siphons was carried out in the 1940s and 1950s. The Piripaua power station was commissioned in 1943 and Kaitawa in 1948. John Martin, *People, Politics and Power Stations* (Wellington: Electricity Corporation of New Zealand and Historical Branch of the Department of Internal Affairs, 1998), pp 97–105.
429. Emma Stevens, 'Report on the History of the Title to the Lake-Bed of Lake Waikaremoana and Lake Waikareiti' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996) (Wai 894 ROI, doc A85), pp 22–23
430. Ibid, pp 39–40; Gisborne Native Appellate Court minute book 27, 22 April 1947, fols 50–52
431. White, *Inland Waterways*, p 156
432. Ibid, p 157
433. Ibid
434. 'The lease of the lake-bed to the Crown was finalised on 21 August 1971. The deed was signed by Sir Turi Carroll of Wairoa, John Rangihau of Rotorua, Wiremu Matamua of Tuai, Turi Tipoki of Gisborne, Te Okanga Huata of Hastings, Canon Rimu Hamiora Rangiihu of Waipatu, Tikitu Tepoono of Te Teko, William Waiwai of Tūrangi, Kahu Tihi of Taneatua and Rodney Gerald Gallen of Napier on behalf of the owners. The Minister of Lands, Duncan MacIntyre, signed the lease on behalf of the Crown': Wai 894 ROI, doc A85, p 58.
435. Rent was fixed at 5½ per cent of the lake's value ($143,000) and was to be paid to the Tūhoe Māori Trust Board and the Wairoa Māori Trust Board. The rental quantum could be reviewed on a 10-yearly basis. The Crown also acquired a perpetual right of renewal, backdated to 1967: Wai 894 ROI, doc A85, pp 4, 59.
436. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1303
437. In 1951, amendments to the Taupo Trout Fishing Regulations restricted to Māori the taking of whitebait, kōura, 'or other small fish indigenous to New Zealand'. The Taupo Trout Fishing Regulations 1971 enabled anyone to take whitebait, lamprey, or eel, but only Māori could take kōura or other fish indigenous to New Zealand (reg 48). The Māori Purposes Act 1981 rewrote the 1926 Act to provide that 'indigenous fish' meant 'indigenous to' the lake. The Taupo Fishing Regulations 1983 then provided that anyone can take whitebait, lamprey, or eel, but that only Tūwharetoa Māori can take kōura or other fish indigenous to the lake: Waitangi Tribunal, *Report of the Waitangi Tribunal on Lake Taupo Fishing Rights* (Wellington: Waitangi Tribunal, 1986), pp 1–2.
438. Native Land Amendment and Native Land Claims Adjustment Act 1926, s 14(9)(c)
439. The number of free licences to be distributed to the board was increased to 200 on 10 April 2003 by section 3 of the Maori Land Amendment and Maori Land Claims Adjustment Amendment Act 2003.
440. *Te Weehi v Regional Fisheries Officer* [1986] 1 NZLR 680, 692
441. *Te Runanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 655 (CA)
442. As indicated previously, the Rotoaira Trout Fishing Regulations 1979 apply solely to the lake and to any fish found in, taken from, or deemed to have been taken from Lake Rotoaira and the 'adjoining waters forming part of the Lake' (regs 2, 3). The regulation defines the 'adjoining waters forming part of the Lake' and includes the Poutū inflow, being the water between Lake Rotoaira, the Poutū Dam; and the waters forming part of the Wairehu Canal. 'District' is not defined in the regulations but, given the context, it may be presumed that 'district' refers to the general vicinity of Lake Rotoaira and the Poutū inflow.
443. Paper 3.3.30, p 113
444. All of the provisions of the Maori Land Amendment and Maori Land Claims Adjustment Act 1926 have been repealed, with the exception of section 14. This section vests the bed of Lake Taupō in the Crown, but makes express provision for Ngāti Tūwharetoa to fish for indigenous species in its waters.
445. Rangikamutua Downs, brief of evidence, 2 October 2006 (doc G40), p 1
446. Under regulation 2, references to 'the lake' pertain to the body of water known as Lake Rotoaira and all of the adjoining waters that form part of the lake. These include the Poutū inflow (the water that runs between Lake Rotoaira and the Poutū Dam), and the waters forming part of the Wairehu Canal.
447. Taupō Fishery Regulations 2004, reg 40(1)
448. Ibid, reg 40(2)(a)
449. National Parks Act 1980, ss 2, 5, 60(1)(h)
450. The management plan sets out the principles of the Treaty of Waitangi and objectives that flow from these. The management plan also includes a section on indigenous animals. This states that 'In protecting and enhancing the park's indigenous fauna it is essential to preserve and restore the park's natural character': Tongariro–Taupō Conservancy, *Tongariro National Park Management Plan – Te Kaupapa Whakahaere mo te Papa Rēhia o Tongariro, 2006–2016*, Tongariro/Taupō Conservation Management Planning Series 4 (Tūrangi: Department of Conservation, 2006), pp 50, 67–68.
451. The Tongariro conservation area is also described as the Tongariro Forest conservation area.
452. Department of Conservation, 'Tongariro Forest Map', http://www.doc.govt.nz/upload/documents/parks-and-recreation/activity-finder/

hunting/Tongariro/tongariro-forest.pdf, accessed 21 June 2012. As this map demonstrates, the Tongariro conservation area encompasses a number of waterways, including the Waione Stream, the Otamawairua Stream, and the Okupata Stream. In addition, it is bounded by the Whakapapa River to the west and the Whanganui River to the north.

453. Department of Conservation, *Tongariro–Taupo Conservation Management Strategy, 2002–2012* (Tūrangi: Department of Conservation, 2002), p 86

454. Ministry of Fisheries, *Customary Fishing: Information Manual* (Wellington: Ministry of Fisheries, 2009), p 21

455. Fisheries (Amateur Fishing) Regulations 1986

456. Ministry for Primary Industries, 'Tangata Whenua', Ministry for Primary Industries, http://fs.fish.govt.nz/Page.aspx?pk=128, accessed 2 July 2012

457. Ministry of Fisheries, *Customary Fishing*, pp 17, 19

458. Ministry for Primary Industries, 'Tangata Whenua'

459. Claimant counsel submitted, for example, that the Crown had continued to ignore 'the issue of effective Maori control over fisheries' and described the Crown's failure to apply the Fisheries (Kaimoana Customary Fishing) Regulations 1998 as part of the problem: paper 3.3.30, pp 110–111.

460. The powers of tangata kaitiaki or tangata tiaki in respect of general customary food gathering and mātaitai reserves are spelt out in regulations 11 to 13 and 27 to 32 respectively and are governed by regulations 18 to 26. See regulations 14 to 17 for information on the participation of tangata kaitiaki or tangata tiaki in fisheries management.

461. Ministry of Fisheries, *Customary Fishing*, pp 26–27

462. Resource Management Act 1991, s 35A(1)(b)

463. 'Iwi authority' is defined in section 2 as 'the authority which represents an iwi and which is recognised by that iwi as having the authority to do so'.

464. Stephanie Milroy, 'The Māori Fishing Settlement and the Loss of Rangatiratanga', *Waikato Law Review*, 8 (2000), p 83

465. Treaty of Waitangi (Fisheries Claims) Settlement Act 1991, s 10(b)

466. Paper 3.3.45, ch 13, p 19

467. Described by the majority in *McRitchie v Taranaki Fish and Game Council* as setting in place 'a statutory regime for the propagation, protection and preservation of trout before their importation into New Zealand'.

468. Salmon and Trout Act 1867, s 2

469. Document A20, p 201

470. Native Purposes Act 1938, s 22(2)

471. Maori Purposes Act 1947, s 48

472. Maori Purposes Act 1959, ss 4(3)–(5), 5

473. 'Sports fish' are defined under section 2 of the Conservation Act 1987 as 'every species of freshwater fish that the Governor-General may declare, by Order in Council, to be sports fish for the purposes of this Act; and any such Order in Council may be expressed to apply to freshwater fish in any specified freshwater or other waters'.

474. As at 13 July 2012.

475. Rotoaira Trout Fishing Regulations 1979, reg 8; Maori Purposes Act 1959, s 5

476. Nzfishing.com, 'Lake Rotoaira Trout Fishing', Nzfishing.com, http://www.nzfishing.com/FishingWaters/Taupo/TPFishingWaters/TPRotoaira.htm, accessed 27 July 2011

477. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1329. This report referred to section 22 of the Native Purposes Act 1938 and particularly subsection (2). This was modified by the Maori Purposes Act 1947, section 48 of which increased the penalty for illegal fishing in Lake Rotoaira.

478. John Stephen Asher, brief of evidence, 1 October 2006 (doc G38), p 9

479. Document G52(a), p 6; ibid, p 10

480. Rotoaira Trout Fishing Regulations 1979, reg 27. It should be noted, however, that these measurements can be modified by the Trust following their notification in the *New Zealand Gazette*.

481. Rotoaira Trout Fishing Regulations 1979, reg 23. See also regulations 24 and 25.

482. Document G38, p 10

483. These are adult prices: see Department of Conservation, 'Buy a Licence for the Taupo Trout Fishery', Department of Conservation, http://www.doc.govt.nz, accessed 27 July 2011.

484. Ibid

485. P White, J Gunston, C Salmond, J Atkinson, and P Crampton, *Atlas of Socioeconomic Deprivation in New Zealand, 2006* (Wellington: Ministry of Health, 2008). See the map showing socioeconomic deprivation for the lakes district, which shows that approximately half of the inquiry district is in the most deprived quintile, and see the maps pertaining to the Waikato and Whanganui districts for the balance of the inquiry district.

486. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1307

487. Section 14(9)(c) provides:

> The operation of the Fisheries Act 1908, so far as it applies to the said district, shall be modified as follows . . .
>
> (c) Such members of the Tuwharetoa Tribe as are nominated by the Board hereinafter referred to shall be entitled to have issued to them, free of charge, licences to fish for imported fish in accordance with the regulations: Provided that not more than 200 such licences shall be issued in any one year without the consent of the Governor-General in Council.

This was increased from 50 to 200 in 2003 by section 3 of the Maori Land Amendment Act and Maori Land Claims Adjustment Amendment Act 2003.

488. Document F10(a), p 10

489. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1329. For the Court of Appeal case, see *McRitchie v Taranaki Fish and Game Council*.

490. See the map provided in the Department of Conservation's consolidated guide: Department of Conservation, *Taupo Fishery Regulations 2004* (Tūrangi: Department of Conservation, 2004).

491. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1303

492. Ibid, p 1300

493. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1299. That Tribunal wrote:

> in terms of the Crown's regulation of freshwater fishing, we find that the Crown eroded the claimants' rangatiratanga over their fisheries by legislation which . . . abolished the ability of Maori to engage in the exercise of their rangatiratanga and the adaptation of their customary fishing practices by providing access for European anglers to fish for trout in exchange for money. In other words, the Crown prohibited Maori from selling or leasing fishing rights and from controlling access to their taonga.

494. Sports fish are defined under section 2 of the Conservation Act 1987 and are deemed to include those species contained in the first schedule to the Freshwater Fishing Regulations 1983. These include brown trout, rainbow trout, American brook trout or char, lake trout or char, Atlantic salmon, Quinnat or Chinook salmon, sockeye salmon, perch, tench, rudd, and any hybrid of these species.
495. Generally speaking, it is an offence to take sports fish without a licence: Conservation Act 1987, s 26ZI.
496. 'Anglers Notice for Fish and Game Regions', 12 August 2011, *New Zealand Gazette*, 2011, no 124, pp 3421–3423, 3432–3434
497. *McRitchie v Taranaki Fish and Game Council*; citing Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wellington: Waitangi Tribunal, 1988), pp 203–204
498. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 203
499. *McRitchie v Taranaki Fish and Game Council*
500. These include, in chronological order, the Salmon and Trout Act 1867, the Fish Protection Act 1877, the Fisheries Amendment Act 1908, the Native Land Amendment and Native Land Claims Adjustment Act 1921–1922, the Native Purposes Act 1931, the Conservation Act 1987, and the Resource Management Act 1991. With the exception of the Resource Management Act 1991, these are each discussed by the Court of Appeal in *McRitchie v Taranaki Fish and Game Council*.
501. *McRitchie v Taranaki Fish and Game Council*, p 154
502. Resource Management Act 1991, s 7(h)
503. *McRitchie v Taranaki Fish and Game Council*, pp 156–157
504. Ibid
505. *Livingstone v Department of Conservation*, unreported, 15 May 2009, Potter J, High Court, Rotorua, CRI-2008–463–37, para 35. Section 26ZL of the Conservation Act 1987 sets out a number of restrictions on fishing. Under this section, the director-general has the authority to make such restrictions; he may, for example, 'declare any waters to be spawning grounds for freshwater fish' and thus prohibit or impose restrictions on the entry into these waters or onto land within a specified distance of these waters. He may also prohibit or impose either restrictions or conditions on fishing in any waterway or any specified section thereof. Under this provision, any fish and game council is able to request the issue of a notice by the director-general. Under subsection (2A), everyone who acts in contravention of any prohibitions, restrictions, or conditions imposed under subsection (1) commits an offence and will be liable for a fine of up to $5,000.
506. A decision that was affirmed, as we have seen, in the later case of *Livingstone v Department of Conservation*.
507. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1328
508. Ibid, p 1330
509. Paper 3.3.60, p 25
510. William Field, 30 September 1903, NZPD, 1903, vol 126, pp 119–120
511. The Central North Island Tribunal sets out the criteria that, in their opinion, must be met for an iwi to be entitled to this right to development.
512. That Tribunal described the principle of development as follows:

> Maori expected and were entitled to develop their properties themselves and to have a fair and equitable share in Crown-created property rights, including those made available by scientific and technical developments. The Treaty – or rather the two Treaties that the parties agreed to – needed to evolve to meet new and changing circumstances.

Waitangi Tribunal, *Radio Spectrum Management and Development Final Report* (Wellington: GP Publications, 1999), p 52.
513. Waitangi Tribunal, *Report on National Freshwater and Geothermal Resources*, p 107
514. Document G40, p 2
515. Document G38, p 10
516. Document G40, p 2
517. Tony Walzl, 'Environmental Impacts of the Tongariro Power Development Scheme' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc E12), p 425
518. Document G40, p 3; doc G38, p 10
519. Geoff Park, 'Summary and Responses to Statement of Issues: Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Reponses Concerning the Indigenous Flora and Fauna, 1912–1983', June 2006 (doc A20(a)), p 33
520. Ibid, p 34
521. Document A14, p 9
522. Tony Walzl makes brief mention of the fact that the economic potential of Lake Rotoaira had been recognised: doc E12, p 450.
523. Helen Bain, 'Talk of the Town', *Dominion*, 8 January 2002, p 10; Leanne Boulton, 'Contextual Material on Maori and Socio-Economic Issues in the National Park Inquiry District, 1890–1990: A Scoping Report' (commissioned scoping report, Wellington: Waitangi Tribunal, 2006) (doc A57), pp 92–93
524. Document G52(a), p 26
525. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1294–1295
526. Except where the Minister of Conservation's consent has been obtained.
527. Document G9, p 4

CHAPTER 14

THE TONGARIRO POWER DEVELOPMENT SCHEME

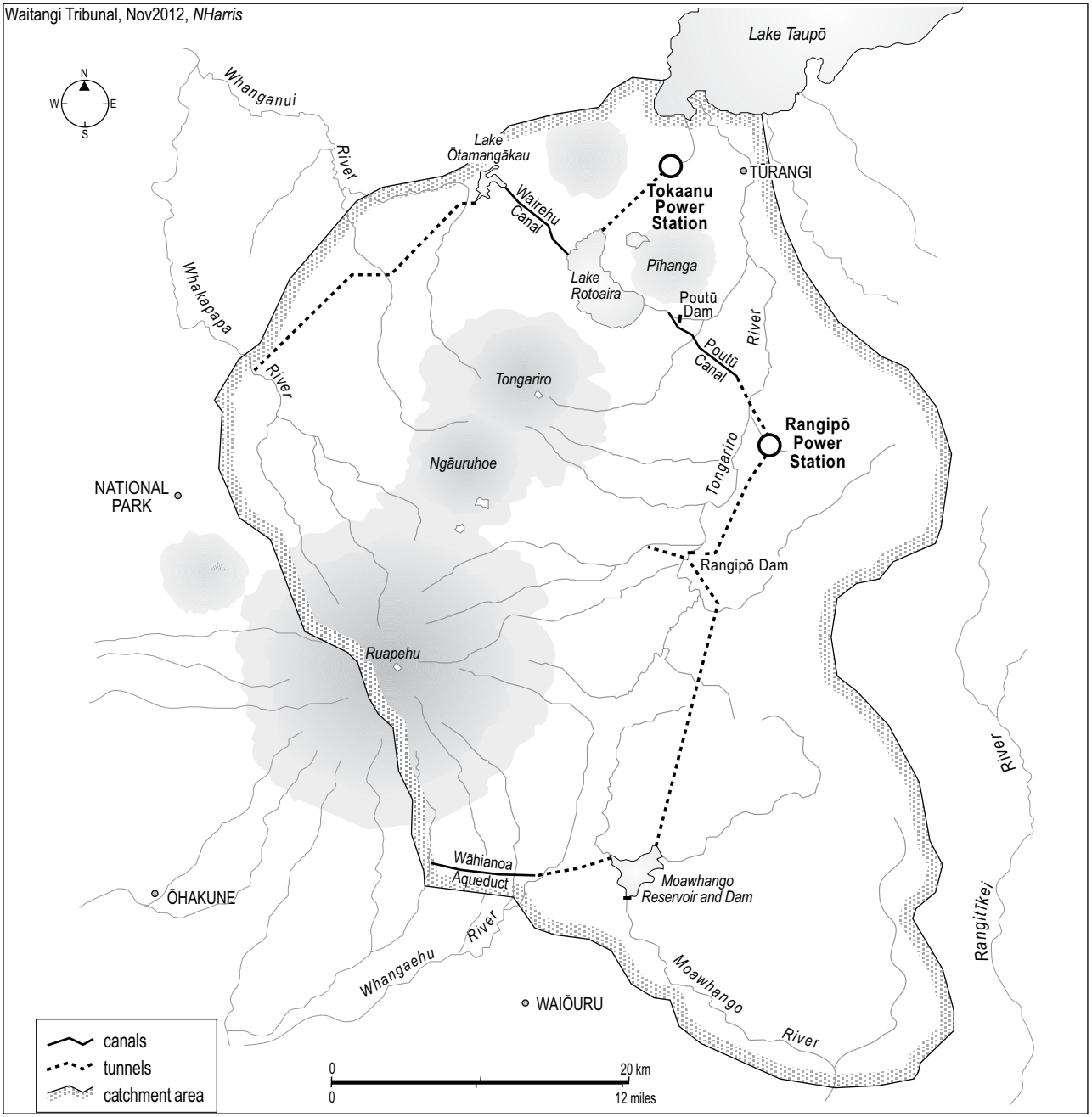
14.1 Introduction

The Tongariro power development (TPD) is a hydroelectric power generation scheme located on the central volcanic plateau. The TPD, as conceived in the 1950s, had a double role: it would harness the headwaters of the Whanganui, Whangaehu, and Tongariro River systems to generate power at power stations at Tokaanu and Rangipō; it would increase the flow of water into Lake Taupō and boost the energy generated by a further nine power stations on the Waikato River (map 14.1).

Constructed between 1964 and 1984, the TPD is the last great North Island hydro scheme of the twentieth century, conceived in an era of post-war electricity shortages and powerful agencies of State like the Ministry of Works (MOW) where the project engineer had a dominant role.

Cabinet approved the first two stages of the scheme in 1964 and construction began that year. At the time, the booming electricity industry, with the State generating system as its centrepiece, was described as New Zealand's biggest business.[1] But the TPD's construction straddled something of a divide in recent New Zealand history. By the time the scheme was completed in 1984, the social, political, economic, and cultural landscape had changed, with growing public awareness of Māori issues, passage of the Treaty of Waitangi Act 1975, and the first Tribunal inquiries. Legislative and policy regimes came to reflect environmental considerations, with laws based on sustainable use of resources. In this changed landscape, the environmental planner took the place of the engineer. From 1984 onwards, economic restructuring reduced the size of the State, paving the way for commercialisation of hydro schemes like the TPD. In corporatising, then partially privatising, the electricity industry, the Crown relinquished the traditional model for State ownership and control, the model on which the TPD had been founded.

In creating and operating the TPD, the Crown had to take into account the Treaty rights of Māori. In sections 14.2 to 14.7, we consider the Crown's overall intentions for the TPD when it established the scheme and ask if it complied with its Treaty obligations when the scheme was planned and initiated, and during the construction phase. In sections 14.8 to 14.13, we examine the post-construction impacts of the scheme: we look at the impacts of the TPD on the waters and lands of ngā iwi o te kāhui maunga, and on the mana and rangatiratanga of ngā iwi; we ask if these have involved Treaty breaches; we ask if the regulatory regimes for the TPD have been Treaty compliant; and we ask whether ngā iwi o te kāhui maunga have benefited economically from the use of their taonga in the TPD.



Map 14.1: Tongariro power development catchment area

In section 14.4, we suggest ways in which the relationships between ngā iwi o te kāhui maunga and the waters used by the TPD can be restored.

We begin with the planning and construction phase.

14.2 Planning and Construction – Introduction

The Crown was able to gain control of the lands and waterways needed to build and drive the TPD under an Order in Council (OIC), issued in 1958 under the Public Works Act 1928. Many of those lands and waterways are regarded as the taonga of ngā iwi o te kāhui maunga.

In creating the TPD, the Crown had to take account of the Treaty rights of Māori. Under the Water-power Act 1903, the Crown vested in itself the sole right to use waters for electrical purposes, 'subject to any rights lawfully held'.[2] Whether Māori had a right that could be proven to the satisfaction of the Crown remained to be tested, and the intersection between Māori customary rights and British law was left unclear. The 1903 Act was repealed in 1905, but the provision about the Crown's sole right to waters used for power generation was retained in public works legislation in ensuing years – including section 306 of the Public Works Act 1928, the provision under which the OIC establishing the TPD was issued.

A number of claims have arisen in relation to the establishment and operation of the TPD. In considering these, we pay close attention to *He Maunga Rongo*, the central North Island (CNI) Tribunal's findings on power generation, in particular as they related to development opportunities in the modern hydroelectricity industry. That Tribunal found that central North Island Māori interests in power generation met many of the criteria which define a Treaty right to participate in development, namely that:

- the development or activity is a legitimate outgrowth or development of a customary property right;
- the development or activity is in their rohe;
- the development or activity involves their taonga (whether still in their legal ownership or not);
- they have had a long association or history of involvement in the development or activity . . .;
- a tribal initiative is involved or contemplated;
- the development or activity may contribute to the redress of past Treaty breaches; and
- the development or activity may assist their cultural, social, or economic development.[3]

We also take into account the recent report of the Tribunal inquiring into the national freshwater and geothermal resources claim. We note in particular their view that 'the water bodies used by permit holders are not "public assets"'. Rather, Māori possessed their water bodies in a manner akin to full ownership as at 1840, and once the extent of their residual property rights has been established (which is likely to vary from case to case), these should be recognised. The question is, said the Tribunal, 'how are the rights and laws derived from Māori culture to be understood or given effect (so that they may be protected) in New Zealand's laws?'[4]

In sections 14.3 to 14.7, we consider the Crown's overall intentions for the TPD and whether in establishing the scheme in 1964, and thereafter, it complied with its Treaty obligations. In carrying out this assessment, we try to take into account the complex, often competing, agendas within central government and its agencies of State during the mid to late twentieth century, including between Ministers of the Crown and departmental officials. However, we must at all times treat those government agencies and their executive employees 'on the ground' as agents or embodiments of the Crown in so far as they had statutory powers to operate on its behalf.

14.3 Planning and Construction – Crown Concessions

The Crown conceded, in its closing submissions, that Whanganui Māori were not consulted in relation to the creation and establishment of the TPD, and that this was inconsistent with the Crown's duty to act in good faith, and a breach of the Treaty of Waitangi and its principles.

Electricity pylons and wires on the Desert Road silhouetted against a snow-covered Mount Ruapehu. Electricity shortages and increasing demand led to the creation of the Tongariro power development scheme.

In particular, it accepted the finding of the Waitangi Tribunal in its *Whanganui River Report* that no consultation or notice was given to Whanganui Māori in relation to the OIC of 1958 authorising the taking of water from the Whanganui and other rivers for the proposed scheme.[5]

14.4 Planning and Construction – Claimant Submissions

The claimants argued that, in setting up and managing the TPD, the Crown failed to meet its Treaty obligations in the ways detailed below. By way of general introduction to Ngāti Tūwharetoa's closing submissions on the subject, claimant counsel stressed that 'the TPD affects almost every river in the National Park area and all the hapū are impacted in some way'.[6] The Ngāti Rangiteauria claimants, too, on behalf of the Whanganui iwi and Ngāti Rangi, emphasised the widespread repercussions on the tangata whenua of setting up and operating the scheme.[7]

14.4.1 Consultation

The claimaints argued that, in failing to consult adequately with iwi and hapū prior to establishment of the scheme, the Crown breached the Treaty principles of partnership and active protection.

Picking up on Ngāti Rangi's point that the Crown had assumed that, by 'consulting' with Ngāti Tūwharetoa, it had met its responsibilities towards all Māori interest holders in the area, Ngāti Tūwharetoa submitted that any consultation with them was in any case rendered pointless: the Crown had made 'promises and undertakings about the benefits of the scheme that were not fulfilled'.[8] Ngāti Manunui, Ngāti Hikairo, and Ngāti Waewae made similar submissions.[9] Counsel for Ngāti Hikairo described

consultation over the scheme as 'woefully inadequate', and said that the government had simply made its decision and proceeded regardless. In particular, they noted a nine-year absence of contact by the Crown between a meeting with Tūwharetoa in 1955 and final decisions over the scheme's construction in 1964.[10]

14.4.2 Coercion or acquisition of control

In the submission of counsel for Ngāti Hikairo, the Crown used the 1958 OIC to gain entry onto Māori land for the TPD, thus evading the protection mechanisms supposedly available to Māori.[11] Of particular concern to the claimants, though, was water, and the Crown's acquisition of control over it. Counsel for Tamahaki said that the 1958 OIC had enabled the Crown to take water from the Whanganui, Tokaanu, Tongariro, Rangitaiki, and Whangaehu Rivers and tributaries, and to control their levels, without the consent of the Whanganui iwi.[12] Speaking particularly of the western diversion, counsel pointed to its creation and operation as a breach of the Treaty, because they interfere with Ngāti Tamahaki's Treaty-guaranteed rights over the waters of the Whanganui.

Counsel for Ngāti Hikairo pointed to the Water and Soil Conservation Act 1967 – and its successor, the Resource Management Act 1991 (RMA) – arguing that the legislation 'effectively nationalised or expropriated all development rights relating to natural water by vesting in the Crown.'[13]

Counsel for Ngāti Tūwharetoa submitted that the trustees who signed the 1972 agreement about the use of Lake Rotoaira 'did so under duress, there being no feasible alternative if they were to retain their taonga.'[14] The Crown's actions in relation to Lake Rotoaira, said counsel, had resulted in a number of Treaty breaches. The Crown had acted in bad faith by placing unconscionable pressure on the Lake Rotoaira trustees; it had required Ngāti Tūwharetoa to forfeit compensation for the use of their taonga; and it had acquired effective control over the lake in breach of its article 2 guarantee.[15]

Ngāti Hikairo claimants submitted that the 1972 deed provided the Crown with full use of Lake Rotoaira but had been instrumental in reducing Ngāti Hikairo's tino rangatiratanga over their lake to 'a mere computer generated title with no benefit of the resource.'[16] Other Ngāti Hikairo claimants submitted that imposition of the Public Works Act hindered or prevented Ngāti Hikairo from fulfilling its obligatory role as kaitiaki over Lake Rotoaira.'[17]

14.4.3 Mutual benefit and compensation

The claimants submitted there had been an effective nationalisation of their Treaty development right to use or store the water of their lakes and rivers to generate electricity. Counsel for Ngāti Tūwharetoa argued that 'Treaty rights with respect to their waters include the right of development' and 'inherent to that right is the right to license others to use the waters.'[18] This right 'has been expropriated by the Crown, without compensation and without the consent of Māori.'[19]

On the subject of waters diverted for the TPD, counsel for Ngāti Rangi submitted that in breach of the principle of good faith, the Crown failed to adequately compensate for 22 diversions of waterways.[20] On the issue of Lake Rotoaira, Ngāti Tūwharetoa submitted that, in breach of previous assurances, the Crown had caused 'significant damage . . . without any compensation being paid'.[21] Ngāti Hikairo has been asked to pay a significant price for 'the national good' and it is time for the Crown to ensure a flow of benefit back to it.[22]

Ngāti Rangi submitted that the Treaty provides a basis for a continued relationship between Ngāti Rangi and the Crown: a true and genuine partnership utilising the Crown's resources within the rohe.[23]

14.4.4 Active protection

The claimants argued that, in failing to consult adequately with iwi and hapū prior to the establishment of the scheme, the Crown breached the Treaty principles of partnership, active protection, and equal treatment of iwi and hapū. Ngāti Rangi submitted that the Crown has a duty to ensure that Māori are treated fairly and equitably with high standards of justice.[24] Ngāti Tūwharetoa and Ngāti Hikairo ki Tongariro submitted that the Crown has failed to protect Lake Rotoaira as a major taonga: a waterway

that once teemed with native fish, an area that was bountiful with ika and manu, a bountiful larder once shared under the rangatiratanga of Ngāti Hikairo and Ngāti Tūwharetoa.[25]

14.5 Planning and Construction – Crown Submissions

14.5.1 Consultation

The Crown argued that the pre-establishment phase of the TPD from 1955 to 1964 was characterised by a fundamental level of understanding with Ngāti Tūwharetoa. It rejected the contention that consultation was without substance and that the scheme was imposed without agreement.[26] Nor did it accept submissions that it failed to properly inform Ngāti Tūwharetoa of the impacts of the scheme or that it made commitments about its benefits that were not fulfilled'.[27]

Counsel submitted that 'there was consultation with Ngāti Tūwharetoa about the proposed establishment of the Scheme prior to Cabinet approving construction'.[28] The initial October 1955 meeting where the TPD was broadly outlined to Ngāti Tūwharetoa (including the western and eastern diversions and the use of Lake Rotoaira) 'had a positive tone'.[29] The Crown conceded that there was a nine-year gap between the first meeting with Ngāti Tūwharetoa in 1955 and meetings during 1964.[30]

Counsel said the position as at September 1964 was that Ngāti Tūwharetoa did not object in principle to the establishment of the scheme; and the government would compensate for any adverse effects using the public works regime including land taken for use in the scheme and any impacts on Māori fishing interests.[31] The Crown argued that it was under no obligation to carry out detailed pre-scheme assessments on matters such as social, cultural, spiritual or economic impacts of large infrastructure projects like the TPD. The Crown's intention was that 'practical issues such as impacts and compensation would be dealt with as those issues arose'.[32] Nothing was inherently wrong or Treaty-inconsistent with this approach.

14.5.2 Coercion or acquisition of control

Counsel addressed the issue of acquiring the use of Lake Rotoaira, acknowledging that it was 'pivotal to the operation of the scheme'.[33] Accepting that Māori may have had 'a genuinely held belief that compulsory acquisition [of Lake Rotoaira] was a real possibility', counsel denied that compulsory acquisition had ever been Crown policy.[34] There was no evidence of threats of compulsory acquisition being made directly by or on behalf of the Crown. Rather, counsel put the trustees' fears down to 'the cumulative effect of a number of factors', including: experience in relation to the Tūrangi township, media statements, and communications from government officials.[35] The 1972 agreement was the outcome of a negotiated process.[36]

14.5.3 Mutual benefit and compensation

Counsel noted that with regard to Lake Rotoaira, Ngāti Tūwharetoa themselves had proposed the 'no compensation' offer.[37] Issues concerning the purchase and a lease in perpetuity were still on the table at the time the offer was made.[38] The Crown did not coerce the trustees into forfeiting their rights to compensation.[39] Rather, the trustees appeared 'to have viewed the "no compensation" agreement in 1972 as a significant victory at the time'.[40]

The Crown submitted that it was under no obligation (Treaty or otherwise) to compensate Māori for all adverse impacts, cultural, social, economic, spiritual, or environmental, of large infrastructure projects like the TPD. The proposition was too broad.[41]

14.6 Planning and Construction – Submissions in Reply

14.6.1 Consultation

Expanding on the alleged inadequacy of consultation, counsel for Ngāti Tūwharetoa said the Crown had committed to the TPD 'in principle' in April 1964, before it commenced consultation in earnest. With the exception of a single meeting in 1955, consultation between the Crown and Māori effectively began 11 days after Cabinet approved

the scheme 'in principle': it was therefore something of a *fait accompli* situation, likely to proceed irrespective of the position that Ngāti Tūwharetoa took.[42]

Counsel argued that the consultation process thus did not meet the standards required at law, let alone a Treaty-consistent standard. She noted the legal standard for consultation set out in the Court of Appeal decision in *Wellington International Airport Ltd v Air New Zealand* 1993[43] and the Treaty standard for consultation set out in the *Te Arawa* report.[44] Ngāti Tūwharetoa should have been fully informed on the design of the scheme, the benefits, and the likely impacts. The information should have been clearly and explicitly communicated at hui open to all Ngāti Tūwharetoa, not confined to meetings with the trust board. Consultation should have commenced early, well before the Crown had committed to the scheme.[45]

In relation to four meetings held during 1964, counsel noted: 'There was no distinction between meetings to disseminate information and meetings to seek input from Ngāti Tūwharetoa.'[46]

On the adequacy of the provision of Crown information, counsel submitted that Ngāti Tūwharetoa was never fully briefed on the detrimental environmental effects of the scheme. The inclusion of Lake Rotoaira was not dealt with until after construction was under way, meaning that the owners had no choice whatever about the inclusion of the lake.[47] They were actively misled by assurances that the fishery would not be harmed, even though officials were aware that the hydrology of Lake Rotoaira would be drastically altered.[48]

Counsel for Ngāti Hikairo, Ngāti Manunui, and Tamahaki submitted that, as separate iwi, they too should have been separately consulted.[49]

14.6.2 Coercion or acquisition of control

Ngāti Tūwharetoa argued that the Crown's position on the issue of the 1972 agreement with respect to Lake Rotoaira was 'nonsensical': while seeking to establish there was never a threat to compulsorily acquire the lake, the Crown also claimed the TPD was a scheme of national importance that justified the compulsory acquisition of land.[50] Counsel submitted:

> The use of Lake Rotoaira was critical to the operation of the TPD scheme. It does not take a rocket scientist to work out that if Ngāti Tūwharetoa refused to sell the lake, then the only way that the Crown could secure ownership (its clear preference) was to use its public works powers to compulsorily acquire it (as it had done with Tūrangi township). In other words, the threat remained hovering in the air . . .[51]

14.6.3 Mutual benefit and compensation

Ngāti Tūwharetoa argued that the Crown had acted unconscionably in allowing Ngāti Tūwharetoa to forfeit compensation for Lake Rotoaira to which it was morally and legally entitled. Counsel argued:

> It is true that the offer initiated from Ngāti Tūwharetoa's side, but the question must be asked as to whether it is honourable for the Crown to take advantage of Ngāti Tūwharetoa's fear that they would lose their taonga if they did not agree.[52]

Ngāti Tūwharetoa strongly rebutted the Crown's submission that Māori regarded the 1972 agreement as a 'significant victory', saying,

> That submission is insensitive, to say the least, given the evidence of witnesses such as Arthur Smallman, who spoke of the tears rolling down Pateriki Hura's face, and Mrs Ringakapo Payne, who spoke of the stress and worry inflicted on her brother John Takakopiri Asher over the whole affair.[53]

14.7 Planning and Construction – Tribunal Analysis

As we have seen, the claimants' concerns fell largely under four headings:

- consultation;
- the Crown's acquisition of control over land and waterways;

Italian workers on the Tongariro power development scheme. The Italians were brought into New Zealand for tunnelling work. Camps were established at each end of the tunnel, as well as where the two sections met.

- mutual benefit and compensation; and
- the impact of the scheme during construction.

These concerns tend to correspond to different stages of the scheme's life, and we break down our discussion accordingly. We thus move from the origins of the TPD and the wider political and economic context in which the scheme was conceived, to how the plan was put into effect, what the Crown knew of the scheme's impact prior to construction, and the actions the Crown took to mitigate adverse environmental and cultural impacts.

Throughout our analysis, our underlying concern will be: Did the Crown comply with its Treaty obligations when it established the TPD?

14.7.1 The Crown's aims in establishing the TPD

(1) *The scheme's scope*

Constructed between 1964 and 1984, the TPD covers a catchment area of 26,000 hectares. The scheme was conceived at the start of a long post-war economic boom characterised by a spiralling demand for electricity. Built by the Ministry of Works (MOW) on behalf of the New Zealand Electricity Department (NZED), the scheme employed at its peak some 2100 people including Māori, Pākehā, and migrant workers including 200 Italian tunnellers. The project did bring job opportunities to the region.[54] The total cost of the development in 1974 was estimated at $270 million ($2.76 billion in 2011 dollars).[55]

Sited south of Lake Taupō, the scheme and its steel and concrete structures extend from the southern flanks of Ruapehu to the southern point of Lake Taupō, along both sides of the Ruapehu–Ngāuruhoe–Tongariro volcanic mountain chain (see map 14.1). The development as a whole provided some 40 per cent of the North Island's hydroelectric energy.[56]

(2) *Early government championing of hydro power*

From the start of the twentieth century, creating electricity by waterpower was viewed as the way to meet domestic energy needs. As early as 1903, L M Hancock, a visiting Californian electrical engineer, reported on the electricity-generating potential of the Waikato watershed:

> In this region, which is quite unusual in many ways, immense quantities of power can be developed and, though somewhat distant from the centres of industry, it will some day prove of wonderful value to the colony . . .[57]

The Water-power Act 1903 gave the government the sole right to generate hydroelectricity, and this law subsequently became part of the Public Works Act 1928. The idea of diverting water from the National Park watershed to generate electricity was again raised in the 1920s as the government began to consider a national electricity system based on hydropower. A State Hydro-Electric Department (State Hydro) of the Public Works Department, established by the Electricity Act of 1945, revisited the idea of diverting the Tongariro rivers in 1948 as demand for electricity soared. State Hydro's main role was operating and maintaining completed power schemes, including installing equipment at sites, and constructing transmission lines.

(3) *Rotoaira's strategic potential noted*

Identifying new sites for hydro works became a Crown priority in the post-war years. A 1948 report by Public Works Department surveyor Harold Jenks, for example, noted that

> the potentialities of RotoAira have long been recognized . . . [but] any proposal to augment Rotoaira by collecting the stream from the east side of Tongariro will involve some tunnelling and heavy earth works.[58]

Jenks added: 'it seems likely that at some stage the Upper Waikato will form one of the large blocks of power contributing to the North Island demand'.[59]

Since the 1920s, the Waikato River had served as what might be termed the hydro hub of the North Island, with further stations added from the late 1940s. In the early 1950s, power planners faced an accelerating demand for electricity, predicting an annual surge in demand of around 8 to 10 per cent for the foreseeable future.[60] Shortages and usage restrictions continued. Ending them

became a political imperative. Officials resurrected the Jenks report and a new report, put out in 1955, outlined an 'Upper Waikato Development' that became known as the TPD.[61]

In October 1955, the Crown engaged British engineering consultants Sir Alexander Gibbs and Partners, a firm with international experience in hydroelectric projects, to investigate the idea. Also in October 1955, an informal exploratory meeting was held between Māori and officials. We shall return to that meeting later. Almost two years then elapsed before Gibbs and Partners issued their preliminary report, in favour of the new development. The following year, the Electricity Amendment Act 1958 created a separate portfolio for electricity, with State Hydro reconfigured as the NZED.

It was in 1958, too, that an incoming Labour government, faced with a deteriorating economic situation and continuing power shortages, moved to expedite TPD investigatory work. The Works Minister, Hugh Watt, who was also the Minister of Electricity, told an August 1958 conference that a hydro scheme would be fast-tracked at Tongariro. The same month, Watt tabled a White Paper on domestic power needs.[62] The document made a case for greater use of hydro power in the North Island. Following the White Paper's release, the proposal for a Tongariro River Power Development with 'thirty-two miles of tunnels, nine dams and five power stations' gained extensive newspaper publicity.[63] Watt pressed ahead with the scheme as a solution to the growth in electricity consumption, rather than build a cable across Cook Strait, as recommended by NZED officials, including Arthur Davenport.[64]

On 29 October 1958, the government passed an OIC under the Public Works Act giving it full powers to establish the TPD. That OIC has already featured in our discussion of Ōtūkou, in the public works chapter, and we will discuss it again later in this chapter. Proposals for hydro developments at Aratiatia Rapids on the Waikato River, and Lake Manapouri on Fiordland, generated the first-ever national debate about environmental impacts of large schemes. Late in 1959, Watt hosted a conference to discuss conservation of scenic resources and prevention of damage by hydro and industrial development. He told delegates there was no alternative to the development at Aratiatia: 'Otherwise there will be power blackouts in the North Island from 1964 to 1966'.[65] At the same time, Watt undertook to set up a body to represent 'nature conservancy' interests.[66]

Progress reports by Gibbs and Partners meanwhile judged the TPD proposals viable in terms of water availability, geological issues, economics, and power output.[67] They suggested the scheme be implemented in five stages over a 19-year timeframe from 1964 to 1983. In 1963, the National government's power planning committee proposed going ahead with the first three stages of the scheme. Meanwhile, parliament had passed the Nature Conservation Council Act 1962 which set up the Nature Conservation Council. Membership of the new council comprised scientists, officials, and political appointees, who included John Te Herekiekie Grace.[68] Announcement of the TPD proposals during the 1963 election year saw concern about the effects of proposed river diversions aired in newspapers in affected communities such as Wanganui and Taupō, and 'Election meetings in Taupo in 1963 were enlivened by questions on the possible impacts of the scheme'.[69]

(4) *Energy demand continues to rise*

During 1963, electricity consumption increased by 13.7 per cent: electric ranges and water heaters were in common use in New Zealand, and many households had television sets.[70] In February 1964, officials recommended the TPD proceed, noting that the proposals were technically sound and economically attractive, and that the scheme would provide the power needed by the North Island system between 1970 and 1973.[71] The incoming Electricity Minister, Thomas Shand, accepted these findings and endorsed the scheme's first three stages.[72] As Minister, he would shepherd the TPD through heated debate about the environmental impacts of hydro developments.[73]

On 24 March 1964, Shand announced that Cabinet had approved the scheme 'in principle', subject to further negotiation with 'affected parties'. Public opposition mounted throughout 1964, notably from an emerging

Wellington-based environmental lobby with strong angling interests, but also in Taumarunui. Cabinet asked the newly established Nature Conservation Council to assess the scheme on environmental grounds and to make recommendations. In September 1964, the council endorsed the scheme, provided that there were safeguards for the Tongariro River fishery.[74] Cabinet approval was announced on 21 September 1964 and work on the western diversions and the 'hydro town' at Tūrangi commenced immediately. The scheme has been called 'by far the most ambitious electricity generation project to be undertaken in New Zealand'.[75]

14.7.2 The scheme's key elements

(1) *Stage 1: western diversion*

The western diversion would harness south- and west-flowing water from a catchment area of 320 square kilometres and carry it northwards (see map 14.2). Water was diverted from the headwaters of the Whanganui River through a series of tunnels connecting the Whanganui and the Whakapapa Rivers and three canals, Te Whaiau, Ōtamangākau, and Wairehu. Dams were built at Te Whaiau and Ōtamangākau to create new artificial lakes. Water then proceeded through the Wairehu Canal to Lake Rotoaira (and from there to Lake Taupō through a tunnel). The diversion allowed the generation of an extra 420 gigawatt hours annually from existing Waikato stations. Over the seven years, an estimated 2.7 million cubic yards of material was excavated.

In 1966, the MOW began damming the Whanganui River at Taurewa, and excavations for Te Whaiau and Ōtamangākau commenced. The Whakapapa–Tawhitikuri–Whanganui Tunnel discharges into the Te Whaiau Canal, and from there to Lake Te Whaiau, a body of water formed by the construction of an earth-filled dam. The Ōtamangākau Dam, providing short-term storage, drains a catchment of 46 square kilometres including several tributary streams. The Wairehu Canal was built to transport waters to Lake Rotoaira, which serves as the reservoir for the Tokaanu Power Station, which in turn sends water on to Lake Taupō.

Western diversion waters flowed into Lakes Rotoaira and Taupō in 1971, increasing the output of the Waikato River power stations. The Tokaanu Power Station was completed in 1973 as part of stage 2.

(2) *Stage 2: Rotoaira (Tokaanu)*

Constructed between September 1966 and July 1973, the northernmost section of the scheme was based on channelling Tongariro River water through the Poutū Tunnel and the Poutū Canal into Lake Rotoaira (see map 14.2). From there, it drops through a surge chamber down to a four-turbine power station at Tokaanu. A tailrace canal then transports the water four kilometres into Lake Taupō. This second stage of the TPD is today commonly known as Rotoaira, the title used by its current operator, Genesis Energy Limited.

Work began with construction of the Poutū Dam, and the powerhouse and tailrace at Tokaanu. In 1967, contracts were let for the six kilometre-long concrete-lined Tokaanu Tunnel.[76] In 1968, the Poutū Stream was diverted to allow construction of the Poutū Dam, and in the following year work began on the Poutū Tunnel and Poutū Canal designed to channel Tongariro water into Lake Rotoaira. The natural flow of the Poutū River was thus reversed.

The first electricity was generated on 2 July 1973, when the Tokaanu Power Station was commissioned.[77] The diversion of Tongariro water into Rotoaira, in December 1973, signalled the completion of the first two stages of the TPD, a significant milestone. The diversions of water caused dramatic changes to flows in the Tongariro River and the volume of water in Lake Rotoaira.[78] These impacts are addressed elsewhere in this chapter. The total excavation for the Rotoaira stage, excluding the two tunnels, was more than five million cubic metres.[79]

(3) *Stage 3: eastern diversion*

The centrepiece for stage 3, begun in 1969, was the diversion of 22 tributaries of the Whangaehu River through the Wahianoa Aqueduct to discharge into Lake Moawhango, a reservoir created by damming the Moawhango River (see map 14.3). From there, the Moawhango–Tongariro Tunnel would carry the water 20 kilometres to the Tongariro River and the Rangipō Dam. Some Tongariro River water

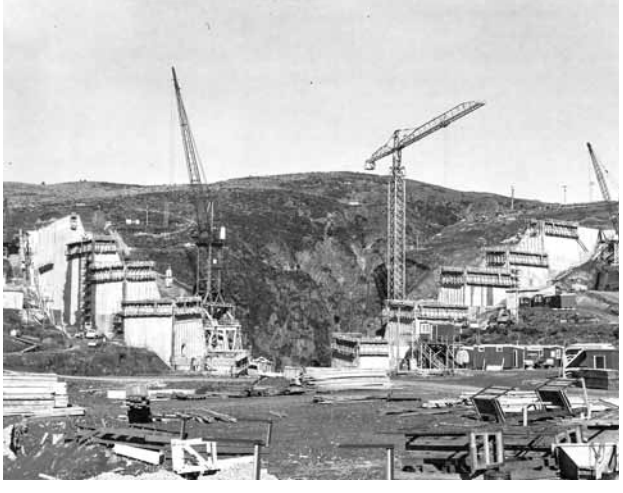
▲ The control gates of the Wairehu Canal under construction. The canal takes water from Lake Otamangakau to Lake Rotoaira.

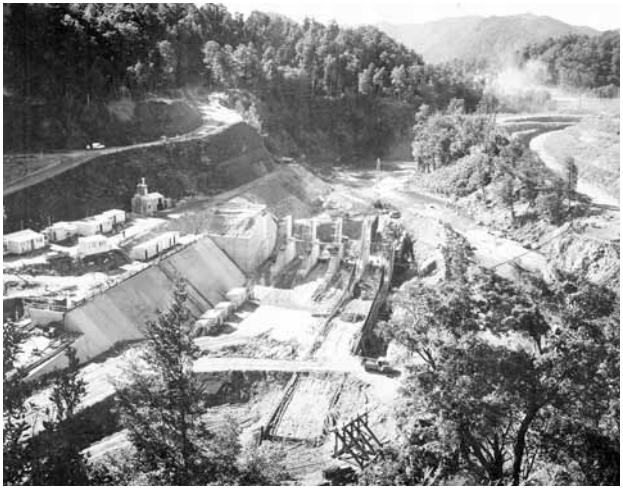
▶ The Wahianoa Aqueduct under construction, early 1974

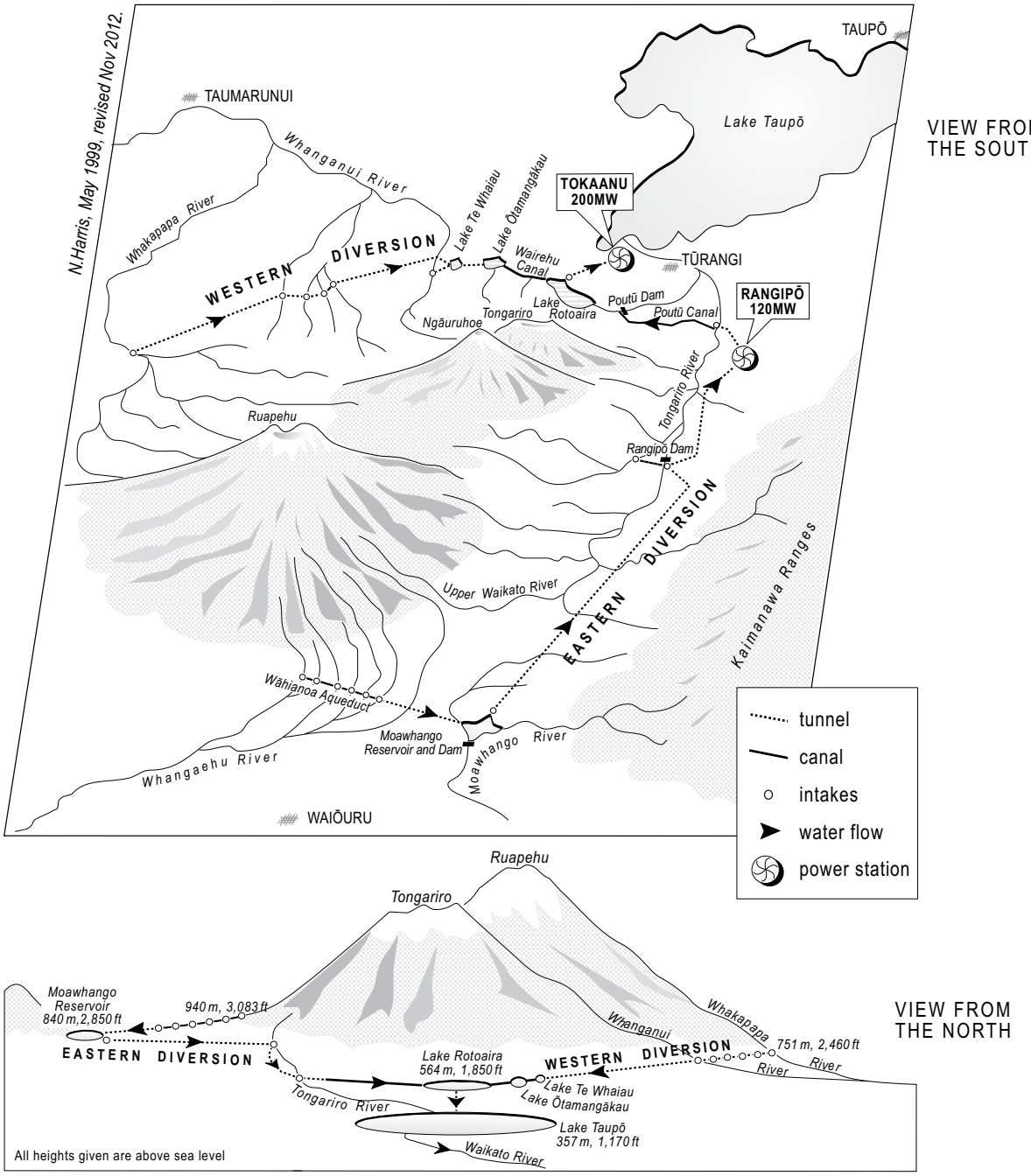
▶▶ The steep valley of the Moawhango River

▶▼ The diversion of the Tongariro River and the creation of the intake structure of the Rangipō Dam

▼ The Moawhango Dam under construction, 1974







Map 14.2: The Tongariro power development – diversions and power stations

▼ Lake Ōtamangākau and the Ōtamangākau Dam

▼▼ Lake Te Whaiau and the Te Whaiau Dam

◄ The Tokaanu Power Station

◄▼ The Wairehu Canal outfall. The outfall empties water into Lake Rotoaira, which serves as a reservoir for the Tokaanu Power Station.

The butynol lining of the Te Whaiau Canal

The Te Whaiau Stream

would be channelled onwards to Lake Rotoaira, increasing the Tokaanu Power Station's energy potential and some would remain in the Tongariro River. Both would add to the water stored in Lake Taupō and the power generated by the existing Waikato stations.

Work on the Moawhango–Tongariro Tunnel began in 1969, and in 1972 construction started on the Moawhango Dam and the Wahianoa Aqueduct. Originally, the aqueduct was to divert the Whangaehu River but the river's acidic content excluded it from the TPD.[80]

On 24 April 1975, a lahar swept down the Whangaehu River from Te Waiamoe, the crater lake, bursting the riverbanks at the entrance of the Moawhango–Tongariro Tunnel and filling it with rock, mud, and water. No workers were present. Following this incident, a permanent stopbank was built along the Whangaehu River to better protect Lake Moawhango. The eastern diversion was finally completed in 1979 when the Moawhango Dam was filled and the Moawhango–Tongariro Tunnel came into use.

(4) *Stage 4: Tongariro River and Rangipō*

The construction of stage 4 of the TPD occurred between 1974 and 1984. By the time this fourth stage had gained approval, it had faced a more rigorous environmental assessment than any previous hydro scheme. An additional two power stations had been proposed for the Tongariro River: the lower one to be sited on the river at Begg's Pool, the higher one at Rangipō. The concept of a lower station was dropped after controversy about the likely impact on the river's famous trout fishery. The two stages were merged, thereby saving the gorge known as the 'Gates of Hercules' and Begg's Pool located below it. There was now to be only one station, at Rangipō, and a dam lower down the river at Moawhango. The so-called 'one station decision' represented a major concession to the angling lobby. A large tailrace runs back from the Rangipō Power Station into the Tongariro River.

The Rangipō Power Station was commissioned in 1984, marking the completion of the TPD project.

14.7.3 Consultation, negotiation, and the Treaty: planning phase

We turn now to a consideration of the Crown's consultation and negotiations with Māori. We begin with the planning period from 1955 to 1964, noting that land takings for quarries and metal pits, for dams and canals, and for the creation of Lakes Te Whaiau and Ōtamangākau, have been considered in the public works chapter.

Faced with pressure to ensure additional national capacity for electricity generation, matters were becoming

The Rangipō Dam

urgent for the Crown by the 1950s. During 1955, the MOW discussed the hydroelectric proposals with other departments. On 14 June that year, works commissioner Fred Hanson wrote to the secretary for Māori Affairs. He indicated that the MOW was giving thought to a hydroelectric development in the Tongariro National Park and noted 'it might be necessary to store water well above normal lake [Rotoaira] level, and in that case some land adjacent to the lake would be affected'.[81]

On 13 July 1955, the Māori Affairs secretary advised the Tūwharetoa Trust Board of the Crown's interest. He noted that the proposals were speculative. However, Lake Rotoaira would play an essential part in the scheme if it went ahead, with the effect on its fishery likely to be raised in discussion.[82]

(1) *The 1955 Tūrangi meeting*

At this point came the only formal and direct contact between the Crown and Māori prior to Cabinet agreeing 'in principle' to the TPD nearly nine years later. On

11 October 1955, three MOW officials and a Māori Affairs district officer met with a gathering of Ngāti Tūwharetoa elders at Hīrangi marae in Tūrangi. Those present included P A Grace, John Atirau Asher, and Pat Hura.[83] The officials gave a briefing on the Crown's preliminary thinking on a possible power scheme based on Lake Rotoaira. The Crown has since acknowledged that there was no consultation with Whanganui Māori – this despite the fact that their diverted waterways would be an important part of any scheme.

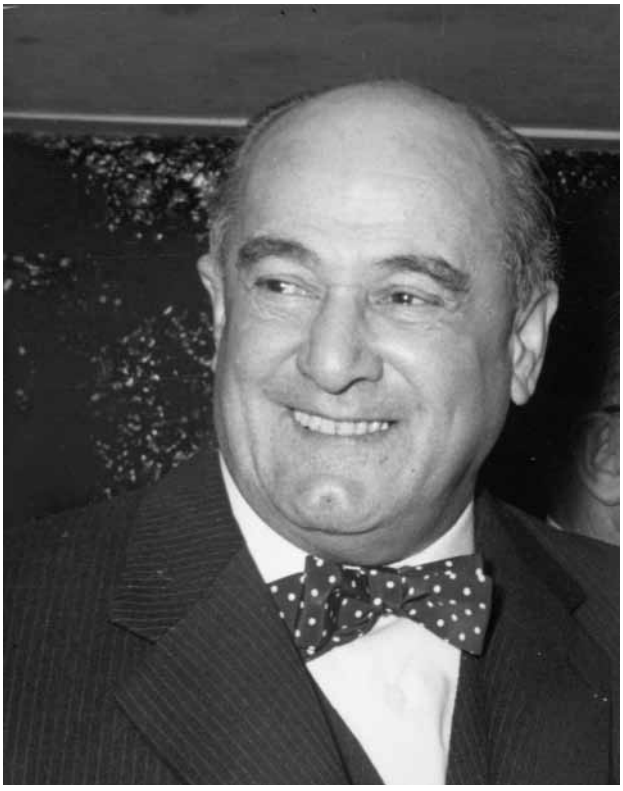
Reporting to head office, MOW engineer W M Fisher estimated the number of Māori in attendance at 60. Summarising the matters covered, he listed the growing electricity demand, the need to investigate further power sources, and the steps already taken to safeguard fishing interests. He said he had stressed 'the need for co-operation with the Māori people in all these aspects'. Fisher also noted that he had 'explained the proposals for the Tongariro', after which the meeting had gone into committee. At the end of that session, the committee had passed a resolution, which it then read out when the meeting reconvened after lunch. The resolution recorded that,

> as there are no concrete plans available at this juncture in connection with the use of the lake for hydro-electric proposals, that this matter be deferred for further consideration at some future date.[84]

At the end of his summary of the meeting, Fisher noted:

> the Maoris will be willing to come to terms over their fishing rights but are naturally watchful of their interests and will get what they can for them. Mr Asher mentioned in discussion before the meeting the Maoris desire to capitalise their fishing rights by issuing fishing licenses. The Internal Affairs Department is interested in acquiring these rights, so that fishing may not be such an obstacle to progress as we had thought.[85]

In April 1956, the Māori Land Court awarded title to the bed of the approximately 3,805-acre lake to 2,778 owners. The court appointed trustees for the Lake Rotoaira Trust on 6 December and the order was confirmed by the Minister of Māori Affairs on 1 March 1957.



John Atirau Asher. A licensed interpreter in the Native Land Court, Mr Asher took on a range of roles in Ngāti Tūwharetoa tribal affairs.

We pause at this point, for reasons that will shortly become clear, to note that at the time of the Tūrangi meeting, the Māori Land Court was still investigating the ownership of Lake Rotoaira. Rights to the lake, and compensation for the loss of indigenous fish were the subject of intense negotiation in the 1920s and 1930s. In 1937, an application was made to the Native Land Court for investigation of title to the lake bed. The Crown initially opposed the application but withdrew its opposition in September 1943. It did put on record, however, that the case should not be taken as a precedent in respect of the beds of inland waters.[86]

Pāteriki Hura of Ngāti Tūwharetoa. A former member of the board of Māori Affairs, Mr Hura was very experienced in farming and timber milling.

(2) *The Crown issues an Order in Council*

In October 1955, engineering consultants Gibbs and Partners began investigatory work. A team of 70 engineers and support personnel carried out the activity, recording river flows, determining the siting and size of proposed dams and diversions, and undertaking extensive drilling.[87] In evidence, Whakapumautanga (Darkie) Downs of Ngāti Tūwharetoa recalled how he and associate Jim Rawhiti assisted with this activity, aimed at determining the proposed scheme's feasibility in geological, biological, hydrological, and economic terms.[88] Tūwharetoa Trust Board secretary Mr Asher later indicated that whenever a team needed to enter Māori land, permission was first sought from the board through him.[89] Gibbs and Partners issued their preliminary report in August 1957.

The government, faced with power shortages in the North Island, moved quickly. On 29 October 1958, it proclaimed an OIC under section 311 of the Public Works Act 1928 that gave the Crown powers to use the waters of the Whanganui, Tokaanu, Tongariro, Rangitīkei, and Whangaehu Rivers, and all their tributary lakes, rivers, and streams to build canals, tunnels, and dams, and erect transmission lines on private as well as public land.[90]

The OIC sped up engineering investigations, and it got around the need to obtain permission from Māori. Works commissioner Hanson made this clear in a letter to Arthur Davenport, his NZED counterpart:

> We fear there will be considerable delay in the finalising of the contract for the construction of the stations if we endeavour to get the owners' consent beforehand. The owners are usually numerous and even with the best of goodwill and intention on their part, it is difficult to get consent.[91]

The Crown now had what one official described as 'a comprehensive authority empowering the Minister to raise or lower or divert the waters of the river concerned and of any tributary lake, river, or stream'.[92]

There is evidence of hapū opposition to surveying activity: engineers noted in 1958, for instance, there was 'some hostility' from 'the alleged owner' of one block.[93] Kevin Amohia Hikaia of Ngāti Hāua provided this view of the situation:

> the Crown issued an Order in Council authorising the taking of water . . . for the purposes of hydro power generation. This was imposed by the Crown without the consent of Ngati Haua (the Treaty partner). There was no consultation or discussions with Ngati Haua. The Crown even started work on Maori land before it had any authority to do so.[94]

Russell Kirkpatrick, Kataraina Belshaw, and John Campbell commented in their evidential report that the government had 'absolute authority for the scheme to proceed' and any opposition was 'doomed to fail'.[95]

The 1958 Order in Council

Authorising the Minister of Electricity to Construct and Use Works in Connection with the Utilisation of Water Power From the Wanganui, Tokaanu, Tongariro, Rangitikei, and Wangaehu Rivers for the Generation of Electrical Energy

COBHAM, Governor-General
ORDER IN COUNCIL
At the Government House at Wellington this 29th day of October 1958

Present:
HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 311 of the Public Works Act 1928, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby authorises the Minister of Electricity to erect, construct, provide, and use such works, appliances, and conveniences as may be necessary in connection with the utilisation of water power from the Wanganui, Tokaanu, Tongariro, Rangitikei, and Wangaehu Rivers, and all their tributary lakes, rivers, and streams, in the Land Districts of South Auckland, Taranaki, and Wellington, for the generation and storage of electrical energy, and with the transmission, use, supply, and sale of electrical energy when so generated; also to use electrical energy when so generated in the construction, working, or maintenance of any public work, or for the smelting, reduction, manufacture, or development of ores, metals, or other substances ; also to raise or lower the level of all or any of the said rivers and their tributary lakes; rivers, and streams, and impound or divert the waters thereof; also to construct tunnels under private land, or aqueducts and flumes over the same, erect pylons, towers or poles thereon, and carry wires over or along any such land, without being bound to acquire the same, and with right of way to and along all such works and erections; and also to supply and sell electrical energy and recover moneys due for the same.

TJ SHERRARD, Clerk of the Executive Council.
(NZED 21/7S/1)

(3) *Lake Rotoaira and the Māori Purposes Act 1959*

After the Māori Land Court had investigated title to, and ownership of, Lake Rotoaira, it vested the lake in 11 trustees, representing certain hapū of Ngāti Tūwharetoa – namely, Ngāti Parehuia-Mātangi, Ngāti Rongomai, Ngāti Waewae, Ngāti Marangataua, Ngāti Pouroro, Ngāti Pouroto, Ngāti Tūrangitukua, Ngāti Rakeipoho, and Ngāti Kuaruia-Rangipō. The intent of the vesting was to give the trustees power to manage and control the lake. They were also authorised to 'negotiate with the Crown over projected hydro-electric works affecting the lake'.[96] The precise legal meaning of that power would come to be a source of anxiety to Crown officials as issues of compensation for TPD-related damage arose.

The trustees also had powers to regulate the fishing.[97] Rangikamutua Henry Downs of Ngāti Tūwharetoa recalled in evidence how they saw their role:

> The objective of the Trust was to protect the lake. The Trust wanted to keep the Lake well stocked with trout because the

lake was known as the 'food basket' of Tuwharetoa, and it was a very important food source that helped sustain the people.[98]

In 1959, while investigatory work proceeded on the proposed TPD, the powers of the Lake Rotoaira trustees in respect of fishing for trout and other fish in Lake Rotoaira were legislated in part I of the Māori Purposes Act 1959. John Te Herekiekie Grace was working in the ministerial office of Ernest Corbett, Minister of Māori Affairs, and, as a Lake Rotoaira trustee, was in a position to broker the Māori ownership of Lake Rotoaira and the Rotoaira Trout Fishing Regulations included as part of the Māori Purposes Act 1959.[99]

During the third reading debate on the Bill in October 1959, Prime Minister Walter Nash (who was also the Minister of Māori Affairs) clearly articulated an endorsement of continuing Māori ownership of the lake.[100] Nash also repeated the general assurances contained in an influential 1958 Marine Department report, by fisheries scientist Derisley F Hobbs, that raising the lake level 'would be likely to be beneficial to the owners rather than a handicap'.[101] Nash was confident enough to support the legislation and provide an unequivocal reassurance that Māori ought to be accorded comprehensive protection under it. Significantly, considering it was 1959, Nash explained his government's endorsement in Treaty terms: 'there are clauses in the Treaty of Waitangi which reserve the lakes, among other things, for the benefit of the Maori people. We have to take some note of that Treaty.'[102]

Later in the debate, Nash spoke about compensation, stressing that Māori had a right to claim for any loss sustained:

> If any change of Government policy entails the loss of the benefits of any facility which the Maori has today, then the Maori has a right to claim compensation for whatever loss he sustains. Whether this legislation went through or not, he would have that right. That is a right that he has in potential assets and benefits that could come to him when the alterations of the type I have mentioned did not take place. If we do introduce hydro-electric work I cannot see that having any different effect.[103]

John Te Herekiekie Grace
1905–85

John Te Herekiekie Grace was the grandson of the Reverend Thomas Grace and the great-grandson of Te Herekiekie of Tokaanu, a senior chief of Ngāti Tūwharetoa. When he left Te Aute College, he studied for his Māori interpreters' licence and joined the Department of Lands and Survey as a surveyor. He transfered to Wellington as a clerk in the Native Department and a clerk interpreter for judges of the Native Land Court. He was active in the Territorials and became a squadron leader in the Royal New Zealand Air Force. Grace was private secretary to the Native Minister and Labour Prime Minister Peter Fraser in the 1940s, and became secretary to Minister of Māori Affairs Ernest Corbett after National came into power in 1949. He left the civil service in 1959 and became active in Ngāti Tūwharetoa leadership and in the National party.

John Te Herekiekie Grace was knighted in 1968 and was appointed as the first New Zealand High Commissioner to Fiji in 1970. He was active in tribal leadership, farming, and politics. He served on the Tūwharetoa Trust Board, the Lake Rotoaira Trust Board, the Historic Places Trust, and the Nature Conservation Council.[1] In 1959, he published a history of Ngāti Tūwharetoa of the Taupo district.[2]

Nash's support came despite Opposition accusations in parliament that a Labour administration was 'conniving at and condoning the selling of fishing rights by the Maori people'.[104] Nash replied: 'We are not giving the Maori any special privilege; we are giving him the same privilege as a European would have.'[105]

Nash further stressed: 'whatever rights the European people have with regard to property ought also be available to the Maori people'.[106]

(4) *Pressure to expedite a hydro scheme*

The election of a National government led by Keith Holyoake in 1960 occurred as the TPD investigation process continued. The TPD was high on its list of priorities. The ever-growing demand for electricity, coupled with a desire to secure continuing employment for the workforce from Mangakino (the permanent base for Waikato hydro schemes) increased pressure on the Crown.[107] In September 1963, the government's power planning committee (comprising the MOW, the NZED, and electrical supply authority representatives) endorsed the first three stages of the TPD.

The TPD scheme was not a major issue in the 1963 general election, held at the end of November, but John Grace made his opposition to the scheme public in his new role as the National Party candidate for the general seat of Wanganui:

> the people of this city can rest assured that I will do all I can with the authorities in Wellington to prevent the diversion of the headwaters of our river . . . it must be realised that my interest in this matter is two-fold. I am a member of the Board of Trustees of Lake Rotoaira, and was greatly responsible for having that lake made available to the general public for fishing. This scheme will ruin the fishing potential of that lake.[108]

In February 1964, officials prepared papers for Cabinet, setting out four 'reasons for urgency' in seeking approval for the scheme as a whole 'in principle'. The first noted that 'the first stage of development is planned to be in operation by April 1970 to meet the North Island demand, and work should start very soon if this date is to be met.'[109]

A construction township was said to be essential, with the most favoured site at Tūrangi West, on Māori land. Proposals were 'technically sound and economically attractive' and 'would provide the power required by the North Island system over the period 1970–1973.'[110] The documents set out five controversial aspects of the scheme, outlining a range of likely impacts on flows in the Waikato, Whanganui, Rangitīkei, Whangaehu, and Tongariro Rivers. They canvassed the likely effect of a reduction in Whanganui River water flows, with associated effects on Whanganui Harbour, on the Taumarunui water supply, and on the Piriaka Power Station. The effect on fishing of reduced flows in the Tongariro and likely problems with Lake Rotoaira were also addressed, including a statement that raising the lake level by 'a normal range of two feet' was not expected to affect any of the fish feeding grounds'.[111] The document continued: 'If any case for compensation arises, equitable arrangements will be made with the owners affected'.[112] An accompanying press statement was headed 'Tongariro Electricity Development Should Not Harm Fishing'.[113] Significantly, in the context of our present inquiry, the briefing papers stressed the need for time to carry out proper consultation:

> this scheme is unusual in that so many more parties are involved than in previous power schemes. Ample time is required to make contact, conduct preliminary negotiations and establish goodwill with these parties. A detailed Submission to Cabinet cannot be prepared until such negotiations have been made.[114]

On 24 March 1964, Cabinet approved the TPD 'in principle'. The decision appears to have come as a surprise to Māori. John Asher in Tokaanu, for example, learned of it from his morning newspaper. He immediately wrote to Thomas Shand to express his 'considerable interest' that the TPD 'has been approved in general principle, subject of course to preserving the interests of parties who could be adversely affected by the scheme'.[115] Mr Asher recalled that at what he termed the 'inception meeting' between 'the Tūwharetoa people' and the MOW, on 11 October 1955, he had been appointed 'Chairman and liaison representative

'You can't foist that sort of thing on the public!' This cartoon appeared in the *Evening Post* following a passionate article by artist Peter McIntyre railing against the destruction of natural scenic beauty caused by the Tongariro power development.

relating to this project'. We have no evidence about what Mr Asher's role as 'liaison representative' involved, but he assured Shand of the continued support of Ngāti Tūwharetoa and extended an invitation to visit 'so there cannot be any possible misunderstanding that our people most substantially support this project'.[116]

The Taumarunui Borough Council, however, articulated considerable concern about proposed river diversions for the TPD, including a reduced flow at Whanganui Harbour, and urged Prime Minister Keith Holyoake to stop them.[117] On 21 May 1964, Crown officials travelled to Taumarunui to assure locals that the Crown would pay 'fair and reasonable compensation for damage' to local amenities.[118] Despite the assurances, there remained 'a solid block of protest' at Taumarunui.[119] On 24 June 1964, Peter McIntyre, the war artist and angler, attacked the proposals in a newspaper article: 'the Philistine with his bulldozer is on the rampage'.[120] Government departments

and the MOW in particular suddenly saw themselves up against a vocal and orchestrated opposition which threatened to turn public opinion against the TPD.

On 10 July 1964, Shand called for 'urgent action . . . to avert an emergency in the Government's power construction programme'.[121] He warned that a decision 'must now be reached much earlier than had been anticipated'. NZED general manager S W Blakely added that 'it was vital to start the Tongariro scheme now'.[122] On 30 July 1964, Shand led a high-powered delegation, including three Ministers, to Taumarunui to address concerns. A public meeting attracted 550 people. Shand promised townspeople full compensation for all loss and costs incurred as a result of impacts from reduced flows in the Whanganui.[123] He turned down a council request for annual compensation but agreed to consider the idea of a royal commission to determine the compensation. The resulting set of promises and statements became known as the 'Shand agreement'.[124]

In 1968, senior members of Whanganui iwi attended a meeting arranged by the Taumarunui Borough Council to advise the public of the diversion of the headwaters of the Whanganui River. The strong reaction of Whanganui peoples to proposed diversions by the Crown of their waterways were evident when Hikaia Amohia stood and spoke:

> He raised the issue of Maori ownership of the Whanganui River and asked why they were taking water out of the river without the approval of Whanganui iwi. He was asked by the chairman of the meeting, who was the mayor, to sit down because he was out of order. He continued to explain the river claim by the Whanganui iwi, and the legal processes that had been undertaken by iwi up to that date, and their concern over the river diversion as a result of the power project. The chairman insisted that he sit down, and after he had finished his delivery, he did.[125]

It is not clear how much contact (if any) there had been between Māori and the Crown on the subject of the TPD in the approximately nine years from 1955 to 1964, but we have no evidence of any formal consultation. The Tūrangi meeting of 1955 was not reconvened as planning unfolded. The Crown conceded that: 'the evidence discloses no substantial contact with Ngāti Tūwharetoa following the initial meeting of 1955 until 1964'.[126]

(5) *Public consultation in 1964*

As far as the Crown was concerned, it seems the 'parties' to be formally consulted during 1964 were local authorities, anglers, business and service groups, but not the Treaty partner. The *Taranaki Daily News*, for example, noted on 24 March 1964 that for the TPD, 'final approval rested upon Government efforts to arrange for the protection of the interests of Taumarunui Borough Council and other groups affected by the development'.[127]

That said, four important meetings did take place between the Crown and representatives of the Ngāti Tūwharetoa hapū Ngāti Tūrangitukia. Claimants have questioned the status and timing of these hui in Treaty terms, noting that the Crown had committed 'in principle' three weeks before the first meeting.[128] Merle Maata Ormsby of Ngāti Hikairo recalled in evidence the atmosphere surrounding the meetings:

> This was a turbulent and unsettling time for us. Everything happened quite quickly. One minute we were being told and the next minute, while the meetings and discussions between our people were still taking place, developments had begun. While we were consulted with, it seemed just cursory. It was hard for people to understand what was really going on.[129]

(6) *Four Tokaanu meetings in 1964*

The first meeting occurred on 15 April 1964, in the offices of the Tūwharetoa Trust Board. Leading the discussions and briefings was MOW employee and TPD project engineer A W Gibson, then based at the Mangakino office. Stephen Asher of Ngāti Tūwharetoa recalled to us in evidence the Māori view of a government department like the MOW during the era in question:

> The Ministry of Works was a huge, very powerful and all pervading Crown agency. It very much acted like it had the authority to do whatever it liked, and if anybody got in the way they were literally shunted aside.[130]

MOW documents prepared in advance of the 15 April 1964 meeting confirm that the Crown's main agenda was securing land for a TPD township at Tūrangi: 'The meeting . . . is exploratory at this stage to see if the tribe are amenable to construction of a town on their lands at Turangi on reasonable terms.'[131] John Asher and George Asher were both present at this first meeting. Minutes record that one of them reiterated the wish of the Ngāti Tūwharetoa people to cooperate.[132] The focus was on a 'general policy in relation to township development' with a decision on the site still to be resolved.[133] Four locations were under consideration. The minutes ended with a note recording that 'Mr Asher agreed to call a meeting of owners in about one month' when he was confident of a 'satisfactory conclusion.'[134]

A second meeting took place at Tokaanu on 7 May 1964. Officials of the MOW, Department of Internal Affairs, NZED, and members of Taupō County Council attended. Its purpose appears to have been to update Māori on work in connection with the township, not the wider TPD scheme.[135]

On 24 May 1964 came a third meeting, the first to include detailed information on the hydro scheme itself. The minutes record that a 'large representation of Maori Land Owners' and their legal representatives were present.[136] Also on hand were paramount chief Hepi Te Heuheu, Pat Hura, and Arthur Grace senior, with John Asher in the chair. The trust board's solicitors were present. Using a map, project engineer Gibson explained the various stages of the scheme, including 'the effect it would have on the Tuwharetoa land and rivers in the area.'[137] Stressing the employment opportunities for Māori, Gibson added that it was the department's intention:

> *to carry out proper negotiations* with the people affected so that they fully knew the case and so that the feeling of the Maori Owners can be reported back to Government. [Emphasis added.][138]

Mr Asher again 'pledged the Maori owners wish to cooperate.'[139] However, we note that although a motion was passed approving the establishment of the township, no resolution relating to the wider scheme was either proposed or passed.[140] This third meeting appears, rather, to have been a general briefing, with Māori raising a number of questions.[141]

Merle Maata Ormsby of Ngāti Hikairo recalled in evidence how Māori continued to meet among themselves as the various Crown briefings occurred:

> Our elders held many meetings . . . at Hirangi marae, to discuss the scheme and the concerns felt by the community. They did this in their spare time every Sunday after church.[142]

Despite the goodwill expressed in Mr Asher's remarks of May 24, Ngāti Tūwharetoa were concerned at the continuing absence of a formal Crown plan. Māori had no detail about the process of taking the land required, or the mechanics of compensation.[143] On 14 August 1964, Arthur Grace senior therefore pressed for an additional meeting. With the final Cabinet decision on the TPD looming, the Crown interpreted the Māori request as vexatious and Works Minister Percy Allen summarily threatened to find another location for the township.[144] Grace replied that Māori had no plans to veto the scheme, but commented pointedly that 'if the actual siting and location [of the township] is now finalised we the owners should be taken more into your department's confidence by disclosing same.'[145] Allen assured Grace that officials would produce the requested plans, and the fourth meeting duly took place in Tokaanu on Sunday 20 September 1964, later adjourning to Hīrangi marae.[146]

In attendance were Ngāti Tūwharetoa elders and legal counsel, a large representation of landowners, MOW engineers (including Warren Gibson and John Bennion), and representatives of Māori Affairs and the Taupō County Council. Gibson said the meeting was called 'for the purpose of advising progress on the Tongariro Hydro Scheme and particularly concerning the planning of the Turangi township.'[147]

The minutes reveal that discussion largely focused on the township, with Gibson confirming it would be on the Tūrangi site. There was some explanation of matters relating to the wider TPD, including, as we discussed in our

public works chapter, quarrying activity at Ōtūkou. At one point, Gibson assured those present that there would be 'more benefit than interference'.[148] We also note the presence and active advocacy of John Te Herekiekie Grace, who does not appear to have attended the previous three Tokaanu meetings. At this fourth meeting, Grace made explicit reference to his membership of the advisory Nature Conservation Council and to that council's role in the Cabinet decision, stating:

> he read in the papers last week that the whole [TPD] project was almost in jeopardy. Recommendations to the Government [by the council] saved the situation. He wanted to let the people know his part in it.[149]

Speaking in his capacity as a council member, Grace said that the council was 'quite happy if during the construction period conservation plans are in line with what is being done in the [Australian] Snowy Mountains region'.[150]

(7) *Cabinet signs off on the scheme*

On Monday 21 September 1964, the very next day after the Tokaanu meeting and six days after the Nature Conservation Council's approval, Cabinet agreed to the construction of Tūrangi township and the start of TPD activity.

Around the same time, a heading in the *Evening Post* trumpeted 'Maoris Approve Power Scheme'. Closer study of the article itself, however, revealed that Māori approval was restricted to the siting and the plan of the hydro township at Tūrangi.[151]

(8) *Treaty-compliance of Crown actions*

We have noted the Crown's acknowledgement that it failed to consult with Whanganui iwi during the planning and establishment phase of the TPD. This, the Crown has conceded, 'was inconsistent with [its] duty to act in good faith and was a breach of the Treaty of Waitangi and its principles'.[152]

Our focus thus turns to the Crown's dealings with Ngāti Tūwharetoa and its hapū and the trustees of Lake Rotoaira.

The Crown first met with around 60 Ngāti Tūwharetoa leaders and some landowners at the 11 October 1955 meeting. The Crown gave them a provisional overview of its intentions, responded to questions, and met with 'a degree of cautious engagement with the Scheme at the pre-establishment stage'.[153] NZED general manager Arthur Davenport later confirmed this:

> The discussion was informal and there was no question of negotiation on either side. The purpose of the meeting was to obtain the consent and goodwill of Maori landowners before going ahead with investigational surveys. Negotiations over fishing rights or any other interest would be premature at this stage.[154]

There was, in the words of Crown witness Marian Horan 'an overall policy to seek Ngati Tuwharetoa consent and cooperation'.[155] But the Tūrangi meeting was not followed up with more specific consultations as the Crown's plans to proceed with stages 1, 2, and 3 took shape.

In other words, the October 1955 meeting at Tūrangi was a beginning but it cannot be seen as consultation with the hapū of Ngāti Tūwharetoa or the owners of Lake Rotoaira. Had this meeting been part of a series of consultative meetings as the scheme evolved, we might have been of a different opinion but, as it is, we cannot accept that there had been proper Treaty-based consultation between Māori and the Crown in respect of the implementation of the TPD.

The OIC, proclaimed three years later in October 1958, gave the Crown wide powers and bypassed important provisions in the public works legislation which provided protection for citizens and for Māori. Despite the importance of the OIC and the policies of consent and co-operation, we can find no record of consultation or information sharing about the OIC prior to its proclamation. The Tūrangi meeting could have been reconvened but was not. The Lake Rotoaira trustees could have been consulted, but they were not.

The issuing of the OIC was done without consultation or consideration to the adherence of the Crown's Treaty obligations. It was as if the Treaty did not exist. The policies of

consent and cooperation from the Crown's side were either ignored or set aside. The Crown exercised its kāwanatanga rights without regard for Māori rangatiratanga: the project was in the national interest, the lands and waters it would need were important for Māori but there was no attempt at consultation. In the absence of the information base which could have been provided by good consultation and the sharing of construction intentions for phases 1, 2 and 3, the Crown was unable to achieve a reasonable balance between the exercise of kāwanatanga and the recognition and protection of rangatiratanga.

The Crown continued with detailed preparation for the TPD during the period from 1955 to 1964. The Crown concedes that: 'the evidence discloses no substantial contact with Ngati Tuwharetoa following the initial meeting of 1955 until 1964'.[156] What began well, was not followed up. We find this failure to consult a breach of the principle of partnership and good faith.

We received detailed submissions, from claimants and from the Crown, about the four meetings in 1964. Were they in accord with the intentions evidenced at the 1955 meeting in Tūrangi? Did they fulfil the Crown's Treaty duty to consult with Māori about the implementation of the TPD? We think not. Rather than full consultation about the TPD scheme, we consider that the Crown's overriding concern in all four meetings was finalising a site for the hydro township at Tūrangi, and acquiring Māori land for that purpose.[157] Detailed minutes of the meetings, prepared by MOW officials, confirm that matters relating to the township dominated discussions. Even in this respect, the Tūrangi Township Tribunal's view was that the meetings did not constitute full consultation with Māori and that Māori landowners of the area were prejudiced as a result.[158] The TPD as a whole did not receive detailed consideration at any of the meetings.

We further note that it was only the intervention of Arthur Grace that ensured the fourth and final meeting took place at all.[159] That meeting occurred 24 hours before Cabinet was due to approve the TPD.[160] We acknowledge the presence of representatives of Ngāti Tūwharetoa leaders. We also note John Asher's prior written assurance 'that our people most substantially support this project'.[161] Remarks made by John Te Herekiekie Grace, with his knowledge of, and comfort with, the scheme are also likely to have been influential. Based on such expressions of support, the Crown appears to have believed that Māori fully endorsed the proposed TPD scheme. From the Crown's perspective, there was no further duty to consult with Māori because it had power under legislation to act and because it appeared to Crown representatives that Ngāti Tūwharetoa supported the scheme.

We are, however, sceptical about the efficacy of the consultation. Given the lack of detail provided by the Crown about the wider TPD scheme, we cannot consider the series of meetings as adequate consultation 'with affected people' in Treaty terms. In particular, those Māori most directly affected, the local hapū and the Lake Rotoaira trustees, were not given the opportunity to consider the likely impacts, talk through, negotiate modifications, and give or refuse informed consent to the larger TPD. We recall, in particular, the situation of the Ōtūkou residents, discussed in chapter 10. Rather, members of the Ngāti Tūwharetoa leadership were briefed on an already-established plan. The only evidence of a willingness to modify that plan, on the Crown's part, was a threat to take the township elsewhere if Ngāti Tūwharetoa's leadership did not cooperate.

We again note the 1992 Court of Appeal decision regarding Wellington Airport which now sets the benchmark for consultation:

> Consultation must allow sufficient time, and a genuine effort must be made. . . . Implicit in the concept is a requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses. It is also implicit that the party obliged to consult, while quite entitled to have a working plan already in mind, must keep its mind open and be ready to change and even start afresh.[162]

Whilst we appreciate that this decision came in 1992, we consider the principles set out in it should not have been foreign to the Crown in 1955. The decision, after all, only made explicit what should already have been obvious to

anyone engaged in a situation requiring consultation. The Crown's terms, however, amounted to a simple proposition: the government would use Lake Rotoaira for its power scheme. It gave assurances to Māori that they would suffer no loss, and it assumed that Māori would cooperate.

In our view the Crown failed to meet commitments to Māori to disclose full information. We find, in company with the *Tūrangi Township Report*, that the claimants were prejudicially affected by the failure of the Crown to keep them properly informed. The Crown failed to consult fully and effectively. The Crown did not act reasonably towards its Treaty partner. We find that the Crown has failed to uphold the principle of partnership and to honour its duty of good faith.

14.7.4 The Crown's understanding of the TPD's impact

We now turn to consider what the Crown's understanding was of the TPD's impact prior to construction beginning, including its impact on Lake Rotoaira, how those understandings evolved over time, what assurances the Crown gave, and how Māori responded. We address the things that the Crown knew about the likely impacts of the TPD, the manner in which those insights were shared or withheld, and the way in which Māori – and Ngāti Tūwharetoa in particular – responded to the assurances given by the Crown.

(1) *Information available at the TPD's inception*

As we have seen, Crown officials met with Māori at Tūrangi on 11 October 1955 for preliminary discussions about an as-yet-tentative hydro scheme. Among other things, officials suggested Rotoaira as a possible storage lake for waters diverted by the scheme, an exercise that might involve raising the lake by as much as 20 feet. At the time of that meeting, the Crown knew that if Rotoaira were 'allowed to rise and fall over a wide range, fishing would be adversely affected'.[163] From the evidence available, officials did not share that information with Māori.

The Crown, however, was more concerned about the scheme's potential effect on the Tongariro River, a possible Achilles heel in terms of public opinion.[164] The issue of trout fishing was a Crown priority and a small committee, comprising representatives from Māori Affairs, the MOW, and the Marine Department, was set up to advise on the impact of any hydro scheme. One of the Marine Department representatives was Derisley Hobbs, an expert on freshwater fisheries. NZED general manager Arthur Davenport also sought the assistance of the Internal Affairs Department:

> as fishing is so important in our national life, we would welcome the co-operation and assistance of your officers in planning hydro development to affect it as little as possible.[165]

The committee discussed fishing interests relating to the Tongariro River. Among their recommendations were: maintaining enough water to permit spawning, avoiding rapid flow fluctuations, removing sediment, and preserving fish feeding grounds. Minutes show an awareness of the likely impacts:

> the beheading of the Tongariro and Poutu will reduce the minimum flow during droughts below the natural minimum of 200 cusecs at Turangi, unless provision is made for compensation water during such times.[166]

The Marine Department initially advised against the inclusion of the Tongariro River, arguing that proposed water diversions would adversely affect the fishery:

> In view of the interest shown by anglers the world over in this river [Tongariro] and because your preliminary plans will isolate the best spawning tributary, every endeavour should be made to avoid using these waters for hydro-electric purposes. This is probably the only river in New Zealand where angling interests should be considered paramount.[167]

On 1 October 1958, the Marine Department reversed its position, acting on new advice from Derisley Hobbs. He presented an influential report which concluded that a scheme would not harm the regional fishery and might improve it by creating new lakes.[168] Hobbs pronounced no conflict between fishery and hydro interests:

Fishing in the Tongariro River. Controversy about the likely detrimental effects on the Tongariro's famous trout fishery prevented the construction of a second power station on the river.

> If the hydro-electric authority shows a sympathetic appreciation of fishery needs, there is no reason why, without undue expense or serious hurt to the hydro-electric undertaking, the scheme of works should not be so developed as to prove beneficial on balance to freshwater fisheries.[169]

Hobbs, however, struck a cautionary note about the Rotoaira fishery:

> the probability is that the introduction of the Wanganui water system might increase the available spawning ground in the Wairehu Stream and possibly bring about some maladjustment of numbers of fish relative to food supply.[170]

Despite these caveats, the 'beneficial on balance' comment would be subsequently applied to the general impact of the scheme on the regional fishing grounds, including Rotoaira.

Officials forwarded the Hobbs report to Ministers, stating that

> Fishing is by far the most controversial aspect of the Tongariro Scheme. It is probably the only one that could hold up the scheme through pressure of outside interests.[171]

With concerns about trout fishing allayed by the report, the OIC was duly proclaimed on 29 October 1958.

(2) *Warnings over possible compensation claims*

It seems, however, that the officials were in possession of advice that was less reassuring about the likely impact of a hydro scheme on the Rotoaira fishery.[172] When legislation was drafted in 1959 to (among other things) enshrine Māori ownership of the lake and its fishery, Arthur Davenport warned that the result would be Māori demands for compensation because there was 'every

prospect that fishing will be disturbed by hydro-electric works'.[173] He followed up that warning with a briefing note to the Works and Electricity Minister, Hugh Watt, elaborating on his concerns and pointing out the Crown's likely liability:

> The point at issue is the amount of compensation that may become payable to the Maoris or their trustees through interference with their fishing rights . . . as there will be a dam on the river, a great deal more water will be diverted into the lake and will be taken out of it than under natural conditions, and there will be greater fluctuations in the lake level. For this interference, the Department will expect to pay a certain amount of compensation.[174]

It is not clear if Watt forwarded the NZED briefing note to the Prime Minister. When the Bill was debated in the House, Nash repeated Hobbs's assurances that raising the lake level 'would be likely to be beneficial to the owners rather than a handicap', and the legislation was passed.[175] The substantive issues contained in the briefing were not addressed: the 1958 assurances from Hobbs had, by 1964, become the accepted Crown view.

(3) *The Crown moves to allay wider fears*

As the Crown moved closer to approving the scheme, it became controversial on environmental grounds. In October 1963, the Ministers of Marine and Internal Affairs issued a joint press release to allay fears in the community at large, particularly among recreational fishers. Noting the investigations into fishing on the Tongariro River, they suggested that fishing resources 'would in most cases be improved'.[176] In November 1963, Gibson and fellow officials gave careful thought to how best to name the scheme:

> the title given is 'Tongariro River Power Development' but this is considered unsuitable because (1) It could have repercussions with a suggestion that tourism and fishing is being interfered with . . .[177]

On 24 March 1964, the *Dominion* carried an announcement by the Minister of Electricity regarding fishing:

> The proposal allows for a continued flow in the Tongariro River which expert advisers assure us will be adequate to maintain the present excellent fishing, and the level of Lake Rotoaira will not be substantially affected.[178]

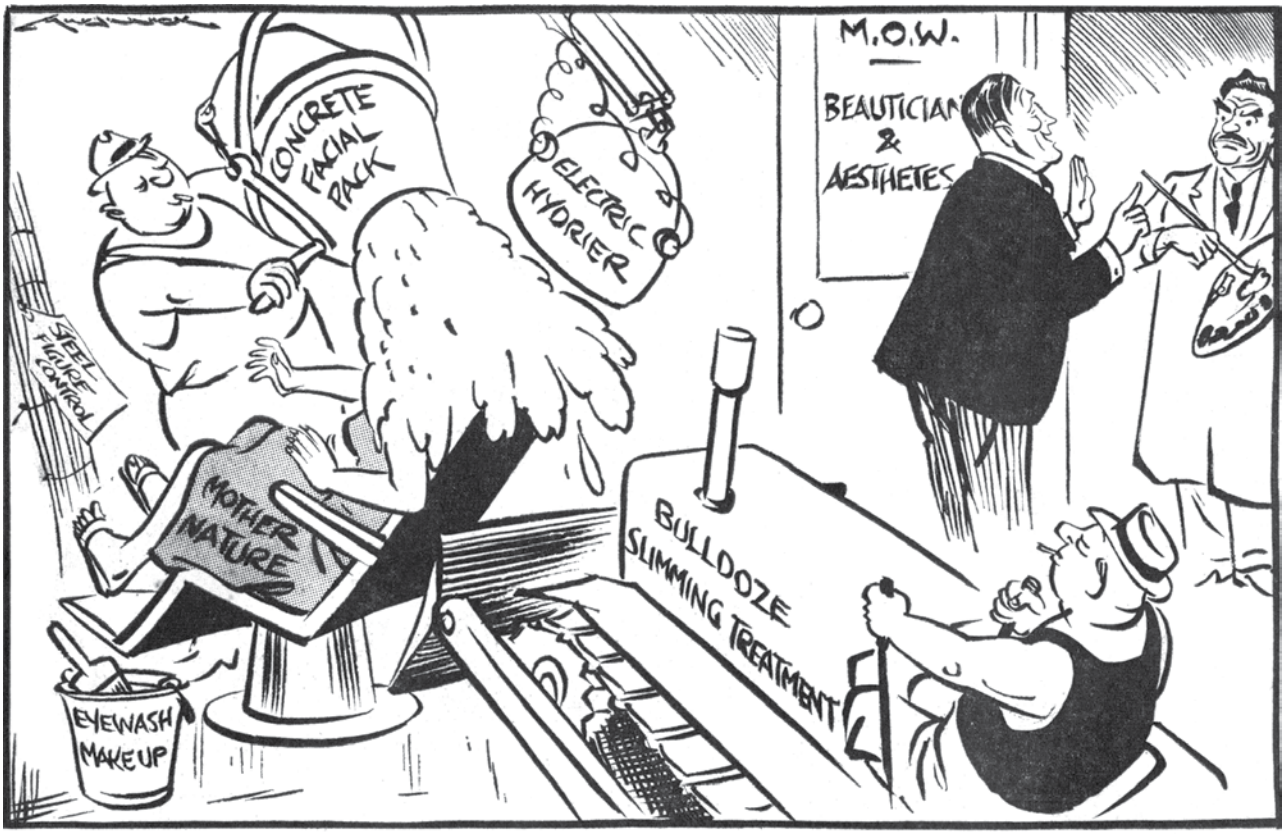
The issue of impacts became politicised from this time onwards: a full-time public relations officer was appointed to undertake this work on behalf of the MOW and a Public Relations Committee was formed 'to initiate . . . [public relations] policy and to formulate a programme for the department'.[179] Pamphlets, ministerial speeches, press statements, and other public information now placed strong emphasis on accentuating the positive aspects of the TPD.[180] By 1966, one official noted 'the original hostility to the scheme has now largely been replaced by interest and even approval'.[181] John Manunui of Ngāti Manunui recalls the effect of these assurances:

> Prior to actually seeing the effects of the TPDS, we believed the information that the Crown was providing in pamphlets and press releases that once the Scheme was constructed that there would be no detrimental effects on the environment.[182]

(4) *The TPD scheme becomes controversial*

During 1964, the proposed TPD fuelled a national debate about the environmental impacts of large-scale hydro schemes. The impacts of diversions on recreational uses remained sensitive, especially among the influential angling lobby. From this point onwards, departments, and the MOW in particular, perceived themselves as locked in a conflict with a populist movement that threatened to turn public opinion against its proposals. Peter McIntyre's 'Hands Off Tongariro and its Surroundings' group exemplified the media-savvy pressure groups of the 1960s, which used the typewritten press release, the handbill, and the telephone to cultivate journalists and mobilise mass support.

Many Māori were aware of the dimensions of the debate, even if the Crown did not directly inform them. Mr McIntyre, who owned a bach on the Whanganui, met with locals, including a number of Māori, to warn of the likely impact on local rivers. Mr Manunui recalls:



'Wait, Mr McIntyre – when we've finished you won't know her!' This cartoon on scenic restoration following construction appeared in the *New Zealand Herald* and was another response to artist Peter McIntyre's article about the construction of the Tongariro power development.

Despite what Peter McIntyre told us people were focussed on the employment that the Scheme would bring. People needed to earn a living and the TPDS provided a large number of jobs for the local community.[183]

Lois Tutemahurangi of Ngāti Manunui recalled in evidence that economic necessity forced her father and uncles to take MOW jobs despite their underlying scepticism about likely TPD effects on local waterways:

> Their word for what would happen to those taonga was 'wrecked' . . . [but] they had to feed their families after the timber mills closed down. So whatever their personal feelings about the Power Scheme they had little choice but to work for the organisation that was carrying it out.[184]

Officials and Ministers continued to provide reassurances. Thomas Shand, for example, claimed that the TPD would not involve any substantial destruction of the region's native bush and scenery and that it would improve recreational facilities rather than damage them.[185] Project engineer Gibson stated that more than £360,000 had been

spent on landscaping, sowing, planting, and tidying up recently completed hydro sites on the Waikato River.[186]

On 3 August 1964, officials met with acclimatisation societies, and the Rotoaira and Tūwharetoa Trust Boards' solicitor R E Tripe. The series of commitments made that day included:

- holding to the principle of providing artificial freshes in the Tongariro River to give the best possible fishing conditions;
- excluding the sulphurous waters of the Whangaehu from the scheme; and
- providing an undertaking that, during dry spells, the Whanganui and Whakapapa Rivers would not be allowed to drop below a certain level so as not to endanger fish.[187]

An undertaking was also given that the proposed TPD would be designed and operated to ensure Lake Rotoaira would be substantially unaffected.[188]

The Electrical Supply Authorities' Association journal, though, still criticised the Crown's reluctance to inform the public about what was planned for the scheme: '[they] are either ill equipped to do a good public relations job or they do not want the public to know what they have up their sleeves'.[189]

Cabinet delayed its final decision until the Nature Conservation Council reported. As we saw earlier, the membership of that body, which had been set up in 1962, included John Te Herekiekie Grace. On 15 September 1964, the council endorsed the scheme, its chief focus being the safeguarding of the Tongariro River fishery:

> That the need for additional power by 1972 having been weighed against conservation factors, this council offers no objection to the Government's proceeding with the scheme provided every effort is made to preserve the recreational value of the Tongariro River . . .[190]

Cabinet approved the TPD six days later, and the MOW reiterated that the scheme 'would favour rather than hinder the natural environment'.[191]

Some newspapers, however, were still sceptical about the amount of information provided. The *Evening Post* commented that protesters had not been given 'anything like a fair idea, until it was prised out of the Government, as to what the scheme would entail'.[192]

In the case of Lake Rotoaira, Māori, faced with a paucity of information from the Crown, found it necessary to commission their own research, as we shall discuss below.

(5) *Crown assurances to Māori*

The Crown gave assurances about employment benefits, about water quality in the Tongariro River and, most importantly, about lake levels at Rotoaira.

During the 1964 meetings at Tokaanu, officials stressed the TPD's positive aspects in terms of jobs and local economic development, stating there 'should be large employment opportunity for local residents'.[193] In an area where there was little other employment for Māori, this was an important consideration. Patrick Piripi (Phillips) of Ngāti Hikairo, for example, said in evidence: 'In those days we just needed a job to work and get paid.'[194]

Asked on 24 May 1964 about potential impacts on the Tongariro River, Gibson told Māori that, with a reduction in Tongariro River flows, 'it was considered that, fishing should improve after this [TPD] work by a steadying of the flow of the river'.[195]

This contrasted with Crown information being passed informally to Māori. In evidence, Arthur Grace of Ngāti Tūwharetoa recalled remarks by official Pat Burstall:

> I remember that back in the 1960s, Mr Burstall went overseas accompanied by a scientist, and they researched the impact of hydropower schemes on fisheries. Their conclusion was that a power scheme like this would ruin the waterways, and they were very concerned about the fishery. They knew that they had to prove that the mighty Tongariro was going to be stuffed up, so that they could get something done about it. So they gathered the evidence together and then they asked the Ministry of Works to put in place measures to address some of the problems . . . The Crown knew that the river would become choked due to the reduced flow, and yet it has never done a thing about it.[196]

The use of Lake Rotoaira as a large hydro reservoir

was a key component of the TPD. In February 1964, with plans for the first three stages complete, preparations were made for Cabinet approval. Briefing documents included specific assurances over likely rises in the level of Lake Rotoaira. Such official assurances were seen as highly significant, especially to Māori, because of their direct relationship with the health of the lake fishery, and associated compensation should it be harmed. Anticipated lake raising for the proposed scheme, the briefing documents said, would be within 'a normal range of two feet' and this was not expected to affect any of the fish feeding grounds.[197]

Speaking to Māori at Tokaanu on 24 May 1964, Gibson painted a rosier picture, adjusting the February estimates of lake level changes downwards and referring, in addition, to compensation for any effects on the fishery:

> Lake Rotoaira could rise as much as 2 ft in periods of low power consumption but the normal rise would be no more than 2 or 3 inches . . . fishing would not be interfered with but where this was not possible, it was intended that full compensation would be made.[198]

Other variations in the Crown's assurances followed. On 30 July 1964, the government released a second Marine Department report on the scheme. The 400-page document, prepared by department biologist CS Woods, proved influential on Shand's further assurance of 13 August 1964 to Ngāti Tūwharetoa's solicitor that the proposed TPD would be designed to ensure that 'Lake Rotoaira would be substantially unaffected'.[199]

By the time Gibson met with Māori on 20 September 1964, he was talking of a hydro scheme that involved 'no permanent rise whatever' in the level of Lake Rotoaira:

> Plans calling for the damming of the outlet envisage Roto Aira *being kept at the same level*. It is anticipated that there could be *a maximum fluctuation in the level of the lake of 2 feet*. [Emphasis added.][200]

On 21 September 1964, Shand's name appeared on the Cabinet document seeking final approval for the scheme. He stated of the Rotoaira and Tūwharetoa Trust Board:

> These Boards are prepared to rely on assurances already given on behalf of Government that *full and adequate compensation will be paid for any damage suffered*. [Emphasis added.][201]

We have considered up to this point what the Crown told Māori about the scheme prior to its establishment. We now examine how Māori, Ngāti Tūwharetoa in particular, responded to Crown assurances. An example, considered at the end of this section, is the Māori response to Crown intimations of potential fishing rights in the new TPD lakes.

(6) *Māori 'not obstructive'*

Cabinet papers for final approval of the scheme confirm that Tripe, as legal representative for the Rotoaira and Tūwharetoa Trust Boards, accepted the Crown's admission of 24 May 1964 that the full effects of the scheme would not be known for at least a year.[202] The papers recorded:

> the attitude already adopted by both Boards at a recent meeting that it is no part of their function to be obstructive to Government, particularly on the information at present available. They take the attitude that it is difficult for anyone to forecast the precise effect of the scheme upon the fishing in the district and that the matter will be one which can only be judged by results in due course.[203]

The 21 September 1964 Cabinet paper approving the TPD noted that the two boards would be relying on

> assurances which have already been given on behalf of Government that full and adequate compensation will be paid for any damage which it may be found they will have suffered.[204]

During 1964, Māori appeared to show an unqualified willingness to accept Crown assurances. On 22 September of that year, the *Evening Post* quoted a set of remarks made by Shand:

> One pleasing feature of the negotiations . . . has been the friendly cooperation of the Maori . . . it is true to say they

> stand to gain very substantially but it has not always been the case, as it has on this occasion, that people who stand to gain are so cooperative and helpful in the planning and negotiation of a project.[205]

(7) *Māori respond to lake and river pollution*

By 1966, as construction and roading activity continued to transform the landscape of the volcanic plateau, Māori began to worry about the implications for Rotoaira, its tributaries, and the fishery. This was confirmed in the press. On 23 June 1966, the *Evening Post* stated that

> the spawning streams of the world famous fishery, Lake Rotoaira, have been destroyed despite repeated promises by the Government to protect fishing in the Tongariro power development area.[206]

The *Taranaki Daily News* recorded, similarly, that the dumping of pumice had ruined the Wairehu and Otara Streams.[207]

During the second half of 1965, the Crown revised its official assurances from 1964 that Rotoaira would be 'substantially unaffected'. The Rotoaira trustees had plans for a holiday and tourist complex beside the lake and Tripe, as their solicitor, wrote seeking information on the maximum level to which the lake would be raised. In coming years, Shand's reply would often be quoted in official correspondence, highlighting its sensitivity:

> the present average level of Lake Rotoaira . . . is about 1850.35 feet. Under hydro-electric operation the top water level under normal operating conditions will be 1852.5 feet and the lowest drawdown level will be 1850.5 feet. In a 500 year flood under the most pessimistic operating conditions it is estimated that the flood level could rise to 1854.5 feet and this would be for only a very short period.[208]

The disclosure of this additional information is significant. We contrast it with the 1964 assurances. In a fundamental change in the scheme, the Crown now admitted that the lake would be raised by 2.15 feet during normal operations, and even more during floods.

As the environmental impacts of construction became apparent, officials appear to have become defensive, as they realised the extent of potential Crown liability. The potential costs of compensating Māori became an urgent consideration.

Lacking hard information, and increasingly sceptical about recent assurances on Rotoaira, Māori commissioned their own research. They approached well-known Taumarunui angler H E Payne to undertake the work. On 7 December 1966, Payne noted that all Rotoaira's spawning waters (the Wairehu, Ōtara, and Poutū Streams) had in some way been adversely affected, and he said that in his view the MOW was 'paying only lip service to efforts to stop quarry run off from entering the waterways'.[209] Payne saw little hope of improvement without changes in quarrying procedures and suggested to his Māori clients that a complaint be made 'without delay'.[210]

Patrick Piripi (Phillips) of Ngāti Hikairo recalled in evidence extensive and long-running excavations as part of the construction of the Wairehu and Poutū Canals:

> They changed a lot of the tributaries to the lake – diverted them and also put in canals instead . . . These canals bring foreign waters into the Lake and . . . [caused] major changes to the environment visually, physically and spiritually.[211]

Ngāti Tūwharetoa Māori tackled the Crown over the mounting environmental problems. On 3 February 1967, Tripe complained that contractors, when separating sand from spoil and washing metal, were causing the discharge of silt into Rotoaira, seriously affecting its fishing quality and endangering the spawning of trout. This was, he said, 'damaging the reputation of the lake'.[212]

Pollution of Rotoaira also gained national attention. On 1 February 1967, the *Taranaki Daily News* headlined the battle over Lake Rotoaira pollution and followed this with claims that Gibson was 'burying his head in the sand'.[213]

Within three years of the start of TPD construction, Shand's 1964 remarks about 'the friendly cooperation of the Māori' were fast becoming a distant memory. Māori were shocked and angry at what was happening to Rotoaira, especially as the Crown and its agents

appeared to be powerless to stop the continuing damage. A series of assurances followed: on 28 September 1967, for example, the Crown promised 'full restoration' of all lands and waterways affected by the TPD.[214] The Māori readiness to 'go public' over lake pollution meanwhile had surprised the Crown, given apparent Māori willingness in 1964 to cooperate fully over the scheme. From the end of 1967, the tenor of the relationship would change for the worse, with Crown officials increasingly reluctant to share information.

(8) *Māori concerns increase and information is curtailed*

By mid 1969, the focus of Māori concern was not just on the effects of TPD construction on Lake Rotoaira, such as siltation, but also on the likely impact of future river diversions on lake levels. Aware that diversions from Whanganui were due to begin in 1971, trustees wanted more specific information about likely impacts. Negotiations over lake ownership were under way, adding to an already adversarial atmosphere. The Crown publicity machine, so active in 1965 and 1966, went silent towards the end of the decade.

Behind the scenes, officials were becoming concerned about the spectre of compensation payments to Māori. In 1970, Gibson, for example, privately told works commissioner J H Macky that 'Sir John Te Herekiekie Grace is building up a case for a very large claim on alleged upsets to the lake.'[215]

On 30 June 1970, a meeting of officials heard that the 'upsets' were serious ones, likely to get worse. Pat Burstall of Internal Affairs stated that Rotoaira was 'at a critical level', and 'second only to Lake Rotorua in enrichment'. He went on: 'the lake must be protected now if the delicate balance of its ecology is to be retained'.[216] Gibson confirmed that he expected 'a weed problem on Lake Rotoaira.'[217]

Officials debated whether to share this highly important information with Māori. A divergence of views emerged. J E Cater of the Māori Affairs Department insisted that sharing the information with the trustees should take place as a matter of course.[218] Gibson and another official, argued against this, claiming 'it was difficult to forecast this because they [were] not sure at present where the load will be and how the scheme will operate'.[219]

Lake pollution continued to worsen. On 24 July 1970, Gibson revealed to fellow officials a new scientific update about the deteriorating state of Rotoaira:

> there will be initial and continuing pollution of Rotoaira with pumice, colloidal fines and enrichment. *As the lake waters are already at a critical level of enrichment* . . . weed growth can be expected to increase rapidly. What the effect will be on the fishery justifies some explanations whether it is intended to negotiate for purchase of the lake bed . . . or not. [Emphasis in original.][220]

Neither the scientific information, nor the growing unease on the part of the officials, was shared with the Lake Rotoaira trustees. The evidence points to an informal Crown policy of not providing Māori with data about Lake Rotoaira. This remained in place for two or more crucial years. Not until 1972, when Cabinet agreed to accept the Treaty partner's word not to seek compensation for damage to the lake, an issue discussed later in this chapter, did the Crown again disclose scientific and technical information to Māori. When it did, the news was not good. On 11 May 1972, for example, the works commissioner revealed to Māori what the TPD meant for fluctuations in the level of Rotoaira:

> it may be necessary to lower the lake level by as much as 9 feet, for a period of several weeks, in order to expose and kill off lakeweed. This will also expose large areas of lakeshore, and present a serious impediment to boating activity . . .[221]

What officials had learned in June 1970 about the true state of Rotoaira – and the fiscal implications given earlier compensation assurances – clearly shaped the Crown's subsequent plan of action. Rotoaira, it was decided, would have to be partially drained on a regular basis to allow for weed clearing. One way to avoid recurring and costly compensation would be for the Crown to acquire the rapidly degrading lake from its Māori owners. Meanwhile, those Māori owners, although knowing from their own

observation that all was not well with the lake, were unaware of the full extent of likely damage, having been denied information by the Crown.

(9) *Fishing rights to Lakes Ōtamangākau and Te Whaiau*

We now consider Crown statements regarding Māori fishing rights to Lakes Ōtamangākau and Te Whaiau, the new bodies of water created by the scheme. We also look at Māori responses.

At the fourth Tokaanu meeting of 20 September 1964, Gibson pointed to the possibility that Māori could be given ownership of, and fishing rights to, the new lakes:

> It is understood that this land which will be flooded is owned by the majority of the members and that it could be a reasonable proposition as far as these owners are concerned to own these bodies of water and have fishing rights very similar to Roto Aira.[222]

Seemingly to ensure Māori were in no doubt about what he was suggesting, Gibson repeated this reference to fishing rights to the new lakes. The idea – unsurprisingly – received a positive response from those present. Gibson's departmental superiors, Ministers Shand and Allen, however, withdrew his statements after July 1965, saying Gibson was not authorised to make them.[223] This reversal – and its timing – became a source of considerable discontent on the part of Māori.

The trustees, meanwhile, had been trying to pursue the opportunity outlined to them by Gibson. On 20 November 1964, solicitor Tripe asked whether 'in lieu of compensation for land taken and damage suffered' Māori could gain rights to the new lakes.[224] Alternatively, he suggested that Rotoaira trustees be compensated for their loss, should they find their fishing business diverted to the new lakes 'artificially created by government'.[225] Māori Affairs secretary Jock McEwen characterised the suggestion as:

> a piece of colossal cheek, serving no purpose but to show that the Maoris in the area see in the Crown's operations the opportunity of advancing compensation claims which won't bear looking at. Mr Tripe's statement that the Rotoaira trustees will expect the Government, *in good faith*, to compensate them rates a hearty laugh, but not much more. [Emphasis in original.][226]

McEwen talked of 'the dangerous Lake Rotoaira principle for which there is no justification'.[227] An officials' meeting on 25 February 1965 to discuss ownership of the new lakes was dismissive of the original decision to vest fishing rights in Māori: it created commercialised rights, they believed, and its provisions might add to the costs or impede the operation of the TPD.[228]

On 12 July 1965, more than nine months after the meeting with Gibson, Shand informed Tripe of the Crown's decision to retain ownership of the new lakes, and stated that if there were any adverse effects to the fishing rights of the Māori owners, claims for compensation could be settled under the existing framework of public works legislation.[229]

Tripe's reply indicates mounting frustration by Māori:

> The whole tenor of the relations between Government and the Maoris has been that they would suffer no loss, and, in the light of this attitude of Government, they have freely cooperated at every stage.[230]

The issue of fishing rights in the two new lakes simmered as construction proceeded. The Minister of Works, Percy Allen, confirmed the 1965 position in a meeting with Ngāti Tūwharetoa in 1971. The minutes record that 'despite objections from owners Minister advised that Crown will take beds of new lakes'.[231] For Māori, the issue of assurances over fishing rights to the new lakes would continue to be a sore point. During the 1972 meeting with Prime Minister Holyoake, for example, Pat Hura again raised the issue, revisiting Gibson's 20 September 1964 remarks:

> We were promised this by a responsible Officer of the Crown whose initial discussions with our people formed the very basis of tribal commitment and co-operation . . . Any derogation from this would be tantamount to the Crown breaking its word.[232]

A reference regarding the new TPD lakes was therefore included in the Lake Rotoaira Deed of November 1972. It acknowledged:

> that the Trustees consider that the new lakes . . . should be included with the waters subject to the Rotoaira Trout Fishing Regulations 1959 . . . the Crown shall review the responsibility for administration with a view to delegating to the Trustees such authority in relation to public use of the lakes as the Crown agrees is desirable . . .[233]

We are not aware that any such review has been carried out. In April 1974, Lakes Te Whaiau and Ōtamangākau were vested in the Crown when the Waimanu and Ōhahukura lands, in which they were located, were taken for TPD purposes.[234]

(10) *The Crown and the Treaty in the lead-up to the TPD*

What was the Crown's level of understanding about likely impacts of the TPD scheme? We have reviewed the information available to the Crown in 1955, and through the period from 1955 to 1964. It is clear to us, on the evidence presented, that the Crown became aware that there would be a substantial rise in the level of Lake Rotoaira, an increase in the magnitude of fluctuations in lake level, and an adverse effect on fishing in Lake Rotoaira. The failure of Crown officials to share this information with Māori, either when they met at Tokaanu on 11 October 1955, or in the lead-up to the Cabinet decision on 21 September 1964, are breaches of the principle of partnership. The Crown was aware that there would be physical and ecological impacts, and took no steps to engage with Māori to ascertain the social, economic, and cultural impacts on Māori.

Did the Crown use expert advice appropriately? We have examined the advice provided by Derisley Hobbs in 1956, the revision of this advice in 1958, and the manner in which this advice was used by officials and Ministers. Based on the uncritical acceptance of such advice, the Crown committed itself to pay compensation if the Rotoaira fishery was adversely affected by rising water levels, a stance that would prove difficult when Hobbs's assurances turned out to be flawed. We consider that there was a degree of carelessness, bordering on neglect, in the Crown's decision-making at this time. The Māori Treaty partner suffered the consequences.

We have considered Crown assurances to Māori, given by officials at the 1964 meetings in Tokaanu and by Shand, the Minister of Electricity, at the point where the TPD was approved by Cabinet. The officials gave assurances that there would be no permanent rise in the level of Lake Rotoaira and the maximum fluctuation in the level of the lake would be two feet. The Minister reiterated that 'full and adequate compensation will be paid for any damage suffered'. We believe that these assurances were given in good faith and that the obligation to pay compensation was accepted.

We turn to the period between 1969 and 1972, particularly with respect to impacts on Lake Rotoaira. In our view, there was a concerted policy of not providing Māori with information at this time. This began in 1969 or 1970 when officials learned about ecological problems at Rotoaira and continued until 1972 by which time Ngāti Tūwharetoa had agreed not to seek compensation for damages to the lake. The information withheld was of crucial importance to Māori. We consider the Crown's actions in withholding vital information from Māori during a negotiation of such importance to be a major breach of its Treaty obligations. The Crown knowingly acted in bad faith, and the outcomes were highly prejudicial to Māori.

We consider Gibson's proposition that Māori owners of lands to be inundated might be given ownership of Lakes Ōtamangākau and Te Whaiau, together with fishing rights similar to those at Rotoaira. That proposition was intimated to Māori on 20 September 1964, the day before Cabinet approved the TPD scheme. Some time after the scheme had been approved, Gibson's departmental superiors denied that he had authority to make this proposition. The Crown maintains that 'there does not appear to be evidence of lack of good faith on the part of the Crown.'[235] However, project engineer Gibson was speaking as the Crown's agent, and should have been properly briefed on what he could and could not say. The Crown was, at the very least, guilty of a failure of oversight and direction and Māori were substantially disadvantaged as a result.

14.7.5 Consultation, negotiation, and the Treaty: construction and post-construction phases

We turn now to the nature of negotiations following the start of TPD construction in late 1964. Access to materials such as road metal and andesite has already been discussed in our public works chapter, as has the taking of land. Our particular focus here is on the process the Crown followed in acquiring the use of Lake Rotoaira from Māori for the TPD, and whether the Crown used the threat of compulsory acquisition. An associated issue for consideration is whether the Māori trustees of the lake were coerced to forfeit their rights to future compensation.

As we saw in chapter 9, the Crown moved in 1968 and 1969 – close to half a decade after the start of construction – to resolve its land and resource requirements for the TPD. As officials shaped policies for acquiring land needed permanently, the status of Lake Rotoaira stood out as a 'special problem'.[236] On 25 February 1969, officials considered three possible approaches:

1. The trustees relinquish control of the lake bed, for a payment, and the Crown buy all surrounding land associated with the lake.
2. The trustees retain control of the lake bed and the Crown purchase the land likely to be affected by occasional increases in lake level, proclaiming it a lakeside reserve.
3. The trustees retain control of the lake bed and the Crown make payments whenever the level of the lake rises above an agreed level.[237]

Gibson, in 1964, judged the third option best because: it avoided survey costs; the Crown did not acquire land of little value; and it left trustees in control of the lake bed along with their right to levy fishing fees. Option three was similar to the course of action suggested by Tripe, the Rotoaira and Tūwharetoa Trust Boards' solicitor, in August 1964. Shand agreed to it in principle and promised to investigate.[238]

Two events altered the direction of Crown decision-making during 1969. First, the scheme's adverse impacts on Lake Rotoaira became apparent. The second event was Shand's sudden death and the subsequent allocation of his electricity portfolio to Works Minister Percy Allen.[239] However, Allen was himself in poor health and ill-equipped to deal with the additional volume of work.

(1) *Officials propose taking Rotoaira*

By 1970, officials realised that contrary to Crown assurances and commitments made to Māori in 1964, TPD construction was degrading the lake and its fishery. Concern mounted about Māori eligibility for substantial and continuing compensation. Officials looked back to the 1958 OIC as a way to get around the problem. Gibson argued that, for engineering reasons, the lake should be taken by proclamation. In March 1970, he recommended that 'we take the whole lake, compensate for loss of income, compensate for high lake levels as for Taupo and open the lake to the public'.[240]

During 1970, there was a clear intention to remove the lake from Māori ownership, or what officials increasingly termed 'private' ownership. An August briefing spelled out this policy:

> It was contemplated at an earlier stage that it [the lake] would remain in Maori ownership. The Maori owners enjoy privileges over the lake and considerable revenue is obtained . . . Farming development could easily promote the growth of lake weed . . . control measures will be necessary. This would involve major temporary reductions in level with recurring claims for compensation from owners if they retain title. Protection of a major Crown investment should not be prejudiced by private ownership.[241]

Allen, however, did not act on this advice.

(2) *The Crown talks purchase but Māori decline to sell*

As the idea of buying the lake outright gained currency, officials were told that 'the possibility of purchasing Lake Roto Aira was to be investigated confidentially'.[242] Cabinet authorised discussions with the Māori owners.[243] On 19 October, officials met with trustees at Tokaanu. The main topic was afforestation of the Rotoaira catchment but, at the same time, officials formally advised the owners of the Crown's 'interest in possible purchase of the lake'.[244] Māori were not, however, made party to Crown knowledge about

the deteriorating state of their lake. Nor was any financial offer divulged. Solicitor Russell Feist confirmed a negative initial response:

> The Lake Trustees have no power under their Trustee Order to sell the Lake but, in any event, they do not consider that a sale would be in the interests of their beneficial owners and they have instructed me to let you know that the lake is not for sale.[245]

Rangikamutua Henry Downs recalled in evidence the strength of the opposition among Māori to a sale: 'We were all opposed to the taking of our Lake . . . we made our opposition to that well known.'[246]

Officials debated how to calculate the lake's valuation, but the year 1970 ended in stalemate, with the Crown considering purchase of the lake but yet to make a firm offer. Māori, for their part, were strongly committed to retaining the lake.[247] Meanwhile, TPD construction had reached the point where diverted waters were poised to flow into the lake: on 17 February 1971, waters of the Whanganui were diverted north into Lake Rotoaira.

(3) *The Minister meets with Māori for the first time*

Works Minister Allen met with Ngāti Tūwharetoa at his office in Wellington on 9 March 1971.[248] On the agenda were the land requirements for the TPD, including Lake Rotoaira.

The main issue, however, was the final decision on Tūrangi township land, with Allen confirming land would be taken compulsorily under the Tūrangi Township Act. And, as we have already seen in our public works chapter, the Minister refused to concede on the new TPD lakes, confirming that land for these would also be compulsorily taken. When the subject of Rotoaira was raised, Māori set out their negotiating position: 'Trustees do not wish to sell but will refer any offer to the owners for consideration.'[249]

Allen reiterated the Crown's desire to purchase the lake and asked officials to 'assess fair value and advise Minister'.[250] Internal memoranda show that officials were ambivalent: one noted that 'The discussion on Lake Rotoaira did not really progress the matter'.[251] The possibility of purchase was uncertain, but officials, aware of the lake's environmental degradation, were increasingly anxious about the compensation that might be payable.

(4) *Valuation of the lake*

On 29 July 1971, official W M Duncan of the MOW's Power Division, aware of the lake's potential as a fishing facility, canvassed the options:

> a figure of $300,000 to $400,000 seems reasonable. If it is bought for anything much less, posterity could well decide that the owners had been taken for a ride.[252]

But no offer was made. On 27 August 1971, the commissioner of works, J H Macky, said: 'it has not yet been possible to fix upon a firm figure at which Cabinet could be asked to authorise an offer for purchase'.[253] He proposed three options: outright purchase, acquisition in return for a fixed annual payment in perpetuity, or perpetual lease at fixed annual rent.

Māori were in a cleft stick over the matter of valuation. If they were to retain Rotoaira, they preferred a lower valuation for rating purposes since, as we have seen, they did not derive a huge income from the lake. If, on the other hand, it were to be taken from them, they would clearly want to seek a much higher valuation since it represented an important part of their remaining patrimony.[254] On 23 September 1971, Ngāti Tūwharetoa disclosed plans to contest the nominal valuation of $30,000 listed on the District Valuation Roll for 1970.[255] A hearing was laid down for 7 February 1972.[256] Behind the scenes, officials considered their response. On 18 October 1971, I E Tierney of the Valuation Department discussed the likely attendance of Pat Burstall of Internal Affairs at the hearing:

> he [Burstall] considers that he is better to save his evidence to protect the Crown's interest against what he expects to be outrageous claims for compensation . . .[257]

Negotiations between Māori and the Crown reached a stalemate.

The compulsory taking of the lake under the Public

Works Act continued to be an option for the Crown. On 12 January 1971, for example, Gibson implied doubt about the wisdom of instituting an arrangement similar to that applying to Lake Taupō (where compensation became payable if the waters exceeded an agreed level), saying:

> The possibility of mismanagement of the lake accidentally or deliberately from the agreed levels could be expensive . . . Certainly *presuming negotiation is mandatory* I am sure the compensation arrangement whatever devised, will be a very significant figure . . . [Emphasis added.][258]

As negotiations continued, officials privately debated how best to value the lake. District works commissioner C G Beale, for example, observed early in 1971 that the full effects of the TPD operation, if they were to become known to Māori, could affect compensation:

> the Maori owners are in a very strong bargaining position . . . It seems pretty certain that the present value of Rotoaira . . . will be largely destroyed by NZED operations, and that we will be up against substantial compensation costs if we do not buy the lake.[259]

By the end of 1971, the Crown's frustration was clear. On 25 November 1971, Macky, the commissioner of works, hinted at using the powers of the 1958 OIC:

> we cannot allow a situation to develop where we are forced to adopt a last minute solution regardless of cost . . . the Crown has a legal right to raise the level of the lake to any extent necessary for the scheme . . .[260]

(5) *Māori write to Prime Minister Holyoake*

After seven years of observing the deterioration of their lake, and fearful of compulsory acquisition, Māori decided to approach the Prime Minister, Keith Holyoake. On 8 December 1971, Pat Hura wrote to Holyoake:

> Tuwharetoa who are deeply concerned over the pressure . . . to bring about the acquisition of our lake either by purchase or by the land being compulsorily taken . . . We understand that our proposal to contest the current valuation . . . will rebound to our detriment if the land is compulsorily taken . . . such an eventuality would be in total derogation of a written undertaking . . .[261]

Hura explained that it was 'only out of deference to the request by the Minister of Works, the Honourable Mr Allen' that the trustees had agreed to 'leave the matter open for the Minister to make an offer' – an offer which was, however, yet to materialise.[262]

(6) *A flurry of official correspondence*

On 17 December 1971, Mr Feist met Crown Law officials to discuss the proposed valuation hearing. A record of the meeting confirms that the lake's compulsory acquisition remained the subject of active speculation in officialdom:

> *In view of the rumours in circulation that the Ministry of Works now wish to take the Lake* the Maori owners have obtained an appointment to see the Prime Minister . . . Feist maintained that, should the Government in fact decide to take the Lake, the owners would be unduly prejudiced, if they were forced to proceed at this stage . . . [Emphasis added.][263]

A decision was made to adjourn the hearing until after the prime ministerial meeting. A second (Crown Law) document urged that, prior to the meeting, the Prime Minister be fully briefed on the MOW's latest thinking:

> If . . . your Department is clear that it does not want the Lake and *has no intention, at least in the foreseeable future, of taking it* the Prime Minister should be so advised . . . [Emphasis added.][264]

A 20 December MOW briefing note appeared to be swinging towards leasing the lake instead. Crown ownership was seen to be preferable, given the extent of the weed problem and the desire to protect a major Crown investment, but leasing might be a viable option:

> In view of the apparent opposition to sale of cherished hereditary land, consideration has been given to a lease of the

lake. This would overcome the objections to giving up ownership while securing to the Crown full rights to the lake.[265]

Meanwhile, Allen had been asked by the Prime Minister to make full inquiries amongst his officials to ascertain whether the Hura allegations were well founded. Allen replied, assuring the Prime Minister that there had been 'no pressure on the owners to sell' and 'no suggestion of compulsory acquisition'. The Minister added that he had 'no intention of acquiring the lake compulsorily against the known strong opposition of the very large number of owners'.[266]

(7) *Ngāti Tūwharetoa meet with the Prime Minister*

As officials prepared for the prime ministerial meeting, a further MOW briefing again noted Māori opposition to sale and proposed that leasing the lake become the Crown's formal negotiating position:

> You may consider it opportune at the hearing of the deputation to raise the suggestion that owners enter into a long-term lease to the Crown. Such an arrangement could secure full control of the lake without depriving the owners of ownership.[267]

The memorandum suggested a rental of $4,000 to $5,000 per annum for a long-term lease, with the possibility of further income from fishing.[268]

On Friday 28 January 1972, Holyoake hosted the 16-strong Ngāti Tūwharetoa deputation led by Hepi Te Heuheu and including Sir John Grace.[269] Officials joined Allen and Māori Affairs Minister McIntyre at the meeting, held in a hotel conference room in central Wellington. Hepi Te Heuheu indicated that his tribe's concern arose from 'what appeared to be an idea held by members of the Government and departmental officers that there was to be a takeover of tribal interests by the government'. Hura elaborated: 'We are fully aware that the Government, if it so desired, can forcibly take Lake Rotoaira by proclamation.'[270]

To avoid such an eventuality, the deputation then proposed what they termed 'a formula . . . to provide a working arrangement that would be acceptable to both parties'.[271] As Hura explained:

> The Trustees are aware that Works Department officials would like to see ownership of the Lake vested in the Crown so as to avoid any question of compensation claims arising in the future. The Trustees are prepared to give a written assurance to Government that no claim for compensation will be made arising out of the fluctuation in the level of the Lake . . . or any other action necessary in connection with the Lake.[272]

Sir John Grace poignantly recalled all that Ngāti Tūwharetoa had already done by making available to the nation 'facilities for the enjoyment of our peoples', and listed a number of examples, not the least of them being thousands of acres of land for the nucleus of Tongariro National Park.[273]

It is evident from the records that Ngāti Tūwharetoa were deeply concerned about the possibility of a compulsory taking of the lake.[274] Mr Feist, the delegation's legal adviser, reiterated those fears to the Prime Minister and his party, pointing to instances where land had been compulsorily taken at Tūrangi despite assurances to the contrary from 'Senior Departmental Officers'. In the case of Lake Rotoaira, he said, there had even been assurances from the Minister of Works, but he still sought the additional security of an undertaking from the Prime Minister:

> My clients have been happy to accept these assurances [from the Minister] and would not have brought this matter to you now, Sir, were it not for increasing uncertainty in the matter.[275]

Mr Feist underlined Ngāti Tūwharetoa's strength of feeling:

> The records of the early meetings make it clear how important the owners considered the statements and assurances given at these meetings . . . My clients feel that any changes on matters of principle which may be forced on them by utilising a statutory [power] of compulsory acquisition makes a mockery of the negotiations . . .[276]

Mr Feist reiterated the tribe's request for the Prime Minister to give them an assurance that the lake would not be taken.[277]

It was Allen who responded, saying that 'The Minister of Electricity would not ask the Minister of Works to have it taken compulsorily'.[278] We note here that Allen himself held both portfolios at the time. The Prime Minister's commitment was less firm and categorical: he said that he 'could not give any assurance at all except that the Government would take into account the rights and wishes of everyone' and that 'just taking the departments in isolation, it was a tidy thing to own and control the lake'.[279] Allen did, however, indicate that he would see if a lease could be negotiated for the lake.[280]

Māori and officials both recorded the substance of the meeting. Mr Feist immediately wrote to the Prime Minister to record his interpretation of the outcome:

> the clear assurance by the Honourable the Minister of Works [*sic*] that this lake would not be taken compulsorily is of great comfort to my clients.[281]

Officials meanwhile pored over what the Ministers had actually said and committed to that day. A memorandum by a senior official, dated 31 January 1972, set out his understanding:

> Lake Rotoaira will not be compulsorily taken – undertaking by Minister of Works [*sic*]. I noticed PM said in another context that he would give no assurances.[282]

Shortly afterwards, Holyoake retired as Prime Minister and was succeeded by Jack Marshall, his long-time deputy.

(8) *Māori meet with the Crown at Tokaanu*

In February 1972, MOW officials went to Tokaanu for another meeting with Ngāti Tūwharetoa, 'at which all aspects of outstanding land matters, including the purchase of Lake Rotoaira, were further discussed'.[283] Following the meeting, commissioner of works Macky sent a briefing to Minister of Works Allen, recommending that he agree to

> *effective* rights of ownership being transferred, with all requirements of power scheme met, but retention of *nominal* ownership by Tuwharetoa tribe, plus fishing rights . . . compensation to be included in lump sum settlement – no annual rental. [Emphasis in original.][284]

He noted that the proposed lump sum (intended to settle a range of TPD issues) appeared to include 'about $100,000 in respect of Rotoaira' but that, because there were 'a number of items subject to variation', it would probably require a sum of 'approximately $165,000' to secure 'complete agreement on all points'.[285]

Also mentioned were fishing rights and permits. On this issue, Macky was clearly of the view that if Māori were to get a capital sum in respect of Rotoaira and compensation for the land beneath Lakes Te Whaiau and Ōtamangākau, then any other concessions should be kept to a minimum. He therefore recommended that 'the offering of fishing privileges in the three lakes' (Rotoaira, Te Whaiau, and Ōtamangākau) should be restricted to the present owners, and then only 'for, say, 50 owners'.[286]

It is not known whether any of the above was communicated to Māori, but Mr Feist restated Ngāti Tūwharetoa's position on 12 April:

> any offer would be rejected by the owners . . . the key factor, so far as the owners are concerned, is the retention of legal ownership. Also of importance is the right to continue and extend the fishing rights on the Lake.[287]

Meanwhile, on 10 April 1972, Cabinet approved an extensive programme of afforestation for the Lake Rotoaira catchment area, with large provision for local employment.[288]

(9) *May 1972: the Minister of Works briefs Cabinet*

From the evidence, it is clear that by early 1972, problems of weed control had become a significant factor in the Crown's need to acquire the lake. On 27 April, Allen, as Minister of Works, in consultation with Treasury, drafted a memorandum for Cabinet. In it, he signalled what would later, as we saw above, be revealed to Māori: namely, that

to deal with the weed it might be necessary to lower the lake's level by as much as nine feet.[289] This was of concern for two reasons. First, the MOW was unsure if the 1958 OIC would cover such a lowering. Secondly, there were fears that such lowering of the lake would be so detrimental to Māori interests that, despite Ngāti Tūwharetoa's assurances about not seeking compensation, it would trigger hefty claims. Officials initially supported the Lake Taupō compensation model, with payment due if and when the lake level rose or fell outside a particular range. It soon became apparent that Rotoaira was in a different category. As evidence accumulated, officials became aware of the enriching effect of the diverted waters. In short, there were risks that the Crown would be required to pay massive compensation.

Minister Allen's draft submission to Cabinet therefore recommended outright purchase of the lake, at a suggested price of $200,000. As an alternative, he proposed that,

> if purchase is rejected, a lease in perpetuity be entered into for Lake Rotoaira whereby all ownership rights *including fishing rights* will be acquired for a capital sum of $100,000. [Emphasis added.][290]

The Ministry of Works' Cabinet paper, in its final form, reintroduced the possibility of compulsory taking. It suggested that, alongside the offer of purchase, 'the possibility of compulsory acquisition should be indicated to the owners'.[291] The option of a lease in perpetuity remained, but Allen warned of potential difficulties: 'If the Crown does not own Lake Rotoaira . . . it is likely that there will be continual disputes over its control and management'.[292]

Allen also expressed uncertainty about Ngāti Tūwharetoa's offer to forego compensation:

> While we have the assurance of the owners that there would be no claim for compensation, the circumstances or limitations of this assurance have not been defined.[293]

The NZED, however, took Ngāti Tūwharetoa's offer at face value and reported that outright purchase of Rotoaira was not necessary.[294] Cabinet accepted that the Ngāti Tūwharetoa offer was given in good faith, and deferred any decision, either for or against, on the Minister of Works' recommendations.[295]

(10) *Heads of agreement signed*

Work continued behind the scenes, on the terms of an agreement. On 11 May, commissioner of works Macky wrote to Mr Feist, clarifying that the government did not contemplate either purchasing or leasing the lake 'providing a mutually satisfactory agreement can be concluded, recording formally the assurances concerning compensation for necessary protection and utilisation for the power scheme'. To that end, a draft agreement was dispatched to Mr Feist the following month.[296]

The agreement, as drafted, required Ngāti Tūwharetoa to confirm that they would not seek compensation for any damage, yet, as the iwi noted with dismay, it left open 'the possibility that the Crown may decide to take the lake in the future'. Mr Feist wrote back sharply:

> The agreement as submitted by you is entirely in the Crown's favour. No consideration whatsoever passes to the owners; the concessions are all on their part.[297]

The iwi, through the intermediary of Mr Feist, countered with an amended draft.[298] It was not until 30 November 1972, however, that the Crown and Ngāti Tūwharetoa finalised a heads of agreement covering a range of TPD-related matters and a separate Lake Rotoaira deed. Under the agreement, the Crown was required to pay Ngāti Tūwharetoa a total of $28,000 in compensation for various TPD-related issues, none of them directly associated with Lake Rotoaira (a sum equal to over $270,000 in 2011).[299] The deed for its part recorded the trustees' offer of 28 January to waive all compensation for lake damage in exchange for no compulsory taking, and extended the application of the Lake Rotoaira Trout Fishing Regulations 1959 to include intakes and canals adjoining the lake. A commitment to review the administration of the new TPD lakes 'with a view to delegating to the Trustees such authority' was included as a final provision.[300]

The Minister of Works and the Lake Rotoaira trustees signed the Lake Rotoaira trust deed on 30 November 1972 (see below).[301] The Crown could now exercise all the rights and powers under the Public Works Act 1928, the Water and Soil Conservation Act 1967, and the Electricity Act 1968 to maintain and protect the TPD. Trustees were prohibited from any act or activity that could jeopardise the way the scheme was operated and managed. Māori title to

Deed between the Trustees of Lake Rotoaira and Her Majesty the Queen

The Lake Rotoaira trust deed, signed by the Crown and the trustees of Lake Rotoaira on 30 November 1972, contains eight provisions.

Provision 1 is for the maintenance and protection of the Tongariro power development scheme:

> **1.** THAT the Crown shall have full power in respect of the said Lake to exercise all the rights and powers conferred on it by the Public Works Act 1928, the Electricity Act 1968 the Soil and Water Conservation Act 1967 and any re-enactment or amendment of any of those Acts for the purpose of the maintenance and protection of the Tongariro Power Development Scheme and in particular the Crown my from time to time hereafter as it thinks fit alter the level and condition of the said Lake, construct operate and maintain such works as it may require to alter the level or condition of the said Lake and enter upon the said Lake to enable it to exercise and enjoy the rights and powers referred to herein.

Provision 3 releases the Crown from liability to pay compensation:

> **3.** THE trustees and the beneficial owners release and discharge the Crown and its successors in title its servants and agents from all liability to pay compensation under the Public Works Act 1928 or any re-enactment thereof or to pay valuable consideration or damages whether recoverable by action or otherwise or to make any other recompense whatsoever to the Trustees for any loss suffered by the Trustees or the beneficial owners arising out of the reasonable exercise and enjoyment by the Crown of the rights and powers referred to herein including the exercise from time to time of powers of entry and the alteration or condition of the said Lake.

Provision 6 addresses the issue of compulsory acquisition:

> **6.** THAT the Trustees complying with their covenants and agreement herein expressed or implied the Crown will not exercise any statutory powers of compulsory acquisition of the title to the Lake for the purposes of the Tongariro Power Development.

Provision 8 relates to fishing rights in the new lakes created by the scheme:

> **8.** THE Crown acknowledges that the Trustees consider that the new lakes created by the Tongariro Power Development and known as Lake Otamangakau and Lake Te Whaiau should be included with the waters subject to the Rotoaira Trout Fishing Regulations 1959 and agrees that after these Lakes have been established and the fishing potential can be determined the Crown shall review the responsibility for administration with a view to delegating to the Trustees such authority in relation to public use of the lakes as the Crown agrees is desirable in the interests of the Trustees, the general public and the New Zealand Electricity Department.

For the rest, provision 2 sets out the trustees' responsibilities to protect the public works; provisions 4 and 5 relate to the rights of the beneficial owners and set out the lines of communication; and provision 7 contains amendments to be made to the Rotoaira Trout Fishing Regulations 1959.[1]

the bed of Lake Rotoaira would remain with the lake owners in return for surrendering control of the lake for the operation of hydroelectric generation and on condition that no compensation would be sought. Existing Māori fishing rights at the lake were extended to the intakes and canals, but not to the new TPD lakes.[302]

Rangikamutua Henry Downs recalled for us the sombre mood among Māori when the agreement was signed:

> John Grace . . . made it clear that the Deed was signed under duress. However, we signed to prevent the Crown taking our lake. The areas lost to the TPD and flooded have never been compensated for, nor have we ever received any payment or compensation for the damage to our fishery.[303]

A Crown assessment, dated 7 December 1972, was much warmer:

> The final agreement . . . ensures that NZ Electricity Department can operate the scheme with complete freedom from future compensation disputes . . . Efforts were [also] made to take advantage of the opportunity to end the special fishing privileges enjoyed by the owners . . .[304]

(11) *The agreement with the acclimatisation society*

The 1972 deed with the Lake Rotoaira trustees is in stark contrast to another Crown negotiation settled in the same year. The Rotoaira deed, negotiated during 1972, and signed on 30 November 1972, contains, in clause 8, explicit reference to the trustees' interest in developing Lakes Ōtamangākau and Te Whaiau for trout fishing.

In June 1972, negotiations with the Waimarino Acclimatisation Society about trout fishing rights were quietly resolved by the Department of Internal Affairs. In exchange for the loss of fishing brought about by the diversions of the Whanganui and Whakapapa headwaters, society members would be allowed to fish in the new TPD lakes Ōtamangākau and Te Whaiau, and they could do so with a Waimarino fishing licence, not a Taupō fishing licence. On 12 June, the society accepted the Crown's offer. The agreement was ratified in 1973 by an amendment to the Taupo Trout Fishing Regulations 1971.

It appears that neither Ngāti Tūwharetoa nor the Lake Rotoaira trustees were consulted or informed of the negotiations with the Waimarino Acclimatisation Society, despite the fact that the ensuing agreement stood to have a financial impact on the iwi's fishing revenues. Ngāti Tūwharetoa later stated that the negotiations represented a breach of their 1972 agreement, which had acknowledged the tribe's ongoing interest in developing the new lakes. Their solicitor, Mr Feist, wrote:

> Our clients understand that fishing [in Lakes Otamangakau and Te Whaiau] is permitted by persons holding either Taupo or Waimarino fishing licences. We wrote to the Commissioner of Works on this matter in December 1974 and sent a copy of our letter to the Department of Internal Affairs at Rotorua taking strong exception to the use of Waimarino fishing licences. A reply received from the Conservator of Wild Life, Rotorua, indicated that agreement to permit Waimarino fishing licences had been reached in 1971, that is prior to the conclusion of the agreement between the Crown and our client trustees.[305]

Mr Feist wrote that the existence of this agreement was never disclosed to his clients, and added:

> Had the agreement with the Waimarino Acclimatisation Society been disclosed to them at the time, the agreement reached with your officers in 1972 would never have been concluded in the way it has.[306]

Mr Feist accepted that the negotiating officers may have been unaware of the agreement 'reached by another Department of State' with the acclimatisation society, but

> Be that as it may, . . . the matter is of fundamental importance to them [Ngāti Tūwharetoa], and they consider it represents a fundamental breach of the agreement reached in 1972.[307]

Internal Affairs official Pat Burstall, who led the Crown's negotiations with the acclimatisation society, later claimed that he was unaware of what was happening with respect to the Rotoaira negotiations:

> At no stage was I brought into the picture regarding the negotiations . . . except that on a number of occasions the question did arise and I was asked for my feelings regarding the incorporation of Otamangakau with the Roto-aira fishery . . .[308]

Burstall gave no indication as to why he did not inform himself further, or indicate to his counterparts that the two sets of negotiations might be linked.

(12) *A final approach to the Crown*

With the impacts of the TPD very evident in 1984, Māori once again made an approach to the Crown over Rotoaira. At the Tribunal's inquiry, Rangikamutua Henry Downs of Ngāti Tūwharetoa recalled that in the aftermath of TPD construction, the lake had become more like a flowing river, affecting its fishery and having a marked effect on the number of permits sold: 'The Trust was hit hard and revenue dropped . . . [it was] in a terrible financial situation.'[309] On 12 March 1984, John Asher, on behalf of the trust, wrote to Energy Minister Bill Birch emphasising the lake's role as the 'key' to the TPD:

> This trust as the owner of Lake Rotoaira does not receive one cent of income for the use of its property for the generation of electricity and a massive income return to the NZ Electricity Department of which you are Government Head . . . It may not have a legal claim[,] however, it has a moral claim as here is Maori owned land being used to generate massive sums for the State in particular and the taxpayer in general . . .[310]

Birch agreed to look into the question of compensation payments.[311] Use of the word 'compensation' upset Mr Asher. His reply of 6 April 1984 stressed that the trust was not seeking compensation, the right to which had been waived in the 1972 deed. Birch, in response, pointed out 'the sole right to use water is vested in the Crown by the Water and Soil Conservation Act 1967'.[312] In any event, he stated, the OIC of 29 October 1958 gave the right to use, supply, and sell any electrical energy that was generated. The issue of a moral claim was side-stepped. Mr Asher replied that the trust had always accepted the right of the Crown to use the water of Lake Rotoaira for the generation of electricity without compensation to the owners of the lake title:

> What is unacceptable to the owners is the use by the Crown of a Maori land title ie, the bed of the Lake, as a means of producing electricity which when sold by the Crown produces a massive income to the Crown without one cent of annual rent being paid to the owners of the land for the use of their land title . . .[313]

On 25 June 1984, Birch reiterated the terms of the 1972 deed. His letter spelled out what might happen should the trustees pursue claims for payment. Birch not only noted there was no legal basis for the Crown to make any payments but that the 1972 deed was written in such a way to provide that:

> if the Trustees continue to permit the Crown to exercise its rights to the lake without recompense to the Trustees the Crown will not exercise its right to acquire the title to the bed of the Lake from the Trustees.[314]

In evidence, George Asher noted, 'for the lake trustees it seems the spectre of compulsory acquisition was still very real to them in the 1980s as it was in the early 1970s'.[315]

In the way it conducted itself with Ngāti Tūwharetoa and the Lake Rotoaira trustees the Crown succeeded in nationalising all the benefits which would accrue from the completed TPD scheme and privatising upon Māori all the burdens and losses caused by the establishment of the TPD. The outcome was the complete antithesis of what the Treaty required. The Crown had a duty to actively protect the property and taonga – te pātaka kai o Ngāti Tūwharetoa – of Lake Rotoaira, but the Crown acted throughout as if article 2 of the Treaty did not exist.

The interest of the owners in their lake undoubtedly remains. If the circumstances of the use changes, as has happened, then the Crown is bound to reconsider the interest of the owners. It seems quite unacceptable that commercial profit can be made from the owner's interest

in the lake and its water without any form of compensation. The considerations that might be addressed in appropriating property for cooperative use, such as in the case of a State-owned power system run to maximise national benefit (through keeping prices down), as opposed to commercial use operating essentially to maximise profit for the sole (Crown) shareholder could be markedly different. In fairness to its Treaty partner, the Crown is bound to take these into account. These thoughts are not original, but mirror those found in the *Te Ika Whenua Rivers Report*.[316] In that report, the Tribunal was dealing with customary Māori interests in the rivers concerned. Therefore, what the Tribunal concluded in that report applies with undoubtedly greater force in respect of a lake for which the owners have legal title. In this case, the Crown derives significant shares from the appropriation of Lake Rotoaira. In our view, therefore, it would be unconscionable for the Crown to refuse to put aside the deed of 30 November 1972.

(13) *Actions leading to the deed's signing and the Treaty*

There are two linked questions from our perspective: did the Lake Rotoaira trustees sign under duress; and was there a lack of good faith on the part of the Crown and its agents? We have received detailed evidence from the claimants, the Crown, and expert witnesses about the sequence of events between 1964 and 30 November 1972 when the deed was signed. We have considered all the correspondence, minutes, and memoranda, including Cabinet papers, made available to us during this inquiry. They show that, in the period from 1970 up until the signing of the deed, the Crown became increasingly aware that the impact of the scheme on the lake was going to be far greater than had been previously thought likely. The Crown's developing appreciation of the enriching effect of the diverted waters on the lake and weed growth in it brought officials to contemplate that lake levels would have to be lowered periodically by as much as nine feet, with severe impacts on the fishery and boating. The fiscal risks to the Crown at Rotoaira through claims for compensation for loss of and damage to the fishery came to be seen as much greater than earlier understood.

The great irony is that the Crown had all along dismissed, or, at the very least, ignored oft-repeated Māori protestations that it was wrong to mix different waters. To those holding to the Western world view, the Māori view was not 'scientific' and, therefore, it could be ignored if not actually treated with contempt. Māori were entitled to say 'We told you so'.

Even at this stage, the Crown was somewhat confused about its position. This extract from the Minister of Works's draft memorandum to Cabinet for the meeting on 8 May 1972, which was circulated to several departments, is instructive:

> The Crown would not appear to have the right to prevent action on Lake Rotoaira harmful to hydro-electric operations, eg, enrichment of the waters promoting weed growth, or sporting interests which may cause damage, eg, high speed launches operating near structures. It would seem that it would have to convince the Lake Rotoaira Trustees of the harmful nature of any activities, and depend on the authority of the Trustees to prevent such action. Government control and management stemming from full ownership rights, or possibly from a lease in perpetuity acquiring all ownership rights (from a subsequent paragraph it is clear this included the fishing rights), would appear to be the only satisfactory solution to the problem. Suggestions of depriving the present owners of their fishing rights on Lake Rotoaira will meet with strong resistance; it would be preferable if such a step could be deferred until settlement can be effected on all outstanding matters, which can, in fact, be dealt with separately.

So, the Crown needed to get the lake off the owners to stop the Crown enriching the lake. And, rather than talk to the trustees about controlling boats, over which the trustees had total control because of the need for entry permits, the solution was to get the lake off them. The final tactics outlined show the Crown planning to induce an agreement on most issues by avoiding the explosive issue of damage to the fishery until that agreement is reached then striking a blow to seize the fishery and leave Ngāti Tūwharetoa lamenting.[317] This was only to be equalled by an alternative recommendation to Cabinet pointing

to the possibility of compulsory acquisition to induce a sale of the lake bed. This is the same Crown that Ngāti Tūwharetoa trusted and with whom they sought to cooperate because they considered they were in a partnership with the Crown.

We believe that the best contemporary account of the state of things with Ngāti Tūwharetoa in the lead-up to the signing of the deed is to be found in the record of the Māori Land Court for the hearing held on 13 November 1972. That hearing considered the leasing of Māori land in the Lake Rotoaira catchment area to enable the Crown to establish what became known as the Lake Rotoaira Forest.

The relevant part of the court transcript reads:

> **Mr Feist:** Firstly it was indicated to the owners that the trustees of Lake Rotoaira have reached agreement with the Crown under which the Crown has undertaken not to take Lake Rotoaira for the purpose of the power scheme. This is the major success of the negotiations but as far as the lake is concerned, there will be a written undertaking not to take for the purposes of the scheme.
>
> **Court:** The Crown will be using the Lake?
>
> **Mr Feist:** Yes they are using the Lake but they will not take Lake Rotoaira. The price that the trustees of Lake Rotoaira have to pay for this is they have to forego compensation for damage to fishing. This could come about as a result of lowering the Lake level but the risk is regarded as minimal. It was more important to the owners to retain ownership of Lake Rotoaira than to be concerned as to the possible risks of the fishing revenue as a result of the activity. The price that could have been obtained for the Lake would have been quite insignificant. The value of the Lake is low – it has very little basic value except value to the owners. They would rather therefore, preserve ownership than lose the Lake.
>
> **Court:** Is the way still open for them to claim compensation if it is proved that fishing is affected?
>
> **Mr Feist:** If the damage proves as a result of the necessary protection of the power scheme works, then there is no right to compensation. The Crown has an investment in protecting the fishing in the Lake and the area generally. The risks of this are believed to be minimal but it is anticipated that if some quite unforeseen thing happens, this risk would have to be accepted. The control of fishing will be vested in Rotoaira Trustees. The details with regard to the fishing of the artificial lakes is still indefinite.[318]

Mr Feist's responses to the court are echoed in his evidence to the Tribunal, which was quoted by the Crown in its closing submissions. After making what we consider, in the light of the evidence, a surprising statement to the effect that the Crown appears to have believed that there would not be any adverse effects to the lake or the fishery, the Crown cited Mr Feist:

> The Crown had made elaborate plans to protect the fishery and the owners believed the Crown assurances that the fishery would not be adversely affected. No other damage to the lake was anticipated . . . The adverse effects which eventually followed were not anticipated. The fear of losing ownership of the lake was much greater than any fear of subsequent adverse impact.[319]

This extract and the identical phrases 34 years earlier in the Māori Land Court show how completely the claimants were induced or even deceived by the Crown into believing that the risks of damage to their bountiful fishery were minimal. Therefore it was no significant concession to agree to waive compensation for loss of or damage to the fishery in order to secure the Crown undertaking not to take the lake.

Whatever plans the Crown had made earlier on, elaborate or otherwise, by the beginning of the 1970s its officials were increasingly aware of the likelihood of serious adverse impacts on the lake and fishery. The Crown documents in evidence before us were unambiguous on these matters. Knowing these things, they told Ngāti Tūwharetoa nothing. Nor did they consult them. They maintained them in a state of blissful ignorance, even for a period forbidding any discussion between Māori and officials. Ultimately, Ngāti Tūwharetoa came, as it were, to the lion's den, to see the Prime Minister out of fear for their continued ownership of their lake. Even then, they still did not appear to fully understand why the Crown was pursuing them so determinedly to acquire the lake from them.

The key point here, which the Crown appears to have missed, is that Ngāti Tūwharetoa had to operate and make its critical decisions in a state of ignorance carefully maintained by the Crown and in a climate of fear fuelled by the Crown's calculated ambiguity. Their concerns arose from their own observations as the works pressed forward, and the awareness that the Crown had broken promises made to them in respect of the Tūrangi industrial area, the Tūrangi water supply area, and the two new lakes.[320] The concrete had been poured, the western diversion was flowing through the lake, and the silt was settling. The Crown knew full well the vulnerability of the claimants and did nothing to relieve it. That is not a state of affairs compatible with the principles of the Treaty.

We find that the Crown breached the principle of partnership in its actions.

As to the question of whether the deed was signed under duress, we do not believe that we need to make a finding of duress in the legal sense of the word. In the light of the evidence and our finding above, we understand why the claimants use that word to describe the events on 30 November 1972.

It is clear from Pat Hura's words when he began Ngāti Tūwharetoa's presentation to the Prime Minister on 28 January 1972 that they had a real and present apprehension that the Crown would very likely move to take their lake. His carefully formulated words deserve to be set out:

> This is our heritage and we want to retain it . . . a desire to retain what is traditionally a part of our tribal history.

Since the owners refused to consider selling the lake, there remained only the option of compulsory taking, or, as Hura put it, 'a more precise consideration of the factors which would leave the land in tribal ownership, subject to an arrangement that would meet the approval of both parties'. As to compulsory taking, the owners did not concede that such drastic action was justified, and they had been constantly assured that the lake would not be taken.

Not knowing of all the consideration of both buying and taking the lake which had passed between Crown officials in the preceding months, Hura went on:

> We are prepared to discuss any reasonable proposition that would help to bridge the gap between our interests and those of the TPD . . . with goodwill and honesty of purpose a formula can be found to provide a working arrangement that would be acceptable to both parties.

Hura's 'precise consideration of the factors' did not include all that had passed between officials and Ministers, in relation to the lengths to which the Crown was willing to consider going to acquire the lake and their reasons for considering such drastic action, including their appreciation of the highly likely deterioration of the lake and the risk of loss and or damage to the fishery. Thus, Ngāti Tūwharetoa approached the matter calmly and with professional advice but not in possession of information on a number of critical factors because the Crown had taken care to keep them uninformed. While the charge of duress may not be made, the Crown deceived or, at the very least, induced them to make the offer put on the table at the meeting with the Prime Minister. The signing of the deed 10 months later followed a confused process of negotiations towards a lease or other arrangements short of resorting to public works legislation compulsory taking and, at times, the consideration of lump sum compensation.

These negotiations petered out and the Crown resurrected the January offer. Ngāti Tūwharetoa, true to their word, signed the deed but not without great pain. A number, including Sir John Grace, were heard to say the deed was signed under duress, so strong were their feelings at the Crown's actions in respect of their beloved lake. Before us, Mr Feist hesitated to use the word 'duress'. Cross-examined by the Crown, he said that he 'certainly would not have used that the term as such in the 1970s' but he would have used the term 'threat of compulsory taking'.[321]

The only other living witnesses of the meeting with the Prime Minister, apart from Mr Feist, were Rangikamutua Downs and Arthur Te Takinga Smallman, a trainee trustee. Mr Downs said in evidence:

> we were forced into signing the 1972 Deed: we either signed the deed agreeing to surrender our rights to compensation

for 'any alteration or condition' of the lake or the Ministry of Works threatened to take it anyway under the Public Works Act.[322]

Arthur Smallman said:

> The trustees had no option but to agree that the rights to use the lake be released to the Crown. Refusing meant that the owners would lose the lakebed. Our negotiators tried to impress upon the Crown how important the lake was to Ngati Tuwharetoa, but the Crown wasn't listening. They were going to get their scheme through irrespective of how we felt. The trustees had no option, they were forced into submission. There was complete silence. Pateriki Hura could not hold back the tears. He turned and walked away from them. I can still remember the look on his face.[323]

George Te Waaka Eruera Asher, who worked for many of those who were trustees during and after the years concerned, told us that the events surrounding the deed 'imposed a heavy personal burden on many of them'. He had no doubt in his mind, having listened to the stories of several of the trustees involved, that the 'Crown's tactics . . . were coercive'.[324] In his view,

> The Crown's modus operandi [was] clear. Through the veiled threat of compulsory acquisition of Ngati Tuwharetoa's cherished taonga, they were deliberately manoeuvred into a position where they had to choose the lesser of two evils – to relinquish ownership of the bed of the Lake or to forego compensation.[325]

Whatever the words used, there is no doubt that the Crown breached the principles of the Treaty in its actions that led to the signing of the deed on 30 November 1972.

14.8 Post-construction Impacts – Introduction

We have seen that the TPD represents a considerable feat of engineering that refashioned water flows on a huge scale. Waters to the west and to the east of te kāhui maunga were diverted into Lake Rotoaira and used for power generation. The TPD was undertaken at a time when the national demand for electricity was booming, and we need to remember that the government planned and committed to it before the birth of the modern environmental movement. The claimants say, though, that the Crown's actions in building and operating the TPD have damaged their waterways and fisheries in ways that have impacted on their livelihoods and cultural practices. Furthermore, they have been denied opportunity to participate in decision-making with respect to their waters, and to share in the economic benefits of electricity generation using their waters.

Having examined the establishment of the TPD between 1964 and 1984, we turn now to its impacts, inside and adjacent to the National Park district.[326] How did the scheme affect the waterways? What impact did it have on the tangata whenua's use of, and relationship with, those water resources and the animal and plant life within them? To what extent was the Crown implicated in any negative effects, and were any Treaty breaches involved? Have ngā iwi o te kāhui maunga been able to share in the economic benefits of the electricity generation which uses their waters?

We begin by looking at the parties' submissions in more detail.

14.9 Post-construction Impacts – Claimant Submissions

Claimant counsel were of a common mind in their identification of issues over the TPD's damage to the waterways. The examples they provided included the scheme's effects on ecology and fisheries (exotic and indigenous) and its impacts on ngā iwi o te kāhui maunga themselves, both physically and spiritually.[327] Counsel for Ngāti Rangi argued that the Crown failed to recognise their mana motuhake, tino rangatiratanga, and kaitiakitanga over their waterways; the Crown removed vital food and water resources, failed to protect their resources for future generations, and dismissed environmental knowledge accumulated over the centuries.[328] The claimants held that

the Crown breached Treaty principles when it failed to adequately assess the adverse effects of the TPD and to protect Māori from them.[329]

Lake Rotoaira, the key component in the TPD, is a core concern. Ngāti Hikairo submitted that the Crown's failure to adequately assess the impacts of the scheme on Lake Rotoaira and other waterways was a breach of the principle of active protection.[330] Ngāti Tūwharetoa submitted that the Crown had caused 'significant damage to the Lake' and 'makes enormous profits from using the lake'.[331]

The Crown took control and failed to protect the indigenous fishery. Nor did it even protect the trout fishery.[332] As a result,

> There has been a significant loss of income to Lake Rotoaira Trustees due to the irreversible destruction of a world-renowned fishery and consequentially serious economic downturn to the Lake Rotoaira Trust.[333]

The resident population of native kōaro in the lake has diminished, say the Ngāti Tūwharetoa claimants, and trout have declined by about 80 per cent. The natural fish-spawning ground on the Poutū River, which used to supply the whole of the lake with trout, is gone. These losses are directly attributable, say claimants, to the TPD.[334]

Some Ngāti Hikairo claimants went so far as to say that the environmental impacts of the TPD were even more of a concern for them than takings of land.[335] Ngāti Hikairo claimants assert that the Crown has failed to protect the mauri of their lakes and lands and say that, through the TPD, they have completely lost their 'mana, guardianship and customary association with Lake Rotoaira'.[336] Ngāti Manunui seek compensation for loss resulting from Crown impacts, including on their fisheries, restoration of rivers and waterways, and compensation 'for what has been taken from them without payment in the past'.[337] Ngāti Hikairo's counsel argued that there was a failure by the Crown to allow any benefit from the scheme to flow to Ngāti Hikairo, even while the Crown drew significant benefits from the scheme itself.

Streams and rivers to both the west and the east of te kāhui maunga give cause for concern. Counsel for Tamahaki and for Uenuku Tūwharetoa particularly focused on the waters of the Whanganui and Whakapapa Rivers, affected by the western diversion of the TPD.[338] They sum up by saying that Māori have been left with a devastated environment, their fisheries destroyed, and their rivers a shadow of what they once were.[339] This has impacted on the cultural and spiritual health of the people. Ngāti Manunui's submissions also related to the waters of the western side, and particularly to the tributaries of the Whanganui River, pointing out that sediment has built up, and flows are depleted.[340] Eeling tributaries were notably depleted: long-finned and silver-bellied eels were few and far between, and Ngāti Manunui could no longer provide eels for their relations at the lake.[341]

Counsel for Ngāti Tūwharetoa expressed concerns that, on the eastern side, the flows of the Tongariro River have been reduced to just over half of what they would be without the TPD, so that the river is now just 'a shadow of its former self'.[342] Problems with siltation, identified as early as 1968, were not addressed, said counsel.[343] Such changes, occurring over a period of 35 years, have affected the mauri of the river.

Also on the eastern side of the TPD, Ngāti Rangi described their losses as equally comprehensive. They particularly pointed to a loss of mauri:

> By allowing the diversion and mixing of wai within Ngāti Rangi's waterways and tributaries, the Crown has failed to actively protect the awa and taonga. Due to its actions, and in some cases inaction, the Crown is responsible for upsetting the natural flow and balance of Ngāti Rangi's awa.[344]

What is generally described as 'the mixing of waters' has become a crucial element in this case. As a result of the TPD's diversion of waters from 22 waterways in the Ngāti Rangi rohe it is, they say, no longer safe for them to fish and eel in the Whangaehu, nor are its healing properties able to be sustained. Wairua and mana are affected in many ways, they said, citing the example of their kaitiakitanga role, which also involves manaakitanga and the feeding of manuhiri.[345] They noted in particular that the Whangaehu has become more acidic because of the loss

of dilution from its tributaries, so that Ngāti Rangi can no longer use the awa as previously; tuna migrations also were impeded.[346]

The various counsel also addressed issues to do with resource management legislation. Counsel for Ngāti Rangi made links between resource management rights and rights to development: the loss of control over their awa and associated whenua has meant economic opportunities have been denied to them. The Crown has breached the Treaty by depriving them of any possibility of developing and utilising their resources and fisheries on their own terms.[347] Counsel for Ngāti Tūwharetoa argued that inherent in the right to their traditional waters is the right to develop them. This includes the right to license others to do so. Such a licensing arrangement needs to be put into effect with respect to the TPD.[348] Counsel for Ngāti Tūwharetoa submitted that the Crown's resource management regime, by allocating water use rights, has created rights akin to property rights that supplant or erode Māori Treaty and legal rights.[349] Counsel further submitted that Crown recognition of Māori rights to water is long overdue.[350]

Counsel for Ngāti Tūwharetoa spoke of how experience with the Resource Management Act has 'made them realise how little they can influence the outcome of the planning process'.[351] Any mitigation within the framework of the resource consent process is at the discretion of the local authority.[352] Ngāti Manunui, for their part, say that because of the Crown's failure to protect their interests, they no longer have control, management, and use of their customary lands and resources.[353]

14.10 Post-construction Impacts – Crown Submissions

The Crown argues that it must govern in the interests of all New Zealanders.[354] It proceeds on the assumption that it has lawful authority to legislate planning and management regimes for the use of water and the creation of infrastructure such as the TPD.[355] Counsel argues that, with regard to the TPD, it had balanced its duties and responsibilities for the common good.

At the same time, counsel acknowledges the Crown has a duty to actively protect the Māori interests guaranteed by article 2 of the Treaty and accepts that the duty of active protection extends beyond property interests.[356] The Crown acknowledges that Māori in this inquiry district have customary relationships with, and interests in, natural resources used for the TPD, and that these relationships and interests are encompassed by the article 2 guarantee and the associated duty of active protection.[357]

With regard to environmental impacts, the Crown says that it adopted a policy to remedy as quickly as possible any destructive effects arising from construction.[358] The planning and environmental management regimes put in place during the TPD's operation have lead to significant mitigations. These regimes (especially the RMA) make express provision for the consideration of Māori values, perspectives, and associations with ancestral lands and waters.[359] As a result, minimum flow regimes and other similarly helpful measures have been put in place. Counsel adds:

> Most recently, the Environmental Court found that 'many of the physical effects on the rivers are caused by factors other than the TPD. In the overall context the physical effects are minor'.[360]

The Crown argues that although flowing water is not capable of ownership, the Water and Soil Conservation Act 1967 and its successor the Resource Management Act 1991 give the Crown the right to regulate the use of water. This includes the sole right to dam, divert or abstract water, as well as to discharge into natural water. In counsel's submission, such actions are 'a legitimate exercise of [the Crown's] kawanatanga under article 1 of the Treaty' because there is a national interest in the regulated control of the use of natural water.[361]

The Crown, citing the Court of Appeal's finding in the *Te Ika Whenua* case, maintains that there is no development right in relation to the generation of electricity from water. Therefore, says counsel, 'it cannot be said that the Water and Soil Conservation Act confiscated, or failed to protect, any rights in this regard'.[362]

14.11 Post-construction Impacts – Third Party Submissions

Genesis Energy is a State-owned enterprise, formed in 1999 when the Electricity Corporation of New Zealand was separated into a number of components.[363] Genesis accepts that although it can point to various agreements with tangata whenua over the TPD, those agreements do not necessarily signify the tangata whenua's unqualified acceptance of the TPD's presence and operation.[364]

On the matter of the TPD's impacts, counsel for Genesis quoted from the Environment Court's findings, noting that it had found the physical effects of the TPD to be minor. The court said, for example, that 'there is no evidential connection between the operation of the TPD and the decline of native fish life'. It also said that 'many of the physical effects on the rivers are caused by factors other than the TPD'. However, counsel also quoted the court's finding that 'The effects of the TPD are more greatly felt on Māori spiritual values.'[365]

14.12 Post-construction Impacts – Claimant Submissions in Reply

The Crown has failed to address the environmental effects of the TPD.[366] There are losses of land as well as lake. The land lost to the scheme has led to a loss of mana and taonga.[367] Even though these areas may no longer be in Māori ownership, the claimants emphasised that the consequential environmental damage has resulted in 'spiritual, cultural and economic cost' for Ngāti Hikairo.[368]

Counsel for Ngāti Tūwharetoa noted that the Crown had not responded to the evidence that the fishery in Lake Rotoaira had been 'severely detrimentally impacted upon by the introduction of the TPD'.[369]

Counsel for Rangiteauria Uri, in a generic submission, drew attention to the Privy Council's finding in relation to *Broadcasting Assets* that, 'if . . . a taonga is in a vulnerable state, this has to be taken into account by the Crown in deciding the action it should take to fulfil its obligations'.[370] Attention had been drawn to the Environment Court's findings about the TPD's physical effects being minor but, said counsel, no mention had been made of the court's remarks about the significant adverse effects on Māori cultural and spiritual interests today.[371] In light of those remarks, and the Privy Council's findings, the claimants say that Crown has a duty to re-assess 'the balance between kawanatanga (Article 1) and tino rangatiratanga (Article 2) in terms of the continued operation of the TPD'. They assert that, instead of doing so, the Crown has 'acted to divest itself of the responsibility' – on the one hand, by devolving or delegating TPD assets and their management to State-owned enterprise and, on the other, by giving over the associated resource regulation and decision-making to local government. In this way, said counsel, the Crown avoided its Treaty obligation to Māori affected by the scheme.[372]

As an example of what can happen in such circumstances, counsel pointed to decisions taken about modifying water flow in the waterways of the western diversion: the Planning Tribunal had chosen to approve flow-changes to protect the interests of whio (blue duck), but when it came to the cultural and spiritual interests of Whanganui iwi and Ngāti Rangi, no similar consideration had been shown.[373]

Despite the Crown's devolution of power and authority, it still has the power to implement real change in respect of the TPD, said counsel, but in the claimants' view 'there appears to be no genuine political will for such change'.[374]

Counsel for Rangireauria, submitting for Whanganui iwi and Ngāti Rangi, suggested that to remedy its Treaty breaches, the Crown consider taking the following steps:

- broker an agreement between affected iwi and Genesis on the resource management issues affecting the TPD;
- resource Whanganui iwi and Ngāti Rangi to carry out any necessary further research that might assist in reaching a resolution between parties, such as effects of differing flows in waters currently diverted;
- resource the development of a cultural health index for the affected waters of the TPD;
- commission a review of the current and future anticipated role of the TPD in terms of electricity generation in New Zealand, in light of alternative sources of electricity over the next 50 years;

- review the impacts of the TPD with a view to decommissioning those diversions with significant adverse cultural, spiritual, and environmental impacts; and
- research ways in which powers or functions of local government may be transferred to iwi authorities.[375]

Ngāti Tūwharetoa does not concede that 'Māori rights to water have been extinguished'.[376] The Crown expresses the English common law position but fails to address Treaty rights to water at Māori law.[377] Ngāti Tūwharetoa has presented evidence on the ownership of waterways which the Crown chose not to cross-examine.[378]

14.13 Post-construction Impacts – Tribunal Analysis

From the submissions of the parties, and from the evidence, it seems to us that the important questions to be resolved for the post-construction phase are the following:

- What have been the post-construction impacts of the TPD on the waterways of ngā iwi o te kāhui maunga and on the people themselves? Is Treaty breach involved?
- To what extent do the regulatory regimes for the TPD since 1984 breach the Treaty and prejudice Māori?
- What rights, if any, had ngā iwi o te kāhui maunga to benefit from the use of their taonga to generate electricity, and have such rights (if any) been given due recognition and effect?
- Are there ways to restore the relationships between ngā iwi o te kāhui maunga and the waters used by the TPD?

We turn now to the first of our questions.

14.13.1 Impacts on the waterways

We consider, in turn, Lake Rotoaira, the rivers included in the western diversions, the Tongariro and Tokaanu Rivers, and the rivers included in the eastern diversions.

(1) *Lake Rotoaira – the lake*

The evidence available includes material from the Lake Rotoaira indigenous knowledge project,[379] the *Lake Managers Handbook* prepared by the National Institute of Water and Atmospheric Research (NIWA) for the Ministry for the Environment in 2002,[380] and evidence presented to resource consent and Environment Court hearings. Among the evidence brought to us by the Crown and Genesis was the latter's voluminous *Tongariro Power Development: Assessment of Environmental Effects* (AEE), prepared in 2000.[381] We were also assisted by material presented to us by Charles Mitchell, a freshwater fisheries biologist.[382]

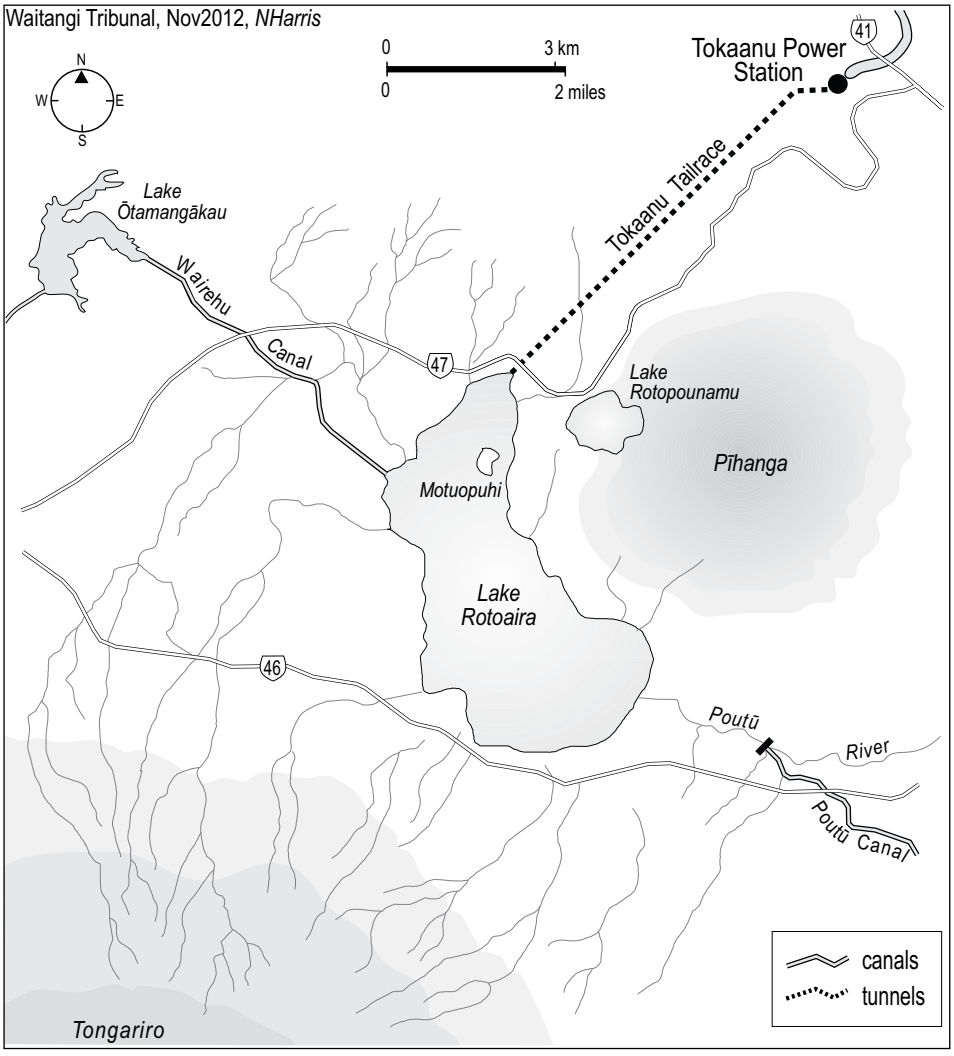
Lake Rotoaira was a key component for stage one of the TPD and for the scheme as a whole (map 14.2). We consider the impact on people first, and then turn to the waterways and the fisheries.

George Te Waaka Eruera Asher described Lake Rotoaira and its surrounds as a taonga for the immediate hapū and for the wider population of Ngāti Tūwharetoa.[383] As we saw in the previous chapter, it was known, throughout Māoridom, as 'te pataka kai o Ngāti Tūwharetoa'. Mr Asher expands:

> The Lake was therefore a significant catalyst in maintaining a network of social and cultural cohesion for Ngati Tuwharetoa. The maintenance by hapū of their attendant kaitiaki duties in protecting the mauri of these taonga is a testament to the high regard held in respect of Lake Rotoaira, its waters and its fishery and bestows significant mana on Ngati Tuwharetoa and the hapū closely associated with this taonga.[384]

The small but fertile lowlands adjacent to the lake were important living places for tangata whenua, and gathering places for their wider whanau, up to the establishment of the TPD.[385] There were kāinga; there were urupā, there were large māra kai; there were farms which ran sheep and cows and grew crops, and where field days were held; there were places for picnicking and camping for whānau, and for end of school camps; there were puna, hot and cold, inside and outside of the lake; and there were sandy beaches where people fished or swam, and where whānau gathered.[386]

The raising of the lake level, the fluctuations in lake level, the new canals built at Poutū and Wairehu, and



Map 14.3: Lake Rotoaira showing rivers, canals, tunnels, and powerstations

the Tokaanu outlet at Ōpōtaka, have brought enormous changes. The impacts are spelt out in detail in the indigenous knowledge project report.[387] Kāinga such as Te Ngongo had been under pressure to relocate because of changes in lake or water table levels or run-off from road construction; beaches were narrowed or submerged; puna were silted up; the Poutū River and the Wairehu Stream were replaced by large canals; and access to māra kai, farmlands, and urupā was lost. The authors of the report see strong linkages between the physical impacts and the human impacts:

> The mauri and well-being of our Taonga suffers through the artificial interference with the natural order of things. The Lake is no more than a reservoir now and the mauri and natural physical features and life of the Lake has been irreparably

Lake Rotoaira from Ōpataka Historical Village

harmed. Korero from the pakeke has vividly demonstrated the impacts. The water, the fishery the beaches and shoreline, the flora and fauna have all been adversely impacted on. The cultural life of Ngati Tuwharetoa has been undermined through the loss of opportunity to undertake the cultural practices described by our pakeke, to maintain tikanga, manaaki and maintain communities and their direct association with the Lake.[388]

'Almost everything in the area and on the Lake has changed', they conclude, 'From the small invertebrate species that live on the bottom of the Lake to the weed that grows in it to the generations of Ngati Tuwharetoa who are descendents of Lake Rotoaira.'[389]

Rotoaira is no longer the food basket and the gathering place that it was.

One of the first impacts of the TPD construction was siltation. Siltation, caused by run-off into the lake, affects water quality and fish habitat. The redds, or underwater nests, which are excavated by female trout during

spawning, require a stony base and a good flow of well oxygenated water. Siltation smothers the eggs and cuts off the supply of oxygenated water to them.[390] The claimants submitted evidence to the effect that spawning streams at Rotoaira were damaged by TPD-associated works such as road building and quarrying – either directly or though siltation from the resultant run-off.[391] They also said that natural depressions on the bed of Rotoaira have been filled in by sediment, and puna have been covered over. This has affected prime fishing spots.[392] Patrick Piripi particularly noted that, when Ruapehu erupted in 1995, ash and pumice had found its way into Rotoaira via the TPD canals, causing a build-up of sediment in the lake. Dredging had been carried out, but only at the Poutū end of the lake – the rest of the lake was not touched. 'There were truck loads of sediment that came out', he said, 'and it all just got dumped on land near the Lake'.[393] George Asher also commented about increased sediment in the lake, and Arthur Grace pointed particularly to siltation at the mouth of the Poutū Canal.[394]

The AEE, in contrast, minimises the impact of sediment. It states that that only very fine sediments reach the lake, via the Poutū Canal, and adds that 'the impact from deposition of fine material arising from the diversions is likely to be very localised'.[395] At the same time it indicates periodic dredging of the inflows.[396]

Taking all this evidence into account, it is clear to us that, irrespective of how fine the sediment was, there were significant inflows of material both during the construction phase and in the wake of the 1995 eruption, and that there are some continuing inflows of sediment through the Poutū Canal.

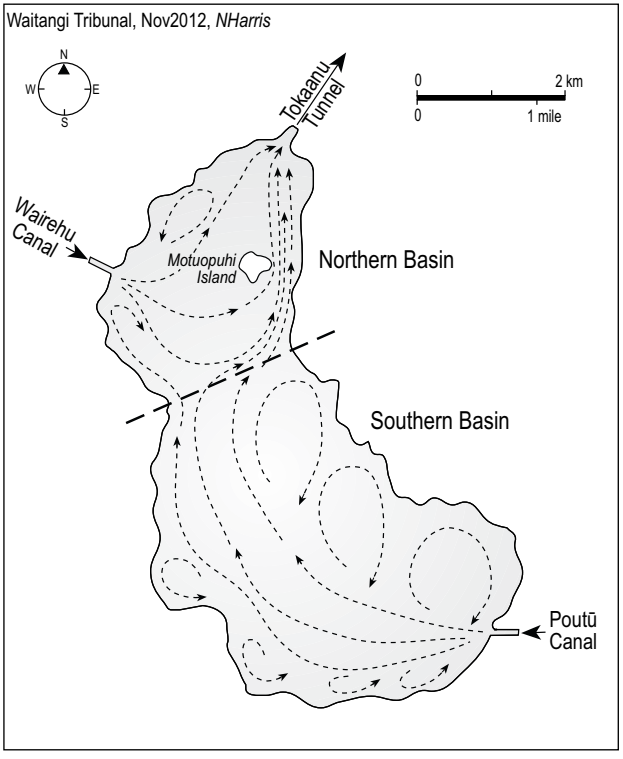
Changes in lake hydrology, including lake levels and the speed and direction of water flow within the lake, can impact on water-tables, beaches, and shorelines. The AEE acknowledges that the '[m]anagement of lake level, inflows and outflows from Lake Rotoaira has led to alterations in the lake level regime', noting that '[t]he lake level is 500 to 600 mm higher than it would be naturally, both on a long term and seasonal basis'.[397] Ngāti Tūwharetoa likened the post-TPD situation to 'water swirling around a washing machine'.[398] Map 14.4 provides a graphic illustration of what is meant.[399] According to the AEE, currents now typically run at two to five centimetres per second; although 'there are large areas of the southern basin where the currents are weaker', the report acknowledges that 'currents in the immediate vicinity of the canal entrances

Lake Rotoaira: A Lake Manager's Perspective

Originally slow-moving, the lake had, in its natural state, just a few small tributaries entering mostly from the north, west, and southwest, and one waterway, the Poutū Stream, departing from the southeast. Under the changes wrought by the TPD, however, the Whakapapa, Whanganui, and Tongariro Rivers all contribute some of their waters to the lake: the first two via the Wairehu Canal; and the latter via the Poutū Canal. Also as part of the TPD, a dam was constructed across the old Poutū Stream, at a point about three kilometres east of the lake, and the waters from the Poutū Canal fed into it. As a result, the stream's flow between there and the lake, augmented by the water from the canal, has been reversed – this section of waterway is sometimes known as the Rotoaira channel.

The combined effect of these canals and channels has been to increase the lake's inflow eightfold, from 6.9 to 57 cubic metres per second. A new outlet – the Tokaanu Tunnel – has been built at the northern end of the lake to take water to the Tongariro hydro station. The Tokaanu tailrace then carries water to Lake Taupō which is used as a storage reservoir for the Waikato River power stations.

As a result of all these modifications, water moves through the Lake Rotoaira much more rapidly and the flows are reversed, exiting now at the north rather than the southeast. Changes of such magnitude inevitably had ecological effects. Furthermore, the dam raises the lake level, both on a long term and seasonal basis, with fluctuations according to daily and weekly cycles, causing a corresponding rise in water table levels.[1]



Map 14.4: Circulation patterns in Lake Rotoaira, post-TPD

are stronger'.[400] This is in marked contrast to the situation pre-TPD when, according to Rangi Downs, 'there was no such thing as a current',[401] and it has resulted in some scouring of beaches and shorelines.[402]

At Heretoa, the beach has been affected by the higher water levels and Patrick Piripi commented that the land had become quite swampy there. He and others also mentioned beaches being similarly affected round the lake edge at Poutū and Ngā Puna, noting that their disappearance represented the loss of favourite fishing and camping places.[403] At hearing, the loss of the Poutū beaches, in particular, was stressed as 'a major, major issue', since they had been gathering places not only for tangata whenua of the immediate Rotoaira area, but also those from the southern end of Lake Taupō.[404]

Motuopuhi, a wāhi tapu associated with the chief Te Wharerangi and his tohunga, appears to have been affected by both scouring and higher water levels. Tiaho Pillot described the area as once having been a 'marshy peninsula', whereas it is now a 'well defined island', and Ngaiterangi Smallman mentioned how, prior to the TPD, duck eggs could be collected from the partially submerged natural causeway leading to Motuopuhi.[405] Erosion has occurred on the northern and eastern shores of Motuopuhi, in particular, and the lagoon that used to exist on the northern side of the island has been totally swamped. This has led to a lessening of resources such as ducks, scaup, and morihana.[406]

The claimants also spoke of higher water levels having drowned various natural springs on the margin of Lake Rotoaira. One particularly important (cold water) spring to have been drowned was near the inflow from the Waione Stream. Other warm water springs were located on the western side of the lake, around Ngā Puna. Another warm water spring was a little north of Patena Bay where, according to Nancy Hallett, steam used to rise at the water line.[407] At hearing, the claimants explained that some springs are on the bed of the lake and some just around the edges. They said that increased lake levels have affected the flow of water out of these springs. Before the TPD, the water used to gush out, said one witness, but 'nowadays you can hardly see it'.[408] Springs were often a favourite place for kōaro to live and breed.[409]

The mixing of waters is also an issue. Rangihouhiri Asher, uncomfortable with the introduction of 'foreign waters' into Rotoaira, said:

> These foreign waters from the Rangitikei and Moawhango have a mauri of their own. Their tikanga and kawa are different. Therefore, their relationship with all the taonga that existed in Lake Rotoaira creates an imbalance. This imbalance creates unknown effects and uncertainty in the Lake and in the capacity for tangata whenua to exercise our kaitiakitanga in accordance with our kawa and tikanga.[410]

Tyronne (Bubs) Smith described the mixing of waters as being 'detrimental to the whole life-force of the resources within [the lake]'.[411]

A dragline removes the final spoil from in front of the portal at Lake Rotoaira. The Tongariro power development significantly altered water flows in the lake and the Poutū Stream, thus affecting the environment.

The claimants say, too, that the changes to the waters have affected the 'vibrant taniwha, Aorangi', who used to act as kaitiaki and look after the people around Rotoaira.[412] Patumoana Tahi told us how the taniwha also used to visit Lake Taupō, travelling there via the Poutū Stream before it became blocked by the dam.[413] Patrick Piripi linked Aorangi with the taniwha Horomatangi, speculating that they may be one and the same.[414] Since the advent of the TPD, say the claimants, Aorangi has become but a shadow:

> he is just a shadow of his former self. He has hauled himself up out of the water and not only is he sick, he is dying. To us at Rotoaira, we wonder if this is what will become of us.[415]

The evidence presented to us on lake weed is mixed. The claimants report that a new weed grows in large quantities, building upwards till it breaks the surface of the lake so that, on rough days, the wind can sometimes rip it out and blow it on shore. There it sits in heaps and

rots, generating unpleasant odours unless it is gathered up and disposed of.[416] The negative impact that this weed was having on the lake was clearly evident to members of the Tribunal when Genesis was forced to shut down Tokaanu Power Station at the same time Tribunal hearings were being held in October 2006.[417] Claimants explained that the original type of weed, which used to provide a habitat for the kōaro, has now been displaced by new varieties, affecting native fish life.[418] They say also that there has been a loss of river crustaceans and larvae as a result of smothering by the new weed.[419] The AEE, on the other hand, states that it is difficult to tell whether there has been any overall change in vegetation due to the TPD.[420] Historian Tony Walzl's evidence notes that a Crown official warned in 1974 that 'oxygen weed' (an invasive non-native) was 'thriving in Lake Rotoaira', and that, under certain wind conditions, it was a hazard for the power station in that 'large masses' of the weed were being propelled across the lake and drawn into the Tokaanu Tunnel.[421] Indeed, at the time of our hearings, such warnings became a reality when the power station had to shut down because of the weed problem.

In terms of other public information, we note that in 2008, Environment Waikato published a report prepared by scientists from the National Institute of Water and Atmospheric Research (NIWA), investigating the state of 43 lakes in the Waikato region. The research was based on the use of 'submerged plant indicators' to 'assess, monitor and report on lake condition'. The report recorded the presence of a number of invasive weeds in Lake Rotoaira, confirming the presence of invasive non-native species since at least the 1970s but giving rise to doubts about whether the weed mentioned by the Crown official in 1974 was indeed oxygen weed. It noted three exotic species (*Elodia canadensis*, *Potamogeton crispus*, and *Ranunculus tricophyllus*) as having had a moderate impact on the lake by 1979, but placed the introduction of oxygen weed (*Lagarosiphon major*) and hornwort (*Ceratophyllum demersum*) a little later, in the 1980s and 1990s respectively. Although noting that, since the 1990s, further invasive impact had been small, the researchers went on to say that 'the Native Condition Index has decreased more substantially due to the partial loss of deeper native charophyte meadows'.[422] Since the 'Native Condition Index' is a measure of 'the native character of vegetation in a lake based on diversity and quality of indigenous plant communities',[423] we take this to mean that indigenous lake weeds in Rotoaira are continuing to suffer. Indeed, using the 1800s as a baseline and rating the condition at that time as nominally 100 per cent, the researchers rate current diversity and quality of native vegetation at only 27 per cent, having declined to that level from 68 per cent in

Lake Rotoaira: Kaumātua Perspectives

George Te Waaka Eruera Asher was the son of Te Rangihouhiri Asher. He describes Lake Rotoaira:

> Lake Rotoaira is a taonga of great significance to Ngati Tuwharetoa. It is of central spiritual and cultural value and was once a source of life giving water and food not only for the immediate hapu but also for the wider population of Ngati Tuwharetoa.

His father, Te Rangihouhiri Asher, left this statement:

> I give evidence in respect of Te Moana o Roto Aira, Known throughout Maoridom as one of Ngati Tuwharetoa's main food sources, Te Pataka Kai o Ngati Tuwharetoa (the food cupboard). Known for the quality and abundance of its trout. The trout population had spawning grounds of the highest quality, namely Te Poutūtanga-a-Tamatea outfall of the south, where in the height of spawning the whole river bed was black with spawning trout.

George Asher continues:

> The lake is therefore a significant catalyst in maintaining a network of social and cultural cohesion for Ngati Tuwharetoa.[1]

Motuopuhi Island in Lake Rotoaira. Raised water levels created the island when they inundated a peninsula. They also resulted in other environmental changes, including the loss of a number of food sources.

1979. In the same period, the 'Invasive Condition Index', measuring the impact of invasive exotic species, rose from 67 per cent to 90 per cent. A comparison between the scores for Lakes Taupō, Rotopounamu, and Rotoaira shows that the condition of native vegetation in Rotoaira is by far the worst of the three, and invasion by exotic weeds is extremely high. The report does not investigate how the exotic weeds were introduced: Charles Mitchell suggests that fishermen's boats or trailers were the most probable sources.[424]

As to other vegetation, Patrick Piripi has noted that watercress, which used to be abundant in Rotoaira, is now found only in streams not associated with the TPD.[425] It also appears that flax once grew prolifically in the area around the mouth of the Waione Stream and that, prior to the 1940s, a flax mill even existed there. While the present situation is not entirely clear from the evidence, the claimants imply that the resource has now diminished. Certainly they note that the paru (a type of black mud) once used for dyeing the flax has gone, the site having been destroyed by the effects of the TPD.[426]

We turn now to the fishery.

(2) *Lake Rotoaira – the fishery*

According to available evidence, kōaro was abundant in Rotoaira prior to the introduction of trout and the construction of the TPD, being the principal fish species found there in those early times. After the introduction of rainbow trout, around 1906, the lake was still famed for being 'the food basket of Tūwharetoa', with the new exotic species now added to the list of resources. Indeed, about five kilometres from the lake, the Poutū Stream contained what had become a natural fish hatchery for trout. It was near rapids, which promoted the oxygenation of the eggs, and fish could develop naturally there and supply Rotoaira in its entirety with trout. Other, lesser, trout breeding areas were in the north-west, in the Wairehu and Waione Streams. No general fishing restrictions were needed, said the claimants, because 'all the Whanau knew how to look after such a precious food resource'.[427] Ngāti Waewae witnesses also stressed the importance of the fishery at Rotoaira.[428]

Changes in the movement of water through the lake have impacted on habitat. In place of the natural outflow at Poutū there was now 'a man-made canal . . . with water flows running in the opposite direction to their natural flow'. Waterflows were also affected at the other end of the lake, with the suction effect of the power station intake, via the Tokaanu Tunnel, creating a strong northward current there.[429] The average residence time for water in the lake has decreased from 247 days to 28 days.[430] All of this impacted on fisheries.

From a trout fisheries perspective, there were changes to spawning areas and changes to areas frequented by juvenile trout. The Poutū River, which was the natural outlet for Lake Rotoaira, was an important spawning area for trout, sufficient to stock the whole of Lake Rotoaira.[431] The area of lake adjacent to the river mouth was a rearing area for juvenile trout and a seasonal gathering place for kōaro. When the Poutū was dammed and the Poutū Canal created, the river east of the dam was drastically reduced and the spawning ground lost. The canal also brought a large flow of Tongariro River water into the lake, with the result that the rearing area for juvenile trout no longer functioned.[432]

At the other end of the lake, the Wairehu Stream, a second important area for trout spawning, had its flow reduced when water was diverted into the Wairehu Canal, and the stream was blocked by roadworks and debris during the TPD construction phase.[433] Some spawning recovered, as is discussed further below, but an extended rearing area for juvenile trout, near the mouth of the Wairehu Stream, is disrupted by the continuing inflow of water from the Wairehu Canal.

Post-TPD, say the claimants, not only was the kōaro virtually eliminated but even the introduced trout declined in abundance and quality.[434] One claimant told us that he had not seen a single kōaro 'now for 15 years'.[435] The decline in both kōaro and trout has been confirmed by the AEE and the *Lake Managers' Handbook*. For kōaro, the AEE notes that the best areas had been the tributaries on the north-west edge of the lake, where there was good native forest cover and a comparative absence of trout. However, after the advent of the TPD, that area changed and, furthermore, it was found that larval kōaro were getting carried away into the nearby outlet to the power station.[436] As regards trout, the report suggests that numbers are not only smaller, but the population has shifted from being younger and smaller in size to older and bigger.[437] This is significant in that taking fish from an older population has been shown to have a greater effect on maintaining stock numbers than would be the case with taking a similar percentage from a younger population. That said, the old Wairehu Stream bed, left in place a little distant from the Wairehu Canal outlet, still has some residual flow and has continued to be an important spawning tributary for the introduced trout. While trout numbers have certainly dropped, that section of stream still gives rise to a large percentage of the remaining rainbow trout in the lake.[438]

That fish stocks in the lake have diminished is also supported by evidence drawn from fishing permit statistics. The receipts from fishing licences on the lake in the mid 1970s dropped spectacularly from $5,000 in 1971 to 1972 to just $183 for 1974 to 1975.[439] The Fisheries Division attributed this to 'the changing ecology of the lake due to the flow of the Tongariro Power Scheme'.[440] The drop in trout numbers occurred before supplementary stocking was

The Poutū Canal and Dam. The construction of the dam altered the environment so much that spawning areas for trout were lost.

discontinued in 1989, so the latter change was clearly not a factor in the decline.[441]

Charles Mitchell, a freshwater fisheries scientist with long experience in the Rotorua, Taupō, and Rotoaira lakes, helped us to interpret this evidence and understand the reasons for the decline in the Rotoaira trout fishery. Prior to the TPD, Lake Rotoaira was one of the most productive trout fisheries in New Zealand. Catch rates of 1.9 fish per hour ranked it far ahead of Lake Rotorua with 0.23 fish per hour, and Lake Tarawera with 0.16 fish per hour.[442] George Asher, from age 11, went fishing at Lake Rotoaira with his father and uncles and brings complementary evidence:

> I recall my father and I catching our limit of 10 trout each in a relatively short space of time on almost every occasion that we went fishing on the Lake . . . If a large hui was being held, my father and others would stay out all night. They often returned to the marae with a large haul of trout. On one of these occasions my father caught over sixty in an afternoon.[443]

Fishery scientists Dave Rowe and Eric Graynoth have collated a wide range of data including trout trapping, trout anglers catch histories, and synoptic records produced by rangers. They confirm the decline in catch rates and are specific about the temporal pattern:

> A rapid drop from 0.9 to 0.4 fish per rod per hour occurred over the three years between 1972 and 1975, indicating a near 60 per cent decline in catch rates compared with the 70 per cent drop estimated from the creel census data. This was followed by a more gradual decline over the next decade (1978–1988) to 0.3 fish per rod per hour. Catch rates over the following decade (1988–1998) varied, but were relatively stable at around 0.4 fish per rod per hour.[444]

Patrick Piripi (Phillips) makes the comparison between Lake Rotoaira and Lake Taupō:

> The kai in Lake Taupo is now much bigger and better than the kai in Lake Rotoaira, but it used to be the other way round.[445]

The kaumātua who provided the evidence for the Lake Rotoaira indigenous knowledge project underline the changes to the quality of trout in Lake Rotoaira:

> The main general observation about the Trout throughout the Lake was that prior to the TPD they were really beautiful, they were much fatter all over, they were shinier and they tasted much better, with the flesh being a lot more orange or pink than that today.
>
> Mr Rangi Downs said that compared to Lake Taupo, Rotoaira was a small Lake but it had better conditioned fish. The trout had lovely pink flesh. However, because of the influx of new water into Lake Rotoaira the fish are losing their colour and taste. Now you get more and more Trout with white flesh, or what we commonly term as 'slabs'.[446]

Mr Mitchell points out that Lake Rotoaira, pre-TPD, had a distinctive combination of attributes: it was high altitude; it was pristine with minimal lake currents; and its lake floor was phosphorous-enriched by recent volcanic activity.[447] Organic material settles on the lake floor and is food for bacteria, midge larvae, snails, and worms. Phosphorous is abundant in the lake sediments and is released into solution if the lake floor is deoxygenated by biological activity. In the pre-TPD situation, when there was minimal lake circulation, there were typically two or three times per summer when temperature stratification within the lake led to oxygen depletion on the lake bed, allowing phosphorous to be released into solution. This, in turn, resulted in algae growth and algae blooms which fed micro-organisms. Midges, in lavae, pupae, and adult form, thrived and provided rich food for kōaro and trout. Mitchell sums up:

> I would like to suggest that Lake Rotoaira was formerly a eutrophic, midge dominated ecosystem . . . The high insect production and a high production of Daphnia, contributed to abundant food for trout and thus a fast growing stock of fish that matured rapidly and had a high quality pink flesh.[448]

In simple terms, pre-TPD, midges provided rich and abundant food for trout and kōaro in summer, and kōaro provided similarly rich food for trout in winter. Trout matured rapidly and had high quality pink to orange flesh. Rotoaira, with this particular combination of attributes, was unique among New Zealand trout fisheries.

Key components of this ecological system were removed when the TPD became operational. There were inflows of cold and oxygenated water which settled on the lake floor and sealed off the phosphorus deposits. Biological activity on the lake floor was reduced and midges in particular became much less abundant. Kōaro stocks declined: partly because larval kōaro were swept into the Tokaanu tailrace and juvenile kōaro were attracted, then stranded, in the infilling canals partly because there were fewer midges; and partly because they were predated on by trout. Trout continued as a key component of the ecosystem, but took longer to mature and provided a less attractive food.

But the claimants went further. They presented evidence that the TPD's effects have been more than just physical. Ngāti Tūwharetoa summed up:

> The mauri and wellbeing of our Taonga suffers through the artificial interference with the natural order of things. The Lake is no more than a reservoir now and the mauri and natural physical features and life of the Lake have been irreparably harmed . . . The water, the fishery, the beaches and . . . cultural life of Ngati Tuwharetoa has been undermined through

the loss of opportunity to undertake the cultural practices described by our pakeke, to maintain tikanga, manaaki and maintain communities and their direct association with the Lake.[449]

(3) *The western diversions*

The western diversions removed water from the headwaters of the Whakapapa and Whanganui Rivers and diverted them, through tunnels, canals, and storage lakes to Lakes Rotoaira and Taupō and, eventually, to the Waikato River (map 14.2). Flows in the Whanganui River were thus reduced. When the Whanganui iwi brought evidence to the 1988 Minimum Flows Tribunal convened by the Regional Water Board, they spoke of their physical and spiritual concerns. We will consider that hearing in more detail later (see section 14.13.2(1)), but one or two points are relevant to the present discussion. Mr T Rangiwhakateka, for example, emphasised how the physical changes have spiritual implications:

> The Whanganui River can only live and maintain its Mauri, its essence of life, with a plentiful supply of water that comes from its source. That source is the base of the Maunga Tongariro and that supply has been reduced beyond its safe existence by the diversion of the Whanganui River headwaters.
>
> This not only means the danger of the loss of a river as the people have known it before. It is the danger to the Taniwha, the guardians of this sacred entity, of the sacred places; and to its Wairua – spirit or soul. It endangers the past, present and future development of the people physically, mentally and spiritually.[450]

Archie Taiaroa, presenting as the chair of the Whanganui River Māori Trust Board, told the Minimum Flows Tribunal:

> The Whanganui River, its watersheds, bed and adjoining land has always been the spiritual and material life source of the Maori tribes of the Whanganui River.
>
> Its waters provide a spiritual and physical cleansing. It also provides the sustenance of fish life, plant life and nutrient for human, animal and plant life, which in quantity and quality have suffered to the extent of extinction in some species of traditional fish.[451]

Sir Archie Taiaroa. As chairman of the Whanganui River Māori Trust Board, Sir Archie was a strong advocate for the river.

Counsel for the Whanganui River Māori Trust Board, John Dawson, submitted that these natural waters were a taonga, protected by the Treaty of Waitangi, and the diversion of their headwaters without consent constitutes a Treaty breach.[452]

Resource consents for the operation of the TPD came up for renewal in 2001 and the Genesis application was heard initially by a joint committee of the Waikato Regional Council and the Manawatu–Wanganui Regional Council, then, in 2003, by the Environment Court.[453] Detailed scientific evidence and some customary evidence was presented.

As with Rotoaira, the mixing of waters was a focus of concern for tangata whenua. Claimants are clearly uncomfortable that whereas, pre-TPD, each affected river system had its own identity, those waters are now mixed

The Whanganui intake. As part of the Tongariro power development scheme, the intake led to reduced flows in the Whanganui River.

together. By way of example, we note the words of Matiu Mareikura of Ngāti Rangiteauria, originally presented to the Whanganui River Tribunal and relayed to us by his son:

> The waters down the Whanganui River are different from the waters in the Mangawhero here, or the Mangateitei over there, or the Manganui-a-te-ao. Each river has its own mana and its own korero. And so it's not just water we're talking about, we're talking about the spirituality of [those waterways].[454]

Gerrard Albert, spoke from his experience as manager of iwi relationships at the Manawatu–Wanganui Regional Council.[455] He was of the view that the diversion of waters from one catchment to another undermines the ability of tangata whenua to carry out their kaitiaki role, since it diverts the mauri of the water. The situation is exacerbated by the realisation that there may also be adverse spiritual effects on others downstream.

The Crown presented no evidence to us on these matters, but we note that they were the subject of some consideration during the consents renewal process.[456] The AEE, prepared in connection with the renewal application, comments that Genesis was 'not yet able to assess the scale and extent of cultural and spiritual effects'.[457]

When the Environment Court sat, it received detailed tangata whenua evidence and came to the 'clear conclusion' that:

> the diversion of the waters by both the Western and Eastern diversions has had and continues to have deleterious effects on the cultural and spiritual values of the Maori people. We find that these effects are considerable.[458]

Since that time, there has been ongoing consultation between Genesis and iwi.[459]

Turning now to water levels and water flows, we heard evidence from both the claimants and Genesis. Nyree Nikora, of Ngāti Hāua, said that water levels in the Whanganui and Whakapapa River systems were lower as a result of the western diversions. In some places, where the shallower water flowed over rocks warmed by the sun, this had led to higher water temperatures.[460]

The AEE accepts that, because of the diversions, the stream beds of the Okupata, Taurewa, Tawhitikuri, and Mangatepopo are usually dry immediately below the intakes. However, it goes on to say that 'within short distances downstream this is ameliorated by the inflow of seepage from the surrounding country and/or from tributary inflows'. Genesis therefore considered the effects localised and 'not significant'. Nevertheless, it proposed to institute a minimum flow regime on the Mangatepopo 'in an attempt to satisfy the requests of conservation interests' – the latter relating to the effect of reduced flows on the whio (blue duck) population.[461]

Water surges were also a concern. Speaking about the Whanganui River, Turama Hawira told us of one occasion when there had been unusually high rainfall and the TPD floodgates had been opened to release excess capacity. This resulted in a sudden huge increase of water coming down the river, which scoured out the river banks as it went and deposited significant amounts of silt and mud further downriver.[462] The instability of river levels, and its relationship to silting, was also commented on by Ross Wallis. Speaking for Tamahaki, he said the slumping of river banks had been observed to coincide with rapid rises and falls in the level of the river.[463]

In terms of the customary fishery, the reduced water levels, noted earlier, have impacted on habitat. In some places, claimants say, where shallower water has resulted in higher temperatures, fish have been killed. In other places, mahinga kai and native fish stocks have been adversely affected just by a lack of water. John Manunui and Lois Tutemahurangi, of Ngāti Manunui, both said that the diminished flow in the Whanganui had resulted in the loss of eeling holes, and it had also had an effect on the kōura population because the pools and 'backwash areas' they had favoured were now gone.[464] Rangi Bristol, of Ngāti Tamakana, similarly reported reduced numbers of piharau (lamprey).[465] Nyree Nikora said the effect on food sources had caused some people to move away, citing the depopulation of Kākahi village as an example.[466]

The AEE particularly comments on impacts around the various water intakes. Downstream of the intakes, according to the report, there has been 'no significant . . . effect on the distribution of native fish', nor 'on the abundance of eels'. However, the authors accept that 'fish communities may have been affected upstream of the intakes' and note a marked decline in eel numbers there.[467] Overall, the Genesis report on fisheries devotes considerably more text to trout than to native fish.

In terms of other forms of wildlife, the AEE notes that 'The Whakapapa–Whanganui River systems, their headwaters, and Lake Otamangakau are important wildlife habitats supporting both threatened and common bird species.'[468] Indeed, it notes the presence of a range of both native and introduced birds across the whole TPD area. It particularly focuses on the whio (blue duck). This is not only because of the bird's status as an endangered species but also because it was 'thought to be an important indicator for the overall health of certain waterways'.[469]

The report comments that no pre-TPD data is available for whio populations on the western diversion, but the species appears to be thriving on the Whakapapa River. On other western diversion streams, however, it is thought that numbers may be lower than they were prior to the construction of the TPD.[470] Genesis has accepted that 'the natural character of the Whanganui River immediately below the intake has been adversely affected by the diversion of water' and that the whio's habitat has been reduced there.[471] The report notes that, at the time of writing, the company was proposing a slightly increased flow release to mitigate both problems. Elsewhere, the report comments on the importance to all waterfowl of maintaining an adequate and steady water flow.[472]

In addition to fish and birds, the claimants point to other ecological losses. Kevin Amohia, of Ngāti Hāua, described the gathering of not only food but also materials

Two whio. The whio or blue duck is a native waterfowl which enjoys living in clean, fast-flowing rivers. Reduced river flows associated with the Tongariro power development have adversely affected it, but efforts have been made to improve its status.

for weaving, rongoā (medicines), and timber for building. In his view, diverting water from such rivers as the Whanganui and Whakapapa had damaged ecosystems and led to 'depleted stocks' of such resources. This in turn impacted on food, shelter, and protection, he said.[473]

The severely adverse impact of the construction and ongoing operations of the western diversions on the cultural life of Whanganui iwi was described by three tangata whenua witnesses.[474] As a result of concerns building over many years the work of Matiu Mariekura, Rangitihi Tahuparae, and others led to the starting of an annual wānanga on the Whanganui River – Tira Hoe Waka o te Awa o Whanganui, in 1989. It has continued ever since with the difficulties described in the evidence arising from the way the power scheme was operated. Whanganui people are a river people and in a society

where most of their pakeke are scattered around the motu, the retention of their cultural life and being depends crucially on being able to connect to their awa, hence Tira Hoe Waka.

What struck us was the contrast between the way in which Genesis and its predecessors utterly disregarded the needs of iwi to be able to conveniently progress their annual wānanga down the awa and the no end of trouble it went to to facilitate flushes to support recreational canoeing by non-Māori national organisations on the Tongariro River. Similarly, the Crown fulsomely, and arguably secretly, accommodated the needs of the (essentially non-Māori) Waitomo Acclimatisation Society in anticipation of adverse impacts of the western diversions on trout fishing. Yet, the Crown refused to respond to its own advisers in the Department of Internal Affairs and Māori concerns as to the imminent danger to the Māori-owned Lake Rotoaira trout fishery.

(4) *The Tongariro River and the Tokaanu Delta*

The Tongariro section of the TPD, focus of much public debate to do with the trout fishery, was the next portion of the scheme to be completed.[475] Waters were diverted from the Tongariro River, through the Poutū Canal and tailrace into Lake Rotoaira. Water stored in Lake Rotoaira is then taken by tunnel to the power station at Tokaanu (see map 14.2).[476] Flows in the Tongariro River are thus reduced.

According to Arthur Grace of Ngāti Tūwharetoa, the Tongariro currently runs at about half its pre-TPD volumes.[477] That estimate is confirmed by the AEE, which states: 'The mean flow in the Tongariro River at Turangi is just over half of what it would be without the TPD'.[478] The AEE concedes that these reduced flows are not 'natural' and that 'the integrity of the river and its connections with its upper tributaries have been reduced'.[479] It, however, expresses the view that increased flows in the lower river are unnecessary, saying:

> The current 16 m^3/s minimum flow is considered to be an excellent compromise between the three conflicting demands of recreational rafting/kayaking, fishing and fishery values, and electricity generation.[480]

The report concludes that the waterway is healthy and, as shown by the internationally recognised trout fishery the river supports, is capable of providing a home to 'a sustainable aquatic biological community which is similar to that present before the TPD'.[481] The committee hearing the consents application agreed that the TPD could not be shown to have had an effect on 'the size or quality of the trout fishery in the Tongariro River'.[482] Nevertheless, a subsequent article about the TPD resource consents, published in a newsletter for Taupō fishing permit holders, noted that there had been an increase in algae in the lower Tongariro, and that Genesis had agreed to 'regular flushing flows' to scour the algae from the river-bed.[483]

There are indications that water flow was also affected higher up the Tongariro; J Boubee, a NIWA scientist giving evidence to the consents hearing, concluded that 'the TPD had reduced the wetted area . . . immediately downstream of the Rangipo Dam'.[484] Ngāti Tūwharetoa's response to the consents application similarly indicates reduced flows along a considerable extent of the Tongariro, and they comment that the effects have been felt not only by Ngāti Tūrangitukua and Ngāti Kurauia, living around the river's lower reaches, but also by Ngāti Hikairo, Ngāti Waewae, and Ngāti Rongomai, higher up the river.[485]

The Poutū Stream, a tributary of the Tongariro, saw its flows drastically reduced when the Poutū Dam was built, capturing most of its waters and returning them back to Lake Rotoaira.

There was conflicting evidence about sedimentation. The AEE states categorically that 'No extra sediment enters the Tongariro River as a result of the TPD'. It concedes, however, that under low flow conditions the river 'does not have the transporting capacity it once had'. This means that sediment patterns along the course of the river have changed.[486] Maria Nepia submitted to us in evidence Ngāti Tūwharetoa's response to the report and the resource consent application.[487] The document particularly pointed to the effect of siltation on the Tokaanu Stream, but also noted that pools in the Tongariro River had been filled in by sediment, and that land in the river's delta had been raised by the dumping of sediment there. This had led to flooding of Māori land in some places,

and a loss of productive capacity.[488] Arthur Grace told us of a build-up of 'orangey brownish silt and rubbish' at the Rangipō Dam. Mr Grace described 'pile ups of brown silt' and other debris at several other places downstream along the Tongariro River, and testified to increased siltation of the river in its lower reaches, saying there was insufficient water flow to flush the sediment out.[489]

The Tongariro section of the TPD has also led to the destruction of wāhi tapu and put other wāhi tapu in danger of destruction of known rangatira graves.[490] The burden of Arthur Grace's evidence was the indifference to Māori concerns compared to the substantial action and expenditure of public money to protect residential and tourist properties and infrastructure. It is as if things highly valued by Māori and in imminent danger of destruction were of no consequence. His concluding comments are a cry for the Crown to engage:

> it's the [Māori] owners who have suffered the most. The Tuwharetoa people are the ones who have suffered. Sure we've got to make progress and have power for the people, but there are things that could help to rectify some of the damage. I'm afraid to say it, it's because we are Māori, and we always appear to get the worse end of the stick. We've lost our waahi tapu and we've lost our taonga.[491]

Genesis, in the AEE, did concede that there was 'a quantity of construction debris still present in the river', and indicated its intention to remove this over a five-year period.[492] It also said that, although the TPD itself does not influence how much sediment there is in the Tongariro River, there had been an increase in sediment load entering the river's catchment since the 1995 and 1996 Ruapehu eruptions. Furthermore, sediment tends to be 'temporarily stored behind the [Rangipō] dam and must be released periodically when the river is in flood'.[493]

Merle Ormsby described how silt also gets flushed down the Tokaanu Stream from the power station and how it banks up at the stream mouth, so that 'in dry times you can basically walk across the mouth'.[494] She said that, in the past, people from Taupō lakeside settlements such as Omori and Pūkawa had often used their boats to get to Tokaanu. However, this was no longer possible because the silt bars, together with water weed and unpredictable river levels, meant the waterway was no longer navigable.[495] Genesis, in the AEE, acknowledged the concerns of residents of 'the community that adjoins the Tokaanu Stream' (without mentioning Māori per se) and proposed mitigating action. The latter was to include regular maintenance of the stream, canal, and aqueduct, along with some financial assistance to help the community implement its Tokaanu Stream management plan.[496]

Ms Ormsby notes that Genesis organised for the stream to be dredged but said that the weed and silt was then dumped on her family's property.[497]

Claimants say that the silting in the Tokaanu Stream has affected the kōura population. Dulcie Gardiner described how kōura like to lay their eggs under small stones, but since the TPD, the stream bed had become smooth because of the siltation, so they no longer spawn there. 'Now I have no koura left at my papakāinga', she said.[498] A community management plan for the Tokaanu Stream, drafted in 2005, noted this absence of kōura but also said that there was 'the potential to reintroduce populations from Lake Taupō'.[499]

Merle Ormsby also commented that morihana (an introduced carp species) had reduced significantly in numbers, to the point where it was many years since she had seen it offered at a feast.[500] As we noted in the previous chapter, loss of morihana had meant they could no longer benefit from a jelly harvested from the fish, which, being rich in nutrients, had been used as a medicine.[501]

Some claimants saw the diverted waters as having been diminished in a spiritual sense. Ms Gardiner, for instance, spoke of the Tokaanu Stream, which, since the advent of the TPD, is taken in a big horseshoe bend through a concrete aqueduct before returning to the stream bed at the back of her house. She says that, as a result of this, its mauri has been degraded. She also believes that its physical quality has suffered and she no longer regards its water as drinkable.[502]

As we have seen in the Rotoaira section, the links between changes in river flows and whio numbers are explored in the AEE. Reduced numbers of whio were

noted on the Tongariro River, and the report acknowledged 'effects of the TPD and natural events such as the 1995–1996 eruptions of Ruapehu' as possible contributing factors.[503] Particularly highlighted was the area between the Rangipō Dam and the Poutū intake, where surveys suggest that numbers have declined since the commissioning of the dam.[504] Reduced water flows had resulted in a smaller 'wetted area', said the report, which had in turn limited 'the habitat available to support aquatic biota' (on which the ducks feed). Reduced flows and changed flood regimes had between them 'considerably modified' this section of the river.[505]

(5) *Eastern diversions*

The eastern diversions, last in the TPD construction sequence, were built in the late 1960s and the 1970s.[506] The waterflow modification involved streams on the southern slopes of Ruapehu; all except the Whangaehu River, which had sulphuric waters, were diverted into the Wahianoa Aqueduct (see map 14.2). The Moawhanga River was dammed to create a new storage lake and water from here was carried by tunnel to the Tongariro River and the Rangipō Dam and the Rangipō Power Station. Water released from Rangipō then found its way to Lake Rotoaira via the Poutū diversion. Mr Walzl comments that this final stage had lasting effects on land and waterways, including the Mangaio Stream and the Tongariro River.[507]

From a Ngāti Tūwharetoa perspective, the eastern diversions completed what Tuatea Smallman called the 'dismemberment' of the Tongariro River:

> The Tongariro Power Development has dismembered our ancestor [the river] Tongariro . . . The dismemberment of the river is its destruction in Māori spiritual terms. The mauri is weakened. Where is our tupuna (ancestor)?[508]

Che Wilson of Ngāti Rangi commented about the impact of diverting 22 tributaries of the Whangaehu into the Wahianoa Aqueduct, saying:

> With the diversion, we are limited in exercising our relationships with and obligations to our environment. It inhibits us from fully exercising our manamotu hake and rangatiratanga over and with the environment.[509]

As presented to us, the harm extends beyond the rivers and their waters and touches the claimants and their relationship with those waterways.

Puruhi Smith of Ngāti Waewae explained how the rivers are part of their identity and also represent their link to the mountain ancestors from which the waters flow. Describing Ngāti Waewae as 'river people', he referred to their rivers being 'born from Nga Kāhui maunga'.[510] His implication was that, where waters are mixed, perceptions of identity and origin risk becoming muddied and tangled.

Speaking particularly of the Whangaehu and Rangitīkei, Mr Smith went on to describe how those rivers used to flow separately out to the west coast of the island. Now, he said, their waters are mixed together and, along with waters from the Moawhango, Wahianoa, Makahikatoa, and other tributaries, they are all carried to Lake Rotoaira. In this way, there is a mixing of mauri across catchments, all around the maunga.[511]

Ngāti Rangi witness Colin Richards elaborated on the cultural impacts including their kaitiaki obligations to downriver whanaunga living outside the National Park inquiry district. He told us that since the building of the Moawhango dam, 'there is only a small portion of the [Moawhango] river flowing there' and, in the tribe's view, 'the life-giving sustenance of [their] tupuna awa has been desecrated'.[512] Puruhi Smith of Ngāti Waewae described how in days gone by his tūpuna had travelled down the Moawhango to reach the Rangitīkei by waka. Together, he said, the Mangaio, Waitangi, and Moawhango used to provide 'huge volumes of water' for the Rangitīkei, but now he sees the Moawhango dam as 'strangling' the Rangitīkei. Furthermore, just below the Moawhango Dam, 'there is now mud and it has a bad smell'. Mr Smith did acknowledge, though, that Genesis regularly increases the flow rate to flush the river clean of debris. Meanwhile the lake itself has drowned a wāhi tapu, Te Tapuae o Tūroa, named after Tūroa Tawhiao, a tupuna of Ngāti Waewae.[513]

In its AEE, Genesis acknowledged that the construction

of the Moawhango Dam and the diversion of water to the TPD has significantly altered the Moawhango River. The effects, it said, were particularly noticeable 'immediately below the dam where the river is virtually dry and downstream to the first significant tributary inflow . . . the Aorangi Stream' but, in mitigation, this was a section of the river which is 'virtually inaccessible to the public'.

The claimants described the impacts of the same works. Colin Richards, for instance, told us how fishing is no longer possible in the Moawhango River because of the reduced waterflow there since the building of the dam.[514] Puruhi Smith's Ngāti Waewae ancestors had also used the Moawhango for fishing, but changes caused to both the Moawhango and Rangitīkei by the TPD meant that in more recent years 'kai became harder and harder to get'.[515] Tame Taite likewise attributed the lack of patiki (flounders) in the Rangitīkei River to lower water levels and swifter currents.[516] Jim Edmonds of Ngāti Rangi commented more widely on the cultural impacts. The freshwater fishery was important to Māori, but fish were not the only food resource to be gathered in and around rivers, and there were other benefits, too, to be had from river environments:

> We always go to get kai, whether it is tuna, puha or watercress . . . It is a way of life, it teaches you to be independent. It puts you more in touch with nature. You are aware of the changes in the seasons. If we lose these things, we will lose the value of life and why all those things are in our rivers in the first place.[517]

A number of evidential sources show that the Whangaehu, too, has been affected, particularly between its confluences with the Tokiahuru and Makahikatoa Streams, mostly as a result of the Wahianoa Aqueduct diverting away virtually all the water from its tributary streams. Reports indicate that by the time the river reaches the Karioi recording station, its flow is about 20 per cent less than pre-TPD. However, upstream of its confluence with the Tokiahuru, the flow has sometimes been reduced by as much as 36 per cent.[518] Ngāti Rangi witnesses explained how the diversion of waters away from the Whangaehu has caused the river to become more acidic.[519] This higher acidity affects the fish: Turama Hawira told us that the tuna heke now delay their migration until such time as there is sufficient rainfall to lower the acidity of the water.[520] Tuna are one of the prestige foods of Ngāti Rangi – that is, one of the specialty foods for which they are renowned. Pink-fleshed tuna with a distinctive taste like kōura were caught in the creeks of the Whangaehu in the Karioi area. The migrating tuna heke, its belly emptied for its transformation to enable it to embark upon its final sea journey for reproduction, was a delicacy.[521] The changed conditions were affecting the tuna's ecological cycle, said Mr Hawira, 'to the point where migration may no longer occur'.[522]

The Moawhango Dam

A notable feature of the fisheries evidence from the claimants is that, with rare exceptions, it relates to native species, which points to the importance of these species in the life of the tangata whenua. As Ida Tauta said: 'fishing was a primary activity to ensure we could provide for our guests'. Traditional delicacies were particularly important in that context.[523]

Then, too, as we discussed in the previous chapter, when native fisheries were lost, the associated skills and knowledge were often lost as well. Tūroa Karatea, of Ngāti Waewae, particularly mentioned:

The making of hinaki and bobbing baits for eels, made of supplejack and muka, large bush worms and muka, stone pa for the capture of inanga, salting and drying of inanga, the making of koura pots from supplejack and muka, spears for trout and flounders made from a pitchfork, kete for carrying kai.[524]

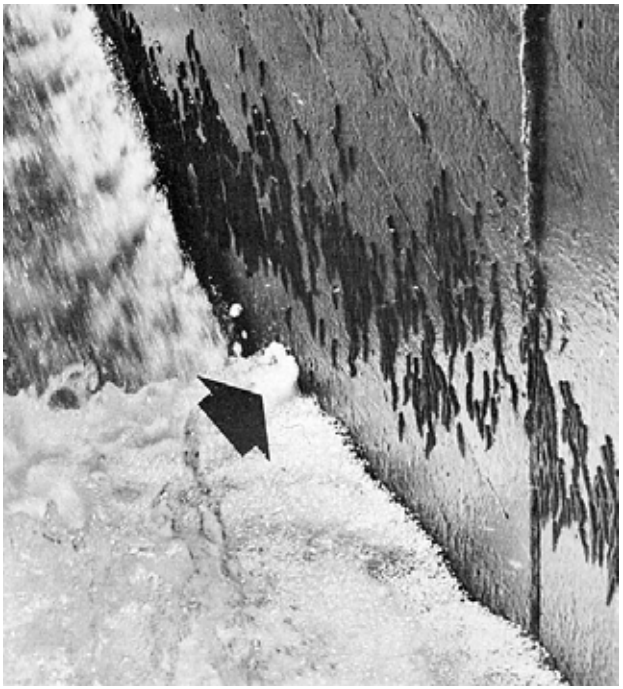
The testimony of Ngāti Tūwharetoa kaumātua Te Rangihouhiri Asher supported this viewpoint: she remembered that Ngāti Waewae had been renowned for their smoked tuna and their īnanga but 'these things were no longer seen'.[525]

(6) *Is Treaty breach involved in any of these impacts?*

We turn first to the impacts on water quality, ecology, and fisheries. The largest impacts are those at Lake Rotoaira which has been changed from a slow moving lake, well stocked with indigenous species of lake plants, indigenous fish, and trout, to a much faster moving water body. The interplay between increases in current, sedimentation, loss of springs, and destruction of indigenous lake plants, has diminished the habitat for both native kōaro and introduced trout. Trout numbers have also been reduced by destruction of spawning habitat on the adjacent Poutū River. Kōaro have largely been eliminated and the trout catch has been reduced. The TPD is, by our assessment of the full spectrum of evidence, the major contributing factor to most of these changes. The Crown has a direct involvement on two counts: it was instrumental in designing and putting in place the TPD scheme, and it was the architect of the resource management legislation designed to protect environments such as Lake Rotoaira. We find that the impacts of the TPD on Lake Rotoaira point to a serious failure in the Crown's duty of active protection towards Māori in the possession and enjoyment of their taonga. The Crown's actions in constructing and operating the scheme in the period to 1984 have resulted in damage to what was formerly a bountiful larder for the tangata whenua – a larder that was and is of ecological, economic, cultural, and spiritual value to them.

Two very different types of impact have resulted from the western diversions. First, there have been operational releases, involving the opening of floodgates to release excess capacity in the TPD. On these occasions, surges of water have been sent down the Whanganui River, causing scouring of river banks and deposition of silt. Secondly, barriers to fish migration have been created, whether in the form of actual concrete structures, or because stream beds, downstream from intakes, have been starved of water. The numbers of long-finned eels above the TPD intakes on the Whanganui and Whakapapa tributaries have declined. The research with respect to other indigenous fish is insufficient for us to draw conclusions. There is an urgent need for fisheries research to address this – research which combines the skill and knowledge bases of Western science and mātauranga Māori.[526]

The reduction of water flows on the Tongariro River is less severe. Minimum flows are seasonally adjusted by the TPD to meet the competing demands of rafting, kayaking, and fishing on the one hand and electricity



Koara whitebait climbing up a velocity barrier in the Wairehu Canal

generation on the other. There is little reference to Māori interests. Genesis has also experimented with flushing regimes designed to assist natural processes. Claimants have, nevertheless, expressed major concerns about the loss of indigenous fish. Again, there is a need for fisheries research which is better informed by customary knowledge about the Tongariro fisheries.

Major adverse effects have been experienced in the downstream areas adjacent to Lake Taupō. Sedimentation patterns have changed. The combined effects of the TPD scheme and increases in the level of Lake Taupō have resulted in increases in siltation in the lower reaches of the Tongariro River, the Tokaanu Stream, and the Tongariro Delta.[527] Crown actions in this inquiry district have impacted on tangata whenua and their whanaunga in the adjacent inquiry district. The Crown has again failed in its duty of active protection towards Māori in the use and enjoyment of their taonga.

The rivers of the eastern diversion have been more severely impacted than the middle and upper Tongariro River. Intake structures and virtually dry stretches of river bed impede fish migrations. The result is a marked reduction in the numbers of indigenous fish above these intakes. Such impacts can not be attributed to farming, roading, forestry, or urban development, since these are far downstream. The situation of the Whangaehu River is different from the other rivers: although it was excluded from the diversion scheme, it has been deprived of the tributaries which used to dilute its acidic waters. Thus, fish migration cycles are disrupted and the tuna-heke, in particular, is put at risk. The Crown has breached the Treaty which guaranteed to Māori the undisturbed possession and enjoyment of their fisheries for as long as they wished to retain them.

Alongside, and closely related to, these physical impacts are cultural and spiritual impacts. The claimants have brought evidence to successive TPD hearings. It is clear that they regard the TPD as having caused harm both to the environment and themselves. Claimants from the four corners of the inquiry district have expressed complementary perspectives.

The issue of waters from different rivers having been mixed as a result of the TPD scheme diversions is one that has clearly caused distress to all the iwi and hapū of te kāhui maunga. As the Whanganui River Tribunal has already observed, the nature of the impacts is diverse:

> If not mediated in an appropriate Maori way, this is spiritually offensive to Maori people . . . It also violated the political harmony between the people of different places, disturbed the exercise of their rangatiratanga over their traditional resources, and affected conservation practices and the productivity of the resources in question.[528]

The Environment Court, in its 2004 judgement, found that the diversion of waters for the TPD was, and is, having 'effects on the cultural and spiritual values' of Māori that are both 'deleterious' and 'considerable'.[529] It reported that the most damaging effect of both diversions is on the wairua and spirituality of the people:

> To take away part of the river (like the water or the river shingle) is to take away part of the iwi. To desecrate the water is to desecrate the iwi. To pollute the water is to pollute the people.

We agree with that conclusion.

There are also more localised, site specific, impacts, for example: on wāhi tapu and on places which provided flax and paru near the mouth of the Waione Stream; the drowning of beaches, favoured nohoanga sites at Rotoaira; the loss of hot-water and cold-water springs within Lake Rotoaira; the erosion of the wāhi tapu site at Motuopuhi; and the loss of eeling holes on the Whanganui River and its tributaries. Associated with the loss of wāhi tapu and mahinga kai sites is the loss of mātauranga. 'If we lose these things', said Jim Edmonds, 'we will lose the value of life.'[530]

The waters of te kāhui maunga have not been protected: in some cases, they have been cut off; in other cases, reduced to a trickle. The claimants have suffered ecological, cultural, spiritual, and economic losses. The Crown

has failed in its duty of active protection of Māori interests in their taonga.

We pause here to reflect on the interplay between kāwanatanga and rangatiratanga and the nature of the Crown's failure. The Crown has a duty to exercise kāwanatanga and to govern in the interests of all of its people. In this case the nation needed electricity and the Crown harnessed the waters of te kāhui maunga to generate electric power and enhance the output of the Waikato River power stations. Chief Justice Cooke in the *Lands* case is very clear:

> 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 to shackle a government unreasonably would itself be inconsistent with those principles.[531]

Alongside the exercise of kāwanatanga, the Crown has an obligation to recognise and protect the rangatiratanga of Māori over their properties and their taonga: in this context, the waters, the plants, the fish, and the wāhi tapu of ngā iwi o te kāhui maunga. How far does the Crown's obligation go and how best can it be exercised? Justice Richardson in the *Broadcasting Assets* case addresses questions such as these:

> This relationship the Treaty envisages should be founded on reasonableness, mutual cooperation and trust. It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting taonga to go beyond taking such action as is reasonable in the prevailing circumstances.[532]

The Crown erred in its duty of active protection not because it built the TPD scheme and the scheme impacted on the lands and the waters. The Crown erred because it provided minimal opportunity for mutual cooperation and trust. The waters were important for national electricity needs and the waters were of considerable practical, cultural, and spiritual importance for ngā iwi o te kāhui maunga. Consultation and a quest for a mutually satisfactory outcome were imperative if kāwanatanga and rangatiratanga were both to be recognised. Had the Crown shared its intentions, stage by stage, as it embarked on the TPD, it would have opened the door to a result that met the needs of partnership. Information would have been shared, some impacts would have been reduced or eliminated, and responsibility for other impacts would have been shared. Māori are not resistant to initiatives such as the TPD. However, they wish to be consulted in a reasonable and appropriate manner, they wish to be protected from inappropriate impacts, and they wish to share in the fruits of development.

The Crown had the opportunity to act as a Treaty partner and to exercise reasonable kāwanatanga during the construction phase of the TPD. The opportunities were not taken and, in our view, the Crown's inaction in this regard breached the principles of partnership and active protection, and ngā iwi o te kāhui maunga were prejudiced as a result.

We turn now to the regulatory regimes put in place in the 1980s and 1990s, which were designed to provide such protection.

14.13.2 TPD regulatory regimes since 1984 and the Treaty

A radical set of political and economic policy changes, initiated by both Labour and National governments in the 1980s and 1990s, had profound implications for the relationship between the Crown and ngā iwi o te kāhui maunga.[533] The TPD, built and operated by the Crown in the 1960s, 1970s, and 1980s, was corporatised in 1987 when the Crown created the Electricity Corporation of New Zealand (ECNZ), responsible for electricity generation across the country. Then, in 1999, ECNZ was disaggregated to create a competitive electricity market, and Genesis Energy became the corporation which used the TPD to generate power in the central North Island. Corporatisation was seen by the Crown as a way to reduce the role of government in the productive sectors of the economy, and as a possible precursor to privatisation. We note that the longstanding philosophical rationale that

the Crown, acting in the national interest, needed to have exclusive use and control over the waters used for electric power generation was dissolved by these reforms. ECNZ was freestanding, no longer an agency of the Crown.

There were parallel changes, driven by the same philosophy, in local government environmental management. Local government was rationalised, many old entities were merged, and a two-tier system was established, with city and district councils at one level and regional councils at another. The latter became responsible for, among other things, the quality and allocation of water. At the same time, the Resource Management Act 1991 was drafted to replace some 72 statutes on resource-related matters, including water and soil conservation and town and country planning. The overall effect was to shift a number of powers that previously had been held by central government to local and regional councils. Simultaneously, a number of other functions of government were either privatised or placed in the hands of State-owned enterprises.

All of this was at a time when Māori expectations of empowerment under a revitalised Treaty of Waitangi were reinforced by findings being issued by the Waitangi Tribunal, whose powers of inquiry had, since 1985, been extended back to 1840. In the National Park inquiry district as elsewhere, it remained to be seen how these rising Māori aspirations would fit with the new mechanisms and structures involving both State-owned enterprises and local government.

Other initiatives were already at work in relation to the TPD. In 1988, the Crown augmented the protective provisions relating to natural waters by introducing an amendment to the Water and Soil Conservation Act 1967 whereby local water boards could set 'desirable minimum flows' for rivers. In November 1983, the National Water and Soil Conservation Authority, having considered submissions from recreation groups and a report from the Rangitikei–Wanganui Regional Water Board, fixed a minimum acceptable flow regime for the Whanganui River. Those flows, to be measured at Te Maire, 17 kilometres downriver from Taumarunui, were set at 22 cubic metres per second (cumecs) from 1 December to 14 February and over Easter, and 16 cumecs for the rest of the year.[534] In arriving at these figures, the board had endeavoured to strike a balance between the needs of recreationalists, on the one hand, and power generation on the other.[535] The consent was to last from November 1983 to October 1988.

(1) *The 1988 minimum flows tribunal*

By 1988, the National Water and Soil Conservation Authority had been abolished and authority to fix minimum flows on the TPD rivers had passed to the Rangitīkei–Wanganui Catchment Board. The board invited submissions and received more than 1200 of these.[536] There were concerns about recreational needs, about trout fishing, about environmental damage already done, and about Māori spiritual values especially in relation to the Whanganui River. Mr Walzl has provided a summary of Māori spiritual concerns:

- Mr Rangiwhakateka discussed the creation of the river by reference to the struggle between the brothers Tongariro and Taranaki and explained how the river united the people by its mana:

> The river holds the memory of his people's history from the time of the first settlement. The Whanganui River can only live and maintain its Mauri, its essence of life, with a plentiful supply of water.[537]

- Hikaia Amohia explained the problems that emerge when decisions are made without the involvement of Māori, and diversions made without appropriate rituals and observances.[538]
- Professor James E Ritchie, an ethno-psychologist, described the spiritual impacts caused when the waters of the Whanganui are emptied into the spiritual jurisdiction of Taupō-nui-a-Tia and then into the Waikato River: 'mixing without agreement thus violates past, present and future mana of the rangatira of all affected jurisdictions.'[539]
- Archie Taiaroa, submitting for the Whanganui River Māori Trust Board noted, first, that the rivers had been taken without meaningful consultation or negotiation. He described the importance of the Whanganui River:

> The Whanganui River, its watersheds, bed and adjoining land has always been the spiritual and material life source of the Maori tribes of the Whanganui River. Its waters provide a spiritual and a physical cleansing.

Mr Taiaroa told the Tribunal: '*We would like the full water flow returned to the river*' (emphasis in original).[540]

ECNZ, the successor to the NZED, asked that the 1983 flow regime be extended for five more years. A tribunal appointed by the catchment board considered the written submissions and heard from more than 70 witnesses. Noting that Tokaanu was the second largest power station (of any kind) in the North Island, ECNZ's witness, DJ Frew, stressed: 'Any reduction of that water for whatever cause usually means that it has to be replaced by burning fossil fuel'.[541] Another ECNZ witness, RJ Somerville, described the status of the water rights held by the State-owned enterprise:

> in 1987 the Crown transferred assets to the Corporation, including water rights which are defined as assets in the State Owned Enterprises Act. Because of the concerns about the Corporation holding some rights in perpetuity to use water it has agreed to apply within 15 years for substitute rights with finite terms.[542]

Insights into the 1988 monetary value of these rights to water were provided by KS Turner, who told the water rights tribunal that the loss of western diversion water, calculated on an annual basis, would be between $10,000,000 and $33,000,000 or, in terms of net present value calculated for 1988, $182,000,000.[543]

The catchment board tribunal reported in September 1988 with four major recommendations:

1. The natural flow of the Whanganui River at the TPD intake should be restored;
2. The diversions of the Okupata, Taurewa, Tawhitikuri, Mangatepopo, and Te Whaiau Streams should be allowed to continue;
3. Minimum flows for the Whakapapa River should be 8.5 cumecs from December to April and 4.2 cumecs from May to November;
4. This flow regime to remain in place for five years to October 1993.[544]

Neither ECNZ nor the Whanganui River Māori Trust Board was satisfied with the outcome. Both appealed to the Planning Tribunal.

(2) *The Planning Tribunal, 1990*

The Planning Tribunal sat for longer, received more evidence, and heard from more witnesses. The full gamut of issues was traversed in depth and in detail, including a significant amount of information about Māori cultural and spiritual values.[545] Recognising that the Whanganui River is a taonga of central cultural and spiritual importance to the Whanganui iwi, it recorded:

> The river unites the Whanganui people with its mana, as the centre of the tribal rohe, and is the symbol of their pride, prestige and dignity. Every tributary that contributes flow to the river contributes to that mana.[546]

The tribunal also noted Māori views about the diversion of waters:

> The Maori attitude is that to take some of the water of the river is to take some of the life of an ancestor; reduction of the natural flow of the river is demoralising for them. An interference with it breaks the sacred affinity of the people with the river and reduces its mana.[547]

Diversion of a river breaches its spiritual integrity, disrupts its mauri, desecrates its sacredness, and reduces its effectiveness for healing.[548]

The tribunal also recorded its understanding that Māori opposition to the abstraction of river water was not absolute:

> The attitude of the iwi would depend on the use to which the abstracted water would be put; and of whether it would come into contact with water from another source. Whether

> abstraction is acceptable would depend on their perceptions of whether it is detrimental to the culture, or to the environment . . . and on whether it is made after reference and regard to the Maori people, and with appropriate rituals and observances.[549]

In its decision, the tribunal took care to define how it had seen its task. It did not wish to rule on the correctness or otherwise of the decision reached by the Catchment Board Tribunal, nor did it anticipate the provisions of the RMA (which was currently before parliament). Rather, the parameters it used were those set out in section 20J of the Water and Soil Conservation Amendment Act 1988:

> The Board may from time to time, after consultation with representatives of all interested bodies, and persons known to the Board, fix maximum and minimum levels, and the minimum standards of quality to be sought or permitted for the natural water in lakes, both natural and artificial, and the minimum acceptable flow and minimum standard of quality of the natural water of any river or stream, and, where desirable, fix the maximum range of flow and arrange for the retention or disposal of surplus natural water.[550]

The tribunal, deliberating in 1990, recognised Māori cultural and spiritual values in relation to water, noted that the Treaty of Waitangi was part of the fabric of New Zealand society, and showed a clear awareness of the spiritual links between Whanganui iwi and awa. It, however, focused on the very specific requirements of the Water and Soil Conservation Act, viewing its task of fixing a minimum flow in the context of:

> conservation of resources of natural water so that they are protected against harm and waste, and are available to meet as many demands as possible, so that their benefits can be enjoyed and shared by all interests to the best advantage of the nation and of the region in which they exist in the course of nature.[551]

In balancing such factors, the Planning Tribunal realised that the 'demand, benefits, and interests' would vary from case to case. Significantly, however, it acknowledged that they would 'generally include instream values, *and the cultural values of the tangata whenua*' (emphasis added). Māori values were thus given a place alongside water based recreation, wildlife habitat, trout fishing, and electricity generation.[552] Nevertheless, Māori Treaty rights were outside the terms of reference.

The tribunal cancelled the catchment board decision to restore the natural flow of the Whanganui River at the TPD intake and set new minimum flows for the Whanganui and Whakapapa Rivers.[553]

The determination was made on 29 October 1990. It was appealed to the High Court but was not overturned: it was, it seems, consistent with the Water and Soil Conservation Act. Meanwhile, the RMA worked its way through parliament and became law in 1991.

(3) *The Resource Management Act 1991*

The RMA established a new regulatory regime which recognised Māori cultural and spiritual values and contained explicit links to the Treaty of Waitangi. As noted earlier, it replaced a large number of previous Acts – among them, the Soil Conservation and Rivers Control Act 1941, and the Water and Soil Conservation Act 1967.[554]

The purpose of the Act is to promote the sustainable management of natural and physical resources. Māori were involved in the process of resource management law reform which led up to the legislation, and a number of sections of the Act make provision for iwi environmental interests. In particular:

- section 6(e) recognises as a matter of national importance 'the relationship of Māori and their culture and traditions with their ancestral lands, water, sacred sites and other taonga';
- section 7(a) acknowledges the role of tangata whenua as kaitiaki or guardians over resources; and
- section 8 requires all persons exercising functions and powers under the Act to 'take into account' the principles of the Treaty, including partnership and active protection.

Sections 6, 7, and 8 are part of a statutory hierarchy. District and regional authorities are required to 'recognise

and provide for' the items of national importance listed under section 6; to 'have regard to' the exercise of kaitiakitanga in section 7; and 'take into account' the principles of the Treaty under section 8.

From 1991 onwards, the operation of the TPD scheme, initially by ECNZ and then by Genesis, came under the RMA resource consents regime. The regional councils, not the Crown, were the decision makers. The minimum flow regimes for the Whanganui and Whakapapa Rivers, set by the Planning Tribunal in September 1990, were effective for 10 years from the passing of the RMA in 1991. New consents, to be issued by the regional councils, would be required from 2001 onwards. Iwi concerns and public participation would be important parts of the consenting process.

ECNZ (until 1999) and Genesis (from 1999 onwards) responded to the challenges and opportunities of the RMA by initiating a consultative process with TPD stakeholders and interested parties. They convened a meeting at Tūrangi in October 1991, to which tangata whenua were invited, and an open public meeting in November 1991, which was attended by numerous groups, including Māori.[555] A TPD consultation steering group and a consultation management group were set up to coordinate the research needed to support the hearings – which would not take place until 10 years later. A conservation working party, a recreation working party, and an operations working party, each including scientists, stakeholders, and managers, were formed. A TPD reports library was set up, progress was reported at public meetings, and a consultation management group newsletter was distributed to 19,000 residents in the central North Island. An external review was held five years into the process, and the research programme was reshaped with a firmer focus on the new information needed to identify impacts and evaluate mitigation options.

Māori, over the same time-span, were deeply involved on other fronts. Te Atihaunui, the collective of Whanganui River hapū, presented the Whanganui River claim to the Waitangi Tribunal.[556] Their evidence was heard in 1994 and the ensuing report released in 1999. The TPD, and its operations, were important components of this larger claim. The Tribunal scrutinised the actions of the Crown in setting up and operating the TPD to see if they were consistent with the principles of the Treaty. The Tribunal found that the Crown's actions fell short:

> Atihaunui possessed and controlled the river. We have also found that possession and control was not taken from them in any way that was consistent with the Treaty of Waitangi. It follows that such use rights as are consistent with the Treaty are only those that Atihaunui have freely and willingly allowed.[557]

Māori had been invited by ECNZ to participate in the TPD consultative process but their participation was uneven, intermittent, and not always effective. Neither iwi nor ECNZ nor Genesis were at fault. Consultation was initiated at a time when Atihaunui, affected by the western diversions, were fully involved with the Whanganui River Claim to the Waitangi Tribunal, first as presenters of evidence, and then as respondents to the report, preparing to negotiate a settlement.[558]

An important window of opportunity opened in January 1993 when Archie Taiaroa attended a meeting with the regional council and stakeholders, including ECNZ:

> Taiaroa provided information that of the five tributaries whose headwaters were taken by the diversion, the Whanganui intake contributed a very small portion of the waters being removed. He had therefore indicated to the meeting that the Whanganui intake in particular should be kept permanently closed.[559]

ECNZ responded that it would not support the proposal and an opportunity for further dialogue on the matter was thus lost.

The situation of Tamahaki Incorporated, representing hapū in the middle reaches of the Whanganui River, was ambiguous. The Regional Council and ECNZ were uncertain about the status of Tamahaki vis-à-vis Te Atihaunui. Tamahaki considered itself to be marginalised and underrecognised, a situation which was not resolved.[560]

On the other side of the mountains, ECNZ worked hard to engage face to face with iwi affected by the eastern

diversion. Hui were held, consultation processes were described, negative impacts were identified, and some mitigations were worked out. These were incorporated into formal agreements between Genesis and each of Ngāti Hauiti, Ngāti Whitikaupeka, and Ngāti Tamakopiri.[561] Working relationships between Ngāti Rangi and ECNZ were more complex.[562] Face-to-face meetings, written exchanges, and careful documentation facilitated the process, and Genesis recognised that the iwi needed financial support at key points, including the preparation of a Ngāti Rangi cultural impact assessment. That dialogue continues.

Relationships between ECNZ and Ngāti Tūwharetoa, as compared with ECNZ and Te Atihaunui, or ECNZ and Ngāti Rangi, were less fraught.[563] ECNZ and Ngāti Tūwharetoa each had a clear awareness of the status and style of working of the other. ECNZ made overtures well in advance and clear processes of consultation were worked out. Genesis and Mighty River Power provided funding for Ngāti Tūwharetoa to set up its own Environmental Services Division, allowing it to prepare an Environmental Strategy and Plan for the iwi and facilitate direct engagement between the State-owned enterprises and the Ngāti Tūwharetoa hapū. Anger and hostility towards past Crown actions was carefully separated from an emerging relationship with ECNZ and Genesis.[564] Aware of the damage done by the TPD in the past, Ngāti Tūwharetoa was prepared to work with Genesis to protect the waterways from further harm.[565]

In short, the decade leading up to the resource consent hearings in 2000 was a busy one. ECNZ and Genesis engaged with stakeholders and the public at large. They endeavoured to engage with iwi and hapū and, in some cases, provided financial support for iwi engagement. Māori were unevenly involved in the preparations for the resource consent hearings: partly because they had fewer financial resources than ECNZ and Genesis, the regional councils, and the Crown; partly because they were endeavouring to engage with the Crown, about a whole range of grievances, through Waitangi Tribunal proceedings; and in some cases, because they found the RMA context to be marginalising and problematic.

The final stage of preparation and consultation took place in 2000 when Genesis released a draft assessment of environmental effects in advance of its formal application.[566] This was made available to the consultation steering group, to stakeholders (including government agencies and iwi), and to the public. Genesis asked for feedback and used this to rework and expand its mitigation proposals. A number of contentious issues were resolved by formal agreements between Genesis and agencies as diverse as DOC, the Royal Forest and Bird Society, and the Tūwharetoa Māori Trust Board. Mr Walzl summed up:

> By the time of the TPD Hearings in 2000, Genesis highlighted that their submissions were the culmination of almost ten years of 'intensive consultation, research and analysis'.[567]

(4) *The TPD resource consent hearings, 2000 and 2003*

Genesis lodged its TPD resource consent applications, supported by the AEE, with the two regional councils (Environment Waikato and Manawatu–Wanganui) in June 2000. Some 58 separate consent applications were listed. A joint TPD hearings committee, appointed by the two regional councils, convened in November 2000. The appointment was challenged, without success, by Ngāti Rangi and others, on the grounds that they had no input into the selection of the panel, and there was no assurance that the panel was competent to hear evidence relating to Māori cultural and spiritual matters. At the request of Mr Taiaroa and Genesis, the hearings for the western diversion were held over for six months to allow further consultation between the Whanganui River Māori Trust Board and Genesis. Hearings were completed by August 2001 and the report was released the following month.

The TPD hearing committee granted each of the 58 consents applied for, but with a list of conditions. Many of the conditions were based on the mitigations proposed by Genesis as a follow-up to its research, its consultations with stakeholders, and its formal agreements with iwi and other parties. Some were added by the hearings committee on the basis of evidence and cross-examination. The minimum flows for the Whanganui and Whakapapa Rivers, established by the 1990 Planning Tribunal, were

continued. The consent for Lake Rotoaira required no mitigations but the hearing committee noted that a confidential agreement had been entered into between Genesis and the Lake Rotoaira Trust. There was extensive provision for monitoring whio (blue duck) numbers and an agreement between DOC, the Royal Forest and Bird Society, and Genesis to establish the Central North Island Blue Duck Conservation Charitable Trust with funds from Genesis. Enhancements for trout habitat had been negotiated with the Auckland, Waikato, and Wellington Fish and Game Councils.[568]

Fifteen parties lodged formal appeals, ensuring that the consents would be reviewed by the Environment Court.[569] Twelve of those appeals were withdrawn or settled before the Environment Court was convened: DOC, for example, reached an agreement with Genesis about mitigation measures for the Tongariro fishery.[570] The list of consents applied for and the mitigations suggested were reworked in the light of these formal and informal agreements. The three appellants remaining in the process were the Whanganui River Māori Trust Board, the Ngāti Rangi Trust, and the Tamahaki Incorporated Society.

The Environment Court met for 30 days between September and December 2003 and considered a very large volume of evidence.[571] The Māori appellants objected to the Manawatu–Wanganui Regional Council decision to grant some 30 water-related resource consents. In particular, they brought a large quantity of customary and spiritual evidence to support their case that these matters had not been given adequate weight in the initial finding. The respondent (the Manawatu–Wanganui Regional Council) and the resource consent applicant (Genesis) brought technical and scientific evidence including the research done in the 1990s, the Assessment of Environmental Effects presented in 2000, and the Planning Tribunal decision on the Whanganui River Minimum Flows Appeal in 1990.[572] The Environment Court also had before it the Waitangi Tribunal report of the Whanganui claim and detailed legal submissions made by each of the parties.

The submissions on cultural and spiritual matters which were brought to the Environment Court were more detailed than those which came to the initial resource consent hearing. The initial hearing had received a Cultural Issues Report prepared by Gerrard Albert, iwi liaison officer for the Manawatu–Wanganui Regional Council, and evidence by Buddy Mikaere, a consultant for Genesis. Mr Albert explained that the damming and diversion of waters had serious and adverse effects on tangata whenua: it impacted on the mauri of waters; it diminished the mana of water bodies, and the mana kaitiaki of the iwi and hapū that controlled those waters. Ngāti Hikairo, for example, told the court that they cannot discharge their responsibilities to other iwi if their waters are discharged into another catchment.[573] Buddy Mikaere gave evidence that Genesis had, in good faith, exercised all of the RMA requirements for consultation with tangata whenua.[574] Mr Mikaere further submitted that concern about the mixing of waters was a modern concept, rather than a traditional concern, and mixing is not, in itself, a harmful act.[575]

The Ngāti Rangi Trust and the Whanganui River Māori Trust Board each brought additional spiritual and cultural evidence to the Environment Court. Colin Richards, for example, told the court:

> There is no separateness of the life force of the natural world and the life force of people. And so, if you divert our streams or rivers then you are taking away their life essence – and by the same token, you are taking away ours. Take the Moawhango River for example. Before the dam was built there she was a mighty and awesome flowing river. Now that the dam has been built there is only a small portion of the river flowing there. The life-giving sustenance of our tupuna awa has been desecrated. Many of our old people fished in the Moawhango up where the dam is now. Below the dam, it doesn't hold the fish any more – the kai that was once sustained by our ancestral river. Its like a dry bed. So if someone tells me that the dam doesn't have an effect, I question their reasons.[576]

Keith Wood, an iwi environmental manager for Ngāti Rangi, addressed the validity of the values and knowledge brought by iwi, as compared to the scientific knowledge contained in the AEE and the Genesis submissions:

> We contend that our peoples' values and knowledge are just as philosophical and systematic as western science . . . [But] Our 'science' can only be explained within our own world view. Just as 'western science' reflects and reaffirms a 'western world view' . . . to know our science is to know our world.[577]

There are two different sciences, two different world views; the challenge is to let each engage with the other in a way that adds to the pool of knowledge. Mr Woods closed with a plea:

> We respectfully ask the Environment Court to give the same consideration and weight to both indigenous and western sciences in determining the TPD's environmental impacts. We are seeking for the korero of our pahake to no longer be misunderstood and dismissed as mere anecdotal narrative. We ask the Court to listen carefully for the science within it.[578]

Mr Taiaroa, presenting evidence for the Whanganui River Māori Trust Board, underscored the importance of the Whanganui River as the awa tupua for the Whanganui iwi and described the impacts of the TPD from the perspective of those who exercise rangatiratanga and kaitiakitanga:

> The TPD in the Maori view offended the mana, the rangatiratanga, and spiritual values in the Whanganui River and its associated waterways. As if one of our kaumatua described it, the effect is that the head of a man has been taken from his body. The position has been further compromised by the lack of any meaningful consultation or any appreciation of their view of the river or their legal and Treaty entitlements. The new resource consents which see no material change in the flow regime only serve to aggravate the offence.[579]

Under the provisions of the RMA 1991, the Environment Court had to give primacy to the sustainable management of natural and physical resources but also recognise and take into account the list of matters of national importance.[580] The court weighed the Māori cultural and spiritual evidence brought by iwi[581] and the scientific and economic evidence brought by Genesis.[582] From the latter, it was aware of the effect of the TPD on the national interest[583] and the national economy,[584] and the desire of Genesis for economic and operational certainty.[585] A solution that met all needs was not easy to find. In the end, the court granted all of the resource consents applied for, but reduced the term of the consents from 35 years to 10 years. It urged the parties to try to find common ground between them:

> We consider, on balancing all the matters raised in the evidence and the submissions, and having regard to the single purpose of the Act, that an appropriate term for the consents, that are subject to these appeals, is 10 years. This will provide time for a meeting of the minds between the two parties on what is a complex and difficult issue. We consider a term of 10 years would concentrate and focus the minds of both parties.[586]

Genesis did not agree and appealed to the High Court, arguing that the 'meeting of minds' requirement was an improper test and seeking the full 35-year consent period. The case was heard by Justice John Wild in July 2005, and his judgment was that the Environment Court had erred.[587] The Ngāti Rangi Trust, Tamahaki Incorporated, and the Whanganui River Māori Trust Board took the case to the Court of Appeal but were unsuccessful. The court, in a split finding, upheld the High Court's decision. Justice Ellen France, in the dissenting opinion, found that the 'meeting of minds' concept was directed to sustainable management, and the metaphysical nature of the adverse effects supported the cautious approach taken by the Environment Court.[588] Justice William Young (presiding) and Justice Robert Chambers, in the majority finding, held that the 'meeting of minds' concept was *not* directed to the underlying purpose of sustainable management.[589]

The matter of the TPD consents in the Manawatu–Whanganui region thus came back to the Environment Court for decision in June 2011.[590] In the interim, 'lengthy and constructive dialogue' had taken place between Genesis and a number of iwi organisations including the Ngāti Rangi Trust and the Whanganui River Māori Trust Board.[591] The parties brought a joint memorandum to

the court and a revised consent order. The Environment Court recorded:

> We have today witnessed a celebration of an accord as between the Māori appellants and Genesis.
>
> We are pleased that such an accord has been reached. We congratulate the parties for engaging in constructive dialogue and reaching agreement. We commend their wish to progress their relationship in a non-adversarial environment.[592]

The Environment Court reiterated its earlier concerns about the lack of interface between the scientific evidence and the Māori cultural and spiritual evidence. It then continued:

> Unfortunately, the phrase 'meeting of minds' has been elevated to a legal construct. That was not our intention . . . our concern was that the parties did not engage in frank and constructive dialogue.[593]

Its concerns dispelled by the agreement between parties, the Environment Court gave approval to the 31 resource consents for a period of 35 years.[594]

(5) *A national policy statement*

The Crown, meanwhile, moved to develop a national policy statement for freshwater management.[595] Extensive consultation took place in 2008 and 2009 and the *National Policy Statement for Freshwater Management* was issued in 2011.[596] There is an explicit Treaty foundation and a stated intention to involve iwi and hapū in the overall management of fresh water. Policies and objectives are set out in the policy statement for water quality, water quantity, integrated management, tangata whenua roles and interests, and progressive implementation. We affirm the initiative but do not comment further on the content of the document since it post-dates our inquiry.[597]

(6) *Research at the interface*

Mr Walzl, in evidence presented to the Waitangi Tribunal, has reflected on the dilemma faced by the courts as they sought to implement the RMA and make decisions in relation to the TPD.[598] These decisions had hinged on the interplay between scientific evidence as contained in the AEE prepared in 2000 and the cultural and spiritual knowledge of the claimant iwi. Reviewing international literature, Mr Walzl noted a newly accepted role for indigenous knowledge from the 1990s onwards: indigenous knowledge and Western science have the potential to complement each other, and both benefit if they are used together.[599]

Similar advances, Mr Walzl noted, have been made in New Zealand under initiatives by the Ministry for the Environment, the Hauraki Māori Trust Board, Manaaki Whenua – Landcare Research, Ngāti Porou, and Te Tau Ihu. The Ministry for the Environment has worked with iwi to develop a system of Māori environmental performance indicators, and Crown agencies and iwi have participated in collaborative research programmes.[600]

Mason Durie, a Māori academic and research scholar, describes such an approach as 'research at the interface' involving mutual respect, shared benefits, human dignity, and new discoveries.[601] Speaking to an international audience, Professor Durie emphasised the important role played by indigenous researchers:

> Indigenous researchers have a crucial role in straddling the divide between science and indigenous knowledge, acting as agents at the interface. . . . they . . . have access to two systems of knowledge and subscribe to both. . . . For their part Maori researchers have been encouraged by the possibilities that two world views, two bodies of knowledge, can be brought closer together. . . . The challenge has been to afford each belief system its own integrity, while developing approaches that can incorporate aspects of both and lead to innovation, greater relevance, and additional opportunities for the creation of new knowledge.[602]

(7) *Tribunal findings on regulatory regimes*

Provisions for the protection of wild and scenic rivers date back to the 1980s when amendments were made to the Water and Soil Conservation Act 1967. Applications could be made for water conservation orders, and the fixing of minimum acceptable flows for specified rivers.[603]

These provisions were tested out in the TPD context when the Minimum Flows Tribunal, set up by the Rangitikei–Wanganui Catchment Board, received evidence in 1988. Māori cultural and spiritual concerns were heard alongside TPD submissions. Recommendations were made which balanced the protection of taonga waterways against the national needs for electricity: some diversions would be allowed to continue; minimum flows were set for some rivers, and the natural flow of the Whanganui River at the TPD intake would be restored (see section 14.13.2(1)). The recommendations were, however, out of step with the requirements of the Water and Soil Conservation legislation: the decisions were appealed; the Planning Tribunal reversed the key decision, and the High Court confirmed this change. The Water and Soil Conservation Act 1967 provided protection for recreational values, wildlife, and electricity generation, but it failed to provide protection for Māori cultural and spiritual values. The kaitiaki responsibilities of ngā iwi o te kāhui maunga to their waters, and to their downriver whanaunga, were thus overridden by the court decisions. The Act also did not provide active protection for Māori taonga and Māori cultural values, and the claimants suffered when their waterways were cut off and diverted.

The outcome of the hearings under the RMA regime is essentially the same for ngā iwi o te kāhui maunga as before 1991. This time it was the Environment Court which was called on to listen to and respond to Māori cultural and spiritual concerns in relation to water and the use of water to generate hydroelectric power. The Environment Court recognised the scope and importance of Māori concerns and endeavoured to incorporate them into its recommendations. But the recommendations were quashed by the High Court, and the quashing was confirmed by the Court of Appeal (see section 14.13.2(4)). The relationships of Māori to their ancestral lands, waters, wāhi tapu, and other taonga were considered but overridden by other matters of national importance. Their kaitiakitanga was acknowledged but not given a place in the decision-making processes. The principles of the Treaty were considered but given less weight. The RMA did not provide protection for the claimant iwi. Their waters continued to be cut off and diverted, the same as before, and they still had no role in decision-making.

The State-owned enterprises ECNZ and Genesis, have been major players in the TPD context and in the regional and national economy. ECNZ in organising its research in the 1990s, and ECNZ and Genesis in preparing and presenting the AEE in 2000, worked to follow the spirit and intent of the RMA in their relationships with tangata whenua (see section 14.13.2(3)). They endeavoured to consult with iwi, to form resource management partnerships with iwi, and to incorporate iwi concerns into their consent applications. In some instances working agreements were forged, as with Ngāti Tūwharetoa. In other cases, iwi felt marginalised and disempowered, as in the case of Tamahaki Incorporated. More recently, in the lead-up to the 2011 hearing of the Environment Court, new agreements have been signed between Ngāti Rangi and Genesis, and the Whanganui River Māori Trust Board and Genesis. Although these relationships were formed since our inquiry, and the specifics are confidential to the parties, the very existence of such agreements represents an encouraging sign.

The RMA 1991, as interpreted by Genesis and the regional council, and confirmed by the High Court in 2005, uses the concept of mitigation as an appropriate pathway to resolve conflicts between different parties and different value systems. None of the courts, since 1991, saw the return of full flows or the closure of particular intakes as compatible with the national interest in electric power generation.[604] The negotiations which have taken place between Genesis and various iwi and hapū have, of necessity, focused on mitigation. The courts made it clear, for example, that the closure of the TPD intake on the Whanganui River was not a possibility: the TPD was in position and its broad configuration would be protected in the national interest.

The essential Treaty relationship is between iwi and Crown, but decision-making about the waters of te kāhui maunga, as determined by the RMA 1991, is in the hands of the regional councils to the north and the south of the

mountains. The RMA does not require the councils to carry out that delegated responsibility in accordance with the principles of the Treaty. There are more recent provisions, introduced into the RMA in 2005, for local authorities to enter into joint management agreements with iwi or groups representing hapū, but there is no *requirement* for this to happen and such agreements can be terminated at 20 days notice.[605]

We have pondered the nature of the problems with the RMA and its amendments.[606] Is the Act fatally flawed, given the weakness of section 8, which requires only that the principles of the Treaty be 'taken into account'? Or is it that those exercising powers have a low level of engagement with te ao Māori? Alternatively is it because important provisions relating to iwi management plans, transfer of powers, and joint management, have not been taken up by local authorities? It is clear to us that the legislation that promised much in 1991 has not protected the waters of te kāhui maunga.

We were close to reaching a conclusion, when our attention was drawn to a 2009 finding by the Environment Court sitting in a region outside of National Park. *Unison Networks Ltd v Hastings District Council* was concerned not with water power but with wind power. Unison proposed to establish a wind farm consisting of up to 34 turbines in the vicinity of Te Waka Range in Hawkes Bay.[607] A first stage of the proposal, on an adjacent site, had been approved but a second stage came under closer scrutiny because of the distinctive nature of Te Waka landform and its special significance for tangata whenua. The local hapū, Ngāti Hineuru and Ngāti Tū, regard Te Waka as their maunga and brought traditional lore to the Environment Court.[608] The court set sections 6, 7, and 8, which take heed of Māori concerns, alongside section 5 which sets out the Act's single purpose 'to promote the sustainable management of natural and physical resources.'[609] In the Te Waka context, the Māori dimension, involving wāhi tapu, mana, and kaitiakitanga, outweighed the other dimensions and this particular windfarm application was declined.[610] Windfarms are acceptable and desirable, but not on Te Waka maunga.

The Environment Court's decision in respect of the Te Waka Range shows that Māori interests can sometimes be determinative. All too often, however, those interests are set aside – not because they conflict with the Act's purpose but because they are subordinated to other considerations set out in the Act. Ngā iwi o te kāhui maunga sought recognition of their kaitiaki role but that recognition has not been granted to the extent that it might have been. Flaws in the RMA were clearly evident in the first decade of its operation, but the Crown has not remedied them in subsequent changes to the Act. As a result, the legislation has failed to protect the waterways of ngā iwi o te kāhui maunga in a way that takes account of tangata whenua interests and concerns.

The Crown has a duty to exercise kāwanatanga and to govern in the interests of all its people. It must, however, do this in a reasonable manner, allowing for the rangatiratanga interests of the tangata whenua, consulting with them, and seeking their cooperation (see section 14.13.1(5) above). In 1993, the Ngāwha geothermal resource Tribunal found that:

> The Crown obligation under article 2 to protect Maori rangatiratanga is a continuing one. It cannot be avoided or modified by the Crown delegating its powers or Treaty obligations to the discretion of local authorities or regional authorities. If the Crown chooses to so delegate, it must do so in terms which ensure its Treaty duty of protection is fulfilled.[611]

Other Tribunals, including those inquiring into the CNI and the Tauranga stage 2 claims, have since endorsed that finding.[612]

Also relevant is the recent *Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, where the Tribunal drew particular attention to kaitiakitanga as a key aspect of rangatiratanga in matters of resource management. Like other Tribunals, including the Wai 262 Tribunal and the CNI Tribunal, it saw tangata whenua as always retaining some degree of kaitiaki rights in resource management, no matter what the ownership status of the taonga. It, however, highlighted the Wai 262

Tribunal's view that kaitikitanga rights exist on a sliding scale, helpfully summarising the concept as follows:

> At one end of the scale, full kaitiaki control of the taonga will be appropriate. In the middle of the scale, a partnership arrangement for joint control with the Crown or another entity will be the correct expression of the degree and nature of Māori interest in the taonga (as balanced against other interests). At the other end of the scale, kaitiaki should have influence in decision-making but not be either the sole decision-makers or joint decision-makers, reflecting a lower level of Māori interest in the taonga when balanced against the interests of the environment, the health of the taonga, and the weight of competing interests.[613]

We endorse that view and also draw attention to the CNI Tribunal's finding that, in any balancing of interests, 'Maori rights cannot be balanced out of existence', nor is it sufficient to grant affected Māori 'a limited right to be consulted'.[614]

In terms of making provision for rangatiratanga (and notably kaitiakitanga) in its regulatory regime for the TPD since 1984, we find that the Crown's performance has been mixed. Some matters have received little recognition in the legislation and regulations. Principal among them are certain spiritual concerns of the tangata whenua, including those about the mixing of waters. We accept however that by 1984, once the scheme was in place, some things could not be reversed even had there been the will to do so: for instance, short of rendering the whole TPD inoperable, diverted waters could not be undiverted *in toto* so as to restore their individual mauri. In other respects, the regime has improved somewhat over time but still fails to discharge the Crown's duty of active protection, in that while much of the decision-making has been delegated to local bodies and State-owned enterprises, and while the regulatory regime *encourages* these bodies to be Treaty-compliant in their policies and processes, there is no binding requirement on them to meet Treaty standards.

In this context we note that at least one New Zealand court of law has found that local bodies should be made accountable for upholding the Treaty. As the Wai 262 Tribunal noted, the High Court stated in 2005:

> It is the responsibility of successors to the Crown, which in the context of local government includes the council, to accept responsibility for delivering on the second article promise. Nowadays the Crown is a metaphor for the Government of New Zealand, here delegated by Parliament to the council, which is answerable to the whole community for giving effect to the Treaty vision in the manner expressed in the RMA.[615]

As the Wai 262 Tribunal said, 'the Crown's Treaty duties remain and must be fulfilled, and it must make its statutory delegates accountable for fulfilling them too'.[616] We agree.

14.13.3 Rights of Māori to benefit from use of their taonga to generate electricity

Development comes at a price, as the preceding sections have shown. But it also brings benefits. One of the claimants' principal grievances is that they have not shared in the benefits – particularly the commercial benefits – from the use of their taonga to generate electricity.[617] During our hearings, it is fair to say that not everyone supported this aspect of the claim. Some claimants spoke only of the harm that the TPD had caused to their taonga. Rangiteauria Uri, for example, wanted the western and eastern diversions decommissioned, as soon as alternative energy sources allow.[618] Che Wilson told us that Ngāti Rangi would have said 'no' altogether to the TPD if asked at the time.[619] These claimants do not see the TPD as a development opportunity, either in the short or the long term. Others, such as Toni Waho, hoped that the people would come to 'tolerate' the TPD so that they could share in its benefits and become 'genuine partners with the Crown in power generation'.[620] Others still, such as George Asher, acknowledged the harm that had been done but saw the TPD as the most important development opportunity for Ngāti Tuwharetoa in our inquiry district.[621] The Crown, it was held by some, should be licensed by the claimants to use their taonga for hydroelectric power, and should be

paying for that privilege.[622] Māori, who have paid a heavy price for the TPD, should not be 'left out in the cold' when it comes to the profits.[623]

The Crown, however, denied that the claimants had a Treaty or property right to benefit from power generation. Crown counsel relied on the decision of the Court of Appeal in *Te Ika Whenua*[624] that Māori Treaty rights should not be construed so widely as to include a right to generate electricity.[625] The Crown also denied the claim of 'misappropriating the possession or control of Maori taonga for various projects in the national interest, but excluding Maori from the benefits of these projects'.[626] Crown counsel relied on the common law position that no one owned the water used by the Crown to generate power (and, by implication, no one needed to be paid for it).[627] Further, the Crown argued that customary rights over lakes and rivers did not give rise to any rights of use or control of water: 'Water is a public right. The [Māori] claims to use and control are inconsistent with the Crown's view of that right.'[628]

We have already considered some of the relevant arguments in chapter 13. There, we concluded that legal ownership was the closest English equivalent to Māori customary rights of possession and authority over waterways in 1840. These rights were confirmed and guaranteed by the Treaty of Waitangi. In agreement with the Tribunal's *Te Ika Whenua Rivers Report*, we found that the Crown ought to have devised a form of title that recognised Māori ownership of their water bodies, including ownership of the water that was an integral part of each water regime (section 13.5.1). We also concluded that Māori retained property rights in their water bodies (including the water) unless it can be shown either:

- that any particular river or lake was deliberately alienated, with the free and willing consent of its Māori owners, as was required by the Treaty; or
- that Māori rights were specifically and unambiguously extinguished by statute.

To our knowledge, there have been no such lawful extinguishments or deliberate and willing alienations in our inquiry district (sections 13.5.2, 13.5.3). In our view, ngā iwi o te kāhui maunga retain residual proprietary rights in all the waterways of the National Park district. As we also noted in chapter 13, however, the exact legal status today of Māori rights and interests in respect of inland waters has not been determined by the courts (section 13.5.2). Nonetheless, the Waitangi Tribunal has found in several reports that Māori had a Treaty right to develop their properties. The Treaty obliged the Crown to actively protect this right. It included the right to develop their water bodies, taking advantage of new technologies and modern opportunities, such as tourism (section 13.7.3).

We also rely on our explanation of the Treaty development right in chapter 1 (see section 1.5.9). The right arises directly from the guarantees in the Treaty: Māori were guaranteed the Queen's care and protection in the preamble and article 3; their property rights in article 2; and the rights of British subjects in article 3. The rights of British subjects included a right to develop their properties. The development right is also sourced in the Treaty promise that both Māori and settlers would benefit from settlement and the opportunities it created (the principle of mutual benefit). The means for giving effect to these guarantees and promises was the partnership between the Crown and Māori, in which both Treaty partners were to act reasonably and in good faith towards one another.

In section 1.5.9, we summarised the main features of the Treaty development right. For the purposes of this chapter, key aspects of the Māori right included:

- the right as property owners to develop their properties in accordance with new technology and uses;
- the right to develop or profit from resources in which they have (and retain) a proprietary interest under Māori custom, even where the nature of that property right is not necessarily recognised, or has no equivalent in, British law (which is our view of the rights retained by ngā iwi o te kāhui maunga in their waterways);
- the right of Māori to retain a sufficient resource base to develop in the new economy, and of their communities to decide when and how that base would be developed;

- the opportunity today to participate in the development of Crown-owned or Crown-controlled properties or resources or industries in their rohe (especially where the Crown is using tribal taonga and needs to redress past breaches or fufil the promise of mutual benefit); and
- the right of Māori to develop as a people, including in economic terms (see also section 15.12.4).

In this section of our chapter, we revisit some of what was said about these matters in chapter 13 in order to address the specific case of hydroelectricity, and we will consider them again in chapter 15 in respect of geothermal energy.

(1) *The Te Ika Whenua decision and the Treaty right of development*

We begin with the Court of Appeal's decision in *Te Ika Whenua*, on which Crown counsel put great weight.[629] We have already set out the circumstances of this case in chapter 13 (see section 13.3.3).

In our hearings, Crown counsel accepted that 'the Treaty does not require a static notion of the expression of Maori property rights'.[630] In other words, the Crown accepted that Māori – in common with other property-owners – had a right to develop their properties using new opportunities and new technologies. On that issue, there was some agreement between the Crown and claimants. Chris Winitana told us:

> Any attempt to minimise that utilisation [of waterways] by straight-jacketing it to perceived traditional usages would be hotly contended. We argue that our traditional knowledge base has always been time adjusted and tested, it is not a closed system. It has always been incumbent on our experts to ensure that we are undertaking our activities in the best possible way with the best available resources. Just as that happened a thousand years ago when some of our ancestors arrived here to this new land and a new knowledge of living had to be worked through, so too will it happen a thousand years later with other new knowledges now available.[631]

Where the claimants and Crown disagreed was whether this development right applies to water. How far does it extend? What 'properties' does it include?

Crown counsel warned that the development of property rights should not be defined too broadly. In particular, 'there must be a [pre-existing] right which can carry the notion of development'.[632] In the Crown's view, the Treaty development right only applies to a right which existed in 1840 or a resource which was used traditionally in 1840.[633] Fishing rights, on that reasoning, were subject to a development right; an unknown resource or activity such as telecommunications using the radio spectrum or the generation of hydroelectricity was not.

In support of this argument, the Crown quoted the Court of Appeal in *Te Ika Whenua* as follows:

> However liberally Maori customary title and Treaty rights might be construed, they were never conceived as including the right to generate electricity by harnessing water power … the Treaty of Waitangi is to be construed as a living document, but even so it cannot sensibly be regarded today as meant to safeguard rights to generate electricity.[634]

Crown counsel concluded: 'In light of this finding, it cannot be said that there was any development right in relation to the generation of electricity from water.'[635]

As we will also observe in the next chapter, where we consider the development of geothermal resources for electricity (sections 15.9 to 15.12), we agree with the Tribunal's findings in the *Te Ika Whenua Rivers Report* and *He Maunga Rongo*. In essence, the Tribunal has found that the Court of Appeal in *Te Ika Whenua* said that Māori did not have a right – as distinct from other citizens – to generate electricity. Clearly, such a right could not have been in the minds of either Governor Hobson or the rangatira at the signing of the Treaty in 1840. Nor, in the court's view, could the Treaty be regarded today as guaranteeing a right to generate power per se. The Tribunal, however, found that Māori had a Treaty right to develop their *properties*, which it distinguished from the Court of Appeal's decision. Although similar to the right of non-Māori property-owners in many respects, the Māori right is unique when it comes to water. This is because Māori

conceptualised water bodies as single, indivisible entities, encompassing the bed, banks, and water, with their own distinct mauri (life force) and whakapapa. As noted earlier, full rights of ownership over these water bodies was the closest equivalent in English law at the time that the Treaty was signed, which includes – all Tribunal panels agree – the water as part of these indivisible water regimes.[636]

The Treaty protected and guaranteed to Māori their taonga, as Māori understood, possessed, valued, and controlled them. The Treaty did not restrict Māori rights to that which can be possessed at law in England, which is the banks and bed of a waterway (and access to the water). Under the Treaty, therefore, the Crown had an obligation to respect its Māori partner's right to develop and profit from their property rights (which included their waters), unless voluntarily relinquished or lawfully extinguished.[637] As we said in chapter 13, there is no evidence of lawful extinguishment or willing alienations of waterways in the National Park inquiry district. Hence, as the Tribunal also found in the *Te Ika Whenua Rivers Report* and *He Maunga Rongo*, ngā iwi o te kāhui maunga retained property rights in their waterways. The Te Ika Whenua Rivers Tribunal found that such rights must be 'substantial',[638] regardless of who has access or legal title to the beds, although the rights will be all the greater where Māori are considered to have retained riparian ownership. These property rights included a development right to benefit commercially from the use of their taonga for hydroelectricity, whether developed for that purpose by themselves, by the Crown, or by third parties.[639]

This Treaty development right was not relinquished or extinguished when the Crown gave itself the sole right to use water for electricity from 1903, although, as claimant counsel have argued, it was seriously impaired. Counsel for Ngāti Tuwharetoa said that the Crown 'misappropriated' the Treaty development right to itself from 1903 onwards.[640] We agree with that submission, although we note that the Treaty right persists for the claimants in our inquiry district because of their residual proprietary interests in their waterways, and because the Treaty promises of prosperity and mutual benefit have not been fulfilled. The Crown's misappropriation of the development right does not need to be permanent (as we discuss below).

There is also the question of the 'national interest' to consider. At the time and since, much weight was placed on the necessity of constructing the TPD so as to meet the nation's growing demand for electricity. This development was seen as vital to New Zealand's domestic needs and economic growth. If Māori interests had to give way for that purpose, in the national interest, then the Treaty required that the infringement of their rights be the least that was reasonably possible in the circumstances.

In earlier reports, the Tribunal has accepted that the development of particular waterways for hydroelectricity was indeed essential in the national interest, and that it was beyond the resources of private enterprise to undertake such large-scale enterprises as the TPD.[641] In other words, there had to be development, and it had to be done by the Crown. But was there the same justification – the generation of power in the national interest – for the Crown to appropriate all the revenue along with its sole right to use the water? We agree with the Petroleum Tribunal, which found in respect of the petroleum resource: 'As Ngata and others argued so eloquently in the House in 1937, even if the Crown did take control of the asset through expropriation, there was no justification to withhold royalties from the true owners of the resource.'[642] In our view, the same reasoning applies to the Crown's statutory right to use the waterways of te kāhui maunga. Māori were entitled to be paid for the use of their proprietary interests in their waterways to generate power. This would have constituted a mininum interference with their property rights, if the generation of power was essential in the national interest.

The Te Ika Whenua Rivers Tribunal found that, during the period in which the Crown managed hydroelectricity as a public good (and not for profit per se), the Māori entitlement to compensation for the use of their property – and their corresponding loss of property rights – 'might have been negotiated on a lesser basis'.[643] This was because of the 'cooperative aspect and the benefits that would flow to all'.[644] We agree. But corporatisation in the 1980s and the 'transition to commercialisation of power production' increased the compensation due to Māori as the owners

of residual proprietary interests in their waterways.[645] We have already noted a similar point above (see section 14.7.5(12)), when we observed the pressing need for the Crown to now put aside the 1972 agreement and negotiate a new arrangement with the owners of Lake Rotoaira.

We note the overall conclusions of the Te Ika Whenua Rivers Tribunal:

> The Tribunal holds that Te Ika Whenua are entitled to payment for the use of their interest in the rivers for power generation and recommends that the Crown consult and negotiate with Te Ika Whenua over past use and to ascertain a suitable formula for payment for future use. It would seem to us, without attempting to bind or limit the parties in the areas of their negotiations in any way, that the following matters at least need to be addressed:
>
> (a) compensation for past use;
>
> (b) compensation for loss of rights or the ability to share as a partner in power production; and
>
> (c) payment for the future use of the proprietary interest of Te Ika Whenua in the rivers.[646]

We turn next to consider what practical options existed for the Crown to have recognised (and compensated) Māori proprietary interests in their waterways at the time the TPD was planned and implemented.

(2) *Recognising and compensating Māori rights*

In terms of recognising and compensating Māori rights, there were several options available to the Crown at the time it constructed and began operating the TPD. Ngāti Tūwharetoa pointed out that practical alternatives for revenue-sharing included leasing and joint ventures. In claimant counsel's submission, the failure to 'protect Ngati Tuwharetoa's Treaty and property interests in its waters' was not a foregone conclusion.[647] In this section (and the next, where we consider Lake Rotoaira in more detail), we explore some of the options available at the time.

Royalties were one option for revenue-sharing. When petroleum was nationalised in 1937, for example, payment of royalties to its former Māori owners was contemplated.[648] Royalties could have been considered for hydroelectricity as well (indeed, Ngata equated the Crown's obligation to pay royalties for petroleum with its obligation to pay for lakes).[649] But this option would have required the Crown to accept that Māori had prior rights in water. The Crown came close to doing so in 1903, as the CNI Tribunal observed. Parliament nationalised the right to use water for electricity in that year on the basis that pre-existing rights would have to be acquired (and paid for). The 1903 Act included a saving clause that was replicated in successive Acts, including the Public Works Act 1928. Although the Court of Appeal in *Te Ika Whenua* did not consider that this saving clause applied to Māori rights, the historical evidence available to the CNI Tribunal suggested some doubt on that point at the time. The legal status of Māori rights to water was not seen as fully resolved in 1903, hence the perceived need to pass special legislation in 1926 for the Crown to use the Taupō waters (with hydroelectricity as one of the objects in mind).[650]

The Water and Soil Conservation Act 1967 fully entrenched the Crown's sole right to use and control natural water.[651] But doubts seem to have lingered even so. In 1972, the Crown still contemplated the need – as it had in 1926 – to acquire Lake Rotoaira and to specifically vest the right to use the water of the lake and its inflowing rivers and streams in the Crown by legislation.[652]

We will discuss the option of acquiring (and paying for) Māori rights in more detail in the next section.

Alternatively, as the Whanganui River Tribunal suggested, Māori could have been empowered to license use of their waterways (and receive licence fees).[653] Ngāti Tūwharetoa favoured this option. In their submissions to the Tribunal, they proposed a system of licensing 'made retrospective to the commencement of Tongariro Power Development operations on Lake Rotoaira'.[654] A licensing regime was in fact established for Lake Rotoaira in the 1950s in the form of entry permits, but the Electricity Department took special steps in 1959 to ensure its own exemption from having to pay for entry on (and use of) the lake.[655] We will discuss the option of a licensing regime further in the next section.

The Saving Clause in the Water-power Act 1903

2.(1.) *Subject to any rights lawfully held*, the sole right to use water in lakes, falls, rivers, or streams for the purpose of generating or storing electricity or other power shall vest in His Majesty.

(2.) The Governor may from time to time acquire as for a public work *any existing rights* or any lands necessary for utilising water for the generation or storage of electrical power. [Emphasis added.]

Leasing waterways for hydroelectricity was another possibility, as contemplated briefly for Lake Rotoaira in the early 1970s.[656] Indeed, we are reminded of the Rotoaira forest scheme, where the Crown initiated a joint venture because Māori owned the land which it wanted to plant in trees, for the protection of the TPD and the development of the regional economy. In many ways, the TPD itself should have been seen as just such a joint venture. We agree with claimant counsel on this point.[657]

In the evidence of Russell Feist, the possibility of a joint venture or any such alternative was (in reality) killed by the Public Works Acts, because the Crown already had the rights it needed to use the water. In Mr Feist's opinion, any mention of a joint venture for Lake Rotoaira in 1972 would simply have 'hardened the Crown's attitude to the negotiations and the Crown's resolve to take the lake compulsorily'.[658]

We take Mr Feist's point that there was a power imbalance between the Crown and Māori at the time of those negotiations. Nonetheless, the point for us is that the owners of Lake Rotoaira had something very material to bargain with. Although the law compartmentalised waterways and treated water as a separate component (with the sole use-right vested in the Crown), there was still a practical difficulty for the Crown in controlling and developing a water resource when others owned the bed or fishing rights. Officials' arguments at the time about Lake Rotoaira, Lake Ōtamangākau, and Lake Te Whaiau show this very clearly.[659] In that circumstance, Māori still had something to bring to the table for a lease or joint venture, as we shall discuss in more detail below. In practical terms, therefore, the Crown's claim to own river and lake beds was just as important as its statutory water right in denying Māori any chance to benefit from use of their rivers and lakes in the TPD.

In the event, the Crown's concession in the Native Land Court in 1943 – that it would no longer oppose Māori ownership of Lake Rotoaira – was crucial for the TPD. The opportunity for Ngāti Tūwharetoa and Ngāti Hikairo to secure an economic benefit from the TPD lay with this lake, possession and control of which came to be seen as vital for the Crown's power scheme. Except in this one case of perceived necessity, the Crown did not contemplate acquiring (or paying Māori for the use of) waterways for the TPD.

We turn to consider the special case of Lake Rotoaira next, in the context of the 1903 and 1926 legislation giving the Crown sole right to use water for electricity.

(3) *Lake Rotoaira*

The claim that the Crown needed to negotiate and pay for the use of waterways for power generation was not new when work began on the TPD. George Asher put it this way:

> Ngati Tuwharetoa have been consistent in seeking acknowledgment of our rights from the Crown over many decades. I can assure the Crown that I am not a revisionist in stating this, as an important letter signed by Hoani Te Heuheu and sent to The Right Honourable Peter Fraser, Prime Minister, on 13 March 1944 makes evident …[660]

We will return to this 1944 letter shortly.

As we discussed earlier, the sole right to use natural water for electricity was first vested in the Crown in the Water-power Act 1903, and was then continued by a succession of Public Works Acts. When the 1903 Bill was

debated in parliament, Northern Maori member Hone Heke told the House:

> It would not be proper for a Bill like this to take away from Maori owners the use of water-power on their lands. There is no telling what use even the Maoris may desire to put such water-power for themselves. … the sweeping provision [of the Bill] is going too far. … It is an attempt to take away Native rights.[661]

The Minister of Works assured parliament that any pre-existing Māori rights would be preserved and the Crown would have to pay for acquiring them (hence the insertion of the saving clause). But the breadth of these preserved rights was ambiguous.[662] Later, the saving clause in the Water-power Act and its successors was interpreted as preserving the specific rights of those who were already generating power in 1903 or had been granted a right to do so.[663] The CNI Tribunal, however, found that broader Māori water rights remained a 'live issue' in this respect for at least 20 years after the 1903 Act.[664] In the early 1920s, the attorney-general was worried that any new Native Land Court titles to lakebeds would, as he advised the government, 'raise a very serious difficulty in the matter of fishing *and possibly the user of water for electric light* and other purposes' (emphasis added).[665]

The CNI Tribunal commented:

> This was an important doubt concerning the Crown's 'sole' right to generate electricity under the 1903 Act and its successors. To put the matter beyond doubt, therefore, the Government felt it necessary to pass legislation [in 1922] which, in giving effect to a negotiated agreement with Te Arawa, declared that the 'the right to use the waters of the said lakes' was 'the property of the Crown, freed and discharged from the Native customary title, if any'.[666] The basis of this agreement, in the view of the Attorney-General, was that 'we [the Government] did not admit you [Te Arawa] had anything to sell and therefore we had nothing to buy'.
>
> We did not hear evidence on the Rotorua lakes negotiations of 1922. We note, however, that the Crown felt it necessary, in 1926, to make the same legislative enactment with regard to Lake Taupo, its tributary rivers, and the Waikato River. Here also, the Crown declared [by statute] the right to use these waters 'to be the property of the Crown, freed and discharged from the Native customary title (if any)', adding 'or any other Native freehold title'.[667]

The CNI Tribunal found that the Tūwharetoa parties to this 1926 agreement understood the negotiations (which resulted in the 1926 legislation and a tribal annuity) to be confined to fishing rights.[668] In the 1940s, however, the government installed control gates and began to actively manage Lake Taupō for hydroelectricity purposes. In his evidence for the claimants, George Asher explained Tūwharetoa's response. The ariki, Hoani Te Heuheu, wrote an important letter to Prime Minister Fraser in 1944. 'It was written', said Mr Asher, 'after many hours of consultation with tribal elders at a time when Hoani was virtually bed-ridden. It provides an important insight into the views of Ngati Tuwharetoa in respect of their mana moana and rangatiratanga in respect of Lake Taupo'.[669] Te Heuheu advised Fraser that the negotiations back in the 1920s had not covered future use of the lake or its tributaries for hydroelectricity. Any such use constituted a new matter requiring fresh negotiations with the iwi.[670]

Mr Asher quoted from the letter as follows:

> I now beg to ask on behalf of the Tuwharetoa people what the Government propose to do in this matter. I take it that the negotiations in 1924–26 had no ulterior motive or aim. I take it that the use of Taupo waters for a new purpose, namely, hydro-electric power, opens up a new question and requires fresh negotiations with us. If Parliament in its 1926 legislation [vesting sole right to use the water in the Crown] has omitted to protect our full rights as owners of Lake Taupo, I take it that Parliament will now be bound in honour to rectify that omission and that you, on behalf of your Government, will see fit to give us an assurance to that effect before you leave for England.[671]

Te Heuheu's letter was followed up by a tribal deputation to Fraser in 1946, which made the same points. Although the Prime Minister promised an investigation

of their complaint, none appears to have been carried out and the matter lapsed.[672] Evidence from Ben White's report suggests that this was not an isolated Māori claim in the 1940s. The Māori owners of Lake Waikaremoana were also seeking negotiations with Fraser at that time over payment for the use of their lake for electricity.[673]

George Asher explained the basis and import of Ngāti Tūwharetoa's claim in the 1940s:

> Implicit in the words of Hoani is the notion that Ngati Tuwharetoa maintained absolute mana and rangatiratanga (authority and control) over the Lake and expected the Crown to fully recognise their mana moana and mana whenua. Implicit also is the expectation that that mana entitled Ngati Tuwharetoa to benefit from the use of its taonga for hydro-electric generation. … Hoani's statement that there was no discussion on rights to hydro electric generation in the 1924–1926 meetings is consistent with this understanding and implies that the latter is a very different use right of the same taonga (Taupo Moana) but one that would naturally require separate authorisation from Ngati Tuwharetoa. This notion, based on Tikanga Maori, is that the authorisation of specified rights to use or occupy land, water or other taonga is derived from the mana and tino rangatiratanga of iwi. Under this tikanga no sense of ownership was implied (or necessary) as this was considered contrary to the belief that these taonga are our tupuna and authority was given to occupy, utilise or consume those resources nurtured and provided by our tupuna. Mana and the exercise of tino rangatiratanga was necessary to ensure that the 'tika' (correctness) applying to the use or acquisition of elements was maintained and enforced. Each set of uses constituted a different set of circumstance and had different impacts to which different sets of regulations applied. This was necessary to ensure sustainability of the holistic order of things, in other words, proper stewardship (kaitiakitanga). Hoani's stated expectation that new negotiations had to be entered into for the use of Taupo waters for hydro-electric power is consistent with this scenario.[674]

In particular, Ngāti Tūwharetoa of the time were concerned that the 1926 legislation, which vested the right to use their waters in the Crown, was 'an obstacle to Ngati Tuwharetoa's capacity to authorise or benefit from the use of the Lake for Hydro electric power similar to the authorisation for public fishing rights and the benefits received from this negotiation'.[675] That Tūwharetoa were still entitled to benefit from the government's use of their taonga for electricity, the tribe did not doubt. But no answer was forthcoming from the government in 1944 or 1946.

In the 1950s, planning for the TPD was under way when attention turned to Lake Rotoaira. Here, too, a new Maori Land Court title raised uncertainties for the Crown, just as the prospect of such titles for the Rotorua and Taupō waters had worried the Crown in the 1920s. In 1956, the Maori Land Court had appointed tribal trustees for the lake, whose purpose was 'to utilise, *develop* and exploit the natural resources of the lake for the benefit of the owners' (emphasis added).[676] The trust order empowered the trustees to

> make arrangements or contracts with the Crown or any department thereof for the use of the water from the said Lake for hydro electric or other purposes and to arrange and decide on behalf of the Maori beneficial owners upon the conditions affecting the rights to carry out such works including fixing the consideration of compensation payable to the owners thereof.[677]

It is clear that the Maori Land Court and the owners both expected the Crown to pay for the use of the lake's water for electricity. Had the Crown's obligation to create an appropriate form of title for waterways been honoured from 1840, many more such trust orders may have existed for the waterways of the National Park district at the time the TPD was established. As it was, only the owners of Lake Rotoaira were in this position.

After the Minister of Maori Affairs approved the establishment of the Rotoaira trust in 1957, the trustees worked with his department towards obtaining the power to license fishing in the lake, seeking the same powers to do so as acclimatisation societies.[678] In principle, it was possible for the trustees to control all access to the lake and the Poutū River, and perhaps to license other activities, such

as use of the lake for hydroelectricity. The Bill empowering the trustees to issue entry permits was introduced to parliament in 1959. It thus came after (and, if passed, would prevail over) earlier statutes and the OIC authorising access and use for the TPD.

The Electricity Department objected to the provisions of this Maori Purposes Bill, which gave the Rotoaira trustees these powers. In Arthur Davenport's view, the Bill could or would have interfered with the department's wide powers to enter necessary lands or waters and establish or operate works for the TPD. The department might now have to obtain and pay for an entry permit.[679] And the trustees could say 'no'.

Because a licensing regime (in this case, entry permits) was a crucial mechanism by which the Crown might have recognised Māori rights and paid for their use in the TPD, we quote the Electricity Department's objections in 1959 at some length:

> In view of the proposed development of the Tongariro and other rivers in the locality for hydro-electric purposes, which is at present under investigation, this Department would view with concern the passing into law of the [Maori Purposes] Bill. The use of Lake Rotoaira and the Poutu River is an integral and essential part of these proposals, and it is considered that the provisions of the Bill in their present form would be likely to add to the cost of, impede, or even prevent the investigation, construction and operation of works for the use of the lake and river. [The undesirability of recognising and increasing the value of Māori fishing rights was then discussed, since it might increase the amount of future compensation payments if fisheries were harmed by the TPD.]
>
> … The Department is not only perturbed about the possibility of inflated compensation claims, but is also concerned about the exclusive rights relating to entry on the lake, river and surrounding land that the Bill creates. The statutory rights of entry of the Department, the Ministry of Works and others concerned with the investigation, construction and operation of power schemes are contained in sections 107 (relating to surveys) and 311 and 312 (relating to construction and operation) of the Public Works Act 1928. It is most undesirable that any legislation affecting any particular piece of land, especially if it features prominently in a power scheme, should derogate from these wide and general powers.
>
> It is desired therefore that even if it is decided to proceed with the Bill … the rights of entry under the Public Works Act without the need for an entry permit should be preserved. This could be done by making the provisions relating to the need for entry permits without prejudice to the rights of the Crown, its servants, agents or contractors under the Public Works Act.[680]

After discussion between the Maori Affairs Department, the Electricity Department, and the Ministry of Works, the Bill was revised in 1959 to include the requested exemption.[681] This is not surprising, given the great power that the Ministry of Works and the Electricity Department wielded at that time, and the overriding importance accorded to hydroelectric development. We have no information as to whether the Rotoaira trustees were consulted about or agreed to this change.

Again, this was not a one-off incident. The Electricity Department had raised similar objections over the trust order for Lake Omapere in 1956, which had also been revised accordingly.[682]

The possibility thus existed for entry permits or licences to be used to recognise Māori rights and to pay for the use of particular waterways in the 1950s. This could have been done without requiring the government to make a general concession of Māori rights or to concede Māori ownership of water at all. But the Electricity Department scotched the possibility during the planning stage of the TPD. It was not, of course, a universal remedy because it depended on the Crown recognising Māori property rights in some form – specifically, ownership of a bed. As mentioned earlier, Sir Apirana Ngata had drawn an apt comparison between the Crown paying a royalty for petroleum and the Crown paying annuities for the Rotorua and Taupō lakes.[683] But, as will also be recalled, the Crown had already obtained the bed of the Tongariro River in 1926, and was soon to win the Whanganui riverbed litigation (in 1962). It also claimed title to other river and

stream beds in our inquiry district. Legal ownership of the Rotoaira lakebed, therefore, became almost the only avenue by which iwi in our inquiry district could secure at least some form of recognition and benefit from the TPD.

In the 1940s and again in the 1950s, Ngāti Tūwharetoa had put forward a claim that the Crown needed to negotiate and pay for the use of their taonga to generate electricity. The next opportunity to do so came in 1964, when the Crown held meetings to discuss its plans for the TPD. From the evidence in the reports of Marian Horan and Tony Walzl, however, no such claim was put forward at these meetings.[684] Nor was it raised explicitly in the negotiations over Lake Rotoaira in the 1970s.[685] George Asher acknowledged this point and suggested that by this time, Ngāti Tūwharetoa had accepted the reality of the Crown's statutory powers over water: 'to take a similar stand to that of Hoani Te Heuheu in 1944', he said, 'would have been an act of futility given the Crown's ability to wield its public works powers.'[686]

This did not mean that the owners of Lake Rotoaira were out of options for recognition and payment in practical terms. After the Crown made itself exempt from the entry permit regime in 1959, it nonetheless remained unsure about the sufficiency of its powers to use, modify, and control Lake Rotoaira. As we discussed earlier in the chapter, a significant part of the government's concern was the compensation it might have to pay, both for damage to fisheries and for periodic raising and lowering of the lake. But it was also concerned to obtain secure possession and control of the lake, which was the lynchpin of the TPD. According to the Commissioner of Works in 1971, it was 'usual policy' for the Crown to protect hydroelectricity investments by owning or acquiring all 'power lakes'.[687] Indeed, the Crown had just negotiated a lease of Lake Waikaremoana from its Māori owners.[688] The government was prepared to forego purchase of what it knew to be 'cherished hereditary land' (the Rotoaira lakebed), if the only way to get possession was by lease.[689] Officials debated paying a rental or maybe a large one-off sum to secure a lease in perpetuity.[690] Leasing the lake for an annual rental would have been a significant economic boon for its owners, who had few other development opportunities.

In the event, as we set out above in section 14.7.5, the owners were so worried about a compulsory taking that they agreed in 1972 to allow the Crown full powers to use, control, lower, and modify the lake without any payment or compensation at all, so long as the Crown undertook never to take the lake by compulsion.

In his evidence for the claimants, George Asher summarised their view of the 1972 agreement and the effects of this (and the TPD) on their development rights. In his view, it represented a 'huge windfall of benefits' for the Crown, while foreclosing on the tribe's options to share in (and exert influence over) the development of their natural resources:

> The TPD story also represents a gross failure of the Crown to actively protect Ngati Tuwharetoa interests as well as its development rights. At the start of this project and under fair circumstances, Ngati Tuwharetoa was in a position to capitalise on their mana, rangatiratanga and legal title, and negotiate a way forward as appears to have been the intention in the 1924 legislation in respect of Lake Taupo. This could have opened the way for the discussion of various options for the creation of opportunities for Ngati Tuwharetoa including leasing, self development or joint venture. Most importantly it would have given Ngati Tuwharetoa a rightful place at the table to determine what the most appropriate use options were for Ngati Tuwharetoa and which of these options provided the optimal benefit to them within the context of the tikanga of Ngati Tuwharetoa. The failure of Tuwharetoa to have meaningful input into the decision to build the TPD, and to share in the revenue generated by the scheme places in perspective the other benefits promised by the Crown to Ngati Tuwharetoa.
>
> . . . . .
>
> The water resource of Lake Rotoaira is of high value for electricity generation because it is located at altitude. The Crown, however, has vested in itself unlimited and free access to the current supply of water without obligation to the Lake owners. This was a significant windfall for the Crown. The

effect of which [is] Ngati Tuwharetoa as the resource 'owner' had not agreed to forfeit potential benefits or opportunities but was instead left to bear extraordinary costs.[691]

Earlier in this chapter, we found that the negotiation and outcomes of the 1972 agreement did not meet the Crown's Treaty obligations. We add here that, in negotiating this agreement, by which the owners of Lake Rotoaira sacrificed any commercial benefit from the use of their property interests so as to simply to retain those interests, the Crown breached its obligation to protect those owners' Treaty development right. All claimant groups with rights in the lake were prejudiced by the deprivation of any financial benefit from the vital role that their lake played in the TPD. The possibility of a lease and rental moneys from Lake Rotoaira was their most realistic chance to share in the benefits from using their taonga for electricity. Everyone agreed at the time that what was sought was not small monetary payments to individuals but rather the capital resources for tribal development projects. The loss of this opportunity in 1972 was a significant blow to the claimants. This loss compounded the earlier denial of their right to license entry to the lake for hydroelectricity purposes in 1959.

George Asher commented:

> The establishment of the TPD represents a blatant denial of Ngati Tuwharetoa's right to control and thereby benefit from its 1840 position and status of mana and rangatiratanga over all the lakes and rivers of the region that we whakapapa to. This injustice stands on its own merits whether the Crown's tactics in acquiring the use of Lake Rotoaira are proven to be underhand and coercive or not. The Crown's failure to acknowledge our Treaty rights over our waterways has been a severe blow to Tuwharetoa's aspirations of participating in the modern economy.[692]

In 1977, the owners tried to revive the possibility of a lease, once the harm to the Rotoaira fisheries became very clear. But we have virtually no information about this initiative, including whether or not a rental was proposed. Although the Internal Affairs Department expressed interest, we also have no information as to why this 1977 proposition was not followed up.[693]

As we explained in section 14.7.5, the Rotoaira trust complained to the Crown in 1984. John Asher wrote to the Minister of Energy about the government's ongoing failure to pay 'one cent of income for the use of [the trust's] property for the generation of electricity', despite 'a massive income return to the NZ Electricity Department'.[694] The claim was conceived in terms of the government making free use of property rights vested in Māori owners by the courts – that is, the Rotoaira lakebed – and not as an attack on the Crown's statutory right to use the water. The trustees sought an annual rent for the lakebed; in essence, the lease arrangement that the Crown had been willing to consider back in 1972. In response, the government relied on the 1972 deed to deny any obligation on its part to 'recompense' the owners of Lake Rotoaira.[695] In 1992, the Rotoaira trustees attempted to use the resource consents process to reopen this question, without success.[696] Since then, a mitigation agreement with Genesis Energy has been negotiated but we have no information as to its contents.[697] George Asher assured us that it did not cover compensation for the matters that we have addressed in this section of our chapter:

> It was understood by both parties that this agreement was a mitigation package, negotiated within the parameters of the RMA, with no intention of it containing any compensatory element in terms of the issues earlier raised by the Lake trustees. In regard to the latter, the agreement specifically acknowledges the right of Ngati Tuwharetoa to take its grievances to the Waitangi Tribunal.[698]

As we found in section 14.7.5 above, we agree with the claimants that the Crown nationalised the benefits that would accrue from the TPD. We stated our view that, after corporatisation and the commercialisation of the electricity industry, it would be unconscionable for the Crown to

continue to refuse to put aside the 1972 deed and negotiate a fresh arrangement for Lake Rotoaira.

We add here that the owners of Lake Rotoaira, in common with all claimants whose proprietary interests have been used to generate electricity in the TPD, are owed compensation for the past use of their taonga without payment. Māori have a unique property right in their waters, ngā iwi o te kāhui maunga have a development right in their properties (including their waters), and the Crown has breached that right in its construction and operation of the TPD. This is of concern when the public derives great benefit at the expense of the Crown's Treaty partner, especially when the Māori Treaty partner had so few other development opportunities in our inquiry district.

We turn next to consider any other development opportunities which arose because of the TPD.

(4) *Other development opportunities created by the TPD*

The claimants relied on the evidence of Russell Kirkpatrick to suggest that their district has become a 'net exporter of resources' for the benefit of others: 'resources are exploited and the resource and the profits from it are then exported from the region, while local iwi do not share in it'.[699] There is a great deal of truth in this observation. In the case of hydroelectricity, this is self-evident, but a far-reaching scheme such as the TPD carried with it a range of regional development opportunities. For the claimants in our inquiry, the most important were:

- the opportunity for employment on the construction and maintenance of the TPD;
- the opportunity for the owners of Lake Rotoaira to extend their operations so as to profit from recreational fishing and boating on new waterways created on their lands;
- the Rotoaira afforestation project on Māori land that arose principally from the need to protect the waters used by the TPD; and
- the creation of a new township (with its attendant needs and services) in their midst.

We deal with each of these opportunities in turn.

First, the claimants do not deny that paid employment resulted from the TPD. John Manunui told us:

> There were plenty of jobs working on the TPDs from the day it started to the day that the project was completed.
>
> I worked on the Scheme between 1967 and 1969. I travelled with 10 other men from Kakahi to the site to work from Monday to Saturday.
>
> The elders did not take issue with us working on the Scheme. At that time they did not know what damage it would cause to the awa.
>
> Other people in Ngati Mananui did not have anything to say about the TPDs either as it brought jobs to our people, who had been without work since all the mills in Kakahi had closed in the early 1960s.[700]

Other witnesses, such as Patrick Piripi, also referred to local Māori working on the TPD. Despite their fears for the environment, which have since come true, 'we just needed a job to work and get paid'.[701]

We do not have exact figures for the employment created by the TPD. In 1964, Gibson had assured a meeting of Tūwharetoa landowners that there would be a 'large employment opportunity' for them as local residents.[702] There is no reason to doubt that the employment created by the power scheme was significant, at least until the early 1980s when construction was completed. As we noted in chapter 9, it was hard to find local workers for forestry in the late 1970s because wages for unskilled work on the TPD were so high, but the situation was very different a decade later. The Tūwharetoa Māori Trust Board praised the employment generated by the TPD in the 1970s.[703] There were social benefits, including the retention of young people and whanau to work in their own tribal area.[704] Without the TPD and forestry, more people could have been lost to the cities.[705] Ngāti Hikairo witnesses, however, emphasised a negative side to all this TPD employment: in their view, relocation within the district for this work (especially to Turangi) was not beneficial for farming or for rural tribal life.[706]

When put alongside forestry employment, it is clear that the Crown's hydro development did provide a significant but finite economic opportunity for ngā iwi o te kāhui maunga.

This was also the case for the Rotoaira forestry joint venture, although its benefits were limited. As we found in chapter 9, the Crown was unlikely to have proposed this afforestation project, or to have agreed to expand it at the owners' request, if not for the need to protect the TPD. In a very real sense, this opportunity was created by the TPD. While the government was influenced by other factors, such as regional development and employment, the TPD was clearly the deciding one. The Rotoaira forestry scheme created some employment and paid dividends to the owners, although neither was as impressive as originally hoped (see chapter 9).

The development opportunity created by the flooding of Māori land to create new lakes, however, was not fulfilled. We have already discussed this issue, and whether the Crown made a definite undertaking about the lakes, in section 14.7.4. Here, we address the aspects relevant to Treaty development rights. The owners of Lake Rotoaira and the lands taken for Lakes Te Whaiau and Ōtamangākau had hoped to corner the market for recreational fishing and boating in their district. Instead, as we have seen, the Crown insisted on ownership of the new lakes as essential for operating the TPD. The government could not exercise the necessary degree of control, it was held, unless it owned these lakes. This meant that the Crown, not Māori, would gain the benefit of the development opportunity, a point that was conceded by officials:

> The owners argue that the powers of entry under the Electricity Act 1968 and the Public Works Act 1928 are adequate to enable any necessary works to be undertaken for the maintenance and control of the new lakes. The powers under the Act are extensive but their purpose is to enable work to be done, and they do not provide adequate powers of control. It is expected that close control will be essential to minimise, for instance, growth of lake weed and pollution, and the power to control is obtained only by ownership. Any alternative would involve the Crown in continuing conflict with the owners, and recurring and expensive compensation claims. It has always been policy to acquire such lands. The owners suspect that the Crown seeks to acquire the lakes to secure valuable fishing and public recreation areas, and *although this would be a result of acquisition*, it is only a consequence of an action which is essential to the Power Development. [Emphasis added.][707]

While control of the new lakes was said to be the primary concern, officials also wanted to prevent future compensation claims (if the new fisheries or lakes were damaged by the TPD). These concerns seem reasonable to us but could have been accommodated without denying the claimants this important development opportunity altogether. In reality, officials were opposed to what they called the 'dangerous Lake Rotoaira principle' where access and fishing was licensed by Māori owners. They did not want to see these rights replicated if new Māori-owned lakes were created, hence the desire to take the land compulsorily for public works, compensate at its current low value, and then flood the land to create the new lakes.[708] The government had a legitimate concern about the control of waterways for the TPD; indeed, that very concern would soon push it into contemplating acquisition of Lake Rotoaira itself. But the result denied Māori a development opportunity arising from the TPD, and showed no regard whatsoever for their interests.

Thus, rather than providing an economic development opportunity for the Māori owners, the Crown appropriated the benefits of the new lakes. In 1964, Tripe raised the possibility of compensation:

> there is assuredly a danger that the fishing business of the Trustees, which at the present moment is unique, will be only one of many other sources of fishing in the area, artificially created by Government. Irrespective of the legal aspect this is a matter for which the Rotoaira Trustees, on behalf of their numerous beneficiaries, will expect the Government in good faith to compensate them.[709]

In the 1970s, Lake Rotoaira fishing revenues dropped drastically. One reason was said to be the diversion of

anglers to Lake Ōtamangākau.[710] By this time, of course, the Lake Rotoaira trust had given up all its TPD compensation rights in order to retain ownership of the lake, an agreement which we have found to be in breach of Treaty principles. As we recommended in chapter 10 (see section 10.5.4(5)), the Crown's actions can now be remedied by the creation of rights to Lake Te Whaiau and Lake Ōtamangākau which are akin to rights to Lake Rotoaira.

Finally, the construction of a new township in their district was a potential development opportunity for local iwi. Claimant witnesses in our inquiry were dismissive of this opportunity in the wider context of the TPD. George Asher commented:

> The failure of Tuwharetoa to have meaningful input into the decision to build the TPD, and to share in the revenue generated by the scheme places in perspective the other benefits promised by the Crown to Ngati Tuwharetoa, in terms of a new township (for which our ancestral land was taken), and for which we were merely given jobs as labourers.[711]

We did not receive detailed evidence or submissions about Turangi and its economic and social significance: the Turangi township claim has already been heard and settled. We refer parties to the Tribunal's report and make no further comment on this matter.[712]

According to claimant counsel, the benefits of the TPD as actually delivered were 'jobs for a few years as bulldozer drivers'.[713] While we appreciate the sentiment expressed in this comment, we think that this position is too extreme. The employment created by the TPD was a significant but relatively short-term opportunity which benefited local iwi. Also, the Rotoaira afforestation scheme, which delivered both jobs and dividends, was a by-product of the TPD and likely would not have happened without it. These were significant development benefits. They were offset, however, by the damage done to Māori interests by the TPD and the failure to deliver on the truly great development opportunity: a joint venture which recognised Māori's rights in their waterways and paid for their use in the generation of power, for the benefit of the nation. If our findings and recommendations are heeded, it is not too late to start delivering on that development opportunity today.

14.14 Looking Forward

We have reviewed the evidence relating to the planning and construction phase and the post-construction impacts of the TPD, and made a number of findings. We now address the matter of what might be done in the future. We frame this section with an overarching question:

- In what ways can the relationships between ngā iwi o te kāhui maunga and the waters of the TPD be restored?

In particular:

- How can the benefits of water use be shared between Crown and iwi?
- What restorative measures might be undertaken?
- What compensation is appropriate where damage has been sustained or restoration measures are not practicable?
- How can the kaitiakitanga o ngā iwi o te kāhui maunga over their waters be restored?

14.14.1 Sharing the benefits of water use

There are larger issues to do with the ownership of water which have not been determined in New Zealand. Ownership issues were set aside during the process of resource management law reform in the 1980s and the focus of the Resource Management Act 1991 is on the use of resources. There are, nonetheless, subsequent economic benefits which accrue from rights to use natural resources, including water. Use rights have become, de facto, property rights.

Ngā iwi o te kāhui maunga have brought specific claims and have argued that Crown recognition of Māori rights to water is long overdue and that loss of control over waterways and their associated resources has meant that economic opportunities have been denied to them.

It is clear to us that the claimants have borne the brunt of the Tongariro power scheme's negative impacts, during its development and its operation, without being able to share in its economic rewards. The wider issues of the

ownership of water, the use of water for electricity generation, and the manner in which the benefits from such use are shared between iwi and Crown are matters of national importance, which are also being addressed in a separate inquiry.[714] Without wishing to make detailed recommendations, we have already stated our view that ngā iwi o te kāhui maunga are entitled under the Treaty to be paid for the use of their taonga to generate electricity, and that they are owed compensation for past use of their waterways for that purpose in the TPD. In particular, our view is that the 1972 Lake Rotoaira agreement must be set aside and a new arrangement negotiated with the lake's owners.

We also note the following submission from counsel for Ngāti Tūwharetoa:

> Ngati Tuwharetoa seek recommendations that if they are to build a sustainable economic base for the future, then the Crown needs to facilitate – by way of redress for its Treaty breaches in misappropriating their taonga and in acknowledgement of their right to development – Tuwharetoa's entry into what have become the mainstays of the economy in the region – hydro-electric generation; geothermal power generation; tourism.[715]

We endorse this submission insofar as it relates to hydroelectricity and the TPD, and say that it applies to all ngā iwi o te kāhui maunga who wish to become 'genuine partners with the Crown in power generation', as Toni Waho put it.[716] Not all wish to do so, although all claimants want aspects of the TPD altered or improved, as we have discussed in section 14.13.2.

For those who see hydroelectricity as a development opportunity for their iwi today, the Crown needs to consider something more than just payment for the use of proprietary rights so as to generate power. The claimants' exercise of tino rangatiratanga over their taonga, their need for re-empowerment, the restoration of their mana, and their development aspirations; all may be addressed to some degree by becoming partners in the modern electricity industry.

In saying this, we rely on the findings of the CNI Tribunal, which examined this issue for the iwi of the central North Island and concluded that those iwi have a present-day right to participate in the hydroelectricity industry. The source of this right was explained by the CNI Tribunal as follows:

- the development or activity is a legitimate outgrowth or development of a customary property right;
- the development or activity is in their rohe;
- the development or activity involves their taonga (whether still in their legal ownership or not);
- they have had a long association or history of involvement in the development or activity (in terms of their requests for payment for the use of their lake [Taupō], the short-term and long-term effects on them of the Tongariro Power Development and the manipulation of lake levels since 1941, and their involvement in working on the power projects);
- a tribal initiative is involved or contemplated;
- the development or activity may contribute to the redress of past Treaty breaches; and
- the development or activity may assist their cultural, social, or economic development.[717]

The CNI Tribunal's findings are applicable to ngā iwi o te kāhui maunga. It is for the Crown and claimants to discuss how this development opportunity might best be given effect in today's circumstances.

We turn next to consider restorative measures in respect of the negative impacts of the TPD, which were an issue for all claimant groups.

14.14.2 Restorative measures to be undertaken

The CNI Tribunal considered that where the tangata whenua were 'experiencing a disproportionate share of any negative environmental impacts resulting from previous or current Crown breaches of the Treaty', then 'the Crown or its delegates should give some priority to providing the remedies necessary to ameliorate those impacts'.[718] We agree, and would extend the recommendation to include, wherever possible, all types of negative impact.

The TPD has impacted on the streams and river systems of te kāhui maunga, and also on Lake Rotoaira. The

claimants do not, for the most part, seek the removal of the TPD and the restoration of waterway configurations to their pre-TPD state. Rather, they seek the increase of flows in some streams, the restoration of habitat, and the restoration of native fish species. They seek to restore ecological relationships and spiritual relationships.

Mitigation in the form of picnic areas and landscaping in affected zones is not sufficient. As a first step towards the restoration of habitat and spiritual relationships, iwi have sought the improvement of river flows in particular places of high spiritual and cultural importance. They have attempted to do this through the resource consent process, and now through claims to the Waitangi Tribunal.

Changes in lake level, fluctuations in lake level, sedimentation, loss of water quality, and changes in habitat, are of particular concern to the owners and kaitiaki of Lake Rotoaira. Wāhi tapu, mahinga kai, and nohoanga have been flooded. The tributaries of the Whanganui, Whangaehu, and Tongariro have all been affected with loss of habitat, and loss of indigenous species. The claimant iwi have lost kai, they have lost customary use, and they have lost opportunities for healing and ritual.

We recommend, as a principle, that 'cultural flows' be re-established in ngā wai o te kāhui maunga, as has been done in some parts of Australia, to restore habitat, to assist where practicable the recovery of indigenous fish, to restore customary use, and to retain mana. We are aware, from information supplied to the Environment Court in June 2011, that one-on-one negotiations have taken place and agreements entered into between Genesis and a number of iwi organisations since the Wai 1130 hearings were completed. As a result, a number of mitigations have already been put in place.

We are aware that the resource consents for the TPD will not come up for review until 2039 and that further one-on-one negotiations about mitigation packages may take place in the interim. We are also aware that iwi may be unevenly equipped to participate in these negotiations and achieve the most appropriate mitigations.[719] We see a need for comprehensive research, which combines the skills of Western science and mātauranga Māori, to monitor the waterways of te kāhui maunga, including Lake Rotoaira, and identify the mitigations which will best meet the needs of each iwi. Such research will have a double role: it will inform and support the one-on-one negotiations between Genesis and iwi; and it will provide a baseline for the assessment of environmental impacts which will be required in advance of the 2039 hearings. We recommend that the Crown funds this research.

14.14.3 Appropriateness of compensation

The claimants have suffered economic, ecological, cultural, and spiritual losses when rivers have been dammed or diverted and, in the case of Rotoaira, when their lake has been used for water storage purposes. Lack of consultation, lack of opportunity for mutual cooperation, and lack of agreement by iwi means that the responsibility for the damage caused by the TPD must fall on the Crown alone. Where remediation is not possible, there should in each case be compensation for the damage done. It should cover the full spectrum of losses and should take into account the nature and duration of the damage.

There are four points we would make in relation to Lake Rotoaira:

- The 'no compensation' provision in the Lake Rotoaira deed should be set aside and the damage reassessed: such a provision is a serious breach of the principles of the Treaty.
- The loss of revenue from the Lake Rotoaira trout fishery has been addressed in chapter 13 and in this chapter. The owners of Lake Rotoaira should also be compensated for the loss of subsistence from kōaro and other indigenous fish.
- The trustees of Lake Rotoaira suffered loss of economic opportunity when their plans for a tourism and accommodation development were negatively affected, initially by the raising of the lake level, and subsequently by the deterioration of water quality and fishing opportunity. We recommend that the Crown provide compensation for these negative effects. The priority, however, from the claimants' perspective, is to focus on improving water quality.
- We have addressed the use of water, and the economic benefits that flow from the use of water, in

sections 14.13.3 and 14.14.1. We found that ngā iwi o te kāhui maunga are entitled to compensation for past and present use of their taonga to generate electricity. In the case of Lake Rotoaira, we see the use of the lake for storage purposes as a particular and pressing issue. The value of the lake for TPD purposes is substantial, and the loss of amenity to the lake trustees is substantial. We recommend that the trustees be compensated, not just for damage done but also for the value of the lake for water storage from the date of commercialisation. It is for the Crown to determine if the ongoing payments should be carried by the Crown or by Genesis. As the Tribunal stated in *Te Ika Whenua*, there is justification for a lower rate of compensation during the period when the Crown's hydroelectricity schemes were managed as a public good rather than a commercial enterprise (although significant revenue was still received at that time).[720] In relation to the transition to commercialisation of power production, the Te Ika Whenua rivers Tribunal found:

> The Treaty has been described as a living document, the interest of Te Ika Whenua in the rivers remains, and if the circumstances of the use changes, as has happened, then the Crown is bound to reconsider the interest of Te Ika Whenua. It seems quite unacceptable that commercial profit can be made from Te Ika Whenua's interest in the rivers without any form of compensation or payment. The considerations that might be addressed in appropriating property for cooperative use as opposed to commercial use could be markedly different, and the Crown in fairness to its Treaty partner is bound to take these into account.[721]

We agree, and we consider that this finding is particularly apt for Lake Rotoaira.

14.14.4 The restoration of kaitiakitanga over waters

Ngā iwi o te kāhui maunga have largely been excluded from the management of their water resources. Under the RMA, this task has been delegated to the Manawatu–Wanganui and Waikato Regional Councils.

Ko Aotearoa Tēnei, in an examination of the RMA, has asked if the current RMA system provides for kaitiakitanga control, partnership, and influence on environmental management.[722] It finds that the Act has not fulfilled its promise with respect to Māori: there have, in particular, been very few transfers of powers to iwi authorities.[723]

Ko Aotearoa Tēnei encourages greater use and recognition of iwi management plans, and points towards partnership arrangements as an appropriate way to involve iwi in decision-making without excluding local government or wider communities of interest.[724] The report also recommends greater use of national policy statements to enhance 'kaitiaki control, partnership, and influence on environmental decision-making'.[725]

Our recommendations recognise the very particular character of our inquiry district, the importance of the waters for the nga iwi o te kāhui maunga, the impacts of the TPD on these waters, and the opportunities and limitations of the RMA.

In the National Park inquiry context, we make three recommendations which, taken together, will increase opportunity for ngā iwi o te kāhui maunga to exercise their kaitiakitanga over their waters. They include local action and national action and sit within the present resource management framework. Those recommendations are:

- That the Crown provide funding for the preparation of an iwi management plan for the waters of te kāhui maunga (section 61(2A)(a) of the RMA). This funding should be ongoing and take into account capacity building and monitoring needs.
- That ngā iwi o te kāhui maunga and the regional councils for Manawatu–Wanganui and Waikato enter into a partnership arrangement for the management of the waters of te kāhui maunga (sections 36B, 36C, and 36D of the RMA provide a framework for this; section 36E, which allows for termination at 20 days' notice, is not applicable). One of the tasks of this partnership would be the preparation of a water

management plan. As a further aspect of the partnership, when applications for water-related consents are considered, the hearing committee should be appointed jointly by iwi and regional councils.[726]

- That the Crown prepare a national policy statement for Māori participation in resource management (section 45(1) of the RMA). Such a policy statement should be consistent with the recommendations of *Ko Aotearoa Tēnei* and identify mechanisms for the exercise of kaitiakitanga, for partnerships between iwi and regional councils, and for the involvement of iwi in decision-making with respect to te ao tūroa, the sustainable management of resources.

Notes

1. Alexander H McLintock, ed, 'The Electrical Industry: New Zealand's Biggest Business', in *An Encyclopeadia of New Zealand 1966*, *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/1966/power-resources/page-7, last modified 22 April 2009
2. Water-power Act 1903, s 2
3. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, *Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 3, pp 913–914, 1190–1191
4. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wellington: Legislation Direct, 2012), pp 67, 89–90, 126, 172, 188
5. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 1, p 19; ch 12, pp 8–9
6. Counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), p 259
7. Counsel for Rangiteauria claim, amended statement of claim, 4 August 2005 (claim 1.2.16), p 4
8. Counsel for Ngāti Rangi, closing submissions, 15 May 2007 (paper 3.3.33), p 71; paper 3.3.43, p 259
9. Counsel for Ngāti Manunui, closing submissions, 14 May 2007 (paper 3.3.27), p 22; counsel for Ngāti Hikairo ki Tongariro, closing submissions, 14 May 2007 (paper 3.3.29), pp 63, 65; counsel for Ngāti Waewae, closing submissions, 28 May 2007 (paper 3.3.41), p 121
10. Counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), pp 96, 98
11. Counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2007 (paper 3.3.42), p 160
12. Counsel for Robert Wayne Cribb and others, closing submissions, 14 May 2007 (paper 3.3.19), p 24
13. Paper 3.3.30, pp 91–92
14. Paper 3.3.43, p 273
15. Ibid, p 290
16. Paper 3.3.42, p 162
17. Paper 3.3.29, p 57
18. Paper 3.3.43, p 257
19. Ibid
20. Paper 3.3.33, pp 74–75
21. Paper 3.3.43, p 290
22. Paper 3.3.30, p 174
23. Paper 3.3.33, pp 13–14, 98–99
24. Ibid, p 15
25. Paper 3.3.43, p 293; paper 3.3.42, p 151
26. Paper 3.3.43, p 269; paper 3.3.45, ch 12, pp 3–5
27. Paper 3.3.43, p 259; paper 3.3.45, ch 12, pp 3–5
28. Paper 3.3.45, ch 12, p 3
29. Ibid, p 4
30. Ibid, p 5
31. Ibid, p 7
32. Ibid, p 5
33. Ibid, p 7
34. Ibid, p 11
35. Ibid
36. Ibid
37. Ibid, pp 11, 14, 24
38. Ibid, p 24
39. Ibid, pp 11, 26
40. Ibid, p 24
41. Ibid, p 39
42. Counsel for Ngāti Tūwharetoa, submissions in reply, 11 July 2007 (paper 3.3.60), pp 18–19
43. Waitangi Tribunal, *The Te Arawa Settlement Process Reports* (Wellington: Legislation Direct, 2007), p 45
44. Ibid, pp 70–71
45. Paper 3.3.60, pp 20–21
46. Ibid, p 19
47. Ibid, pp 18–20
48. Ibid, pp 19–20
49. Links were made to the Crown's concession about disparity of consultation between Whanganui and Tūwharetoa Māori by counsel for Ngāti Hikairo, submissions in reply, 6 July 2007 (paper 3.3.52), p 12; see also counsel for Ngāti Hikairo, reply to Crown closing submissions, 6 July 2007 (paper 3.3.56), p 8; counsel for Ngāti Manunui, submissions in reply to the closing submissions of the Crown, 2 July 2007 (paper 3.3.46), p 4; counsel for Robert Wayne Cribb and others, submissions in reply, 6 July 2007 (paper 3.3.49), pp 6–7.
50. Paper 3.3.60, p 24
51. Ibid, p 23
52. Ibid, pp 23–24. Counsel pointed to the concept of unjust enrichment, that is, to be unjustly enriched at another person's expense.

53. Paper 3.3.60, p 24
54. The work force included 980 Ministry of Works wageworkers, 820 staff employed by contractors, and 320 permanent Ministry of Works staff: Ministry of Works and Development, *Tongariro Power Development: Constructed by the Ministry of Works and Development for the New Zealand Electricity Department* (Wellington: Ministry of Works and Development, 1974), p 49.
55. Ibid, p 6. It is likely that the final cost exceeded this amount.
56. John Martin, *People, Politics and Power Stations: Electric Power Generation in New Zealand, 1880–1990* (Wellington: Electricity Corporation of New Zealand and Department of Internal Affairs, 1998), p 220
57. Ministry of Works and Development, *Tongariro Power Development*, p 1
58. H J Jenks to engineer-in-chief, 7 September 1948, AANU 569 W3214 6/0/10/4, pt 1, Archives New Zealand, Wellington, pp 1–2 (Tony Walzl, comp, 'Supporting Papers for "Hydro-Electricity Issues: The Tongariro Power Development Scheme" and "Hydro-Electricity Issues: The Waikato River Hydro Scheme"', 2 vols (Upper Hutt: Walghan Partners, 2005) (doc A8(a)), vol 2, pp 590–591)
59. Ibid, p 5 (p 594)
60. The growth in electricity consumption proved to be far greater, with national annual increases running at around 13 per cent for most of the 1950s: Martin, *People, Politics and Power Stations*, pp 133–135.
61. Ibid, pp 135–136
62. Ibid, p 137
63. '32 Miles of Tunnels in Power Plan', *New Zealand Herald*, 22 September 1958, p 8
64. Arthur Davenport was the New Zealand Electricity Department general manager at this point: John E Martin, 'Arthur Egbert Davenport', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/5d4/davenport-arthur-egbert, last modified 30 October 2012.
65. Watt, conference on 'conservation of scenic resources and prevention of damage by hydro-electric and industrial development', 24 November 1959 (as quoted in Tony Walzl, 'Environmental Impacts of the Tongariro Power Development Scheme' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc E12), p 29)
66. Document E12, p 29
67. 'Hydro Diversion Plans of Upper Waikato Thought Feasible', *Evening Post*, 9 June 1959, p 14
68. Document E12, p 30
69. Martin, *People, Politics and Power Stations*, p 224
70. Some three-fifths of the power consumed was in the home or farm; industry and commercial users took the remainder: Alexander H McLintock, ed, 'The Electrical Industry: New Zealand's Biggest Business', in *An Encyclopeadia of New Zealand 1966*, *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/1966/power-resources/page-7, last modified 22 April 2009.
71. New Zealand Electricity Department, 'Notes on Tongariro Power Development', February 1964, AANU 7740 W5159 21/75/1, pt 1, Archives New Zealand, Wellington, p 6 (doc A8(a), vol 2, p 795). The memorandum also noted that the proposed power stations would be close to the existing North Island transmission system.
72. Shand, an influential Minister within the Holyoake government, was 'a strong advocate of investment in electricity': Hugh Templeton, 'Thomas Philip Shand', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/5s12/shand-thomas-philip, last modified 30 October 2012.
73. Shand was succeeded in the electricity portfolio by Percy Allen, who was also Minister of Works from 1963 to 1972 and also played a key role in Tongariro Power Development decision-making.
74. 'Tongariro Will Never be the Same Again', *Evening Post*, 24 September 1964, p 18. It later emerged that the scientist members of the Nature Conservation Council had wanted the scheme postponed pending further investigation but had been overruled by lay members.
75. Document E12, p 25
76. A local firm, in conjunction with three overseas firms, was awarded the contract.
77. The third turbine was commissioned in September 1973 and the final one in March 1974.
78. Document E12, p 46
79. Ibid, p 48
80. Tony Walzl, 'Hydro-Electricity Issues: The Tongariro Development Scheme' (commissioned research report, Wellington: Waitangi Tribunal, 2005) (doc A8), p 16
81. Ibid, pp 16–17
82. Ibid, p 17
83. Ibid, p 18; Waitangi Tribunal, *Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 34. John Asher was, at the time of the meeting, secretary of both the Tūwharetoa Trust Board and the Lake Rotoaira Trust.
84. W M Fisher to assistant engineer-in-chief, 26 October 1955, ABZK 889 W5472 92/11/25/2, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, p 347)
85. Ibid; John Koning, *Lake Rotoaira: Maori Ownership and Crown Policy Towards Electricity Generation, 1964–1972*, Waitangi Tribunal Research Series (Wellington: Waitangi Tribunal, 1993) (doc A14), p 4
86. Tokaanu Native Land Court minute book 27, 28 September 1943, fol 296
87. 'Extensive Survey is Well Advanced', *Evening Post*, 14 October 1959, p 22
88. Whakapumautanga Darkie Downs, brief of evidence, 26 April 2005 (doc G4), p 2
89. J A Asher to Minister for Electricity, 24 March 1954, AANU 7740 W5159 21/75/1, pt 1, Archives New Zealand, Wellington (Tony Walzl, comp, 'Supporting Papers for "Environmental Impacts of the Tongariro Development Scheme"', 18 vols (supporting papers, Wellington: Crown Forestry Rental Trust, 2006) (doc E12(b)–(s)), vol 6, p 2623)
90. 'Authorising the Minister of Electricity to Construct and Use Works in Connection with the Utilisation of Water Power From

the Wanganui, Tokaanu, Tongariro, Rangitikei, and Wangaehu for the Generation of Electrical Energy', 29 October 1958, *New Zealand Gazette*, 1958, no 66, p 1463

91. Commissioner of works to general manager, New Zealand Electricity Department, 26 September 1958, ABZK 889 W5472 92/11/25/2, pt 3, Archives New Zealand, Wellington (doc A8(a), vol 1, p 352)

92. Office solicitor to general manager, New Zealand Electricity Department, 17 October 1958, AANU 7740 W5159 21/75/1, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 2, p 800)

93. Sir Alexander Gibb & Partners to commissioner of works, 18 September 1958, ABZK 889 W5472 92/11/25/2, pt 3, Archives New Zealand, Wellington (doc A8(a), vol 1, p 353)

94. Kevin Amohia Hikaia, brief of evidence, 15 August 2006 (doc E24), p 23

95. Russell Kirkpatrick, Kataraina Belshaw, and John Campbell, 'Summary of "Land-based Cultural Resources and Waterways and Environmental Impacts (Rotorua, Taupo and Kaingaroa): 1840–2000" ' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006) (doc A58(a)), p 15

96. Secretary for Māori Affairs to Minister of Māori Affairs, 28 February 1957, MA 1 19/1/334, pt 2, Archives New Zealand, Wellington (doc A8(a), vol 1, p 215)

97. Ibid; doc A14, p 4

98. Rangikamutua Henry Downs, brief of evidence, 2 October 2006 (doc G40), p 2

99. The relationship between Grace and Corbett was a close one. When National was voted out of office in 1958, Grace transferred, briefly, to the office of Walter Nash, Minister of Māori Affairs and Labour Prime Minister, but resigned in 1959. Grace's multiple roles may explain some of the hostility apparent within branches of the Crown following passage of the Māori Purposes Act: see, for example, Allen to Cabinet, 'Tongariro Power Development: land acquisition', 27 April 1972, MA 1 19/1/334, pt 5, Archives New Zealand, Wellington, p 4 (doc A8(a), vol 1, p 264).

100. Walter Nash, 15, 21 October 1959, NZPD, 1959, vol 321, pp 2462, 2580

101. Walter Nash, 21 October 1959, NZPD, 1959, vol 321, p 2580

102. Walter Nash, 15 October 1959, NZPD, 1959, vol 321, p 2462

103. Walter Nash, 21 October 1959, NZPD, 1959, vol 321, p 2580

104. Mr Gotz, 15 October 1959, NZPD, 1959, vol 321, p 2460

105. Walter Nash, 15 October 1959, NZPD, 1959, vol 321, p 2462

106. Walter Nash, 21 October 1959, NZPD, 1959, vol 321, p 2580

107. Martin, *People, Politics and Power Stations*, p 225

108. 'Power Plan Approved in Principle', *Wanganui Chronicle*, 18 September 1963 (doc E12(b), pp 482–483). John Grace stood for this general seat but was not elected. He was, at this time, a government appointee to the advisory Nature Conservation Council.

109. New Zealand Electricity Department, 'Notes on Tongariro Power Development', February 1964, AANU 7740 W5159 21/75/1, pt 1, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 2, p 790)

110. Ibid, p 6 (p 795)

111. Ibid, pp 7–10 (pp 796–799)

112. Ibid, p 10 (p 799)

113. Ministers of Internal Affairs and Marine, 'Tongariro Electricity Development Should Not Harm Fishing', joint press statement, not dated, AALR 873 W4446 40/196/25, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 2, p 997)

114. New Zealand Electricity Department, 'Notes on Tongariro Power Development', February 1964, AANU 7740 W5159 21/75/1, pt 1, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 2, p 790)

115. J A Asher to Minister for Electricity, 24 March 1954, AANU 7740 W5159 21/75/1, pt 1, Archives New Zealand, Wellington (doc E12(g), p 2623)

116. Ibid

117. Document E12, p 96

118. 'Compensation to Taumarunui Promised', *Taranaki Daily News*, 21 May 1964, p 13 (doc E12(b), p 443)

119. Document E12, p 99. The scheme became such a talking point that one cartoonist humorously dubbed it the 'Tongue-ariro': *New Zealand Herald*, 30 July 1964, p 7 (doc E12(b), p 287).

120. 'Rampaging Philistine with his Bulldozer must be told "Hands Off" ', *Evening Post*, 24 June 1964, p 33 (doc E12(b), p 413)

121. 'Earlier Tongariro Decision Required', *Evening Post*, 10 July 1964, p 13

122. 'Demand for Power Not Predicted by the Experts', *Evening Post*, 3 August 1964, p 14

123. Document E12(b), p 278

124. Document E12, p 101

125. Archie Te Atawhai Taiaroa, evidence to the Environment Court, not dated [2003], p 5 (doc E12(q), [p 182])

126. Paper 3.3.45, ch 12, p 5

127. Document E12, pp 92–95, 96

128. Paper 3.3.60, p 19

129. Merle Maata Ormsby, brief of evidence, 14 August 2006 (doc E20), p 3

130. John Asher, brief of evidence, 1 October 2006 (doc G38), p 9

131. Commissioner of works to district commissioner of works, Wanganui, 9 April 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, p 413)

132. 'Tongariro Power Development and Maori Land Owners: Notes of Meeting Held at Tokaanu', 15 April 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, pp 409–411)

133. Ibid, p 409

134. Ibid, p 410

135. Waitangi Tribunal, *Turangi Township Report*, p 328

136. 'Tongariro Power Development: Notes of Meeting between Tuwharetoa Maori Land Owners and Ministry of Works Officials at Tokaanu', 24 May 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 406a)

137. Ibid

138. Ibid

139. Ibid

140. 'Tongariro Power Development: Notes of Meeting between Tuwharetoa Maori Land Owners and Ministry of Works Officials at Tokaanu', 24 May 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington, p 8 (doc A8(a), vol 1, p 406h))
141. Ibid
142. Document E20, p 3
143. Arthur Grace to Minister of Public Works, 14 August 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, p 404)
144. Minister of Works to Arthur Grace, 20 August 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, p 403)
145. A Grace to P B Allen, telegram, 21 August 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, pp 400, 401)
146. Document A8, p 45
147. 'Tongariro Power Development', minutes of meeting between Ngāti Tūwharetoa landowners and Ministry of Works officials, Tokaanu, 20 September 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 376)
148. Ibid, p 2 (p 377)
149. Ibid, p 6 (p 381)
150. Ibid
151. 'Green Light for Tongariro', *Evening Post*, 22 September 1964 (doc A8(a), vol 1, p 396)
152. Paper 3.3.45, ch 12, p 9
153. Ibid, p 4
154. Davenport to Secretary for Internal Affairs, 27 October 1955, ABZK 889 W5472 92/11/25/2, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, p 346)
155. Marian Horan, 'The Tongariro Power Development: Selected Issues' (commissioned research report, Wellington: Waitangi Tribunal, 2005) (doc A51), p 29
156. Paper 3.3.45, ch 12, p 5
157. Document A8, p 32. This involved some 800 acres (323.7 hectares).
158. Waitangi Tribunal, *Turangi Township Report*, pp 44, 64–65, 379
159. Ibid, p 39
160. Document A51, pp 38–39 n 80
161. J A Asher to Minister for Electricity, 24 March 1954, AANU 7740 W5159 21/75/1, pt 1, Archives New Zealand, Wellington (doc E12(g), p 2623)
162. *Wellington International Airport Limited v Air New Zealand* [1993] 1 NZLR 671 (CA), 675, per McKay J, quoting McGechan J in *Air New Zealand v Wellington International Airport Limited* unreported, 6 January 1992, High Court, Wellington, CP403–91
163. Investigating engineer to Fisher, 17 November 1955, ABZK 889 W5472 92/11/25/2, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, p 344)
164. Investigating engineer to chief investigating engineer, 6 October 1958, ABZK 889 W5472 92/11/25/2, pt 4, Archives New Zealand, Wellington (doc A8(a), vol 1, p 363)
165. Davenport to Secretary for Internal Affairs, 27 October 1955, ABZK 889 W5472 92/11/25/2, pt 4, Archives New Zealand, Wellington (doc A8(a), vol 1, p 346)
166. Investigating engineer to Fisher, 17 November 1955, ABZK 889 W5472 92/11/25/2, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, p 344)
167. Document A8, p 21
168. Senior administration officer, Marine Department, 'Notes on Fisheries Aspects: Tongariro Power Development', 1 October 1958, ABZK 889 W5472 92/11/25/2, pt 4, Archives New Zealand, Wellington, p 2 (doc A8(a)), vol 1, p 357)
169. Ibid, p 7 (p 362)
170. Ibid, p 6 (p 361)
171. Investigating engineer to chief investigating engineer, 6 October 1958, ABZK 889 W5472 92/11/25/2, pt 4, Archives New Zealand, Wellington (doc A8(a), vol 1, p 363)
172. Investigating engineer to Fisher, 17 November 1955, ABZK 889 W5472 92/11/25/2, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 1, p 344)
173. Davenport to law drafting office, Wellington, 26 July 1959, MA 1 19/1/334, pt 3, Archives New Zealand, Wellington (doc A8(a), vol 1, p 226)
174. Davenport to Minister of Electricity, 7 August 1959, AANU 569 W3214 6/0/10/4, pt 2, Archives New Zealand, Wellington (doc A8(a), vol 2, p 597)
175. W Nash, 21 October 1959, NZPD, 1959, vol 321, p 2580
176. Martin, *People, Politics and Power Stations*, p 224
177. Project engineer to commissioner of works, 19 November 1963, ABZK 889 W5472, box 308 92/12/67/1, pt 1, Archives New Zealand, Wellington (Marian Horan, comp, 'Document Bank to "The Tongariro Power Development: Selected Issues"', 41 vols (document bank, Wellington: Crown Law Office, 2005) (docs A51(a)–(qq)) (doc A51(k)), vol 11, p 45)
178. 'New North Island Hydro-electric Scheme Announced', *Dominion*, 24 March 1964, AANU 7740 W5159/62 21/75/5, pt 1, Archives New Zealand, Wellington (doc E12(b), p 524)
179. Rosslyn J Noonan, *By Design: A Brief History of the Public Works Department/Ministry of Works, 1870–1970* (Wellington: Government Printer, 1975), p 256; doc E12, p 41
180. Document E12, p 41
181. Memorandum for Minister of Defence, 6 October 1966, AANU 21/75/74, pt 1, Archives New Zealand, Wellington, p 1 (doc E12(f), p 2278); doc E12, p 43
182. John Manunui, brief of evidence, not dated (doc G27), p 17
183. Ibid
184. Lois Jean Tutemahurangi, brief of evidence, not dated (doc G29), p 10
185. Document E12, p 35
186. '£360,000 Spent on Beautifying Hydro Sites', *New Zealand Herald*, 9 July 1964, p 14 (doc E12(b), p 362)
187. T P Shand to R E Tripe, 13 August 1964, ABZK W5472, box 337, 92/12/67/34, pt 1, Archives New Zealand, Wellington, p 1

(Marian Horan, comp, 'Document Bank to "The Tongariro Power Development: Selected Issues"', 41 vols (doc A51(a)), vol 1, p 265)
188. Ibid, p 2 (p 266)
189. 'Planners Did Not Tell the Public', *Evening Post*, 15 August 1964, p 24
190. Minister of Electricity to Cabinet, 18 September 1964, AALR 873 W4446 50/196/25, pt 2, Archives New Zealand, Wellington (Marian Horan, comp, 'Document Bank to "The Tongariro Power Development: Selected Issues"', 41 vols (doc A51(qq)), vol 41, p 58)
191. Document E12, p 38
192. 'A Shadow over Tongariro', *Evening Post*, 22 September 1964, p 16
193. 'Tongariro Power Development, Minutes of Meeting between Tuwharetoa Maori Land Owners and Ministry of Works Officials at Tokaanu', 24 May 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington, p 4 (doc A8(a), vol 1, p 406d)
194. Patrick Piripi (Phillips), brief of evidence, 4 September 2006 (doc F4), p 8
195. 'Tongariro Power Development, Minutes of Meeting between Tuwharetoa Maori Land Owners and Ministry of Works Officials at Tokaanu', 24 May 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington, p 3 (doc A8(a), vol 1, p 406c)
196. Arthur Lancaster Te Takinga Grace, brief of evidence, 4 October 2006 (doc G46), p 9. Patrick Burstall was District Conservator of Wildlife in the 1960s. Arthur Grace and Patrick Burstall were both recreational anglers.
197. New Zealand Electricity Department, 'Notes of Tongariro Power Development', February 1964, AALR 873 W4446 40/196/25, Archives New Zealand, Wellington, p 10 (doc A8(a), vol 2, p 996)
198. 'Tongariro Power Development, Minutes of Meeting between Tuwharetoa Maori Land Owners and Ministry of Works Officials at Tokaanu', 24 May 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 1, p 406b)
199. T P Shand to R E Tripe, 13 August 1964, ABZK W5472, box 337, 92/12/67/34, pt 1, Archives New Zealand, Wellington, p 2 (doc A51(a), p 266)
200. 'Tongariro Power Development, Minutes of Meeting between Tuwharetoa Maori Land Owners and Ministry of Works Officials at Tokaanu', 20 September 1964, ABZK 889 W5472 92/12/67/6, Archives New Zealand, Wellington, p 8 (doc A8(a), vol 1, p 383)
201. Cabinet paper CP (64) 793, 'Tongariro Power Development', September 1964 (doc A51(qq), p 56)
202. 'Tongariro Power Development, Minutes of Meeting between Tuwharetoa Maori Land Owners and Ministry of Works Officials at Tokaanu', 24 May 1964, ABZK 889 W5472 92/12/67/6, pt 1, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 406a)
203. Memorandum attached to Cabinet paper CP (64) 793, 'Tongariro Power Development', 17 September 1964, p 2 (doc A51(qq), p 58)
204. Ibid, pp 2–3 (pp 58–59)
205. 'Tongariro Hydro Scheme to Start Straight Away', *Evening Post*, 22 September 1964, p 12
206. 'Ruin at Famous Trout Lake', *Evening Post*, 23 June 1966, p 16
207. Hadfield Peacock Tripe & Feist to Minister of Works, 6 July 1966, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 1 (doc A51(a), vol 1, p 267)
208. General manager, New Zealand Electricity Department, to Minister of Electricity, 7 December 1971, AANU 7740 W5159 21/75/12, pt 1, Archives New Zealand, Wellington (Marian Horan, comp, 'Document Bank to "The Tongariro Power Development: Selected Issues"', 41 vols (doc A51(h)), vol 8, p 126)
209. Document A8, pp 149–150
210. Ibid, p 150
211. Document F4, p 3
212. Document A8, p 151
213. 'Battle over L Rotoaira "Pollution"', *Taranaki Daily News*, 1 February 1967 (doc A8(a), vol 2, p 807)
214. Document E12, p 53
215. A W Gibson to J H Macky, not dated, ABZK W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 1 (doc A51(a), p 253)
216. 'Minutes of Inter-departmental Meeting: Protection and Control of the Lake Rotoaira Watershed', 30 June 1970, AANU 7740 W5159 21/75/12, pt 1, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 2, p 894)
217. Ibid, p 5 (p 897)
218. Ibid
219. Ibid
220. Project engineer to commissioner of works, 24 July 1970, ABZK 889 W5472 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 1, p 490)
221. Commissioner of works to R T Feist, 31 May 1972, ABZK 889 W5472 92/12/67/6, pt 6, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 1, p 510)
222. 'Tongariro Power Development: Minutes of Meeting between Tuwharetoa Maori Land Owners and Ministry of Works Officials at Tokaanu', 20 September 1964, ABZK 889 W5472 92/12/67/6, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 1, p 377)
223. Document A8, p 108; 'Deputation from the Ngati Tuwharetoa to the Prime Minister', 28 January 1972, ABZK W5472, box 333 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 14 (doc A51(qq), p 81); 'Deputation to the Right Honorable the Prime Minister, Sir Keith Holyoake and the Hon Percy Allen, Minister of Works, 28 January 1972, MA 1 19/1/334, pt 4, Archives New Zealand, Wellington, pp 1–3 (doc A8(a), vol 1, pp 236–238)
224. R E Tripe to Minister of Electricity, 26 November 1964, ABZK 889 W5472 92/12/67/6, pt 4, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 1, p 442)
225. Ibid
226. Secretary for Māori Affairs to general manager, New Zealand Electricity Department, 1 February 1965, MA 1 19/1/11, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 1, p 64)
227. Ibid
228. 'Notes of Meeting on Compensation and Future Ownership of Lands, etc Created by Wanganui and Otamangakau Dams', 25

February 1965, MA 1 19/1/11, Archives New Zealand, Wellington, pp 1–2 (doc A8(a), vol 1, pp 60–61)

229. T P Shand to R E Tripe, 12 July 1965, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 2, p 883)

230. R E Tripe to Minister of Electricity, 16 August 1965, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 2, p 882)

231. Record of interview, 'Minister of Works and Deputation Tuwharetoa Owners', 9 March 1971, ABZK 889 W5472 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 473)

232. 'Deputation from the Ngati Tuwharetoa to the Prime Minister', 28 January 1972, ABZK 889 W5472, box 333 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 1 (doc A51(qq), p 71)

233. Lake Rotoaira deed, November 1972, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington, p 4 (doc A8(a), vol 2, p 849)

234. The largest blocks taken at this point were parts Waimanu 2G3B (157.7 hectares), Ōkahukura 4B1 (100.3 hectares), and Waimanu 2G3A (103.7 hectares): see Land History Alienation Database in document G17, pp 562, 571, 637–646, and Moka Apiti and Crown Forestry Rental Trust, 'National Park Overview Mapbook, Part 2: A District Overview Map Book to Support Waitangi Tribunal Proceedings' (map book, Wellington: Crown Forestry Rental Trust, 2006) (doc A48(a)), pl 9.

235. Paper 3.3.45, ch 12, p 37

236. A W Gibson to commissioner of works, 25 February 1969, ABZK 889 W5472 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 468)

237. Ibid, app B, p 1 (p 469f)

238. T P Shand to R E Tripe, 11 August 1964, AANU 7740 W5159 21/75/12, pt 1, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 2, p 901)

239. The impact of this additional portfolio on Allen's workload appears to have been considerable; by 1970, Allen had suffered three heart attacks: Barry Gustafson, *The First 50 Years: A History of the New Zealand National Party* (Auckland: Reed Methuen Publishers, 1986), p 104.

240. Document A51, p 49

241. F Askin, commissioner of works, and E MacKenzie, general manager, New Zealand Electricity Department, to Acting Minister of Works and Electricity, 'Tongariro Power Development: Land Acquisition: Stages I & II', 14 August 1970, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, pp 2–3 (doc A51(a), pp 251–252). The term 'considerable revenue' was something of an exaggeration, especially given the more than 3,000 beneficial owners. The trust made $1,547 profit in 1968, a loss of $1,081 in 1969, returning to a profit of $3,130 in 1970 – hence averaging under $1,200 a year over that period: doc E12, p 414; Minister of Works, memorandum for Cabinet, 27 April 1972, ABZK 889 W5472 92/12/67/6, pt 6, Archives New Zealand, Wellington, p 3 (Marian Horan, comp, 'Document Bank to "The Tongariro Power Development: Selected Issues"', 41 vols (doc A51(b)), vol 2, p 67).

242. District manager to general manager, New Zealand Electricity Department, 14 August 1970, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 2, p 874)

243. R T Feist to Minister of Māori Affairs, 28 March 1973, MA 1 19/1/334, pt 5, Archives New Zealand, Wellington, p 5 (doc A8(a), vol 1, p 249)

244. Commissioner of works to Minister of Works, 11 November 1970, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington (doc A51(a), p 244)

245. R T Feist to Minister of Works, 28 October 1970, ABZK 889 W5472 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 483)

246. Document G40, p 2

247. Assistant chief land purchase officer to assistant commissioner of works, 19 February 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 1 (doc A51(a), p 235)

248. Record of interview, 'Minister of Works and Deputation Tuwharetoa Owners', 9 March 1971, ABZK 889 W5472 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 473)

249. Ibid

250. Ibid. The $30,000 lake valuation was reviewed and official B C Magill suggested 'purchase at a figure in the order of $150,000 if this can be justified': assistant commissioner of works to assistant chief land purchase officer, 15 March 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington (doc A51(a), p 224)

251. Commissioner of works to district commissioner of works, Wanganui, 13 April 1971, ABZK 889 W5472 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 471)

252. W M Duncan to assistant chief land purchase officer, 29 July 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, pp 1–3 (doc A51(a), pp 201–203)

253. J H Macky, memorandum, 29 August 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 1 (doc A51(a), p 181)

254. Assistant chief land purchase officer to assistant commissioner of works, 19 February 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, pp 1–2 (doc A51(a), pp 235–236); commissioner of works to Minister of Works, 20 December 1971, AANU 7740 W5159 21/75/1, pt 4, Archives New Zealand, Wellington, pp 1–2 (doc A8(a), vol 2, pp 812–813)

255. Document A51, pp 56–57; Feist to Haughey, Crown Law Office, 23 September 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, pp 1–2 (doc A51(a), pp 171–172); commissioner of works to Minister of Works, 20 December 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 2 (doc A51(a), p 120)

256. Haughey, Crown Law Office, to assistant chief land purchase officer, 3 December 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington (doc A51(a), p 132)

257. I E Tierney, supervising valuer, to Haughey, 18 October 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 1 (doc A51(a), p 164)
258. Project engineer to assistant chief land purchase officer, 12 January 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 2 (doc A51(a), p 241)
259. District commissioner of works, Wanganui, to commissioner of works, 5 February 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, pp 1–2 (doc A51(a), pp 237–238)
260. Commissioner of works to project engineer, 25 November 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 1 (doc A51(a), p 155)
261. P J Hura to private secretary of the Prime Minister, 8 December 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 1 (doc A51(a), p 129)
262. Ibid, pp 1–2 (pp 129–130)
263. Haughey, Crown Law Office, to valuer-general, 22 December 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington (doc A51(a), p 127)
264. Haughey, Crown Law Office, to assistant chief land purchase officer, 22 December 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington (doc A51(a), p 125)
265. J H Macky to Minister of Works, 20 December 1971, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 2, p 813)
266. Percy B Allen to Prime Minister, 21 December 1971, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, pp 1–2 (doc A51(a), pp 100–101)
267. J H Macky to Minister of Works, 25 January 1972, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, p 1 (doc A51(a), p 117)
268. Ibid, pp 1–2 (pp 117–118)
269. Sir John, now the High Commissioner to Fiji, travelled back especially to attend.
270. 'Deputation from the Ngati Tuwharetoa to the Prime Minister', 28 January 1972, ABZK 889 W5472, box 333 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 3 (doc A51(qq), p 70); Minister of Works, memorandum for Cabinet, 27 April 1972, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, pp 2–4 (doc A51(a), pp 37–39)
271. 'Deputation from the Ngati Tuwharetoa to the Prime Minister', 28 January 1972, ABZK 889 W5472, box 333 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 3 (doc A51(qq), p 70)
272. Ibid
273. Ibid, p 5 (p 72)
274. Evidence of Arthur Te Takinga Smallman, 28 September 2006 (doc G34(a)), p 7
275. 'Deputation from the Ngati Tuwharetoa to the Prime Minister', 28 January 1972, ABZK 889 W5472, box 333 92/12/67/6, pt 5, Archives New Zealand, Wellington, pp 7–8 (doc A51(qq), pp 74–75)
276. Ibid, p 9 (p 76)
277. Ibid, p 11 (p 78)
278. Ibid
279. Ibid, p 12 (p 79)
280. Ibid, p 11 (p 78)
281. R T Feist to Prime Minister, 28 January 1972, MA 1 19/1/334, pt 5, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 272)
282. Assistant secretary to Māori Trustee, 31 January 1972, MA 1 19/1/334, pt 5, Archives New Zealand, Wellington (doc A8(a), vol 1, p 275). This memorandum is likely to have remained within the Ministry of Works.
283. Minister of Works, memorandum for Cabinet, 4 May 1972, AAFD 807 W3738, box 249, CM 72/18, Archives New Zealand, Wellington, p 1 (doc A51(qq), p 10)
284. Commissioner of works to Minister of Works, 21 February 1972, ABZK 889 W5472, box 333 92/12/67/6, pt 5, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 1, p 444)
285. Ibid
286. Ibid
287. R T Feist to Minister of Works, 12 April 1972, AAFD 807 W3738, box 249, CM 72/18, Archives New Zealand, Wellington (doc A51(qq), p 19)
288. Secretary to the Cabinet to Minister of Works, not dated, CM 72/14/14, AAFD 811 W4198, box 91 271/3/7, Archives New Zealand, Wellington (doc A51(qq), p 22)
289. Minister of Works, memorandum for Cabinet, 27 April 1972, MA 1 19/1/334, pt 5, Archives New Zealand, Wellington, pp 1–10 (doc A8(a), vol 1, pp 260–269); Secretary to the Treasury to Minister of Finance, 2 May 1972, AALR 873 W4446 50/196/25, pt 2, Archives New Zealand, Wellington (doc A51(qq), p 3)
290. Secretary to the Treasury to Minister of Finance, 2 May 1972, AALR 873 W4446 50/196/25, pt 2, Archives New Zealand, Wellington (doc A51(qq), p 3)
291. Secretary to the Treasury, memorandum for Cabinet, 5 May 1972, AAFD 807 W3738, box 249, CM 72/18, Archives New Zealand, Wellington (doc A51(qq), p 9)
292. Minister of Works, memorandum for Cabinet, 4 May 1972, AAFD 807 W3738, box 249, CM 72/18, Archives New Zealand, Wellington, p 5 (doc A51(qq), p 14)
293. Ibid, p 6 (p 15)
294. General manager, New Zealand Electricity Department, to commissioner of works, 3 May 1972, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington (doc A8(a), vol 2, p 852)
295. Secretary to the Cabinet to Minister of Works, 9 May 1972, CM 72/18/10, MA 1 19/1/334, pt 5, Archives New Zealand, Wellington (doc A8(a), vol 1, p 257)
296. Commissioner of works to Tripe Matthews & Feist, 31 May 1972, AAQU 889 W3428, box 359 92/12/67/6/34, Archives New Zealand, Wellington, p 1 (Marian Horan, comp, 'Document Bank to "The Tongariro Power Development: Selected Issues"', 41 vols (doc

A51(kk)), vol 37, p 145); Lake Rotoaira deed, first draft, not dated, ABZK 889 W5472 92/12/67/6, pt 6, Archives New Zealand, Wellington, pp 1–2 (doc A51(b), pp 151–152)

297. Tripe Matthews & Feist to commissioner of works, 23 June 1972, ABZK 889 W5472 92/12/67/6, pt 6, Archives New Zealand, Wellington, p 2 (doc A51(b), p 138)

298. Ibid

299. Document A51, pp 118–119

300. Lake Rotoaira deed, November 1972, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington, p 4 (doc A8(a), vol 2, p 849)

301. Office solicitor to A Muir, 12 June 1984, AANU 7740 W5159 21/75/1, pt 6, Archives New Zealand, Wellington, pp 1–2; Minister of Energy to J T Asher, 25 June 1984, AANU 7740 W5159 21/75/1, pt 6, Archives New Zealand, Wellington, pp 1–2; Lake Rotoaira deed, November 1972, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington, p 4; Minister of Electricity to Minister of Māori Affairs, 15 March 1974, AANS W3546 21/1/10, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 2, pp 819–822, 849, 963)

302. Lake Rotoaira deed, November 1972, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington, pp 2–3 (doc A8(a), vol 2, pp 847–848)

303. Document G40, p 3

304. Commissioner of works to Secretary for Internal Affairs, 7 December 1972, AANU 7740 W5159 21/75/11, pt 1, Archives New Zealand, Wellington, pp 1–2 (doc A8(a), vol 2, pp 839–840)

305. R T Feist to Minister of Works, 24 March 1975, AANS W3546 21/1/10, Archives New Zealand, Wellington, p 1 (doc A8(a), vol 2, p 957)

306. Ibid, p 2 (p 958)

307. Ibid

308. Conservator of wildlife to acting director, Wildlife Service, 16 May 1975, AANS W3546 21/1/10, Archives New Zealand, Wellington, p 2 (doc A8(a), vol 2, p 955)

309. Document G40, p 3

310. J T Asher to W F Birch, 12 March 1984, AANU 7740 W5159 21/75/1, pt 6, Archives New Zealand, Wellington (doc A8(a), vol 2, p 829)

311. Minister of Energy to J T Asher, 16 March 1984, AANU 7740 W5159 21/75/1, pt 6, Archives New Zealand, Wellington (doc A8(a), vol 2, p 828)

312. Minister of Energy to secretary, Rotoaira Trust, 18 April 1984, AANU 7740 W5159 21/75/1, pt 6, Archives New Zealand, Wellington (doc A8(a), vol 2, p 826)

313. J T Asher to Minister of Energy, 9 May 1984, AANU 7740 W5159 21/75/1, pt 6, Archives New Zealand, Wellington (doc A8(a), vol 2, p 823)

314. Document E12, p 431

315. George Te Waaka Eruera Asher, brief of evidence, 6 October 2006 (doc G52(a)), p 10

316. Waitangi Tribunal, *Te Ika Whenua Rivers Report* (Wellington: Legislation Direct, 1998), pp 131–132

317. Minister of Works, memorandum for Cabinet, 27 April 1972, ABZK 889 W5472, box 337, 92/12/67/6/34, pt 1, Archives New Zealand, Wellington, pp 8–9 (doc A8(a), vol 1, pp 267–268)

318. Tokaanu Māori Land Court minute book 52, 13 November 1972, fol 13 (doc E35(c), vol 4, p 1165)

319. Russell Feist, brief of evidence, 13 September 2006 (doc G8), p 6

320. Document A51, pp 84–86

321. Russell Feist, under cross-examination by David Soper, Otūkou Marae, Tūrangi, 19 October 2006 (transcript 4.1.11, p 120)

322. Document G40, p 3

323. Document G34(a), p 7

324. Document G52(a), pp 9–10, 14–15

325. Ibid, p 15

326. The National Park Tribunal, in consultation with the central North Island Tribunal, considers the range of impacts of the Tongariro Power Development including those which take place outside its boundaries: see Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1336–1337.

327. Paper 3.3.43, p 260; paper 3.3.29, pp 61–62; counsel for Ngāti Hikairo, consolidated statement of claim, 22 July 2005 (claim 1.2.2), p 28; counsel for claimants, statement of generic pleadings for and on behalf of claimants affiliated to the Whanganui iwi, 22 July 2005 (claim 1.2.3), pp 44–45; counsel for Ngāti Tūwharetoa, fourth amended statement of claim, 26 July 2005 (claim 1.2.14), pp 47–48, 51; counsel for Ngāti Waewae, amended statement of claim to the National Park Inquiry, 5 August 2005 (claim 1.2.15(a)), pp 97–98; claim 1.2.16, pp 8–9, 12–13; counsel for Ngāti Hikairo ki Tongariro, amended statement of claim to the National Park Inquiry, 5 August 2005 (claim 1.2.17), pp 74–75

328. Paper 3.3.33, p 70; compare paper 3.3.43, p 260

329. Claim 1.2.2, p 28; claim 1.2.3, pp 44–45; claim 1.2.14, pp 47–48; claim 1.2.15(a), pp 97–98; claim 1.2.16, pp 8–9, 12–13; claim 1.2.17, pp 74–75

330. Paper 3.3.42, p 155

331. Paper 3.3.43, pp 271, 290

332. Paper 3.3.30, p 116; paper 3.3.42, p 170

333. Paper 3.3.43, p 293

334. Ibid, pp 264–265

335. Paper 3.3.30, pp 72–73

336. Paper 3.3.42, p 169

337. Paper 3.3.27, pp 31–32

338. Paper 3.3.19, pp 22–63

339. Ibid, p 63

340. Paper 3.3.27, p 23

341. Ibid, pp 24–25

342. Paper 3.3.43, p 262

343. Ibid, pp 262–263

344. Paper 3.3.33, p 86

345. Ibid, pp 74–75

346. Ibid, p 87. Ngāti Hikairo argued forcefully, too, against the mixing of waters, suggesting that the Tribunal's *Te Ika Whenua Rivers Report* had dealt with this issue in ways relevant to this inquiry. That report held that the mixing of waters destroyed the concept of waitipuna (literally, 'ancestral rivers'), thus extinguishing the mauri of the rivers concerned (paper 3.3.30), p 74.

347. Paper 3.3.33, p 75
348. Paper 3.3.43, pp 257–258
349. Ibid, pp 242–245
350. Ibid, pp 246–247
351. Ibid, p 268
352. Ibid, p 263
353. Counsel for Ngāti Manunui, response to statement of issues, not dated (paper 3.3.27(a)), p 2
354. Paper 3.3.45, ch 12, p 46
355. Ibid
356. Ibid, ch 13, pp 4–5
357. Ibid ch 12, p 38
358. Ibid, p 40
359. Ibid, p 46
360. Ibid, pp 45–46
361. Ibid, ch 13, p 35
362. Ibid, pp 36–37
363. Its electricity generation components include the Rangipō and Tokaanu hydroelectric stations, part of the Tongariro Power Development, and Huntly which is thermoelectric. Genesis also retails electricity and gas to customers in the lower North Island.
364. Genesis Energy, closing submissions, 19 June 2007 (paper 3.3.44), pp 2–3
365. Ibid, p 4
366. Paper 3.3.52, p 12; paper 3.3.56, p 8
367. Paper 3.3.56, p 8
368. Ibid; counsel for Ngāti Hikairo ki Tongariro, submissions in reply, 6 July 2007 (paper 3.3.57), pp 17–18
369. Paper 3.3.60, p 25
370. Counsel for James Reid, submissions in reply: Rangiteauria and Tongariro Power Development, not dated (paper 3.3.59), p 11; *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517 (PC) (*Broadcasting Assets* case)
371. Paper 3.3.59, pp 9, 12–13; Environment Court, decision A067/2004, 18 May 2004, Whiting J, p 110 (doc E12(s), p 111)
372. Paper 3.3.59, p 13; Environment Court, decision A067/2004, 18 May 2004, Whiting J, pp 89–93 (doc E12(s), pp 90–94)
373. Paper 3.3.59, pp 14–15
374. Ibid, p 17
375. Ibid, pp 19–21
376. Paper 3.3.60, p 30
377. Ibid, p 28
378. Ibid, pp 25–26
379. The authors of the knowledge project followed an indigenous science brief, using information provided by 10 pakeke who had lived beside Lake Rotoaira for most of their lives: brief of evidence, 2 October 2006 (doc G41).
380. David K Rowe and Eric Graynoth, *Lake Managers' Handbook: Fish in New Zealand Lakes* (Wellington: Ministry for the Environment, 2002). This includes, in part 4, a detailed case study for Lake Rotoaira.
381. Genesis Power's *Tongariro Power Development: Assessment of Environmental Effects* report was prepared by a team of scientists commissioned by Genesis, and runs to over 500 pages. The research is organised under the headings: sedimentation; water quality; aquatic habitat; indigenous fish; and trout fisheries: Genesis Power Ltd, *Tongariro Power Development: Assessment of Environmental Effects* (Auckland: Genesis Power Ltd, 2000) (doc E12(l), pp 15–656)
382. Charles Mitchell, brief of evidence, 13 September 2006 (doc G9), p 1. Mr Mitchell was employed by Fisheries Research Division in the Rotorua–Taupō area from 1975 to 1992. Since then, he has been an independent researcher. Mr Mitchell was cross-examined by the Crown following his presentation: Charles Mitchell, under cross-examination by Kirsten Price, Otūkou Marae, Tūrangi, 19 October 2006 (transcript 4.1.11, pp 128–131).
383. Document G52(a), p 3
384. Ibid
385. Document G41, pp 6–9
386. Ibid, pp 3–13
387. Ibid, pp 13–19
388. Ibid, p 21
389. Ibid, pp 21–22
390. Technical officer, Ministry of Agriculture and Fisheries, to director of fisheries research, 30 March 1979, AAFZ W4617, box 6 72/1, Archives New Zealand, Wellington, p 2; director of fisheries research to technical officer, 22 March 1979, AAFZ W4617, box 6 72/1, Archives New Zealand, Wellington (doc E12(d), pp 931, 953)
391. Document E12, p 420
392. Ngā Hapū o Ngāti Tūwharetoa, 'Response to Genesis Power Ltd's TPD Consent Applications and AEE', table, not dated (doc G42, attachment), p 2; doc G41, p 14
393. Document F4, p 7
394. Document G52(a), pp 5–6; doc G46, pp 4, 13
395. Document E12(l), pp 298, 309
396. Ibid, pp 102, 104, 215–216
397. Ibid, p 290
398. Document G41, p 21
399. Document E12(l), p 292
400. Ibid
401. Document G41, p 5
402. In oral evidence, one claimant said there had been erosion from the Tokaanu Canal almost to Ngā Puna: week 7, day 7, session 3, at approximately 23 mins 20 sec.
403. Document F4, pp 3–5; Iwikino (Sonny) Piripi, brief of evidence, 4 September 2006 (doc F2), p 4; doc G41, pp 7, 15–16
404. Week 7, 19 October 2006, sess 3, Otūkou Marae, tape approximately 29 mins 45 sec
405. Tiaho Mary Pillot, brief of evidence, 4 September 2006 (doc F6), pp 2, 4; Ngaiterangi Smallman, brief of evidence, 28 September 2006 (doc G19), p 4
406. Document G41, pp 5–6, 15
407. Document E12, pp 444–445; doc F4, p 5; doc G41, pp 4–5, 7–8, 11–12

408. Week 7, 19 October 2006, sess 3, Otūkou Marae, tape approximately 1 hr 22 mins 45 sec
409. Document G41, pp 5, 12; doc F4, p 5
410. Document E12, p 440
411. Tyronne Andrew Smith, brief of evidence, 28 September 2005 (doc G24), p 7
412. Document F2, pp 4–5; doc G41, p 20; doc E12, p 444
413. Document E12, p 444
414. Document F4, pp 7–8. A taniwha by the name of Horomatangi is also associated with Lake Taupō: Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 94.
415. Paper 3.3.42, p 175
416. Document F4, pp 5–6; doc E12, pp 369, 446
417. One News, 'Weeds Keep Hydro Station Idle', Television New Zealand, 15 October 2006, http://tvnz.co.nz/content/857446/4202557.xhtml, accessed 29 November 2012
418. Document G41, p 13
419. Document E12, pp 62–72; doc F4, p 6; doc G41, pp 21–22
420. They added that evidence for the years 1973 to 1979 shows 'no significant change in the structure, species composition or depth range of vegetation': doc E12(l), p 317.
421. Document E12, pp 423, 452–453
422. Tracey Edwards, John Clayton, and Mary de Winton, *The Condition of 43 Lakes in the Waikato Region Using LakesPI*, Environment Waikato Technical Report 2008/36 (Hamilton: Environment Waikato, 2008), p 26
423. Ibid, p 6
424. Ibid, pp 26, 30, 35; doc G9, p 9
425. Document F4, pp 6–7
426. Document G41, pp 6, 16
427. Document E12, pp 22, 439; doc G41, pp 3, 9–10, 22; doc E12(l), p 310
428. See, for example, Turoa Karatea, brief of evidence, 28 September 2006 (doc G26), pp 9–10.
429. Document E12, pp 355, 439; doc G41, p 21
430. Rowe and Graynoth, *Lake Managers' Handbook*, p 80
431. Document G41, pp 10, 15–22; Rowe and Graynoth, *Lake Managers' Handbook*, pp 80, 87–88
432. Document G41, pp 17–18; Rowe and Graynoth, *Lake Managers' Handbook*, pp 80–81, 87–88
433. Rowe and Graynoth, *Lake Managers' Handbook*, p 87; doc G41, p 15
434. Document G41, pp 20, 22
435. Week 7, 19 October 2006, sess 3, Otūkou Marae, tape approximately 36 mins
436. Document E12(l), p 311
437. Ibid, pp 312–314
438. Ibid, p 314; Rowe and Graynoth, *Lake Managers' Handbook*, pp 82, 86, 87
439. Document A8, p 89
440. Document E12, p 426
441. Document E12(l), pp 312–314
442. Document G9, p 5
443. Document G52(a), p 4. George left home to go to secondary school in 1964. When he resumed regular fishing in the late 1970s catches were much reduced: p 5.
444. David K Rowe and Eric Graynoth from the National Institute for Water and Atmospheric Research include a Lake Rotoaira case study in their *Lake Managers' Handbook*, pp 77–92.
445. Document F4, p 3
446. Document G41, p 19
447. Mitchell makes comparisons between Lake Rotoaira and Iceland's Lake Myvata, which has a similar combination of attributes and an abundance of char and trout: doc G9, p 8.
448. Ibid
449. Document G41, p 21
450. Document E12, p 118; Wanganui River Minimum Flows Tribunal, 'Report of the Tribunal', 20 September 1988, p 6 (doc E12(k), [p 10])
451. Document E12, p 121; Rangitikei–Wanganui Catchment Board, 'A Summary of Submissions on the Review of Minimum Flows in the Wanganui River', April 1988, p 41 (doc E12(k), [p 92])
452. Document E12, pp 121–122. For more detail, see document E12(k), [p 22].
453. Tracey Elaine Hickman, brief of evidence, 24 July 2006 (doc E8), p 10, app D
454. Whetumārama Mareikura, brief of evidence, 18 August 2006 (doc E31), p 5
455. Gerrard's iwi affiliation is Ngā Paerangi, Whanganui. Gerrard Albert, brief of evidence, 16 August 2006 (doc E25), p 1
456. Buddy Mikaere, a Māori consultant with academic and resource management experience, appeared before the Environment Court as an expert witness for the Electricity Corporation of New Zealand/Genesis. See document E12, pp 156–158.
457. Document E12(l), p 507
458. Document E8, p 21
459. Document E12, pp 148–165
460. Nyree Leiana Ngaroana Nikora, brief of evidence, 14 August 2006 (doc E22), pp 9–10
461. Document E12(l), pp 502–503
462. Tarama Thomas Hawira, brief of evidence, 11 August 2006 (doc E14), pp 4–5
463. Ross Wallis, brief of evidence regarding Tongariro Power Development Scheme, 14 August 2006 (doc E18), p 9. Mr Wallis told the Tribunal about the work done, and the conclusions drawn, by a team of scientists who stayed with Te Whanau o Mangapapa in the mid-1990s. They investigated the topic and were of the view that the loss of riparian lands 'could be partly attributed to the operation of the TPD.' We have not been able to identify the scientists or locate their report.
464. Document G27, p 18; doc G29, pp 7–8
465. Robert Joseph Bristol, brief of evidence, 15 August 2006 (doc E19(a)), p 3
466. Document E22, pp 9–10
467. Document E12(l), p 276

468. Ibid, p 278
469. Ibid, pp 120, 236
470. Ibid, pp 418, 427, 501
471. Ibid, pp 440, 503
472. Ibid, pp 284, 504
473. Document E24, pp 18–19
474. Raana Virginia Mareikura, brief of evidence, 11 August 2006 (doc E23), pp 4–5; Che Philip Wilson, brief of evidence, 11 August 2006 (doc E13), p 13; doc E14, p 5
475. Document E12(a), p 13
476. Document E12, pp 46–48
477. Document G46, p 4
478. Document E12(l), p 201
479. Ibid, p 393
480. Ibid, p 498
481. Ibid, p 393. The Genesis *Assessment of Environmental Effects* as a whole devotes considerably more attention to trout (notably rainbow and brown) than it does to native fish.
482. Document E8, app D, p 1
483. 'Power Scheme Resource Consents', *Target Taupo*, no 41 (December 2002), pp 52–53 (doc E9, app)
484. Tongariro Power Development Hearing Committee Decision, 30 August 2001, p 21 (doc E12(p), p 76)
485. Ngā Hapū o Ngāti Tūwharetoa, 'Ngāti Tūwharetoa Position Statement on Genesis Power's Application for Resource Consents to Operate the TPD and Associated AEE', typescript, not dated (doc G42, attachment), p 1
486. Document E12(l), p 394
487. Ngāti Tūwharetoa, 'Ngāti Tūwharetoa Position Statement on Genesis Power's Application for Resource Consents to Operate the TPD and Associated AEE', typescript, not dated (doc G42, attachment). Maria Nepia is of Ngāti Tūrangitukua/Ngāti Tūwharetoa. She has a degree in environmental science and participated in the resource consent process for which the report was produced.
488. Ngā Hapū o Ngāti Tūwharetoa, 'Response to Genesis Power Ltd's TPD Consent Applications and AEE', table, not dated (doc G42, attachment), p 3
489. Document G46, pp 4–5; doc E12(l), p 363
490. Document G46, pp 5–6
491. Ibid, p 13
492. Document E12(l), p 496
493. Ibid, pp 106, 495, 497–498
494. The Tokaanu Stream and delta are outside of our inquiry district but the changes in hydrology, and the impacts of these changes, are the result of Tongariro Power Development operation within our district.
495. Document E20, pp 5, 8–9
496. Document E12(l), p 506
497. Document E20, pp 8–9
498. Dulcie Gardiner, brief of evidence, 22 April 2005 (doc G2), p 3
499. 'Draft Management Plan Tokaanu Stream, 2005–2008?', August 2005, p 5 (doc E9, [p 186])
500. Document E20, p 9
501. Ibid
502. Document G2, p 6
503. Document E12(l), pp 236, 241
504. Ibid, p 384
505. Ibid, pp 393, 396–397
506. Document E12, pp 48–52
507. Ibid, p 48
508. Ibid, p 376
509. Document E13, p 1; doc E12, p 226
510. Puruhi Smith, brief of evidence, 28 September 2006 (doc G31), pp 2, 5
511. Ibid, p 3
512. Colin Richards, brief of evidence, 10 February 2005 (doc A63), p 3
513. Document G31, pp 3–5
514. Document A63, p 3
515. Document G31, pp 3–5
516. Document E12, p 369
517. Jim Turuhia Edmonds, brief of evidence, 18 August 2006 (doc E27), p 3
518. Document E12, p 229; doc E12(l), p 1
519. Document E13, p 10; Toni James Davis Waho, brief of evidence, 11 August 2006 (doc E15), p 3
520. Document E14, p 4
521. Document E27, p 3
522. Document E14, p 3
523. Ida Rāhera Taute, brief of evidence, 18 August 2006 (doc E29), p 3
524. Document G26, p 4
525. Document E12, p 369
526. See 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)
527. See Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1337, 1359
528. Waitangi Tribunal, *Whanganui River Report* (Wellington: GP Publications, 1999), p 45
529. Environment Court, decision A067/2004, 18 May 2004, Whiting J, p 93 (doc E12(s), p 94). For a fuller discussion of the Environment Court's findings, see document E12, pp 485–497.
530. Document E27, p 3
531. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641, 664–666 (*Lands* case, Cooke CJ)
532. *New Zealand Maori Council v Attorney General* [1993] 1 NZLR 513, 514 per Richardson J (*Broadcasting Assets* case)
533. Steve G Britton, Richard B Le Heron, and Eric Pawson, eds, *Changing Places in New Zealand: A Geography of Restructuring* (Christchurch: New Zealand Geographical Society, 1992), pp 12, 119, 172–174, 176–177, 201, 227, 271–274, 296–297
534. Document E12, pp 114–115
535. Peak demands for recreational activity on the Whanganui River are from December to Easter; peak demands for electricity are during the winter season.

536. A large proportion of these were on a form prepared by the Taumarunui and District Promotions and Development Association. For further details, see document E12, pp 115–116.
537. Document E12, p 118
538. Ibid
539. Ibid, p 120
540. Ibid, pp 120–121; see also Rangitikei–Wanganui Catchment Board, 'A Summary of Submissions on the Review of Minimum Flows in the Wanganui River', April 1988, pp 1–61 (doc E12(k), [pp 50–112]).
541. Document E12, p 132
542. Ibid, pp 133–134
543. Ibid, p 133
544. Ibid, p 141
545. New Zealand Planning Tribunal decision W70/90, *Electricity Corporation of New Zealand and Whanganui River Maori Trust Board v Manawatu Wanganui Regional Council* (successor to the Rangitikei–Wanganui Catchment Board), pp 10, 11, 89, 99–105
546. Ibid, p 100
547. Ibid, p 102
548. Ibid
549. Ibid
550. Ibid, p 22. Section 20J was added to the Water and Soil Conservation Act 1967 by section 18 of the Water and Soil Conservation Amendment Act 1988.
551. Ibid, p 40
552. Ibid, pp 198–207
553. Ibid, p 209
554. Document E12, p 61
555. Document E12, pp 62–72; Tracey Elaine Hickman, evidence to the Environment Court, 29 August 2002, pp 10–11 (doc E12(r), pp 336–337)
556. Waitangi Tribunal, *Whanganui River Report*, p xiii; doc E12, pp 152–154
557. Waitangi Tribunal, *Whanganui River Report*, p 339
558. The claim was brought by Hikaia Amohia and members of the Whanganui River Māori Trust Board for 'Te iwi o Whanganui'. Te Atihaunui-a-Paparangi is the parent name for the Whanganui River hapū: Waitangi Tribunal, *Whanganui River Report*, pp 1–6.
559. Document E12, p 150
560. Ibid, pp 164–178
561. Ibid, pp 254–258
562. Ibid, pp 258–279
563. Ibid, pp 349–372, 392–398
564. The configuration of this relationship, as of November 2002, is set out in a submission by the Tūwharetoa Māori Trust Board to the Genesis resource consent hearings: Karen Feint, submission on behalf of Tūwharetoa Māori Trust Board to joint hearing committee, 23 November 2002 (doc G42, attachment), p 4.
565. Document E12, pp 397–398
566. Ibid, p 70
567. Ibid
568. Ibid, pp 75–79
569. The successor to the Planning Tribunal under the Resource Management Act 1991.
570. Document E12, p 78
571. *Ngati Rangi Trust and Others v Manawatu–Wanganui Regional Council and Genesis Power Ltd* unreported, 18 May 2004, Environment Court, A067/2004 (doc F30); doc E12, pp 78–79
572. Document F30, p 5
573. Document E12, p 459
574. Ibid, pp 460–461
575. Ibid, pp 462–463
576. Document A63, p 3
577. Keith William Paetaha Wood, evidence to the Environment Court, 18 July 2003, p 10 (doc E12(q), [p 123])
578. Ibid, p 13 ([p 126])
579. Document E12, p 467; Keith William Paetaha Wood, evidence to the Environment Court, 18 July 2003, p 8 (doc E12(q), [p 121])
580. Document F30, pp 17–21
581. Ibid, pp 25–38, 70–72
582. Ibid, pp 44–69, 72–93
583. Ibid, pp 93–103
584. Ibid, pp 103–106
585. Ibid, p 103
586. Ibid, p 134
587. *Genesis Power Ltd v Manawatu–Wanganui Regional Council* unreported, 29 August 2006, High Court, Wellington, CIV2004/485/1139, pp 536, 557–558
588. *Ngāti Rangi Trust v Genesis Power Ltd* [2009] NZCA 222, paras 28–37
589. Ibid, paras 38–47, 61–64
590. *Ngāti Rangi Trust v Manawatu–Wanganui Regional Council and Genesis Power Ltd* [2011] NZEnvC 152
591. Ibid, para 3
592. Ibid, paras 4–5
593. Ibid, paras 6–7
594. Ibid, paras 9–10, apps 1–2. The order was given under section 279(1)(b) of the Resource Management Act 1991 on the basis of the consensus reached between the parties rather than a section 297 determination based on the merits of the case.
595. The Ministry for the Environment prepared a draft national policy statement in 2008. Submissions were presented in 2009 to an independent board of inquiry, which prepared a report and recommendations for the Minister for the Environment: *Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management* (Wellington: Board of Inquiry, 2010).
596. The *National Policy Statement for Freshwater Management* was gazetted on 12 May 2011 and took effect from 1 July 2011.
597. The *National Policy Statement for Freshwater Management* has come under close scrutiny by the Wai 2358 Tribunal, which sat under urgency in July 2012 and released its interim report in August 2012.
598. Document E12, pp 454–552

599. See, for example, Henrik Moller, Fikret Berkes, Philip O'Brian Lyver, and Mina Kislalioglu, 'Combining Science and Traditional Ecological Knowledge: Monitoring Populations for Co-management', *Ecology and Society*, vol 9, no 3 (2004), art 2, http://www.ecologyandsociety.org/vol9/iss3/art2/; Marc G Stevenson, 'Indigenous Knowledge in Environmental Assessment', *Arctic*, vol 49, no 3 (1996), pp 287–291.
600. Document E12, pp 514–543; Garth Harmsworth, 'Good Practice Guidelines for Working with Tangata Whenua and Māori Organisations: Consolidating our Learning', Landcare Research Report LC0405/091, 2005; Nigel Jollands and Garth Harmsworth 'Participation of Indigenous Groups in Sustainable Development Monitoring: Rationale and Examples from New Zealand', *Ecological Economics*, vol 62 (2007), pp 716–726; G Harmsworth, T Warmenhoven, and P Pohatu, 'Waiapu Catchment Technical Report: Maori Community Goals for Enhancing Ecosystem Health', Landcare Research Report, LC0102/100 (2002)
601. Mason Durie, 'Exploring the Interface between Science and Indigenous Knowledge' (paper, Asia–Pacific Economic Cooperation Research and Development Leaders' Forum, 11 March 2004), p 13; doc E12, pp 497–498
602. Ibid, p 512
603. The Water and Soil Conservation Amendment Act 1981 provided for water conservation orders and the Water and Soil Conservation Amendment Act 1988 authorised water boards to fix minimum acceptable flows for rivers.
604. Document E12, pp 547–548
605. Resource Management Amendment Act 2005, s 18
606. Recent Tribunals have assisted us at this point. See, in particular, Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 1, pp 235–292; Waitangi Tribunal, *The Report on the Management of the Petroleum Resource* (Wellington: Legislation Direct, 2011), pp 54–61.
607. *Unison Networks Ltd v Hastings District Council*, Environment Court, 2009, decision W11/2009, per Judge Bollard
608. Ibid, paras 116–117
609. Ibid, paras 126–131
610. Ibid, paras 148–159
611. Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker and Friend Ltd, 1993), pp 153–154
612. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 2, p 602; Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1186, 1238
613. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, p 92
614. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1673
615. *Ngāti Maru ki Hauraki v Kruithof* [2005] NZRMA 1, 14
616. Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, vol 1, p 270
617. See, for example, paper 3.3.42, pp 162–163, 169; paper 3.3.30, pp 72–73, 100–101; paper 3.3.43, p 248
618. Paper 3.3.59, p 20
619. Document E13, p 9
620. Toni James Davis Waho, brief of evidence, 11 August 2006 (doc E15), p 12
621. Document G52(a), pp 14–18
622. Paper 3.3.42, pp 162–163, 169; paper 3.3.43, pp 257, 293; paper 3.3.30, p 73
623. Paper 3.3.30, p 101
624. *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General* [1994] 2 NZLR 20 (CA). We have already adverted to this decision in chapter 13, and we will consider it again below in chapter 15, where we examine claims in relation to the use of geothermal steam and fluids to generate electricity.
625. Paper 3.3.45, ch 12, p 38; ch 15, pp 7–8
626. Ibid, ch 15, p 7
627. Ibid, ch 13, pp 34–37; ch 15, pp 7–8
628. Ibid, ch 13, p 36
629. Ibid, ch 12, p 38; ch 13, pp 36–37; ch 14, p 21; ch 15, p 8
630. Ibid, ch 15, p 7
631. Chris Tāmihana Winitana, brief of evidence, 20 April 2005 (doc G1), p 16
632. Paper 3.3.45, ch 15, pp 7–8
633. Ibid, p 8
634. Ibid
635. Ibid, ch 13, p 36
636. For a full discussion of these matters, see Waitangi Tribunal, *Te Ika Whenua Rivers Report*, chs 10, 11; *He Maunga Rongo*, vol 3, chs 13, 16, vol 4, ch 18; and *Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, pp 39–49, 61–81, 110–112. See also the detailed claimant submissions about water issues in paper 3.3.43, pp 208–258.
637. Waitangi Tribunal, *Te Ika Whenua Rivers Report*, pp 121–138; Waitangi Tribunal, *Whanganui River Report*, pp 25–26, 231–232, 263, 291, 293, 337–339, 342–344
638. Waitangi Tribunal, *Te Ika Whenua Rivers Report*, p 129
639. Ibid, pp 121–138; Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1168–1191
640. Paper 3.3.43, pp 370, 396
641. See, for example, Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1189.
642. Waitangi Tribunal, *The Petroleum Report* (Wellington: Legislation Direct, 2003), p 62
643. Waitangi Tribunal, *Te Ika Whenua Rivers Report*, p 130
644. Ibid, pp 130–131
645. Ibid, pp 131–132
646. Ibid, p 132
647. Paper 3.3.43, p 377
648. Waitangi Tribunal, *The Petroleum Report*, pp 26–37
649. Ibid, p 32
650. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1176–1177
651. Paper 3.3.43, pp 235–237
652. Document A51(a), pp 93–94; doc A51, p 96. Interestingly, this Bill (which was superseded by the 1972 heads of agreement) also

contemplated that Crown and Māori title to Lake Rotoaira could co-exist despite purchase by the Crown and vesting of the bed and the right to use the water in the Crown. The proposed Bill included a clause which stated: 'Maori customary title or any other Maori freehold title is preserved in recognition of the traditional Maori relationships with the lake, which are hereby recognised'.

653. Waitangi Tribunal, *Whanganui River Report*, p 338; see also paper 3.3.43, p 249
654. Paper 3.3.43, p 293. See also p 257.
655. Document A8, pp 25–28
656. Ibid, pp 75–89
657. Paper 3.3.43, p 377
658. Document G8, p 4
659. See, for example, doc A8(a), vol 2, p 814.
660. Document G52(a), p 7
661. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1176
662. Ibid
663. *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General* [1994] 2 NZLR 20, 25
664. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1176–1177
665. Ibid, p 1177
666. Native Land Amendment and Native Land Claims Adjustment Act 1922, s27
667. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1177; Native Land Amendment and Native Land Claims Adjustment Act 1926, s14
668. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1317–1326
669. Document G52(a), p 7
670. Ibid, pp 7–8
671. Ibid
672. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1325–1326, 1344–1345; paper 3.3.43, p 251
673. Ben White, *Inland Waterways: Lakes*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1998), p 157
674. Document G52(a), pp 8–9
675. Ibid, p 9
676. Document A8(a), vol 1, p 215
677. Document A8(a), vol 2, p 846; see also doc A14, p 4
678. Document A8, pp 21–22, 25
679. Ibid, pp 25–27
680. Document A8(a), vol 1, p 226
681. Ibid, vol 2, p 597; Maori Purposes Act 1959, s 4(7)(h), (i)
682. White, *Inland Waterways: Lakes*, pp 242–243
683. Waitangi Tribunal, *The Petroleum Report*, p 32
684. Document A51, pp 30–44; doc A8, pp 29–45
685. Document G8, p 7
686. Document G52(a), p 9
687. Document A8, p 74
688. White, *Inland Waterways: Lakes*, pp 160–161
689. Document A8, p 75
690. Document A51, pp 75–107
691. Document G52(a), pp 15–16
692. Ibid, p 15
693. Document A8, p 91; doc E12, pp 425–427
694. Document A8, p 91; doc A8(a), vol 2, p 829
695. Document A8, pp 91–94
696. Document G52(a), pp 11–12
697. Ibid, p 13
698. Ibid
699. Paper 3.3.30, p 101; see also doc A58(a), p 3
700. Document G27, p 16
701. Document F4, p 8
702. Document A8, p 36
703. Waitangi Tribunal, *Turangi Township Report 1995*, p 195
704. Ibid, pp 194–198
705. Paper 3.3.41, p 146
706. Paper 3.3.42, pp 180–182
707. Document A8(a), vol 2, p 814
708. Ibid, vol 1, pp 61–62
709. Document A8, p 64
710. Ibid, p 89
711. Document G52(a), pp 15–16
712. See Waitangi Tribunal, *Turangi Township Report 1995*.
713. Paper 3.3.43, p 377
714. Wai 2357 and Wai 2358, lodged in February 2012 and heard under urgency in July 2012, address the sale of power generating State-owned enterprises and national freshwater and geothermal resources.
715. Paper 3.3.43, p 399
716. Document E15, p 12
717. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1190–1191
718. Ibid, vol 4, p 1249
719. Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, vol 1, p 283
720. Waitangi Tribunal, *Te Ika Whenua Rivers Report*, pp 130–131
721. Ibid, pp 131–132
722. Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, vol 1, pp 285–292
723. Ibid, p 273. Transfer of powers are provided for under section 33.
724. Ibid, p 259. Provision for this was introduced in 2005 when section 36B was inserted into the Resource Management Act 1991.
725. Ibid, p 286
726. The previous hearing committee was appointed jointly by the Waikato Regional Council and the Wanganui–Manawatu Regional Council.

Page 1078: Map 14.2
Source: Based on an illustration by Rodney Clark issued by ECNZ Ltd.

Page 1085: John Te Herekiekie Grace
1. Graham Butterworth 'John Te Herekiekie Grace', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, last modified 1 September 2010, http//teara.govt.nz/en/biographies/5g14
2. John Te Herekiekie Grace, *Tūwharetoa: The History of the Māori People of the Taupō District* (Wellington: Reed, 1959)

Page 1108: Deed between the Trustees of Lake Rotoaira and Her Majesty the Queen

1. Tyronne Andrew Smith, brief of evidence, 28 September 2005 (doc G24), app A

Page 1119: Map 14.3

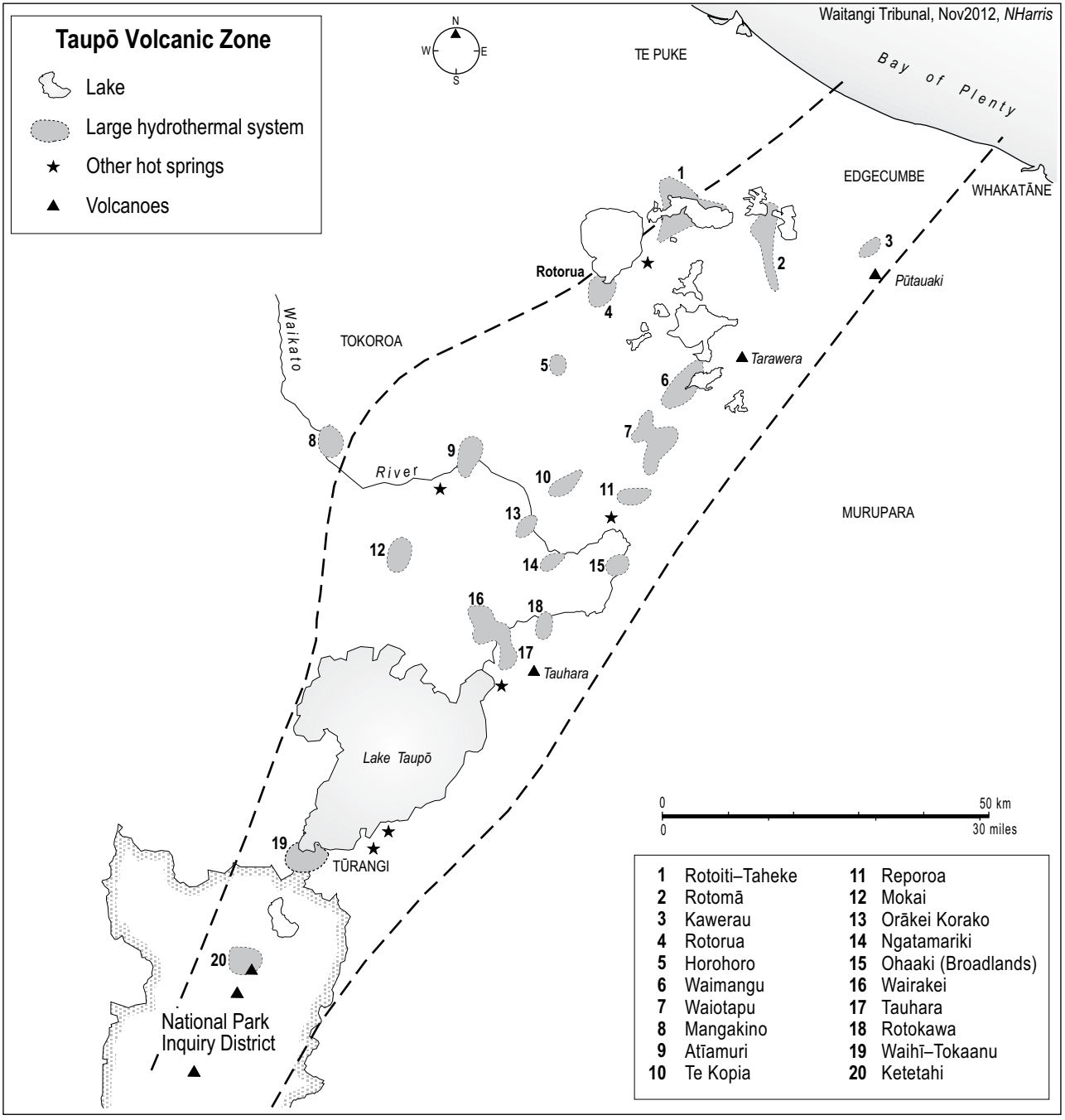
Source: David K Rowe and Eric Graynoth, *Lake Managers' Handbook: Fish in New Zealand Lakes* (Wellington: Ministry for the Environment, 2002), p 81

Page 1121: Lake Rotoaira: A Lake Manager's Perspective

1. David K Rowe and Eric Graynoth, *Lake Managers' Handbook: Fish in New Zealand Lakes* (Wellington: Ministry for the Environment, 2002), pp 77–92; doc E12, pp 401, 443; Tony Walzl, 'Environmental Impacts of the Tongariro Power Development Scheme', report commissioned by the Crown Forestry Rental Trust, supporting papers, vol 9 (doc E12(l)), pp 290–293

Page 1124: Lake Rotoaira: Kaumātua Perspectives

1. George Te Waaka Eruera Asher, brief of evidence, 6 October 2006 (doc G52(a)), p 4



Map 15.1: Geothermal areas in the Taupō volcanic zone

CHAPTER 15

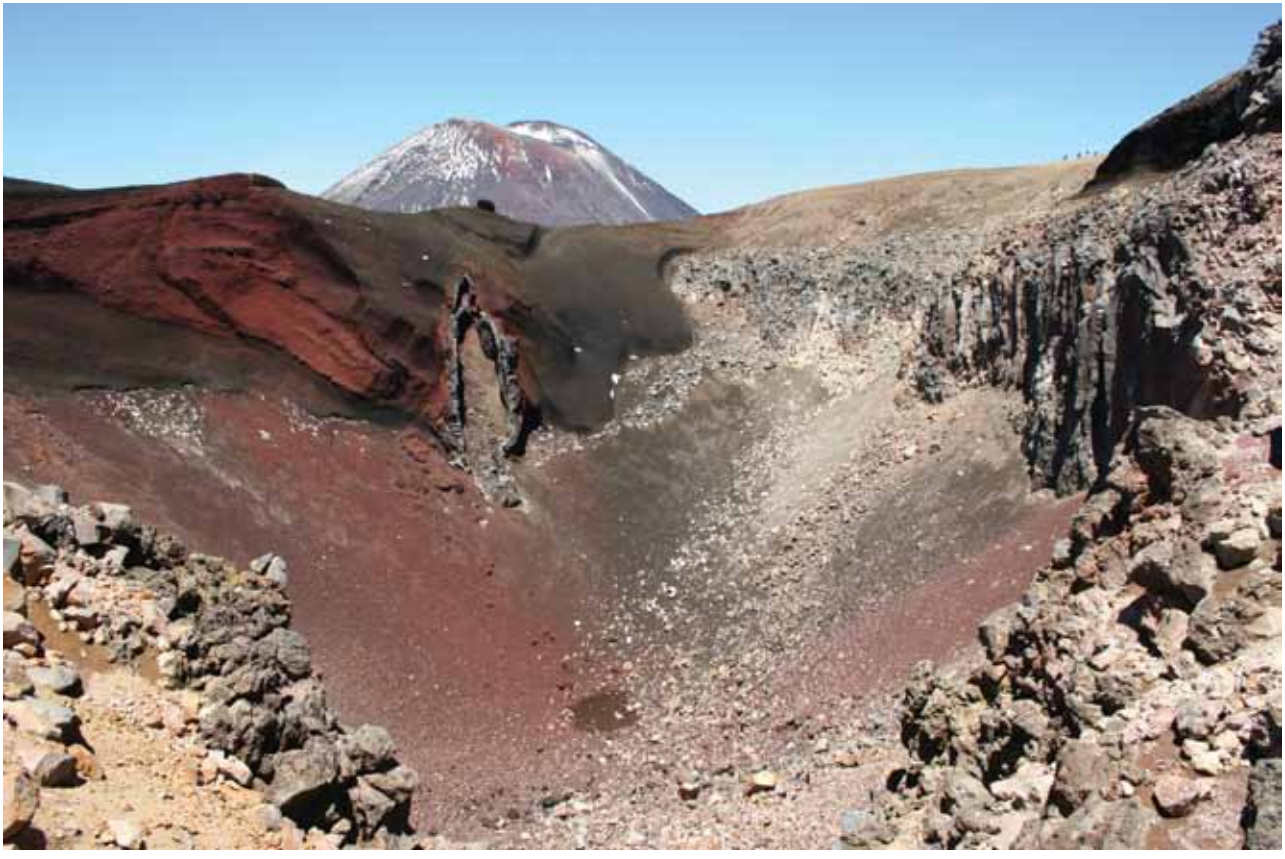
THE GEOTHERMAL RESOURCE

> It is ironic to us that the one legacy to which we are told we have no entitlement is the one we value the most; that resource, the heated fire of the earth's core, that *saved our ancestor's life*![1]
>
> —Chris Winitana

15.1 Introduction

The geothermal fields and features of the Taupō volcanic zone (TVZ) extend into the National Park inquiry district, and are of great importance to ngā iwi o te kāhui maunga. These geothermal fields and features are the subject of claims, notably by Ngāti Tūwharetoa and its hapū. The central North Island (CNI) Tribunal has already carried out an in-depth investigation of geothermal issues and, prior to that, two other Tribunal reports – the *Ngāwha Geothermal Resource Report 1993* and the *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (*1993*) – also made findings relating to the resource in those particular areas.[2] The geothermal fields within the National Park inquiry district overlap with the area covered in the CNI report and therefore many of that Tribunal's findings are also applicable to the areas under consideration here. It seems to us, however, that there are matters for consideration in terms of the resource within our inquiry boundary, and its ownership and development. How have Crown acts or omissions impacted on the relationship of tangata whenua (and notably Ngāti Tūwharetoa) with the geothermal resource, and what can be said about these impacts in Treaty terms?

We cannot begin to answer this question without first knowing the nature and extent of the resource within the district and understanding how tangata whenua related to it. We thus begin by describing the main geothermal fields that lie wholly or partly within our inquiry district, drawing mainly on technical reports filed in our inquiry and on the report of the CNI Tribunal. We also draw on the only brief of evidence we received on geothermal scientific matters which was from Dr Charlotte Severne, a New Zealand expert on the subject who is affiliated to Ngāti Tūwharetoa through Ngāti Kurauia, Ngāti Hikairo, Ngāti Hine, Ngāti Hinerau, and Ngāti Tutemohuta.[3] Once the physical sites have been described, we go on to set them in their cultural landscape, laying out oral traditions about the origin of the resource and describing its customary usage. We then turn to the submissions of the claimants and the Crown and examine the particular issues they raise.



Inside the Red Crater of Mount Tongariro. The dike, a volcanic geothermal phenomenon, is prominent, with Mount Ngāuruhoe visible beyond the crater's rim.

15.1.1 Physical description of the resource

The geothermal fields which lie, or partly lie, within the National Park inquiry district are the Tongariro–Ketetahi field and the Tokaanu–Waihī field, which form part of the TVZ. This system is shown in map 13.1. Prior to the impact of the Tongariro power development (TPD) there were also warm springs at Lake Rotoaira, in the shallow waters around the edge of the lake.[4] The precise relationship between these and either of the other two fields is currently unknown.

The TVZ is the most concentrated area of geothermal activity in New Zealand and has been described as 'a zone of active volcanism, extensional faulting, earthquakes, high geothermal heat flow, and tectonic deformation', which was formed by the collision of two of the earth's crustal blocks. It extends from Ruapehu to Whakaari (White Island) and beyond, along the boundary of the two blocks where the Pacific plate is subducted under the Indo-Australian plate.[5] Dr Severne's technical description of the geothermal resource is useful to repeat here:

> A geothermal system is a general term that describes any natural heat transfer within a confined volume of the Earth's crust where heat is transported from a 'heat source' to a 'heat

Looking towards Mount Ngāuruhoe from the Red Crater of Mount Tongariro

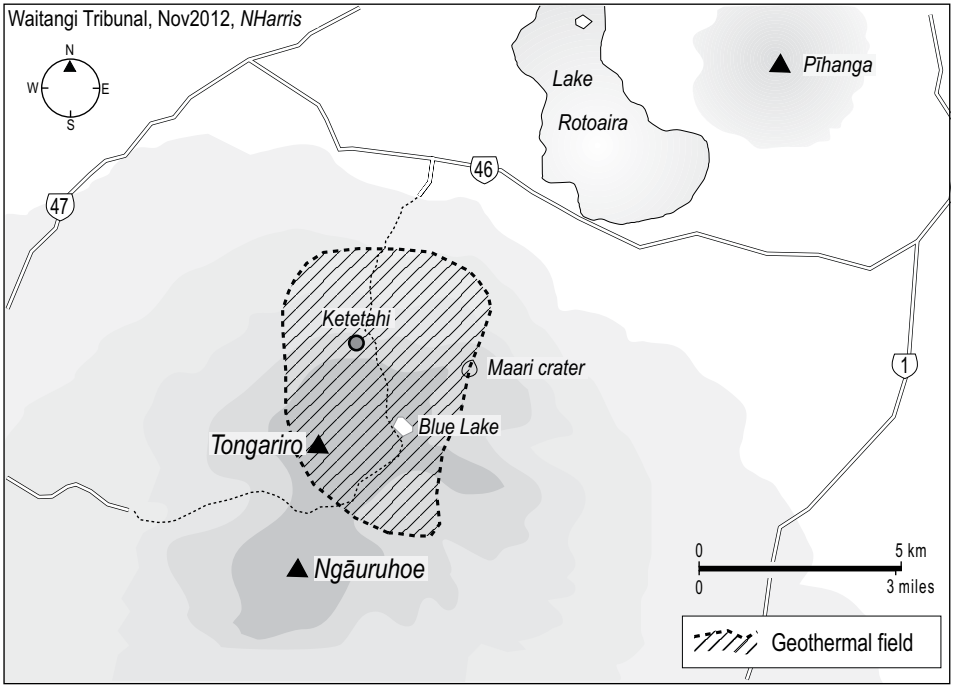
sink', which is usually the free surface. A hydrothermal system is a type of geothermal system where heat transfers from a heat source (often a cooling pluton) to the surface by 'free convection', involving meteoric fluids with or without traces of magmatic fluids. Liquids discharged at the surface are recharged or replenished by meteoric water derived from outside the boundary of the system. A geothermal field is the area, at the surface, above a geothermal system and includes areas with surface manifestations.[6]

Manifestations such as hot springs and geysers occur where surface water, penetrating down into the earth, is heated by intruding magma encountered in the earth's fractured crust, subsequently emerging either as boiling water or steam. Such sites are numerous in the TVZ because the earth's crust is shallow there and reaches a temperature 'of at least 350°C at a depth of less than 5 km'.[7]

15.1.2 The Tongariro–Ketetahi Springs geothermal field

The Tongariro–Ketetahi field, in the southernmost portion of the TVZ, is centred on Mount Tongariro. It is unique in New Zealand as it is this country's only high altitude geothermal system. There are surface manifestations of the system at Ketetahi Springs, Te Maari crater,

Two figures overlook the spectacular thermal activity of Ketetahi Springs, circa 1913. Early on, the Crown saw potential in developing the thermal area of the national park for tourists.



Map 15.2: The Tongariro–Ketetahi geothermal field

and at the Tongariro summit.[8] The system has several acid geysers; hot springs and pools; steam and gas vents; fumaroles; mud pools; sulphur deposits and a hot stream. Dr Severne told us that the Tongariro–Ketetahi field is:

> the only vapour-dominated system discovered where the fluids are comprised predominantly of meteoric water, unlike the volcanic systems of Ngauruhoe and Whakaari (White Island). Within Ketetahi Springs there are unusual acid geysers, and the geothermal area supports a high-altitude thermophilic midge that is not known to live anywhere else . . . Recent evidence suggests a warm surface outflow to the north west of Rotoaira.[9]

We would note that as we finalise this chapter of our report, we have received news of an eruption in the vicinity of the Te Maari crater. This is the first eruption for some 100 years, and we do not know what impact it may have had on the field or its surface features. All descriptions, discussion, and analysis in the pages that follow are based on evidence about the field as it was prior to the eruption.

In 1917, the Ketetahi Springs were described in the *Evening Post*:

> It is possible to get within about 20ft of the geyser, which is a fountain of boiling water, springing straight up to a height of about 4ft, also to get within less than that distance from the great blowhole, which seems about a couple of feet in diameter, and roars out with such force that the steam cannot be seen until it has ascended about 40ft into the air. Besides these, there are a number of smaller blowholes and geysers of varying sizes, right down to the tiny ones the size of a sixpenny piece.[10]

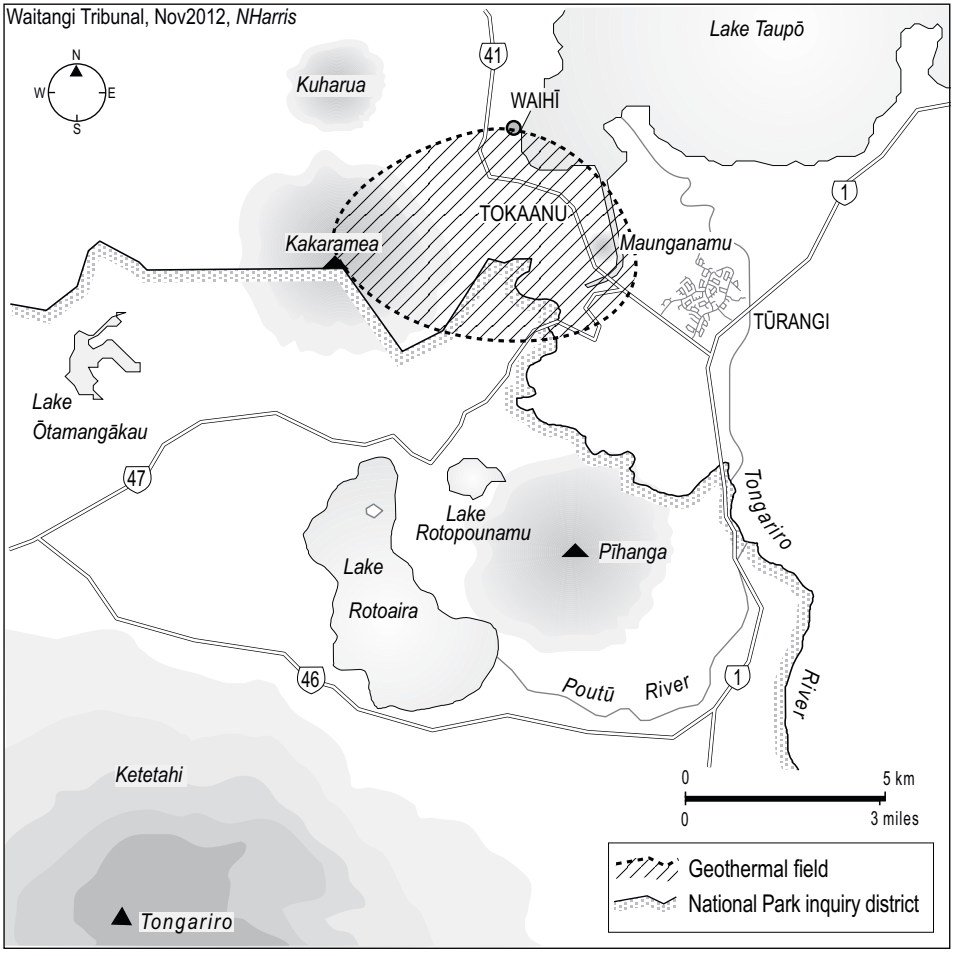
In respect of the Tongariro field, claimants focused their interest particularly on the Ketetahi Springs, as this is where tangata whenua have retained land with a surface feature. The rest of the field lies under the surrounding

Geysers and hot pools at Tokaanu, circa 1869. These features were all part of the Tokaanu–Waihī geothermal field.

Tongariro National Park and the Ketetahi Springs are generally accessed via the park's Tongariro Crossing. We note here that in 2007 the Department of Conservation (DOC) changed the name of the crossing to the Tongariro Alpine Crossing in order to better reflect 'the nature and terrain of the track'. We will generally refer to the track by its new name.[11]

15.1.3 The Tokaanu–Waihī geothermal field

The Tokaanu–Waihī field is located along the southern shore of Lake Taupō between the settlements of Waihī Village and Tokaanu. The main surface features (hot pools, springs, and fumaroles) of the Tokaanu–Waihī geothermal field are principally around the Waihī and Tokaanu Villages and as such are located in the Tribunal's CNI inquiry district. The field's extension further south, into our inquiry district, was indicated during construction of the 6.1-kilometre long Tokaanu tunnel in the period from 1969 to 1973, by the presence of 'at times unworkable hot and swelling ground caused by thermal activity' which disrupted progress.[12] The presence of such hot ground had not been detected by subsurface investigations before approval in principle was granted in 1964 for the first three stages of the TPD.



Map 15.3: The Tokaanu–Waihi geothermal field

Despite most of the field being located within the CNI inquiry district, certain areas involved with, or affected by, the TPD – for example, by the tailrace and bund, the powerhouse and associated construction work, the Tokaanu river diversion, and other river and earth works – are matters for consideration by this Tribunal. Tangata whenua evidence in this inquiry records a number of the geothermal features of that field being destroyed, concreted over, or buried by the TPD-related works mentioned. We also note that the Tribunal's *Tūrangi Township Report* records a decision by the Ministry of Works in late 1970 to continue excavating the tailrace using draglines as they were the 'best means for dealing with . . . geothermal water and steam, which had already been encountered near the power station.'[13] The impact of such TPD-related works on the geothermal field as a whole, and the claimants' ability to develop it, will be considered in this chapter. According to Dr Severne, the Tokaanu system can be accessed from the southern flanks of the Kakaramea saddle which is within the National Park inquiry district.[14] We will discuss the issue of the boundary of the geothermal field in more detail from section 15.8 onwards.

15.1.4 Te Waiamoe

For the sake of completeness, we record here that there is one other geothermal feature of importance in our inquiry district. We refer to Te Waiamoe, the crater lake on Ruapehu, which Ngāti Rangi describe as their most significant geothermal taonga.[15] According to their traditions, the waters of Te Waiamoe are 'where we came out of and where we return to'.[16] It is a resting place or urupā for Ngāti Rangi tūpuna.[17] The crater lake is described in detail in chapter 2, which discusses Māori relationships with the volcanic plateau, and is also discussed in chapter 12 in the context of our examination of the relationship that Ngāti Rangi have with DOC. However, it has not been presented to us as a geothermal issue per se, and is therefore not discussed in the present chapter.

15.1.5 Traditions about the geothermal resource

Ngāti Tūwharetoa, in particular, have very strong traditions about the origin of the geothermal resource, attributing its presence in New Zealand to their ancestor, Ngātoroirangi, the paramount tohunga of the Te Arawa waka, who was also related to the people of the Tainui waka. In the CNI inquiry, historians identified several versions of the Ngātoroirangi story, noting that they all credited Ngātoroirangi with bringing geothermal activity to Aotearoa.[18]

We have already recounted, in chapter 2, the traditions that were conveyed to us in this inquiry. To summarise them briefly here, when Ngātoroirangi was overcome by a snow blizzard during his ascent of Tongariro, he sent to his sisters Kuiwai and Haungaroa in Hawaiki for heat. In response, they sent two tipua (fire ancestors), Te Pupu and Te Hoata, with te ahi tipua (the sacred fire).[19] Travelling by subterranean passage, the tipua emerged from time to time along their route to ensure that they were going in the right direction. In doing so, they brought fire to the surface of the earth and formed the principal geothermal spots of the Bay of Plenty and the central North Island. Eventually, the fire emerged at the summit of Tongariro and Ngātoroirangi was saved.[20] As Ferdinand von Hochstetter marvelled in 1859:

> This legend affords a remarkable instance of the accurate observation of the natives, who have thus indicated the true line of the chief volcanic action upon the North Island.[21]

This 'line' extends from White Island to te kāhui maunga.[22]

Since that time, te ahi tipua has been a defining taonga of those descended from the Arawa waka of the region. An event from the 1880s serves to illustrate how closely it is linked with Ngāti Tūwharetoa's claims to mana on the central plateau. At a sitting of the Native Land Court in Taupō, the question of rights over a certain area arose and Te Keepa Rangihiwinui rose to claim an interest and to assert ahi kā. Horonuku Te Heuheu is said to have responded sharply:

> Who are you that speak of your fires of occupation burning in my country? Where is your fire, your *ahi-ka*? Where is it? You cannot show, me for it does not exist.[23]

'Look yonder!', he went on, pointing dramatically to the mountains. As he did so, says James Cowan, recounting the story, 'a plume of yellow vapour' curled upwards from one of the distant peaks and the old chief cried:

> Behold my *ahi-ka*, my mountain Tongariro. There burns my fire, kindled by my ancestor Ngatoro-i-rangi. It was he who lit that fire and it has burned there ever since! That is my fire of occupation!

Sir John Grace, in his own version of the story, maintains that Te Heuheu's rivals for the land, 'recognising the chief's mana, made no further claims on his country'.[24]

From Ngāti Hikairo witnesses, we learned two versions of how the Te Maari crater on Tongariro came to be named. In one version, it was named for Te Maari I, the daughter of Pakaurangi. In this account, when Te Maari I was born, the side of Tongariro blew out, forming the crater.[25]

In the other version of the story, the crater is named for Te Maari II, the daughter of Te Whareangi. When Te Heuheu Mananui asked Te Whareangi for his daughter's

hand in marriage, the chief demurred, thinking no-one was good enough for his daughter. Surmising that what Te Heuheu really wanted was prestige, not the marriage per se, Te Whareangi offered him Tongariro maunga instead, and Te Heuheu accepted.[26] However, despite their agreement, a pool near the summit of the mountain continued to be the special preserve of Te Maari and she alone bathed there. When she passed away, the pool, it is said, exploded. All that was left was a crater, which was named 'Te Maari' in memory of her.[27]

There is also a story of how Ketetahi was named, which was recounted to us by Ngāti Tūwharetoa claimant Chris Winitana. He explained that by the time the two tipua reached Ngātoroirangi on the slopes of Tongariro, only one of the three ketes they carried still contained te ahi tipua. Angered, Ngātoroirangi is said to have stamped the ground, exclaiming 'Kotahi anō te kete!' (there is only one kit!); hence 'Kete-tahi'.[28]

15.2 Property Rights – Claimant Submissions

15.2.1 The geothermal resource as a taonga

The principal submissions on geothermal issues have come from Ngāti Tūwharetoa and its associated hapū, notably Ngāti Hikairo. These claimants submit that the geothermal resource, the localised geothermal fields, and

Te Maari crater on Mount Tongariro

the associated surface manifestations, are their sacred taonga.[29] Ngāti Tūwharetoa seek a finding from the Tribunal that 'the geothermal resource emanating from Tongariro is their taonga, over which the Treaty guaranteed their tino rangatiratanga and ownership'.[30] Ngāti Hikairo and Ngāti Tūwharetoa underlined the Ngāwha Tribunal's finding that when the Treaty of Waitangi was signed in 1840, 'the hot springs of Ngāwha and the associated sub-surface geothermal system were a sacred taonga over which the hapū of Ngāwha had rangatiratanga'. In this sense, said the Tribunal, the hapū 'owned' the Ngāwha geothermal resource.[31] The claimants sought that, given their own long association with and connection to their geothermal resources in the inquiry district, this Tribunal should adopt the Ngāwha Tribunal's findings.[32]

Ngāti Tūwharetoa submit that, as tangata whenua, in 1840 they 'exercised management and control' over a range of natural and physical resources in the rohe, including '[a]ccess to significant geothermal resources'.[33] They note that, traditionally, rights to use geothermal pools and springs were allocated according to tikanga.[34] The geothermal resource, they say, has been at the very core of human existence in the area since Ngātoroirangi. It enabled Māori to live and thrive in an environment that would otherwise have been cold and inhospitable – perhaps even uninhabitable – for many months each year.

Ngāti Hikairo claim that in breach of the Treaty of Waitangi, including in particular the article 2 duty of active protection, the Crown has failed to recognise and provide for customary interests according to tikanga in the geothermal resource.[35] Crown breaches have caused iwi in the National Park inquiry district to suffer 'the loss of rangatiratanga' over their 'ngāwha and other geothermal resources'.[36] The claimants further allege Crown breaches in its acts and omissions in allowing trespassing on, and exploitation of, the geothermal resource. They argue that this has happened without recognition of the spiritual significance of the resources, without consultation or payment, and without due regard for customary ownership and kaitiakitanga over the resources.[37] In other places, their use and enjoyment of the geothermal resource has been diminished by flooding and erosion of surface manifestations as a result of public works. Counsel for Ngāti Tūwharetoa argued that 'Crown legislation, or rather lack of it, has failed to protect the geothermal resource, and enormous harm has resulted'.[38]

In addition to the loss of rangatiratanga over these resources, the claimants further allege that, as a result of Crown acts, Ngāti Tūwharetoa and its associated hapū have lost access to their geothermal springs, hot pools, and other aspects of the resource and, as such, 'have lost the ability to use the resource according to our needs and for our benefit according to our own tikanga'.[39] In respect to te ahi tamou (the geothermal resource), their goals are:

> To assert and exercise rangatiratanga of nga hapū o Ngāti Tūwharetoa over geothermal taonga [and to ensure] that the geothermal resource is protected, enhanced and managed according to the tikanga and kawa of nga hapū o Ngāti Tūwharetoa for the benefit of current and future generations.[40]

The claimants contend that the legislation enacted by the Crown to regulate the geothermal resource does not protect their Treaty rights in that resource.[41] The Geothermal Energy Act 1953 vested the sole right to use and control geothermal resources in the Crown. These rights were carried over in the provisions of the Resource Management Act 1991 (RMA), which remains the current regulatory regime governing the use and allocation of the resource.[42] Counsel for Ngāti Waewae argued that these legislative measures have excluded hapū interests and denied them their authority and management rights over the geothermal resource.[43] The Ngāwha Tribunal, said counsel, found that in enacting this legislation the Crown failed to include

> adequate provisions to ensure that the Treaty rights of the claimants . . . are fully protected. As a consequence, the claimants have been, and are likely to continue to be, prejudiced by such a breach.[44]

Counsel asked that the National Park Tribunal note the Ngāwha Tribunal's findings in relation to this legislation.

With regard to the Tokaanu field, Ngāti Tūwharetoa

Hot Springs or Boiling Ponds near Taupo Lake, 1844. The geothermal spots in the central North Island are part of a volcanic line that stretches from White Island to the Tongariro mountains.

submitted that Crown regulation has 'failed to protect the geothermal resource', in that the Crown has allowed 'unchecked development' to occur in the vicinity of the field, resulting in 'significant and unnecessary degradation of the resource'.[45] In respect of the regulatory framework imposed by the Crown, the claimants further submitted that their 'right of rangatiratanga amounts to the right of Māori to be decision-makers with respect to the use of the resource'. However, they said, this has not been recognised by the Crown.[46]

15.2.2 The significance of surface manifestations

Two areas of geothermal surface manifestation were particularly mentioned in claimant submissions.

Children in hot springs at Tokaanu, 1910–30. The claimants have noted the loss of many of their thermal pools as a result of the Tongariro power development project.

Ngāti Hikairo's submissions referred to the loss of domestic geothermal pools in the Tokaanu region. They pointed to claimant evidence showing how small thermal pools, valuable in the everyday lives of the local people, were lost when the Tokaanu stream was diverted for the Tongariro Development Project.[47]

The other area cited was the Ketetahi Springs on the Tongariro–Ketetahi geothermal field. Ngāti Tūwharetoa, Ngāti Hikairo, and Ngāti Waewae all made submissions about these springs, making clear that they regard them as a very significant geothermal surface feature. They said the springs were widely known as a site of healing, with many Māori travelling there to seek out physical and spiritual healing through the springs' curative properties.[48] The springs at Ketetahi represent 'the genesis of Te Ahi Tamou', formed from the actions of Ngātoroirangi in bringing the geothermal resource to the region following his ascent of Tongariro. Counsel for Ngāti Hikairo cited the evidence of Tyronne (Bubs) Smith, who stated that

> Ketetahi Springs is singularly the most significant site for Tūwharetoa because of the actions performed by Ngātoroirangi in his ascent of Tongariro and in bringing the geothermal.[49]

Hot mud pools near the Tokaanu Hotel. Mud pools and hot springs are surface features showing volcanic activity at the southern end of the Taupō volcanic zone.

15.2.3 The adequacy of the Native Land Court process

The claimants also made submissions about the adequacy of the court process in relation to the land at Ketetahi where the geothermal surface features are sited. When title to Ketetahi Springs was determined by the court on 21 September 1887, ownership of the springs was vested in the names of seven rangatira only. Tūwharetoa argued that although the idea was for these seven rangatira to 'hold' the springs for all local hapū, the effect of the court system was that the seven ended up owning the block 'even though Ketetahi are of enormous significance to all the hapū'.[50] Ngāti Hikairo asserted that as a consequence of the policies and legislation individualising title, their interests in the springs were not reflected in the court's list of owners.[51] It is therefore alleged that the current Māori owners are severely limited in their ability to control and manage the springs.

The claimants further submitted that the court's 1887 order describing the block wrongly stated that it contained only 20 acres: it did not include the full extent of the springs (which amounted to around 90 acres).[52] This was because the court's order was based on a sketch plan with 'erroneous boundaries'. The mistake was not rectified for many decades.[53] Indeed, claimant counsel highlighted

historical evidence presented by Dr Brad Coombes which suggested that through the first half of the twentieth century, the Lands Department chose to exploit this error, insisting the block comprised only 20 acres 'when it had been informed many times that it was over 90 acres'.[54]

15.2.4 Crown pressure to sell and failure to respect property rights

The claimants allege that the Crown failed to 'actively protect the rights of the owners' by not respecting their decisions to retain the Ketetahi Springs for their people.[55] Rather, the Crown placed the owners under considerable pressure to sell. However, with just one exception, the owners refused. It is claimed that no consideration was given to the possibility that Māori might simply have wanted to retain their springs. Ngāti Tūwharetoa submitted:

> The Crown failed to respect the owners clear and unequivocal decision that they did not wish to sell the block, and made repeated attempts to purchase, acquiring individual interests.[56]

Counsel emphasised Dr Robyn Anderson's observation that the very significance of Ketetahi Springs to local iwi is shown by their determination to retain the block in Māori hands, despite repeated attempts by Crown agents, over a number of decades, to purchase the land and absorb it into the Tongariro National Park.[57]

Aside from this attempted acquisition of the springs, the claimants alleged that the Crown failed to actively protect their taonga and their rights as the landowners of the block throughout the twentieth century. In essence, Ngāti Tūwharetoa summed up the evidence of all the claimants:

> For many years (up to 1991), the Springs were openly accessed and used by people using the National Park, despite the Springs not being part of the National Park.[58]

The Ketetahi Springs block is surrounded on all sides by National Park land, and claimants say that the Crown has failed to protect their lands from park visitors. Despite the block being privately owned, the Crown allowed the construction of the Tongariro Alpine Crossing track over the block, and allowed trampers access to the springs as if the springs were just another part of the National Park. Unrestricted access to the springs continued until the 1990s.[59] During that time, misuse of the springs – including litter and human waste left by trampers – has been deeply offensive to claimants and has desecrated the tapu of the springs.[60]

According to claimants, DOC still 'does not adequately control and protect the Ketetahi Springs from unauthorised access by users of the Tongariro National Park'.[61] The claimants argued that, as the Crown's agent, DOC should exercise control over people using the park to prevent unauthorised access to the springs. In this way, the Crown could protect the springs from adverse impacts. However Ngāti Hikairo maintains that Crown action, or rather lack of action, in failing to protect their land and sacred taonga is in blatant disregard to their rangatiratanga, property rights, and cultural values.[62] The claimants allege that the Crown failed to provide for and actively protect their rights as property owners of their lands, and that this constitutes a breach of the Treaty.[63]

The claimants also submit that the Crown has failed to respect their intellectual property rights in the geothermal resource. They allege that the Crown has collected scientific information from Ketetahi Springs and the surface features at Tokaanu without their permission. The claimants cited the evidence of Dr Severne who queried why the intellectual property law should recognise:

> the rights of the scientist who 'discovers' those [geothermal] properties, but not the hapū who have been kaitiaki of the resource for centuries and who possess extensive traditional knowledge on the properties of that resource.[64]

While claimant counsel recognised that intellectual property rights were, at the time of hearings, under consideration by the Wai 262 Tribunal, the claimants sought that, in the National Park inquiry district, the Tribunal

find that such a breach is 'a further aspect of failure to recognise customary rights and to respect the Treaty guarantee of rangatiratanga over the resource'.[65]

15.2.5 Whanganui claimants do not seek geothermal findings

The Whanganui claimants have not made any submissions on geothermal issues, and Ngāti Rangi, for their part, do not seek findings in regard to Te Waiamoe as a geothermal resource; rather, they 'seek to have Te Waiamoe protected as an urupā and wāhi tapu of Ngāti Rangi'.[66]

15.3 Property Rights – Crown Submissions

The Crown considers that claims dealing with geothermal springs and resources are of two kinds: first, those relating to the alienation of land with surface features, as happened at Ketetahi Springs, and secondly, claims relating to 'ownership and management of geothermal resources, *per se*'.[67] The Crown also noted that, in comparison to the CNI inquiry, the National Park inquiry did not receive substantial evidence and submissions on these issues; in the Crown's view, there was 'little fresh evidence presented in this Inquiry'.[68]

First we summarise the Crown's submissions relating to the issues of ownership and management of the geothermal resource. Here, the Crown acknowledges 'that geothermal resources, and in particular the Ketetahi Springs, were and are of importance to Māori for purposes such as cooking, bathing and medicinal purposes' and that 'it has Treaty responsibilities to protect customary use of the geothermal resource by Māori'.[69]

Crucially, the Crown 'does not consider that the geothermal resource is capable of ownership'.[70] This stance is based on the Crown's classification of the geothermal resource as a water resource which, under the common law, is not capable of being owned.[71] Following this line of reasoning, the Crown does not consider that, in its subsequent management of the resource under specific legislation dating from 1952, 'any rights to the geothermal resource have been appropriated'.[72] Ultimately, the Crown 'does not consider that any Treaty breach has arisen following Crown actions or omissions concerning geothermal resources within the National Park Inquiry district'.[73]

In contrast to Ngāti Tūwharetoa's claims of rangatiratanga over the geothermal resource itself, the Crown 'does not consider that the ownership of land with geothermal surface manifestations, such as Ketetahi Springs, means ownership of the geothermal resource'. Rather: 'Ownership of such land simply allows the owner/s to control physical access to the resource.'[74] The Crown considers that there was no evidence to suggest that, upon alienation, Māori retained interests in the geothermal resource, 'separate from the land'.[75] Furthermore, the Crown cited the retention by Māori of the Ketetahi Springs (and other sites in the neighbouring CNI district) as evidence that

> Māori thought use rights regarding geothermal areas are closely linked to land use rights in general, and that alienation of land would carry with it the right of control and/or access and use of the geothermal resource in the land alienated.[76]

Following this line of argument, the Crown further submitted that 'the nature of the geothermal resource, albeit water in the Crown's view' is 'fundamentally different from a river resource' and thus the Tribunal's findings in the *Whanganui River Report* are not applicable to this case. While the sale of land adjoining the river by Whanganui Māori 'did not necessarily result in the original Māori landowners no longer using the River, or continuing to claim ownership of it', the situation was different for the geothermal resource: in the Crown's submission, alienation of land also meant alienation of the surface features and the underlying geothermal resource, and Māori understood this at the time of alienation.[77]

The Crown sees its Treaty duties as being met through the regulatory regime of the RMA. Although the 1993 *Ngawha Geothermal Resource Report* made specific findings on the managment of the geothermal resource under the RMA, the Crown rejects these findings, stating that that Tribunal's approach 'goes too far and does not allow for the appropriate balancing of competing interests as

recognised by the Courts'.[78] Given that the geothermal resource is, in the Crown's view, 'incapable of private ownership',[79] the Crown's core position is that:

- The regulation of geothermal energy is a legitimate exercise of governance under Article 1; and
- The Resource Management Act strikes an appropriate balance in recognising the interests of Māori.[80]

This right to manage the geothermal resource is based on 'the reasonable state objective of common benefit'.[81] The Crown accepts a treaty responsibility to protect customary use of the resource, and argues that this responsibility is adequately covered by the provisions of the RMA and the Local Government Act 2002.[82] These submissions will be more fully explored in sections 15.8 to 15.14, where we revisit Crown submissions on geothermal development.

15.3.1 The significance of surface manifestations

The Crown submitted that it 'acknowledges the spiritual significance of the Ketetahi Springs to Ngāti Tūwharetoa and National Park Māori'.[83] It also recognises the importance of the physical properties of the springs to Māori, noting that customary uses included cooking, bathing, and medicinal purposes.[84]

However, the Crown rejected the Ngāwha Tribunal's finding that it has a duty to protect Māori 'from the actions of others which impinge upon their rangatiratanga by adversely affecting the continued use or enjoyment of their resources whether in spiritual or physical terms'.[85]

15.3.2 The adequacy of the Native Land Court process

On the title determination process for Ketetahi Springs, the Crown has accepted that

> the intention of the Māori owners of Ketetahi Springs was to reserve an area encompassing all of the Springs within the Tongariro 1C block and to exclude the Springs from inclusion in the National Park.[86]

The Crown acknowledged that the original certificate of title delineating the boundaries of the springs was not based on an actual survey, yet it maintained that this was 'in accordance with the legislation in place at that time'.[87] The Crown outlined its version of events surrounding the negotiations that ensued about correcting the boundary size: the area was mistakenly described as being of 20 acres when, as much later events were to confirm, it was indeed over 95 acres.[88] In light of this, the Crown acknowledged that the 1894 certificate of title 'did not accurately reflect the area intended by the owners to be reserved from the Tongariro 1C block and the national park'.[89]

With regard to the tribal interests represented in the list of owners made in the order, the Crown said that the court was working on the list handed to it by Keepa Puataata on 4 February 1886.[90] Claims of exclusion from ownership of the block by Ngāti Hikairo are, the Crown submitted, a consequence of the tribes' decision to list those seven rangatira on the title, as well as the operation of the native land laws. Furthermore the Crown argued that people such as Dr Severne, while not having legal rights to the block, have not been excluded from accessing the land and springs.[91] Having the seven rangatira on the title to the springs was, in the Crown's view, in order to reflect the overlapping hapū interests and tribal leadership of the time, as noted in the submission of Ngāti Tūwharetoa.[92]

15.3.3 Crown pressure on owners to sell

The Crown acknowledged that as late as 1958 it pursued the purchase of Ketetahi 'despite the clear intention of the owners to retain the whole of the Springs in private ownership'.[93] However, the Crown submitted that it 'did not apply undue or considerable pressure on the owners to attempt to force a sale'. The Crown's efforts were ultimately unsuccessful 'as the owners steadfastly maintained their opposition to alienation'.[94]

15.3.4 Active protection of property rights where ownership was retained

Despite Māori retaining ownership of their land, the Crown accepted there 'may have been instances where tourists have trespassed on Ketetahi Springs'.[95] The Crown submitted that where this has occurred, the Crown has taken an active role in informing the public that Ketetahi

Springs are on privately owned land.[96] The Crown cited DOC and claimant evidence that indicated that the majority of tourists respected the signage telling them not to trespass.[97] Where claimants took issue with the inadequacy of DOC signage informing trampers on the Tongariro Alpine Crossing not to enter the springs site, the Crown pointed out that, while the signage was erected by DOC, the wording had been provided by the Ketetahi Trust. DOC had earlier expressed concern about the wording of the sign.[98]

The Crown did not address the related matter of the springs' desecration – for example, through tourists leaving rubbish.

15.4 Property Rights – Submissions in Reply

Counsel for Ngāti Tūwharetoa replied to the Crown's reliance on the common law view that the geothermal resource cannot be owned, stating that this view failed to address the Treaty rights of Māori: 'From the Māori point of view, the basis of the right to the geothermal resource is again derived from tikanga, as the evidence of Chris Winitana makes clear.'[99]

15.5 Property Rights – Tribunal Analysis

In looking at property rights in the geothermal resource, we begin by investigating two questions: was the resource a taonga of ngā iwi o te kāhui maunga, and how did Crown and Māori views of property rights in the resource differ?

15.5.1 Was the geothermal resource a taonga?

At 1840, the subterranean geothermal resource was shared by all the tangata whenua of the wider volcanic zone. At a more local level, iwi and hapū groupings maintained relationships to particular geothermal fields, and to surface features within them. The evidence given to this Tribunal relating to the nature and extent of Māori customary rights over the geothermal resources was extensive and detailed. More was provided to the CNI generic hearings and some to the Tūrangi Township inquiry in 1994.

Under article 2 of the Treaty, Māori were guaranteed tino rangatiratanga over their taonga. If a particular possession is shown to be a taonga then it is incumbent on the Crown to actively protect Māori authority over that taonga. Taonga is a broad term describing treasured possessions of great tangible and intangible value in Māori society. In the Whanganui River inquiry, for example, the Tribunal gave a useful explanation of how the river is conceptualised:

> as a manifestation of the Māori physical and spiritual conception of life and life's forces. It contains economic benefits, but it is also a giver of personal identity, tribal cohesion, social stability, empathy with ancestors, and emotional and spiritual strength.[100]

This description is equally apt in describing tangata whenua connections to the geothermal fields in the National Park district, and indeed across the whole Taupō volcanic zone.

In this inquiry district, the Crown has remained silent on whether it accepts that the geothermal resource generally, or the surface feature of Ketetahi Springs, are taonga. Nor has it explicitly accepted that Māori exercised rangatiratanga over this resource. We find such a lack of position unhelpful. The Crown did, however, acknowledge the spiritual significance of Ketetahi Springs to Ngāti Tūwharetoa and National Park Māori.[101] It also acknowledged that geothermal resources such as Ketetahi Springs were and are important to Māori for purposes such as cooking, bathing, and medicinal purposes.[102]

In terms of existing Tribunal discussion, the Wai 262 Tribunal, which investigated law and policy affecting Māori culture and identity, said that it is possible to test whether a resource or place is a taonga.[103] Summarising that Tribunal's discussion, the recent *Stage 1 Report on the National Freshwater and Geothermal Resources Claim* explained:

> If it is a highly valuable and prized resource, if it has whakapapa and matauranga associated with it, if it has a history of kaitiakitanga, and if it has kaitiaki today, then it is a taonga.[104]

The *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* and the *Ngawha Geothermal Resource Report*, both released in 1993, agreed that surface manifestations and the underlying resource were taonga of Te Arawa and Ngāpuhi respectively.[105] The Ngāwha Tribunal found that,

> Since the springs themselves lay within the territory over which Ngapuhi had always exercised unchallenged their rangatiratanga, it follows that in their view such rangatiratanga would have extended over the entire resource equally above and below the surface of the land and throughout the extent of its manifestation. This, we believe, was the position at 1840 and, the claimants say, it is still the case today. On all major counts, then, the Ngāwha springs and the underground resource are a taonga for Ngapuhi.[106]

The CNI Tribunal went on to adopt a similar test of taonga status in its assessment of whether the geothermal fields of the TVZ were taonga of local iwi. As with the earlier Tribunals, the CNI panel looked at Māori traditions and stories about the geothermal resource, as well as the extensive and sustained customary uses by iwi. That Tribunal found that

> In 1840 the iwi and hapū of the Central North Island exercised rangatiratanga and kaitiakitanga responsibilities over the use and enjoyment of all their geothermal surface features, the geothermal fields, and the TVZ.[107]

The claimants in our inquiry drew the Tribunal's attention to their sustained customary usage of the geothermal resource, evident from 1840 through to the present day, and to the significance of their traditions about the geothermal resource. This sustained spiritual and physical connection to the geothermal resource makes the case not only for the taonga status, but also reinforces the view that local iwi held rangatiratanga over the geothermal fields and surface features and saw their exercise of kaitiakitanga as a legitimate exercise of this power.

Furthermore, the presence of geothermal heat tended to mitigate the sometimes harsh conditions of the mountain region, thus allowing some habitation in addition to more seasonal visiting. In terms of practical, everyday, use of the resource, a series of witnesses from a number of tribal interests spoke of the profound physical and spiritual curative power of Ketetahi Springs. The healing qualities of the springs, referred to by Tūreiti Te Heuheu in 1920 as 'the most potent in New Zealand', were widely known and respected by Māori.[108] The springs were renowned for the relief provided for a range of ailments, including rheumatism, arthritis, and scabies.[109] John Te Herekiekie Grace recorded in 1930 that

> The Spring itself was . . . boiling hot and naturally was not used. There is, however, a small hot stream flowing out of the spring and it was this stream which was used by the Māoris, their practice being to scrape holes in the bed of the stream and use these holes as baths. It is understood that the holes were made for hundreds of yards downstream – the distance downstream being regulated by the individual requirements as to the temperature of the water.[110]

Dr Severne also told us that the 'ill and aged were carried up the Mountain and would stay in temporary shelters during their treatments'.[111] Several prominent European travellers visiting the area in the mid-nineteenth century recorded their observations of such activity. The earliest of these, Edward Wakefield's *Adventures in New Zealand*, dated from 1841:

> Half way up the steep NE face of this mountain, a boiling stream juts out, which is considered by the natives a sovereign remedy for some diseases; they travel from all parts to benefit by its healing qualities.[112]

This indicates that the curative powers of the springs were known to Māori from far afield. Given the remoteness of the location and the hostility of the climate for much of the year, those who came seeking relief from

◀ Steam rising from Ketetahi Springs on Mount Tongariro's northern side. As well as being an important geothermal site for Māori, the springs are renowned for their healing powers.

their ills would clearly have needed rather more than the permission of the hapū; they would have needed their active support and hospitality, especially if they were less than fully fit.

Similarly, the geothermal resource at Tokaanu–Waihī was indispensable to Māori of the plateau area, enabling them to live and thrive in an environment that would otherwise have been cold and inhospitable, perhaps even uninhabitable, for many months each year. The significance of the resource is best conveyed in the written evidence of Paranapa Rewi Ōtimi:

> In the old days with the onset of winter the snowline would reach the lake and Tūwharetoa Hapū would come to live during the winter months because of the geothermal resource Te Ahi Tamou could sustain hundreds of people. Houses were built to accommodate them some of which still stand today. Dried fish, preserved birds, pits of stored veges, raised pigs poultry and even Hapū milking cows were shared communally during Te wa o te Hotoke (the cold season). Even up to the late 1940s and 1950s Waihi village would grow with hundreds of people living there during this time of the year. As spring would arrive people would move back to their Hapū areas around the lake resowing crops, planting Hapū gardens and fishing various areas of the lake.[113]

The warmth from the geothermal resource also aided Māori in their food production, protecting their māra (vegetable gardens). At our hearings, Ringakapo Asher Payne described the technique by which the geothermal resource was harnessed to enable a diverse range of food to be grown:

> Our people had dug two drains parallel with each other . . . running from the . . . hot springs and close to the 'maara' or cultivation areas. The steam from the hot water would rise at night and so protect the crops from the frost.[114]

Dulcie Gardiner gave the example of her koro Kuru, who, thanks to the presence of the geothermal resource, was able to grow corn, kūmara, kamokamo, and melons, despite the cold climate.[115] She also commented how, along the Tokaanu River, each family had its own natural thermal pool for bathing.[116]

Early Pākehā explorers to the area, like the botanist John Carne Bidwill, who visited in 1839, and Ernst Dieffenbach (the naturalist for the New Zealand Company) in 1841, were favourably impressed with both the resources and the village of Waihī – as was the artist George French Angas, who famously depicted life in Te Rapa, including the use of geothermal surface features, when he visited in October 1844. Hochstetter observed in 1859 that there were more than 500 puia in the area around Waihī and Tokaanu.[117] It was Hochstetter, too, who noted that Māori had a classification system for the various types of spring:

> The phenomena are quite similar to those of Iceland, and just as the Icelanders distinguish among their warm springs – hverjar, namur, and laugar – so the Māoris too, make a distinction, although not as sharp, between puia, ngāwha, and waiariki.[118]

Hochstetter further observed that Māori in the area had 'special huts for the winter, erected on warm ground'.[119]

Of those who presented submissions in the National Park district, Ngāti Tūwharetoa and Ngāti Hikairo, in particular, have exhibited a sustained spiritual and physical connection to the geothermal resource. As we have described above, the underground heat and its outflows through surface features allowed them to live in the harsh central North Island conditions by providing a means of cooking, growing food, bathing, and heating. As to the Ketetahi Springs, not only were they revered for their healing qualities, but as several witnesses testified, there are several burial caves located in their vicinity. According to Dr Charlotte Severne, the last burials took place in the area in the early twentieth century. For that reason, the springs and land immediately surrounding them are regarded as wāhi tapu in their entirety.[120]

Geothermal heat and surface features also provide a spiritual link with the creation deities credited with providing the resource – Papatuanuku and Ruaumoko (or Ruaimoko) – and with Ngāti Tūwharetoa's ancestor Ngātoroirangi. As counsel for Ngāti Tūwharetoa

submitted to the Tribunal, '[n]othing could be more sacred to Ngāti Tūwharetoa than the fire called up by their tupuna Ngātoroirangi'.[121] The Whanganui River Inquiry draws a useful comparison here. In that inquiry claimant counsel Sian Elias argued that there is no distinction to be made between the spiritual and physical significance of a resource. That Tribunal agreed that 'the river is a subject of veneration as well as a source of physical and material sustenance and that there is no inconsistency between the two'.[122] For Whanganui iwi the river's significance was not 'symbolic' but was and is integrally tied into the way that the hapū use the river on a daily basis. This statement could equally be applied to the relationship Ngāti Tūwharetoa have with the geothermal resource in the National Park district. The spiritual connection to their ancient ancestor Ngātoroirangi, through his actions in bringing geothermal heat to the region, is very closely tied to the physical and healing properties held in the surface manifestations.

In light of such evidence, it is clear that the geothermal resource was as central to, and essential for, Māori life and society in the central plateau area as any land, forest, and fisheries – arguably more so, as without the benefits of the geothermal resource to mitigate the effects of the climate it would not always have been possible to enjoy those other resources. Most of what has been comprehensively covered in the CNI report is also applicable here: the Treaty guaranteed Māori their rangatiratanga over what they possessed as taonga as at 1840, and in finding that the geothermal resource was a taonga, the panel's corollary finding was that the Crown was necessarily obliged to protect Māori rangatiratanga over it. We agree, noting the particular importance of the geothermal taonga to the tangata whenua of the TVZ, especially Ngāti Tūwharetoa and its associated hapū. We adopt the finding of the CNI Tribunal that, for the tangata whenua, the geothermal surface features, the geothermal fields, and the TVZ are all 'taonga of great cultural, spiritual and economic importance'.[123]

In our view the Tokaanu–Waihī and Tongariro–Ketetahi geothermal fields are, and always have been, a taonga for Ngāti Tūwharetoa, enshrined in earliest legend, deeply imbued with spiritual significance and revered for healing, ritual, and other customary uses. Ngāti Tūwharetoa's intellectual property rights in the resource are held by the hapū who have held kaitiaki status over the fields for centuries and who possess traditional knowledge on the properties of that resource.

It is also clear that from the earliest years of Crown contact with the area, Crown officials such as William Fox quickly came to understand the significance of the geothermal resources of the district. Fox, writing some years later in 1874, noted that the village of Tokaanu had been erected in the midst of 'active and quiescent springs' which were 'used for the various purposes of bathing, cooking, and other domestic uses, by a population of two or three hundred souls'.[124] The Crown cannot have been otherwise than well aware from the evidence given by its Ministers, officials, and agents that here was a well developed, successful, and sophisticated society which had adapted to, was influenced by, and totally dependent upon, the geothermal resource. It must also have been clear that Māori possession and control of the area and the geothermal resource there was effective and complete.

The importance of the springs to Māori was further remarked on in parliament in 1887, when Premier John Ballance, introducing the (unsuccessful) Tongariro National Park Bill of that year, stated:

> The Natives attach more value to these mountains than they do to an equal area of the finest agricultural land in the colony . . . The Natives have attached the greatest possible value to the springs, which are known to be the finest in the colony, and the Natives go to them from long distances on account of their healing qualities.[125]

These comments highlight that Crown officials were very aware of the significant relationship that Māori had with their geothermal resources.

15.5.2 Differences between Crown and Māori views of property rights in the geothermal resource

Critical to any discussion about ownership and property rights over the geothermal resource is an understanding

of what is meant by these terms. How did the Māori view of holding rangatiratanga over the geothermal resource marry with imported European views of how it should be allocated and managed?

(1) *Māori views of resource ownership and management*

As the CNI Tribunal has remarked: 'Law grows out of, and needs to be supported by, the culture in which it operates'.[126] Before embarking on any discussion about resource 'ownership' and management, then, it is critical to note that Māori regarded both land and resources as part of an holisic whole. Further, there was no direct equivalent of the concept of 'ownership'. Māori saw themselves as part of the natural world, not owners of it. They were nurtured by the world around them and, in return, had responsibilities to it. When it came to customary law, a set of guiding principles applied: rights in both land and resources were therefore mediated in similar ways, taking into account the dictates of whanaungatanga, mana, utu, tapu, and kaitiakitanga.[127] Moreover, use rights in any given area were often not exclusive: rather, a number of individuals or groups could be assigned use rights in the land and/or its resources, by the hapū or iwi holding mana there. Sometimes, 'even a resource as particular as a single tree might be subject to multiple use rights, with different groups all agreeing on who should be allowed to set snares there'.[128] In short, there was not 'ownership' in the western sense of the word. Rather, there were the kin groups who held mana and rangatiratanga in a particular area (comprising both its land and resources) and who held deciding power over what should happen there, and there were those who were assigned use rights within the area (who sometimes included external individuals or groups). Moreover, the assignment of those use rights could be adjusted to suit changing circumstances.

Over the centuries, Māori throughout New Zealand developed a deep physical and spiritual connection with their natural-resource taonga. In the case of the geothermal resource, those Māori who depend on it also learned how to monitor and care for it, and their solid understanding of how the geothermal system worked was mirrored in the way they mediated its use amongst different groups, under customary law.

In assessing how this customary law worked in practice, the CNI Tribunal considered there were three layers of Māori rights over the geothermal resource. These rights were:

- over geothermal surface features that form part of the bundle of rights akin to those associated with land ownership;
- over the specific fields; and
- over the subterranean resource being the underlying common heat and energy systems known as the TVZ.[129]

Rights to the first layer were held by the 'particular hapū or iwi associated with the land and geothermal surface features' concerned. This group exercised authority and controlled access to the geothermal resource at the site in question, and was also the kaitiaki or stewards of the surface features.[130] At the level of the field in which the surface manifestations occurred, rangatiratanga was held by all the associated hapū or iwi. Lastly the subterranean resource was held by all the hapū and iwi of the central North Island 'because they all depend on the presence of the TVZ to sustain their fields and geothermal surface features'.[131] The customary rules of allocation, said the CNI Tribunal, not only regulated who could use the resource but protected it from degradation. Furthermore, the iwi who have traditionally held rangatiratanga over particular aspects of the resource see themselves as having 'a continuing responsibility to act as kaitiaki'.[132] We will return to the matter of rangatiratanga later, when we consider the present-day position.

Since the CNI inquiry, the Wai 262 Tribunal has gone on to discuss kaitiakitanga in some detail and has expressed the view that a kaitiaki relationship:

> is not the transactional or proprietary kind of the Western market, and does not rest on 'ownership'. Rather, like a family relationship, it is permanent and mandatory, binding both individuals and communities over generations and enduring as long as the community endures.[133]

Geothermal surface features. Geothermal activity on the Tongariro–Ketetahi geothermal field is revealed in surface features like this flow of boiling water.

(2) *Crown views of resource ownership and management*

When Pākehā arrived in New Zealand, they brought with them their own views of how the world worked and how matters of land and resources should be regulated. Integral to this view was that land and resources could indeed be owned, that ownership was generally exclusive, and that land boundaries were hard-edged. There were, however, inconsistencies in the system. While what was on and in a person's land generally belonged exclusively to that person, there was also the view that some natural resources were not to be regarded as part of the land bearing them and could be treated differently from that land in law. One such example is that the Crown has, since Elizabethan times, claimed a prerogative right to any gold and silver discovered, thereby separating ownership of those minerals from ownership of the land bearing them.[134] The idea of separating land and resources in this way is particularly important in our discussion of geothermal issues.

In May 1858, under the English Laws Act, the British Crown decreed that all English laws existing as at 14 January 1840, 'so far as applicable to the circumstances of the said Colony of New Zealand', should be deemed to have come into force in New Zealand as of that date.[135] Māori custom law now had to be fitted into British law, or give way. However, given the very limited geothermal resources in Britain, there was understandably no parliamentary legislation and little English case law dealing with the ownership or management of geothermal features or fields.[136] Italy had volcanoes and active geothermal areas, as did Iceland (as referred to by Hochstetter), but the only hot water springs in Britain were those at Bath, used for drinking and bathing, and that site appears to have been

under the control of successive local governing powers from the time of the Romans onwards.

Given the British lack of experience with geothermal resources, the analogy of water was used by the colonial government in New Zealand as being the nearest equivalent. As a result, geothermal resources were deemed incapable of ownership in their natural state. However, while the water analogy was perhaps relevant in terms of thermal fluids (including gases), it failed to take account of the heat and mineral aspects of the resource, and the first of these was later to acquire particular importance because of its centrality to the production of geothermal energy.

Under imported English common law, ownership of water can occur only when the resource has been extracted and contained. This is known as the 'doctrine of capture'. That is, the water cannot be 'owned', until it is extracted and contained by either the landholder or another person who has been granted consent to extract the water. Where the water – for example, a spring or pond – is contained solely within one landholding, this is comparatively straightforward. However, the Tribunal's *Petroleum Report* had this to say about the doctrine of capture:

> Under the common law, a landowner is unable to prevent a neighbour from draining the waters from under his or her land, providing that the means of abstraction (pumps and drills) remain within the neighbour's property.[137]

As a 'water' resource, the implication for geothermal fluids running under the land of one or many owners was that any landowner could extract as much geothermal fluid as he or she liked, regardless of existing use elsewhere on the geothermal field.[138]

This water analogy was retained in the first geothermal-specific legislation in the early 1950s, under which the Crown assumed management rights, in the interest of 'public good'.[139] When the Crown consolidated its regulation of natural resources under the Resource Management Act 1991 (RMA), it again retained the water analogy and that position has not changed in the years since then. Crown counsel thus argued before this inquiry that the resource is incapable of ownership and that the Crown's assertion of the right to management is a 'legitimate exercise and reflection of kāwanatanga.'[140]

Querying thst position, Ngāti Tūwharetoa claimant George Asher suggested to us that, under the Thermal Springs Districts Act 1881, the Crown had effectively recognised that Māori had 'unfettered rights' to the resource. He pointed out that, under section 5(3), the Governor was empowered to '[t]reat and agree with the Native proprietors for the use and enjoyment by the public of all mineral or other springs, lakes, rivers, and waters'.[141] Furthermore, section 6 vested in the Governor the power to,

> with the consent of the Native proprietors, to be ascertained in such manner as he may think fit, do any of the following things: Manage and control the use of all mineral springs, hot springs, ngāwha, waiariki, lakes, rivers and waters, and fix and authorise the collection of fees for the use thereof . . . .[142]

By Mr Asher's reading, the Act constituted acknowledgement by the Crown that in 1880 Māori were the proprietors of the resource wherever it occurred. However, closer examination of the Act shows that its provisions were intended to apply only to specified areas (one of which was East Taupō County, of which more below). Furthermore, the natural meaning of the language used throughout the Act indicates that the resources were being regarded as surface features on the land. Under that interpretation, where a parcel of land was acquired from Māori, their control over any geothermal feature contained within it ceased. A natural and ordinary reading of the Act thus suggests that while the Crown may have acknowledged Māori as the proprietors of geothermal land in the areas covered by the Act, to which they could contol access, it did not explicitly recognise their rights over the resource itself.

An analysis of schedule 1 to the Counties Act 1876 reveals that part of our National Park inquiry district came within the boundaries of what was East Taupō County. This area was therefore covered by the Thermal-Springs Districts Acts of both 1881 and 1908.[143] However, most of our district lies outside the bounds of what was East Taupō County.

A number of Tribunal precedents apply to this discussion. The Tribunal's *Mohaka River Report* is relevant. The claimants in that inquiry argued that the Crown had usurped their rangatiratanga rights to control the river, by passing the Water and Soil Conservation Act 1967, which vested regulation rights in the Crown.[144] That Tribunal found that the Mohaka River was a taonga of Ngāti Pahauwera as at 1840 and that possession was never ceded to the Crown. Any legislation which failed to give effect to the claimants' rangatiratanga status over the river was therefore inconsistent with the Crown's Treaty obligations. As with other Tribunal reports, the *Mohaka River Report* agreed that the Crown has important powers in the management of natural resources in the interest of conservation but that these rights are 'qualified by the tribe's tino rangatiratanga'.[145]

Secondly, the petroleum Tribunal and the CNI Tribunal both looked at the relationship between land alienation and resource alienation. In 2003, the petroleum Tribunal found that where Māori lose legal rights to land or resources 'by means that are inconsistent with Treaty principles', they can nevertheless be deemed to retain what it termed a 'Treaty interest'.[146] Thus, for example, where Māori never knowingly or willingly alienated their rights to a resource, a 'Treaty interest' in the resource remains. In relation to the geothermal resource in the central North Island, the CNI Tribunal was of the view that in addition to a 'Treaty interest', a 'customary interest' could be held to subsist in their inquiry area because, collectively, CNI iwi and hapū still held much of the land overlaying the various fields:

> Therefore, and despite some of the land being alienated . . . the claimants continued to have ongoing customary and Treaty interests over their geothermal taonga, specifically their fields and the TVZ, where overlaid by or within the vicinity of Māori land.[147]

We take 'customary interests' to mean proprietary interests consistent with possession under customary law. The CNI Tribunal further went on to comment that even if their view was not correct at law 'it is certainly the position in terms of the Treaty of Waitangi'.[148] In Treaty terms, the onus is on the Crown to acknowledge and provide for Māori rights to their taonga.

We also draw attention to the findings of the Whanganui River Tribunal, which stressed that Māori had traditionally not conceived of possession as ownership in the European sense. However, said the Tribunal, possession had become 'equated with ownership for the purposes English or New Zealand law'. Similarly, it said, although Māori 'thought in terms of territory rather than property', what they possessed had been 'deemed to be a property interest for the purposes of law', and had been treated as a propery interest by the courts.[149] Thus 'possession of territory' has been converted, under Pākehā law, to 'ownership of property'. Of importance to our discussion of the goethermal resource is that the Māori idea of 'territory' comprised both land and resources, which under Pākehā law can be treated separately from each other.

The Whanganui River Tribunal concluded that what might be seen as 'a modern Maori focus on matters of "property" and "rights"' derives from the fact that they had been 'forced to reconceptualise their customs to make them cognisable in English law'.[150] Picking up on this comment, the recent *Stage 1 Report on the National Freshwater and Geothermal Resources Claim* posed the question: 'How are the rights and laws derived from Maori culture to be understood or given effect (so that they might be protected) in New Zealand's laws?'

The Crown's position from the 1950s, as we have noted, is that it has a right to manage the geothermal resource as a 'legitimate exercise of kāwanatanga'. The CNI Tribunal found that the position with regard to thermal springs is that '[n]o special consideration was given in early legislation to ensure that Māori . . . could participate in the management of the springs despite the alienation of land'.[151] That finding applies equally to the development and management of the geothermal resource generally in the National Park district.

A question often raised in relation to other natural resources is also pertinent to the geothermal resource – namely, when Māori alienated land, did they understand that they were also losing control of related resources?

A relevant case that can be cited is that of Lake Ōmāpere, where the Crown asserted ownership of the lake bed. When the matter of the lake was brought before the court in 1929, Judge Acheson, recognising that from a Māori perspective, bed and waters could not be divided, observed that had they considered that they were to lose their ownership of the lake, the chiefs of Ngāpuhi would not have signed the Treaty and their numbers would have been sufficient to ensure the rejection of the Treaty in 1840. He concluded that there could be 'no presumption either in law or in fact that the sales of some lands to the Crown adjoining Lake Omapere carried with them rights to portions of the lake or of its bed'.[152]

An analagous situation occurred in relation to the signing of the Fenton agreement in 1880, which led to the establishment of the township of Rotorua. Years later, during the court's inquiry into the Rotorua Lakes in 1918, Captain Gilbert Mair, who lived among the Te Arawa people, informed the court that Fenton would never have secured Ngāti Whakaue's agreement to his proposal had there been any suggestion that the lakes were not Māori property. Had the government asserted otherwise, Mair contended, a situation potentially more serious than the Waitara affair might have arisen.[153] The case is particularly relevant to the present discussion because in the Rotorua area, water, geothermal heat, and steam were so often present in combination (and in the case of Lake Rotorua, within the lake itself). Mair's opinion as to the consequences of the Crown asserting ownership of the lakes might therefore be considered equally applicable to the geothermal resources of the area.

At the heart of the matter is possession and control of the resource as opposed to possession and control of the associated land. It is an important distinction to make. Māori maintain that through their customary ties and continued connection to the geothermal resource, they still hold communal rangatiratanga and kaitiakitanga over the underground resource regardless of whether they have retained the land above the resource.

Individualisation and alienation of land in and around the TVZ has however made it far more difficult for iwi to assert their rangatiratanga and kaitiakitanga over their taonga. Ngāti Tūwharetoa claimant Paranapa Ōtimi submitted in both the CNI and National Park inquiries that,

> As a Hapū, we need to maintain sustainable management. By individualising the land, the crown through its Māori Land Court processes have taken away hapū's rights to exercise their views on the resources under the land. That's why it's always been difficult for us to get Hapū consent as opposed to landowners' consent. If a geothermal power station was to be developed in the Waihī field, then legally it is the consent of the landowners that counts, not the Hapū, and that is not the way it should be.
>
> The issue of mana whenua in the first instance is the right of the Hapū. Rights given to individuals and others by the Hapū must guarantee the resource sustainability on behalf of the Hapū, and future generations of the Hapū.[154]

This is to say that the Crown's management regime has served to take the power away from the hapū or iwi groupings who have traditionally asserted authority over a particular geothermal field. The kaitiaki responsibilities of the tangata whenua have been bypassed by a management structure which, as Mr Ōtimi points out, requires consultation with landowners only (be they Māori or Pākehā), rather than acknowledging the kaitiakitanga of Māori kin groups over the natural resources of that land.

The Crown's position is that it does not consider that the geothermal resource is capable of ownership; that regulation of it is a legitimate exercise of governance under article 1; and that the RMA strikes an appropriate balance in recognising the interests of Māori. But the Crown is silent on how the article 2 property rights of Māori fit into this picture. When the Crown guaranteed to Māori 'the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties' (or taonga, in the Māori text) so long as it was their wish to retain them, it did not add a rider that the Crown itself would decide what constituted 'other properties', nor that it would restrict the manner and extent of their ownership. In the case of the geothermal resource, it cannot be

said that there was a clash of legal understandings about ownership: as we have already seen, English law was deemed to have been introduced as at 14 January 1840 only 'so far as applicable to the circumstances of the said Colony of New Zealand'. The British effectively had no law governing the ownership of such phenomena and thus, in our view, the only law that was relevant at the time was Māori customary law. If the Crown subsequently wished to take the position that the resource was analogous to water and not capable of ownership, then the abrogation of Māori rights in the resource should at the very least have involved prior consultation. But there is no evidence that there was any discussion with Māori about them relinquishing property rights with respect to either water (where Māori customary law differed from British law) or the geothermal resource, and no evidence of informed consent. In our view, therefore, the tangata whenua who traditionally exercised rangatiratanga over the geothermal resource retain, at the very least, a Treaty interest in it at all levels. In some instances, as we discuss below, they may also retain residual proprietary interests. In that context, we note that the Crown has said, in the recent urgent inquiry into the claim about the freshwater and geothermal resources, that although full ownership of either of these resources is not an option, it is prepared to discuss with iwi 'whether or not Maori have "property rights and interests" that amount to something other than full ownership of water'.[155]

(3) *Ketetahi: a case study*

How has the Crown treated Māori property rights in the geothermal taonga at Ketetahi? The claimants raised significant issues with regard to the Crown's actions through the court process in the nineteenth century, and its pursuit of their land and geothermal taonga in the twentieth century. The four issue questions that this case study will address are:

- Did the Native Land Court title determination process for the setting aside of Ketetahi Springs operate to protect Māori possession of their taonga in accordance with custom?
- Did the Native Land Court fairly represent the owners' wishes in its dealings with the Ketetahi block?
- Did the Crown respect the desire of Māori to retain ownership over time?
- Has the Crown protected the owners' property rights at Ketetahi?

We turn to the first question.

(a) *Native Land Court title determination process for Ketetahi Springs:* The Ketetahi Springs and the associated geothermal resource were possessed according to Māori custom until the 1880s. During the latter part of the Taupōnuiātia hearing in September 1887, however, the Native Land Court issued its title order for the Ketetahi block, which was to be sectioned out from Tongariro 1 and retained by the same seven tribal representatives who were listed in Tongariro 1: Te Heuheu Tukino, Matuaahu Te Wharerangi, Paurini Karamu, Pātena Kerehi, Keepa Puataata, Ngāhiti Rangimanawanui, and Tūreiti Te Heuheu.[156] It seems that the seven rangatira had themselves sought to have Ketetahi sectioned out as a separate block, and in making the order it did, the court was giving effect to section 59 of the Native Land Court Act 1886, allowing it to respect and implement 'any arrangement voluntarily come to by the Natives'.[157]

The Ketetahi block is often referred to as a 'reserve'. However it is important to note here that it was not a 'reserve' in the legal sense of being specifically set aside from purchase for use by Māori, to ensure a 'sufficiency' of land for them as defined by the legislation in force at the time. But the fact that people (including the Crown) kept referring to it as a reserve tends to suggest they understood it as being something that should be protected – and possibly protected for Māori. On the Māori side, as we saw in chapter 7, it seems clear that the seven persons were intended to be, and were understood to be, representatives of the community of owners. They were to hold and preserve their taonga at Ketetahi Springs for the spiritual and cultural, social, and medicinal use and benefit of the owning hapū.

The problem was, of course, that the land law of the

time did not provide for communal title. The seven were not legally charged with responsibility for management of the area on behalf of Ngāti Tūwharetoa, or even any particular hapū. They were absolute owners. In chapter 5, we concurred with the Tūranga Tribunal in its consideration of nineteenth-century Māori land law. That Tribunal found that the Native Land Act 1873 'did not make provision for community ownership and management of Māori land'. Instead, it said, the Act:

- made Māori titles usable in colonial commerce only through sale or lease;
- made sale or lease achievable only by the transfer of individual undivided interests;
- rendered community decision-making irrelevant thereby; and
- did all this in the face of the clearly expressed wishes and actions of all but a few Māori.[158]

Article 2 of the Treaty's Māori text guaranteed tino rangatiratanga expressly in respect of 'whenua' (land), 'kāinga' (villages), and 'taonga katoa' (all things treasured). Crucially, the promise was made explicitly to all levels of rights holders in Māori society: 'ki nga rangatira, ki nga hapū, ki nga tangata katoa' ('to the chiefs, hapū, and all the people').[159] Individualisation of title breached this article by not offering the option of, for example, hapū or iwi title.

We agree entirely with earlier Tribunals' findings on the shortcomings of the land legislation in its ability to protect Māori possession and rangatiratanga over their taonga. In our view, their findings apply directly to the circumstances that claimants described in the Ketetahi Springs case – in particular, that the nineteenth-century title system was not an appropriate way of protecting tribal taonga. In essence, Māori owners obliged the Crown greatly by aquiescing in the Crown's individualisation process.

Individualisation of title was compounded by the laws of succession determined by various native land Acts and policies. In 1865, legislation was introduced requiring succession to Māori land to be in accordance with New Zealand law 'as nearly as it can be reconciled with Native custom'.[160] Traditional Māori custom or tikanga required occupation of or connection to the land. However, in the April 1867 *Papakura* succession case, Chief Judge Fenton found that, where a landowner died without a written will, all children should inherit equally the shares of both their parents.[161] Despite the existing Māori custom, by the 1880s Māori had adopted the equality principle and as a result land was increasingly fractionalised among a growing number of owners.[162]

The CNI Tribunal found that there were no titles available in British law appropriate to recognise Māori possession of areas that were 'properties of especial importance to tribal communities'.[163] Referring to the Whakarewarewa thermal springs, the Tribunal said:

> Clearly what should have been available to the collective hapū at this point was a community title for the springs – perhaps vested in a trust in which all the hapū were represented. The court knew that the springs were a resource that could not sensibly be divided up among them. From the point of view of the hapū, a collective title would have protected the springs from alienation, and enabled hapū management.[164]

Individualisation of title to land that was of importance to these large tribal communities left them particularly vulnerable. As in the case with Whakarewarewa example, the CNI Tribunal argued that that the lack of an appropriate 'community' title to tribal land was 'compounded' when this land contained tribal taonga, and suggested that '[s]uch taonga, no less than land, might have been held in trust'.[165] Māori were, in effect, 'prejudicially affected by the failure to provide for a community title to important natural resources'.[166]

Without such title there was little legal protection afforded Māori in their attempts to exercise tribal management and control of their taonga and to retain these resources for their descendants. Taonga could be acquired simply through the purchase of land or shares in land.[167] This process effectively diminished Māori authority and 'disempowered communities' wanting to enter the new economy. The CNI Tribunal found that available forms of title 'neither recognised customary imperatives nor met Māori aspirations for the future governance, management and use of their lands'.[168]

Ngāti Hikairo submitted that it was the lack of appropriate community title over the tribal taonga at Ketetahi which has caused them much grievance since the block passed through the Native Land Court in 1887. The laws of succession saw the block passing to the descendants of the seven rangatira, as owners of the block, 'even though Ketetahi are of enormous significance to all the hapū.'[169] Bubs Smith for Ngāti Hikairo summarised the essence of the problem:

> To me, there is anguish in the fact that the hapū has been individualised through the Native Land Court process and disassociated [from] the whenua where only 'representatives' of the hapū were named as 'owners'. My concern is not really to do with '*who was named as an owner*' but, more so with '*who was excluded*' from the list. [Emphasis in original.][170]

Concern for those excluded from the title was also raised by another Ngāti Hikairo claimant, Ariki Piripi (Alec Phillips). Mr Piripi complained that the court, with its lists of owners, did not 'reflect our interests in these areas' – interests which included Ketetahi and Tongariro maunga.[171] He alleged that 'people from outside the area ended up as owners on areas that belonged to us'.[172] A significant part of the problem is that some Ngāti Hikairo descend from the line of Te Rangihīroa while others descend from Te Whareangi, son of Te Maari I. Te Whareangi was included in the list of seven owners, but Te Maari's elder brother Te Rangihīroa was not. Those who descend from the latter contend that their interests were disregarded.[173]

This example illustrates the consequences for Māori who were not direct descendants of the individuals listed in the original title. Simply put, many have been left out from their inheritance by the imposition of a process that was foreign to them. Dr Severne described a similar situation:

> My mother is not an owner in Ketetahi springs, even though her grandfather Kohatu Poinga is buried below the springs at Pāpakai with his sister Tangiariki. Descendants of Tangiariki are owners represented by the Ketetahi Springs Trust. No one will question that Kohatu Poinga the tohunga was closely associated with Ketetahi. Clearly I whakapapa to the land but I have no legal right of access as a member of the hapū. This separation of land from hapū is the result of individualisation of the land, by the Crown through its Māori Land Court processes. In turn hapū rights to exercise their views on the resources under the land have been marginalised.[174]

In our view, the case of Ketetahi Springs is a prime example of the harmful effects of the Crown's land individualisation policies. No matter how strong the associations of others, the court's order accomplished an act of dispossession of all but those seven rangatira listed on the title. The Crown's position that exclusion from ownership is a consequence of the tribes' decisions to list those particular seven rangatira on the title to the block, is unsupportable.[175] This position is to deflect responsibility away from the system. The seven became the legal and sole beneficial owners as tenants in common and the share of each stood to be succeeded to on death by such of their respective descendants as might be named in their wills, or equally among their descendants where there was intestacy. Thereafter, the original act of dispossession was compounded as each inheritor died in his or her turn and further successions were cemented in place by the court. The Crown policy enacted in the native land legislation of the nineteenth century had effectively ended the possibility of community ownership and control, in breach of the express guarantee contained in article 2 of the Treaty.

In the case of Ketetahi, the fractionation of interests has in turn created problems in terms of decision-making over the block. In 1887, there were seven owners. However, by 1896 four of these rangatira had died and land had passed to their descendants: by 1913 there were 21 owners and by 1955 the number had grown to 67. But their individual holdings still added up to only seven shares in total.[176] By 2006, the seven shares were divided among 329 owners, some holdings being as small as 0.0003 of a share. Today, the land is vested in an Ahu Whenua trust – the Ketetahi Trust – which is administered by eight trustees on behalf of over 500 owners. The total number of shares still has

not changed: it remains at seven. Most owners therefore hold only a miniscule fraction of one share.

A few owners, however, are rather better placed. Amongst these are one owner at 0.6667 shares and three each holding 0.25 shares, one of whom is the Crown (we discuss the circumstances by which the Crown acquired this share in our next section). Thus, the Crown, as a result of its policies over time, has risen to be one of the top four owners in the block, with only one whānau trust being a bigger shareholder.[177] As a major shareholder, the Crown has potentially significant power to influence the fate of this block, should it chose to do so. At the same time, as noted above, many who can whakapapa to the land are excluded from any shareholding at all.

We now turn to assess the title Māori were left with as a result of the land court system. Our concern here is to determine whether that system operated in the least to protect Māori possession of their taonga. We concluded in chapter 6 that it is likely that Pātena and Tūreiti made the application with the concurrence of their co-owners. The reason for the application was to exclude the springs from the intended gift of the peaks or the sale to the Crown of the interests in the outer peak blocks.

The claimants argued that, although the intention was to section out the area containing the springs, so as to prevent their alienation to the Crown when it acquired Tongariro 1C, the court order describing Ketetahi contained only 20 acres and did not include the springs. The order, according to the claimants, was based on 'erroneous boundaries', which the Crown later took advantage of in order to effectively deny them their rangatiratanga of the taonga.[178]

In order to assess the validity of this claim, we need to review the events surrounding the creation of the Ketetahi block. On 21 September 1887, the court issued the following interlocutory order for the Tongariro 1 block, importantly detailing the court's interpretations of the boundaries:

> Patena Kerehi or Hokopakeke and Tureiti te Heuheu applied to the Court . . . [for] a piece of land round Ketetahi to be contained within two lines drawn ten chains on each side of Ketetahi (marked upon plan) and five chains above towards the summit of the mountain, the two lines twenty chains apart to run parallel to the boundary of Tongariro No 1 block.
>
> This piece to be awarded to the seven owners of Tongariro No 1 and block to be called Ketetahi.
>
> The interests of Te Heuheu Tukino in this portion to be equal with those of Patena Hokopakake and Matuahu separately.
>
> . . . . .
>
> Court ordered certificate of title should issue in favor of undermentioned individuals on properly certified plan being deposited in the Native Land Court Office Auckland.
>
> Te Heuheu Tukino
> Matuaahu te Whareraangi
> Paurini Karamu
> Patena Hokopakake
> Keepa Puataata
> Ngahiiti Rangimanawanui
> Tureiti te Heuheu[179]

But how was the cadastral boundary of the block determined? The evidence on this point is slim. The minutes outlined above described the boundary presumably put forward by the applicants. Three days after these minutes were recorded, the court issued its final order for the Ketetahi block. The Order vested the block in the seven owners and described the block as 'containing by estimation twenty acres'.[180] With no objections, Judge D Scannell directed that 'a certificate of their Title be issued in pursuance of the Act when a plan of the said area has been finally settled by the Court'.[181] Unfortunately, that is the only contemporaneous evidence indicating how the court came to determine that the block comprised 20 acres.

When John Te Herekiekie Grace in the native department reviewed the events in 1930 he puzzled over how the court, in 1887, had reached the estimated area of 20 acres.[182] His report concluded: 'One thing is certain, and that is, that the Reserve cannot be restricted to an area of 20 acres and at the same time conform to the boundaries laid down by the applicants.'[183] Mr Grace suggested two explanations for the initial error. The first was that the court had 'arbitrarily' decided to restrict the size of the

The Ketetahi Springs area. Māori wanted this region protected and kept for future generations. In 1887, an area around the Springs was awarded to the seven owners of the Tongariro 1 block to be called Ketetahi.

block to 20 acres, irrespective of the owners' wishes laid out in their application. The second was that the court, in good faith, had intended to respect the wishes of the applicants 'but failed to do so owing to its being mistaken as to the site of the Spring[s] or as to the boundaries desired by the applicants'. The 1930 report went on to determine that 'the latter explanation appears to be the only acceptable one.'[184]

We agree that it is unlikely that the court deliberately disregarded the applicants' wishes. There is simply no evidence to suggest that was the case. Section 56 of the Native Land Court Act 1880 stated that

> It shall be lawful for the Court, in carrying into effect this Act, to record in its proceedings any arrangements voluntarily come to amongst the Natives themselves, and to give effect to such arrangements in the determination of any case between the same parties.[185]

As discussed in chapter 5, the court was generally responsive to title arrangements brought forward by tribal representatives during the Taupōnuiātia proceedings, and there is no reason to think the approach adopted by the court on this occasion was any different. That being so, how could the court be so mistaken in its title order for the springs? A likely reason seems to be that there was no firm identification, at the time, of the area under discussion. Dr Coombes notes that the minutes of the first day's proceedings did not make any reference to a precise area or location.[186] Whether this reflects a lack of precision on

the part of the judge or careless minute taking, it seems to have resulted in not all parties being clear on either the area or boundaries.

Much of the uncertainty appears to have come about through lack of any adequate map or plan. The evidence suggests that, at the time, all that the court had before it was a survey map of the large Ōkahukura block (plan WD 2178), on which someone had then added in, by hand, the approximate site of the springs, marking them by 'a small black circle (Indian ink)'.[187] No official, though, had gone up to the Ketetahi site to survey it on the ground. As we have already seen in chapter 5, proceeding without a proper survey was permitted under the Native Land Court Acts of 1880 in cases where original title was being determined, as long as full survey was carried out before the certificate of title was issued. Counsel for Ngāti Tūwharetoa probed with Dr Keith Pickens whether it was also the case where subdivisions were being made:

> **Ms Feint:** . . . you have indicated in your report that as a result of the subdivision of Ketetahi being undertaken by virtue of a sketch plan you ended up with this incongruous result where only 20 acres was initially realised.
> **Dr Pickens:** Yes that's quite a farcical situation and it results from use of a sketch plan which is inconsistent with the amount of land that is contained in the Court's minutes. It's again a reflection of the need to make determination on the base of accurate survey plans.
> **Ms Feint:** Well how was it possible for the subdivision to proceed without there being a survey undertaken?
> **Dr Pickens:** Because under the 1880 Act you don't need a survey, you need a sketch plan.
> **Ms Feint:** Even for subdivision as opposed to initial title investigation
> **Dr Pickens:** Yes.[188]

As it happens, however, the Native Land Court Act 1886 had come into effect the year before the Ketetahi hearing. That Act stipulated that, if the court proceeded to subdivision 'in the course of or at the close of an investigation into the title to Native land', even the resulting subdivision orders were not to be signed until 'a certified plan of [the land in question] shall have been furnished to and approved by a Judge'.[189] The court's consideration of the application for Ketetahi to be cut out of Tongariro 1 came as a continuation of the subdivision hearings for Tongariro 1, which in turn (as discussed in chapter 5) were a continuation of the initial Taupōnuiātia title investigation.[190] Thus, had the new Act been followed, a proper survey plan should have been drawn up before a subdivision order could be issued. However, a crucial flaw in the Act, from the point of view of the Ketetahi owners, was that section 115 allowed 'any incompleted procedure' (that is, commenced pre-1886) to be continued under the old 1880 legislation if the presiding judge so chose.[191] Judge Scannell, opting for this speedier alternative, signed the Ketetahi subdivision order on 24 September 1887, specifying only that a 'properly certified plan' would be needed before the certificate of title was finalised, thereby complying with the 1880 legislation.[192] By doing so, the case could be settled without the delay of waiting for a full survey.

Not till 1930 did the Native Land Department attempt to clarify what had occurred. On 30 January of that year, the under secretary wrote to the registrar of the court in Whanganui enquiring whether the subdivision order had actually been signed or not (presumably having in mind the 1886 legislation):

> I shall now be glad to know if the Order mentioned was actually drawn up and signed by the Judge who made the same (Judge Scannell) or to what extent such Order was completed. If the Order was drawn up and signed I shall also be glad to have a copy of the same showing the plan endorsed on the original Order.[193]

Notes supplied to the under-secretary the following month confirmed that 'the Court Order for the Reserve [*sic*] was drawn up and signed by the presiding Judge (Judge Scannell)'. A copy of the order, attached to the notes, had no accompanying plan.[194]

After the 1887 signing of the order, matters relating to Ketetahi appear to have lain dormant for a few years. Then, in 1892, officials at the survey office compiled a plan of the Ketetahi block based on the description in the

court minutes. This plan showed the block to contain 20 acres, as the order of 24 September 1887 had described. But later internal correspondence revealed that neither the compiler of the plan nor anyone connected with its preparation had visited the springs or pegged the block on the ground. Consequently, the plan miscalculated both the location and extent of the springs. Despite these serious shortcomings, Judge Scannell approved the plan in November 1893 and issued a certificate of title on 24 June 1894.[195] Thus did it come about that the title order held by Ngāti Tūwharetoa for over 80 years contained significantly fewer acres than the tribe had originally sought and related to a plan denoting an area that did not even include the springs.

As we have discussed, the tribe wished to retain the springs for their own communal, spiritual, and therapeutic use and benefit: it was why they had sought separate title for them in the first place. Clearly, then, a plan which did not even include the main spring and hot stream (let alone any of the other springs) was entirely at odds with the obvious intentions of both the owners and the court. As Dr Pickens commented:

> Ketetahi and the other Okahukura subdivisions demonstrated the necessity for proper surveys of land to be made and the difficulties that could result if this was not done prior to issuing title orders. The essential point, of course, in these two cases was that sketch maps were being used to subdivide land. This was quite different from the use of a sketch map during an original title investigation, and much more risky.[196]

A short time later, however, an opportunity presented itself to rectify the serious error in the survey office's plan. Government surveyor William Cussen surveyed the Ketetahi block in 1895 when in the region retraversing the boundaries of the Ngāpuna and Ōkahukura 1 blocks. Cussen explained to the surveyor general in Wellington, Stephenson Percy Smith, why he departed from his brief:

> Re Ketetahi – At the request of the Natives and being in the neighbourhood I surveyed the above block although I hold no authority for the survey, and would respectfully ask that the necessary authority for survey to be obtained and my account for the same to be passed.[197]

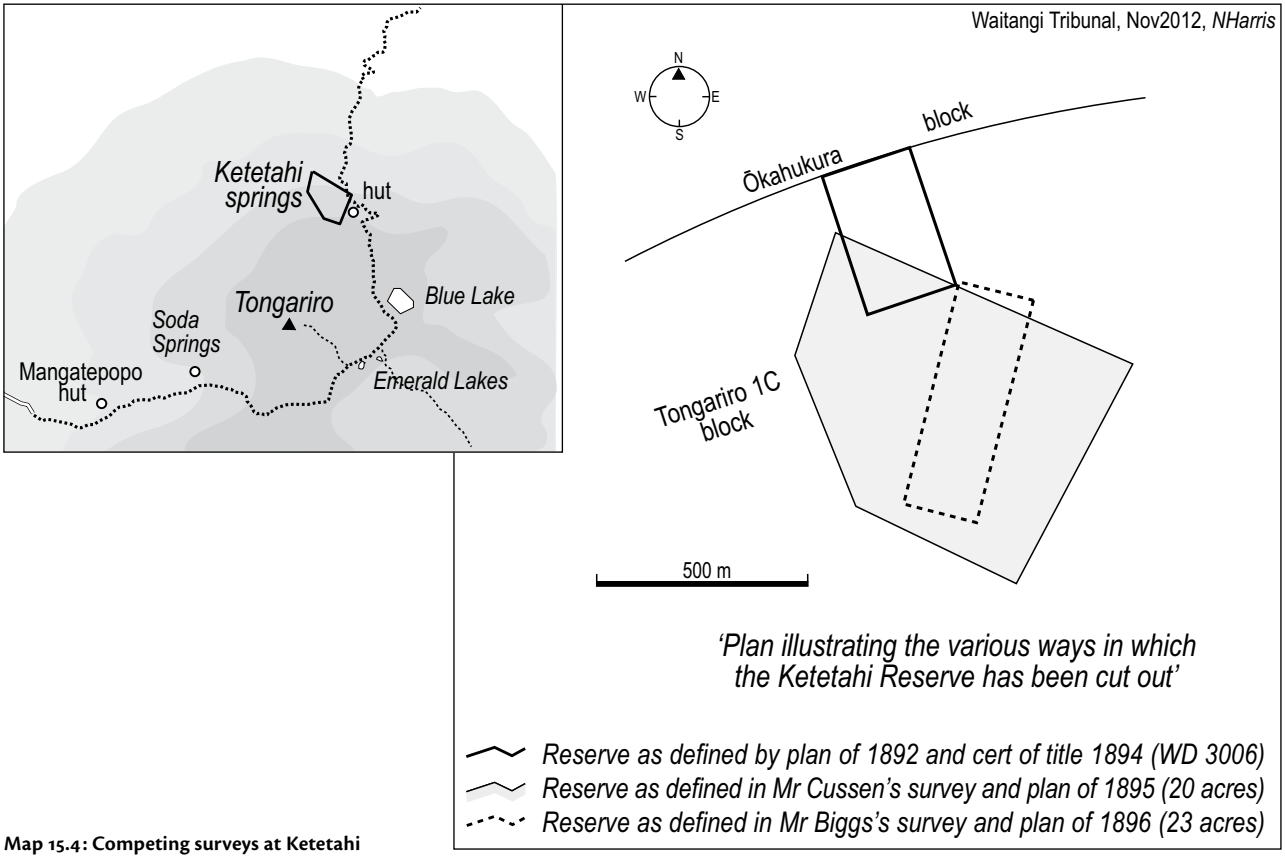
Dr Coombes was unable to determine from the available evidence exactly how Cussen knew that a survey of the block was necessary. He speculated that Cussen understood the situation from either land court records or from communication with his brother, Laurence Cussen, who had previously surveyed the summit of Tongariro. Whatever the case, the chief surveyor in Auckland advised Percy Smith that

> Mr Cussen has surveyed without authority 93 acres taking in all the Hot Springs – whilst the Court plea is strictly for about 20 acres and leaves some of the Springs outside.[198]

According to Dr Coombes, Percy Smith was clearly annoyed that Cussen's survey did not conform to the court's order. Extending the size of the Ketetahi block to 93 acres meant reducing the Crown's interest in the springs, as it was in the process of purchasing the Tongariro 1C block.[199] Percy Smith, therefore, advised the chief surveyor that the order must be carried out for twenty acres, not 93 acres, and instructed him: 'In the mean time, please do not pass the [Cussen] plan.'[200]

The Survey Office responded in August 1896 by compiling a further plan that did conform to the court's order of 20 acres. The plan simply cut off that amount of land from the western side of the Cussen survey and called it 'the Reserve'.[201] Tellingly, Percy Smith advised the chief surveyor (Auckland), in a memorandum on 18 August, that

> I do not think the Natives will be satisfied with the boundary of Ketetahi as you have sketched it, for the reason that the two hot springs shown within your proposed reserve of 20 acres are really nothing but fumaroles, whereas the springs on the main stream are good bathing places. I think before you definitely mark off the reserve on your map, that the 20 acres should be surveyed on the ground, and the surveyor be told to arrange with the Natives, so far as the Order of Court will allow him, so as to make a division of the springs between the Government and the Natives.[202]



Map 15.4: Competing surveys at Ketetahi

We note here that the original court order was for a 'piece of land round Ketetahi' and made no reference to the springs being divided between the Crown and Māori owners.[203]

The Crown acknowledged in closing submissions that Percy Smith's August 1896 direction to 'divide the Springs between the Government and Maori did not reflect the original intention of the owners to reserve all of the Springs from Crown ownership'.[204] In fact, as Dr Coombes highlighted, the idea that a future surveyor should negotiate this division was entirely Percy Smith's own suggestion. Furthermore, since it was he who was to secure for the Crown a substantial interest in this taonga, it is difficult to ascribe honourable intent to his subsequent actions, as we will discuss below. Indeed, as Dr Coombes noted, Percy Smith adopted a similar stance in respect of the Tokaanu hot springs, claiming (to considerable controversy) that Māori and the Crown were to have half of the springs each because they were located on a Crown-granted native reserve.[205]

It appears, therefore, that what began as a mistaken belief by the court as to the area of the Ketetahi block – an error that could have been avoided had the judge chosen to follow the (safer) 1886 requirement for a proper map to be drawn up before the subdivision order was signed – was then clung to stubbornly by the chief surveyor, Percy Smith, even in the face of the emerging facts. The Survey Office requested a further survey to 'correct' Cussen's map

and this was conducted by H J Biggs in 1896. Providing instructions to Biggs, William Kensington, on behalf of Percy Smith, explained the problem with Cussen's plan:

> This area is altogether wrong and not at all in consonance with the order of the Native Land Court which is only for about 20 acres or so . . . You will have to get the owners – or some of them – as shown on accompanying list to meet you on the ground to agree to a fair division of the springs between the Natives and the owner [the Crown] as far as the order of the Court will allow (as indicated by the Surveyor General in his memo. of the 19th August.)[206]

In closing, Kensington emphasised to Biggs that his new plan should follow 'as nearly as possible the Surveyor General's instructions' and that he (Biggs) 'must make the natives thoroughly understand that there is no chance of their obtaining the area surveyed by Mr Cussen, and which was made without authority or instructions'.

Having surveyed and pegged the block on the ground, Biggs filed a plan with the Survey Office in Wellington. In doing so, Biggs mentioned the difficulties of the task, including achieving a 'fair division of the springs' between Māori and the government:

> I must say that I do not quite understand what I was intended to do. The order of the Court . . . says that the Reserve is to be 20 chains wide and 5 chains up the hill, but it gives no boundary for the northern end. This order would not agree with the way the Surveyor General wished the Reserve to be pegged. In his letter he states that a fair division of the Springs should be made between the Māoris and the Government. Now if the Reserve is made 20 chains wide it will take in Springs on Creek to the eastward of Ketetahi and hardly any springs would be left for the Government.
>
> In my instructions I am told that I must get some of the seven owners to go on the ground with me, and I have found that four out of the seven are dead, and two in Wellington, so I could only get one to go with me, 'Patena.' He agrees with the Reserve as shown on plan. The reason for making it so long is that at the NW corner there is an old Māori Camping Place which he wished to be included . . . I may say that it seems to me that this reserve includes the very best of the springs as though there is a good spring or creek to the east and also one or two to the west I don't think any of them are to be compared with Ketetahi itself, but I dont see how the springs which are included in portion marked pink on plan could be divided, and unless the Government had the head of the Creek, which is really 'Ketetahi' any other part would be useless.[207]

Biggs's plan of the block was for 23 acres 20 perches, and Percy Smith was subsequently asked by officials at the survey office if what Biggs had done 'would meet the case'.[208] Smith simply noted that it seemed to be a 'fair interpretation of the Order of the Court'.[209] However, neither this plan nor the previous two authorised plans ever made it to the court. Summing up the situation in February 1930, John Te Herekiekie Grace in the Native Department explained:

> It is quite evident that neither the Order or Certificate of the Court, nor any of the plans and surveys made of the Reserve have met the requirements of the applicants as to boundaries. In three instances, viz, the plan compiled in 1892, the Certificate of Title, and the paper survey of 1896 the Spring, which was the hub of the application, was excluded entirely, while in all instances except one (Mr Cussen's survey) the area of the Reserve was reduced very considerably.[210]

What is clear, therefore, is that from 1895 the Crown persisted in its view of the inaccurate positioning of the boundaries and estimation of the Ketetahi block. It did so in the face of advice from its own surveyors that the court order as issued appeared to exclude a number of features important to Māori including the main spring, the bathing stream, and the camping ground customarily used. When an opportunity arose to correct the boundaries of the block with the court, officials at the survey office refused that opportunity. Even though Cussen's on-the-ground survey more accurately defined the boundaries of the land the tribe wished to retain, Percy Smith rejected it because it failed to comply with the area specified in the title order. Consequently, the plan was not passed to

the court for the owners' inspection and authorisation of a judge. It remained at the survey office, as Percy Smith requested.

The whole purpose of setting aside the Ketetahi block was to keep Ngāti Tūwharetoa's springs for their own use and enjoyment according to their traditions. What they sought to retain was a living spring, not some barren slopes containing only two dry fumaroles. Instead, the survey office commissioned further plans under specific instructions to confine the block to 20 acres. From the evidence available, the chief surveyor was attempting to capitalise on the court's original error as to the size of the block by restricting later surveys to 20 acres. This would, he hoped, ensure that the Crown retained an interest in this nationally significant tourist attraction into the future.

Indeed, the actions of this Crown official saw the Crown asserting a stake in the springs area for several more decades and the owners did not obtain a proper title to their taonga until February 1959. Only then did the Māori Land Court at Tokaanu correct the original fault, amending the block boundary to accord with a new map prepared from a ground survey and aerial photography. Ironically, the block's dimensions were, on this map, very similar to the Cussen survey of 1895. At a later hearing of the Māori Land Court in 1964, after a further survey had been completed and lodged, the area was finally determined to be larger still: 95 acres 33 perches (38.5286 hectares).[211] This remains the extent of the block today.

We now turn to the question of whether the Native Land Court fairly represented the owners' wishes in its dealings with the Ketetahi block.

(b) *The Native Land Court and the Ketetahi owners' wishes:* Article 3 of the Treaty underpins the principle of equity between Māori and Pākehā citizens. As the CNI Tribunal has observed, this includes the 'obligation to ensure that multiple owners were not disadvantaged because of the inadequate recording or surveying of their titles, and the obligation to ensure security of title under the Land Transfer system'.[212] In the Ketetahi example, the Crown has failed on all these counts: tribal ownership was not preserved as the tribe wished; the vast majority of tribal members were left with no legal interest in the block; a legal loophole (in the form of section 115 of the Native Land Court Act 1886) enabled the judge to choose expediency over safety and sign a subdivision order for the springs without first establishing their true extent and location; the boundaries and area of the block were wrongly recorded on several occasions; and Crown officials even tried to secure parts of the land and geothermal resource for the Crown without the owners' understanding or consent.

We have already established that Māori had held the springs for centuries and that they were the undoubted 'owners' (in so far as that notion adequately interprets Māori customary law) of both the land and the springs, their tino rangatiratanga being unchallenged until 1886. We have seen how the provisions of the Native land legislation relating to individualisation of title and succession set in train the erosion of the tino rangatiratanga of people who in accordance with Māori customary law were entitled to be included in the ownership and who were excluded by those legislative provisions of the Crown. While this legislation applied to all Māori land from the time title was determined by the court, it had its worst impact in cases such as Ketetahi Springs where it was the clear intent of the owners that the entire property be retained for the cultural, communal, social, and therapeutic benefit of the tribe and those it accepted as its guests. Compounding the grievance, Crown officials operated in a fashion to deny the owners a just settlement of their title when the opportunity arose. Consequently, in the 87 years between the court hearing of 1887 and that of 1959, the owners held title to only 20 acres of land which, to boot, did not even include much of the taonga the tribe wished to safeguard.

Now, we turn to the question of whether the Crown respected the desire of Māori to retain ownership after title was issued.

(c) *The Crown and the desire of Māori to retain ownership:* Apart from the problems in getting the full extent of the Ketetahi block recognised in the title order, a

second factor at play was the Crown's desire to extend the National Park by mopping up interests in surrounding lands. One focus of this desire was to acquire for the park the Ketetahi block and the geothermal features within it, despite the clear intentions set out by Ngāti Tūwharetoa rangatira in 1887 that the block be set aside for the use and enjoyment by their tribal community. Indeed, the tourism potential of the springs had been recognised very early on by both Māori and Pākehā and was the key motivator in the Crown's attempts to alienate the block from Māori throughout the first half of the twentieth century. This section investigates the actions and intentions of several government departments – the main ones being the Native Affairs Department, the Lands and Survey Department, and the Tourist and Health Resorts Department – and also looks at some key people involved in these attempts to purchase the block.

In 1908, conservationists Edward Phillips-Turner and Leonard Cockayne, both committed to preservation of wilderness, together undertook a survey of the park, accompanied by Robert Speight, lecturer in geology at Canterbury College. The latter suggested that the national park area was one of the notable thermal districts of the world.[213] Phillips-Turner noted that the hot springs at Ketetahi were not included in the park – and ought to have been:

> As these springs are a feature of very great interest, and as they also are reputed to be exceptionally efficacious in rheumatism & similar complaints I would strongly urge the advisability of their acquisition by the Crown.[214]

The 1908 draft National Park Bill was designed to give effect to this recommendation to extend the boundaries by increasing park acreage to 137,000 acres, which would take in Crown land, freehold, and Māori-owned land. That Ketetahi was within the sights of officials at this stage is evidenced by the draft Bill's inclusion of a clause allowing the board to construct bath houses and improve any hot springs or bathing places, or to authorise any department or person to do so. The board could also fix a scale of fees to be charged to those using these facilities.[215] The necessary survey of the park was completed for the government in 1908. Among the lands it showed in Māori ownership were Ketetahi Springs.[216] The general manager of the Department of Tourist and Health Resorts explained:

> it is not at present intended to develop the Ketetahi Hot Springs either for medicine or bathing purposes, but it is merely proposed to appoint a caretaker at the Springs in order chiefly to protect Native flora and possibly make some small provision for accommodation of tourists.[217]

The 1908 supplementary estimates set aside £600 for 'caretaker's house at the Ketetahi Hot Springs'.[218] There is, however, no evidence that this plan had been discussed with the block's named owners or with any other tribal representatives. Indeed, under secretary for lands, William Kensington, who favoured taking the springs under the Public Works Act, wrote to his Minister in 1909:

> I know that the Natives will offer the strongest objection to this being done, and it might be better to try to come to some arrangement with them by which the Government would obtain a lease of the Springs and pay the Natives an annual rental. The Government could then erect baths and a caretaker's house at the Springs.[219]

In these early years, it is clear that the acquisition of Ketetahi, either by lease or by purchase was a focal point for the Crown, as officals circled around the processes by which the acquisition might take place. In the years 1912 to 1913, a string of correspondence neatly reveals the views of some key Crown officials. The exchange was initiated by member of parliament, conservationist, and park stalwart Dr Alfred Newman. Newman brought up the purchase of Ketatahi in the House in August 1912, and a few months later he approached the Minister of Native Affairs about the issue, stating that he had visited the park and found the owners were willing to sell the block to the Crown.[220] Newman was keen on the springs being 'accessible to sick people'.[221] When the Native Minister sought the advice of his staff he was pointed to a memo written

by his under-secretary in August 1912 which stated quite clearly that '[t]he acquirement of these springs would be a distinct breach of faith, as the Ketetahi Springs were specially reserved for the use of the Natives'.[222] This memo is a rare example of a Crown offical recognising Māori interests and acting with a degree of concern and protection towards Ngāti Tūwharetoa and their whanaunga.

His colleagues over in the Department of Lands and Survey did not share the same concerns, and nor did those in the Tourist and Health Resorts Department. The Minister for Tourist and Health Resorts stated in 1912 that Ketetahi should be acquired by the Crown, but noted that the 'consent of the Natives who donated this magnificent park will, however, have to be obtained' and that 'special legislation will be necessary' to effect this.[223] At much the same time the Department of Lands and Survey were making known similar intentions for the acquisition of Ketetahi. They clearly desired the springs to be freely accessible to the public and noted that this is what the park board had recommended.[224] These two departments were far more willing to overlook Treaty obligations than were Native Affairs. It is clear from the exchanges at this early stage that the dominant view was that Ketetahi Springs must be brought inside the park's confines. Dr Anderson argued that

> The permanent retention of this area by Māori – for their own exclusive use, or for rent, or use by their permission only – was not contemplated. Efforts would still be made to purchase the area because this was seen as a prerequisite to any development for the tourist market.[225]

By mid-1914, preparations were underway for legislation to be introduced that would create a newly constituted national park board. At the same time, a distinguished deputation of leading conservationists led by George Thomson, the member of parliament for Dunedin North, began to demand that the park boundaries be 'defined' and 'extended'. The group included Dr Leonard Cockayne, Professors Harry Kirk and Thomas Hunter, and other members of parliament and influential players such as Messrs Guthrie, Sidey, Robertson, Ell, Buick, Wilson, and Robert Smith (the member of parliament for Waimarino). They argued for the preservation of indigenous vegetation for future generations and for track and hut development. Dr Cockayne went on to call the Ketetahi Springs 'the finest curative hot springs in New Zealand'.[226] But a Bill transferring power from Lands to Tourism, passed in November 1914, still contained no provision for the taking of Māori land for additions to the park.[227] In the case of Ketetahi, perhaps there were too many unresolved issues, mostly pertaining to its somewhat nebulous legal status, for its acquisition to proceed.[228]

In line with the Crown's desire to purchase the Ketetahi block, officials had earlier, in 1913, commissioned a valuer to assess the area in question – despite there already being recent valuations. This valuer found the nominal value of the land itself to be of 'say 1/- per acre', as the springs were difficult to access at present and thus 'of little or no commercial value'. However, he stated that if access were improved, there 'may be great possibilities for future development', for example as a health resort. With that use in view, he fixed his overall valuation at 10 shillings an acre.[229] The valuer-general confirmed the valuation at a capital and unimproved value of £47 – being 10 shilings an acre for 93 acres and 2 roods (not, we note, 20 acres). In February 1918, the Minister of Lands directed the Aotea Māori Land Board to summon a meeting of owners so that they could consider an offer by the Crown to purchase the block at government valuation. A meeting of owners was duly held at Kākahi, in the April, with an offer of £47 on the table. After the meeting, it was reported that 'as none of the owners were in favour of the alienation the resolution was lost'.[230]

The following month, the native under-secretary wrote to the general manager of the Tourist and Health Resorts Department, Mr B Wilson, indicating that the Native Land Purchase Board wanted the department to provide a report on the springs, along with a recommendation as to the highest price the Crown could afford to offer for them. He commented that the 1913 valuation of £47 'did not include the value of the Springs', presumably meaning that he considered it as a land valuation only, which did not take into account any additional value deriving from the

presence (and potential development) of the geothermal features. Wilson recommended that, in the circumstances, it seemed 'advisable to let the matter of the acquisition of the springs stand over'.[231]

In October of the following year, however, Wilson suggested that Cabinet be asked to approve the purchase of additional land for the park up to the value of £7,000 – that sum including £600 for the purchase of the Ketetahi 'Native Reserve'. In the event, Wilson obtained Cabinet authority to negotiate on the basis of a slightly lower sum – £500 – and this sum was included in the government's estimates.[232] The native under-secretary then directed the Aotea District Land Board to summon another meeting of owners to consider the new offer (although the board's president somehow seems to have gained the erroneous impression that the department had placed £600 on the public works estimates for the block).[233]

The new meeting was called for 16 January 1920, at Tokaanu, but matters became somewhat heated and the registrar afterwards reported to the native under-secretary, on behalf of the land board, that proceedings had 'had to be adjourned, as the owners were quite unwilling to sell'. He noted that the president of the land board had attended the meeting in person and had reported Te Heuheu and the other owners as being 'very incensed at certain treatment alleged to have been received by them' in connection with the park and other matters. The president, he said, was 'satisfied that the feeling of the Natives is very strong against the sale'.[234]

A particular bone of contention raised at the meeting had been 'the Hot Springs at Taupo'. Despite promises made when those springs had been handed over to the Crown many years before, said Te Heuheu, 'nothing had been done'. Noting that the Ketetahi Springs were viewed by Māori as being 'the most potent in New Zealand', he said he feared that 'if they sold Ketetahi to the Crown, the Springs would be reserved for the Pakeha, and the Maori debarred in practice if not in theory'.[235] This is precisely what had occurred at Tokaanu.

Despite the clear message coming out of the meeting, the president of the Aotea board was not about to give up. Diplomacy, he suggested, was the path forward. He considered that advantage might be taken of the occasion of the upcoming visit of the Prince of Wales to have the owners make a gift of the springs in the 'old Rangatira style'. The springs might be renamed after the Prince, and as an act of reciprocity toward the natives, the board's President suggested 'some monument might be erected by the Government at the Springs to commemorate the gift of the Park and the Springs to the nation'.[236] The evidence is silent about what exchanges, if any, took place in pursuit of this outcome but certainly nothing came of his ideas.

In November 1920 a meeting took place in Wellington between Tūreiti Te Heuheu and William Nosworthy, Minister in charge of Tourist and Health Resorts. Tūreiti was there largely to discuss the park board and his place on it. In the middle of their conversation, the Minister inserted a parenthetical request about Ketetahi in which he prevailed upon Tūreiti to lease Ketetahi to the department. He sought two bathhouses, one for Māori, one for Pākehā.[237] Tūreiti made it clear that he was not at all keen on the idea of 'a money-making concern' based on the springs, although was more sympathetic to something directed at 'curing invalids'. Nevertheless, he declined to give any immediate response.[238]

Throughout the latter months of 1920 the issue of Te Heuheu's seat on any park board became linked with the Crown owning or leasing the springs. The unhappy state of the relationship between the Crown and Tūreiti Te Heuheu is revealed in the closing paragraphs of a report on control of the Tongariro National Park, sent by the acting general manager to the Minister of Tourist and Health Resorts. After commenting that 'the development of the Mt. Tongariro portion of the Park is not being proceeded with, pending the extinguishment of native interests in the Ketetahi Native Reserve', he then went on:

> notwithstanding that the Government has made a most generous offer for the extinguishment of those rights, Tukino's influence is being used against the Government in this matter.[239]

Six months later, Tūreiti Te Heuheu passed away, but this did not alter the deadlock over the springs: in

November 1921, the native under-secretary wrote to the general manager of Tourist and Health Resorts saying no further progress had been made with respect to the springs and he thought there was still little prospect of the Crown purchasing them.[240] Despite this (and not for the first time), the Ruapehu Ski Club 'urged the speedy purchase of the Ketetahi springs'.[241]

In 1922, the general manager of Tourist and Health Resorts noted:

> The natives are . . . holding closely to the Ketetahi Hot Springs, in the hope of obtaining a large sum for them in the future. They are not as guileless as they would appear to be.[242]

This uncharitable attitude that greediness alone motivated local Māori, and that their only real aim in resisting sale to the Crown was to drive up the price, stands in stark contrast to the stance that had been taken by Tūreiti at his meeting with Nosworthy.

But the idea of the Crown obtaining ownership and control of the area containing the springs did not go away. William Field, the member of parliament for Otaki and president of the Tararua Tramping Club, speaking to the Tongariro National Park Amendment Bill on 25 October 1927, reminded the House that it was largely through Lawrence Grace's influence that Te Heuheu Tūkino 'gave this park to the country'. He went on: 'I am satisfied that if Mr Grace were a member of the Board he would bring his influence to bear on the Natives . . . [and] the result will probably be that we will get that wonderful spring at Ketetahi'.[243]

Significantly, Grace was instrumental, the following year, in the Crown purchasing the ½₈ shareholding of his wife Kāhui Te Heuheu, daughter of Te Heuheu Horonuku and sister of the late Tūreiti. One official noted: 'Chance too good to let slip.'[244] By then, it was the Department of Lands and Survey that was in charge of National Parks. Why Grace volunteered to the Crown that his wife was willing to offer her share for sale is not entirely clear. He understood the history of the ownership and critical events in the court in September 1887. He knew about the issues regarding ownership of the maunga and the springs. Despite this, he was willing to facilitate the sale. He cannot, however, have been motivated by money: the couple's financial circumstances would hardly have been improved for long by the £17 17s 1d paid for Kāhui's share.[245] Rather, it seems that Grace may still have held the vision he had shared with Native Minister Ballance, all those years before, of the Crown owning all the volcanic peaks and 'the principal thermal springs in the Taupo Country'.[246]

Overall, between 1915 and 1921 an offer of £500 for the block was made several times by the Crown. Then, at Tokaanu on 26 March 1929, a meeting of owners was called to consider a further offer of £500. Three owners

Kāhui Te Heuheu in traditional dress

attended, one of them also bearing proxies for two others. Together, they held only 9.5 per cent of the total shareholding (which still stood at seven shares but was now divided among a larger number of owners).[247] The only owner in favour of the sale was, by proxy, Kāhui Te Heuheu, the purchase of her interest not yet having gone through. The situation became complex when others, such as a Mr Hutchison, a solicitor from Auckland, showed an interest in purchasing.[248] However, the land purchase officer attending the meeting reported: 'The feeling of the owners and other Natives who were present at the meeting is very strong against the sale.'[249] The native under-secretary subsequently informed Lawrence Grace that 'The owners, led by the Te Heuheu family', had refused the offer. At the same time, he raised the issue of whether Grace might therefore wish the purchase of Mrs Grace's individual interest to be halted.[250] As we shall see below, the purchase of her interest nevertheless went ahead.

Matters could have gone very differently. Under the Native Land Court Act 1909, a quorum for a meeting of owners was defined as 'five owners present or represented' – irrespective of the total number of owners in the block concerned.[251] The Act also decreed that a resolution put to such a meeting 'shall be deemed to be carried if the owners who vote in favour of the resolution own a larger aggregate share of the land affected thereby than the owners who vote against the resolution.'[252] In the case of the meeting of 26 March 1929, where the five owners present or represented held less than a tenth of the shares, this effectively meant that an aggregrate holding of little more than 4.75 per cent of the total shares constituted a majority vote. In this instance, those faced with the decision voted predominantly in favour of retaining Ketetahi. However, all too easily a tiny minority of owners, in both numbers and shares, could dispose of an entire property. Whatever the intentions of government policy, such a move facilitated the separation of Māori from their ancestral lands. This provision was held in the Tribunal's *Mohaka ki Ahuriri Report* to be 'in flagrant breach of the article 2 rights of Māori and the Crown's duty of active protection.'[253] We agree completely with this finding.

Less than a fortnight after the March meeting, on 11 April, the under-secretary for the native department wrote individually to three owners – Kerara te Heuheu, Takarea te Heuheu, and Hemopō Pākau – offering to buy their shares and indicating how much money this would yield for the person concerned. As an extra 'nudge' in the direction of selling, he ended by informing each of them that 'Kahui te Heuheu (Mrs L M Grace) has sold her interest at this price'.[254] When this ploy failed, he tried a more opportunistic approach to acquiring further interests, writing to the native land purchase officer in Auckland saying:

> If you should be attending the sitting of the Court at Tokaanu please note that interests may be acquired in the above block [Ketetahi] should any of the owners desire to sell.[255]

Meanwhile, Hutchison, the solicitor from Auckland, was also still trying to get the owners to sell. The native land purchase officer, hearing of this, alerted the native under-secretary, who in turn recommended to the Native Minister, in December 1929, that he move to prohibit alienation to private parties.[256] A notice prohibiting private sale, under section 363 of the Native Land Act 1909, was gazetted in January 1930, extended twice, and then a third time in October 1932, the latter without a time limit.[257]

Around this time, the under-secretary of lands initiated a more general investigation into the acquisition of Māori land within the national park, wanting to know what had been acquired, how, and when. A full report was supplied to him in December 1929 in which it was noted that native title had still not been extinguished in the 'Ketetahi reserve' and two or three other areas.[258] The under-secretary took up the matter of Ketetahi with the commissioner of Crown lands, which triggered a series of investigations into the block: various letters dating from January 1930 are on file from the deputy commissioner of Crown lands, the chief surveyor, and the native under-secretary, all discussing the status of the block.[259] These culminated in the rather more detailed report of John Te Herekiekie Grace of the native department, dated 17 February, which we have referred to several times already.

It was a report that stressed the need for action to ensure that all the springs, as well as an old camping site, were included within the boundaries of the block, and kept outside the park.[260]

From around this time, the question of Crown ownership seems to have been put on hold. Indeed, when George Moon, husband of Kerara Te Heuheu, wrote to the Native Department in June 1933 offering to sell his wife's interest in Ketetahi, because she was sick and needed medical treatment in Tauranga, the department cabled back: 'Crown not purchasing in Ketetahi at present'.[261]

Not till 1955, however, were steps were taken to clear up the Crown's interest in the land, and the question by then was whether the Crown should sell back its 1/28th shareholding to the owners. In April of that year, the Department of Māori Affairs wrote to its district officer at Wanganui, noting that 'Crown purchase operations were apparently abandoned because of the steady refusal of the owners to sell' and enquiring whether the officer thought a new approach would yield any positive result or whether, to the contrary, 'it would be better to try and dispose of the Crown's interest to one of the other owners'. He replied that the owners' 'sentimental attachment to the land is such as to preclude any likelihood of [further] purchase'.[262] The director-general of lands and survey, in correspondence with the secretary for Māori affairs shortly afterwards, commented that the Crown would still like to purchase the remaining interests in the block but went on in rather wistful tone: 'I note that this is not considered possible'. He wondered instead whether the Māori owners would consider having 'the area declared a Maori Reserve and trustees appointed'. The land, he said, would be very suitable as a reserve '[o]n account of the Hot springs and the location of the area', and if this aim could be achieved, the Crown would consider selling its share.[263]

At about this same time, the chairman of the Tongariro National Park Board began urging that a plan for Ketetahi be developed as soon as possible so 'that everything will be in readiness for the Board to commence its developent in this area when the title situation has been clarified'. Lands and Survey began work on a new proposal, designing a series of baths on the Ketetahi block – with public conveniences, a public shelter, and a new accommodation hut to be located on adjacent park lands. In parallel with the baths and accommodation project, the subject of a vehicular road to the springs was raised.[264]

The following year, the matter of 'gifting, selling or leasing the area to the [Tongariro National Park] Board' to enable a development including 'buildings, access, baths etc' was put, unsuccessfully, to owners at Hīrangi Marae in Tūrangi. The question of a lease in perpetuity at a token rental was again placed before an informal owners' meeting on 10 August 1956. Once more, nothing came of it.[265]

In 1959, the National Parks Authority decided that proposals for the development of Ketetahi Springs would be deferred indefinitely, and for the first time in over half a century the Crown relinquished its ambitions for Ketetahi Springs.[266] The land is now held in trust under sections 215 and 219 of Te Ture Whenua Māori Act 1993.[267]

In her evidential report for the Crown, Cecilia Edwards expressed her view that 'park administrators were not zealous in pressing for a territorial expansion of the park, in particular the areas which involved Māori lands'.[268] However, we note from the evidence that lands and survey official V P McGlone admitted in 1970 that the 'Lands and Survey Department had been trying to acquire these [Ketetahi Springs] for years'.[269] If the Crown failed to obtain ownership of the land containing the springs it was not through lack of persistence, but rather because of a firm and unwavering Māori refusal to contemplate such a loss. Indeed, we note the Crown's acknowledgment that

> until as late as 1958 the Government pursued the purchase of Ketetahi Springs despite the clear intention of the owners to retain the whole of the Springs in private ownership.[270]

Having ascertained that the owners were clearly opposed to sale, that should have been the end of the matter but it was not. Instead, the Crown persisted with calling meetings of owners and employing various other tactics which included attempting a division of the area between Crown and owners; using direct approaches to individual

owners; and encouraging Crown officers to approach owners at land court hearings – all with a view to secure acquisition of the block, or at least as much of it as possible. It was essentially a process of wearing them down over a long period of time. In some decades it was close to being unrelenting.

Given the evidence laid out, the Crown's closing submission that 'it did not apply undue or considerable pressure [on] the owners to attempt to force a sale' is one that in our view cannot be sustained for the period up to 1959.[271] Yet, the first requirements under articles 2 and 3 of the Treaty were that the Crown provide Māori with proper title and quiet enjoyment of their property. Such elementary entitlements of all citizens were actively denied them, effectively from first Crown involvement. We find that this was a serious breach of the Treaty.

(d) *The Crown's protection of the owners' property rights:* We have looked at the struggles that the Māori owners of the Ketetahi block had to face in ensuring that the title they held included the springs. Also, as we have seen, the Crown made repeated attempts to purchase the Ketetahi block. But did the Crown at least respect their land as private property?

The Crown's first attempts at constructing a road or track up the side of Tongariro occurred around the turn of the nineteenth century and were aimed at enabling tourists to visit the mountains, eventually making it possible for them, via horseback, to make it as far as the summit and crater lakes. Planning for this began in 1896 when Percy Smith asked for a road to be surveyed from Rotoaira to the summit of Tongariro.[272] By 1898, the *Appendix to the Journal of the House of Representatives* reported that:

> a bridle road has been made, leading up by easy grades from near the picturesque Otukou Native village, close to Lake Roto-a-Ira, up to the Kete-tahi hot-springs on the side of Tongariro Mountain, which will enable visitors to ride to these springs, the great healing properties of which in certain cases are well known. Moreover, from Kete-tahi to the top of Tongariro, an easy climb over the lava of an hour's duration will take the visitor to the top of the mountain, and enable him to see the number of craters in that locality.[273]

The roading surveyor sent in plans to extend the track further. However, these plans were delayed for a few years, apparently due to funding constraints. In 1900 the annual report for the Lands Department stated that the bridle road had rendered access to the hot springs of Ketetahi and to the mountain-top of Tongariro much easier, 'advantage of which has been taken by several visitors'.[274]

By 1908, a plan of the Tongariro National Park shows the bridle track going past the springs and right over the eastern side of the mountain to the Waihohonu hut.[275] The extent to which Ngāti Tūwharetoa supported the building of such a track is, as Dr Coombes noted, unclear, although they were certainly interested in the development of tourism at this stage, as will be discussed more fully in the second half of this chapter.[276] The track up to Ketetahi remained well formed through the first half of the twentieth century and was suitable for horses as far as the springs.[277] By comparison, as early as 1917 the track from Ketetahi onwards to Waihohonu was described as 'now barely defined' and remained in this condition until sometime in the late 1940s or early 1950s, when the first attempts at reforming this track began.[278] Similarly, the tracks leading up to the huts at Waihohonu and Mangatepopo had deteriorated, with recreational interests complaining in 1934: 'The tracks to Mangatepopo and Waihohonu, once well poled and marked have been allowed to disappear altogether.'[279]

Around mid-century recreational interests began their push for a new track across Tongariro. By this stage, tourism in the park had increased following better roads being built through the central North Island and the completion of the main trunk line. It is doubtless no accident that this push for a new track up the mountain occurred at around the same time as significant changes to the makeup of the park board, which in 1949 saw new representation from recreational interests of the Ski Council, a member of the Federated Mountain Clubs of New Zealand, and several others, including the local member of parliament.

Recreational ventures were experiencing a boom in the years of relative post-war prosperity, and it is in this period that such ventures relating to the park began to encroach significantly on Māori interests.

At some stage in the late 1940s or early 1950s, the National Park board funded the placement of snow poles across the route from Mangatepopo to Ketetahi, but Dr Coombes found that in the instructions for installing these markers 'no consideration of the private land or culturally significant status of the Ketetahi block is evident'.[280] Then, in late 1955, the new National Parks Authority approved the construction of a road to Mangatepopo and a track from there over to the Ketetahi springs.[281] The authority granted £100 to aid the construction of this new track.[282] Much of the work was carried out by the tramping fraternity and was completed relatively quickly in 1956. The track was constructed largely with recreational interests in mind, and was to prove a boon to the walking public, but not to the owners of the Ketetahi block.

The extent of consultation with Māori at this stage is the central issue here. In large part, it appears that where the track passed through the Ketetahi block, that land was treated as if it were a part of the Park. In 1956, the Tararua Tramping Club recommended that

> From Ketetahi Hut down the old track needs to be cleared . . . Until the new road is bulldozed out, the bush logging track through Māori property should be cleared of light bush growth – mainly wineberry, horopito and celery pine.[283]

Soon afterwards, the board recorded that the 'route through the bush in the Māori-owned block to Ketetahi [was] now quite clear and access easy'.[284] There is no suggestion of any negotiation with the Māori owners having occurred, or even that it might be necessary.[285]

Over the 40 or so years that followed, the popularity of the Tongariro Alpine Crossing grew markedly, and Māori were obliged to tolerate regular intrusions upon their taonga and land. The Crown did not restrict the access of visitors at the springs. However, in 1995, the newly formed Ketetahi Springs Trust directed that trampers should no longer approach the springs and that the track across their lands was to be closed.[286] Arthur Smallman, the chairman of the Ketetahi Trust, summed up that at this stage the owners of Ketetahi were

> deeply concerned at the utter lack of respect shown for our wāhi tapu. Human faeces, plastic bottles, beer cans and other rubbish were left in the stream flowing from the hot springs and on the rocks surrounding them. We were not happy with the misuse of the property, or trampers bathing in the springs.[287]

This move prompted discussions about the springs with DOC, with DOC refusing a payment to owners, saying they would build another track on National Park land.[288] However, this proved easier said than done. Following further negotiations, DOC secured an agreement from the trust to allow the track to remain on the trust's land. The agreement was nevertheless subject to such conditions as repair of erosion, track maintenance, and the erection of signs to prevent entry to the springs.[289]

The promise of repair to the track was never fully met and it is clear that a double standard existed with regard to the Crown's attitude to the Ketetahi block. On one hand, the block was largely treated as if it were a part of the park through much of the twentieth century, with the development of the Tongariro Alpine Crossing encouraging public access across the land. On the other hand, DOC also identified the block as being outside the conservation estate it is charged with maintaining, and it thus failed to maintain the section of the track which passed across Māori land. As the Tribunal itself witnessed at the time of hearings, when claimants took the panel up to their taonga, the section through Ketetahi block was both of lower standard and less well maintained than the track leading up through the National Park.

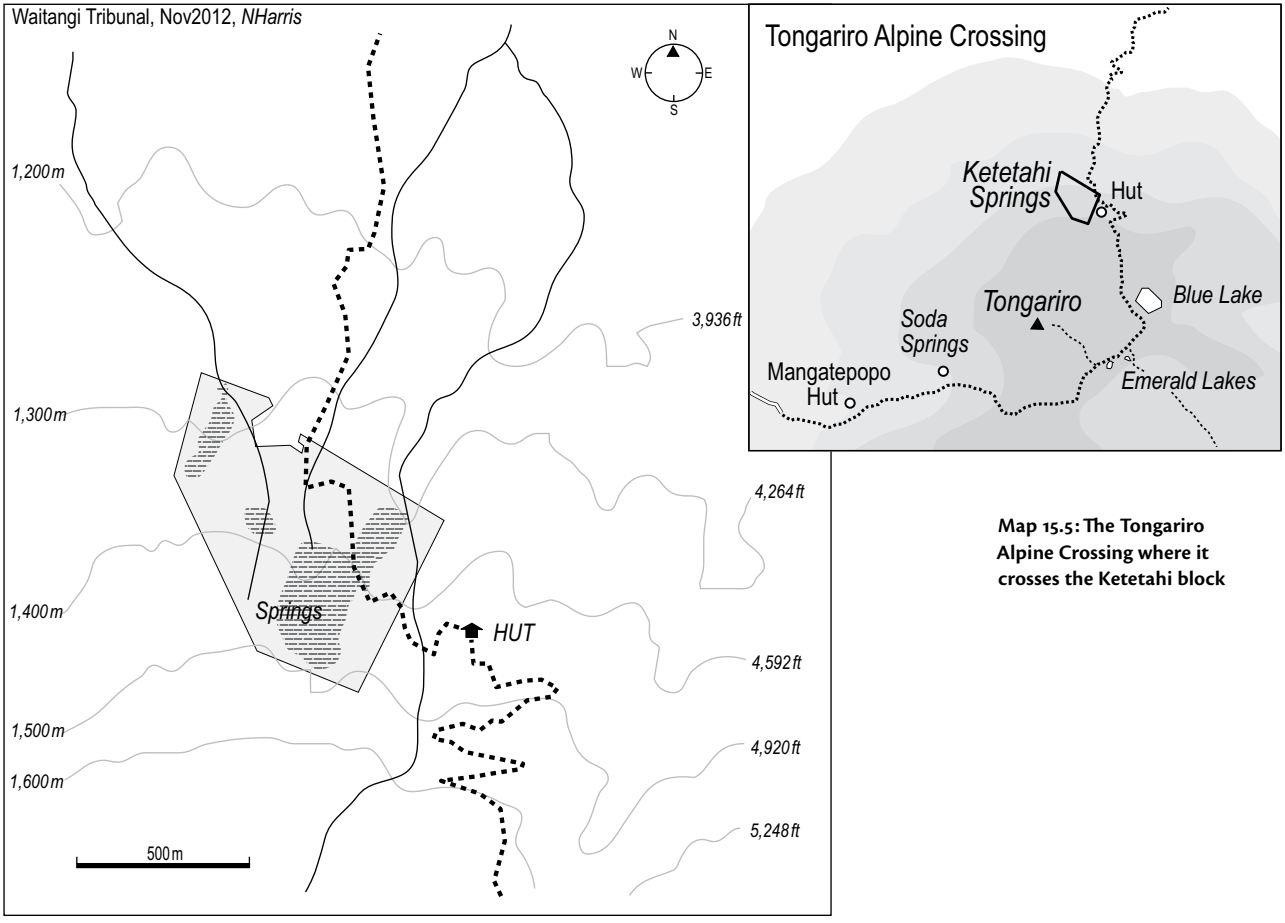
Of the nearly one million visitors to the park each year, around 70,000 now walk the track.[290] Given that the crossing is not suitable for unguided casual trampers through much of the winter, the majority of this foot traffic is concentrated in the spring and summer months and is particularly high on weekends and public holidays, with up to 1,000 walkers being recorded in a single day. In

places the track has been severely eroded by heavy tramping traffic.[291]

Beyond the erosion on the track, the second big issue facing the owners of the springs was the continued intrusion of visitors straying near the springs, bathing in them, and leaving rubbish and human waste. Claimant witness Shelly Christiansen told the Tribunal that:

> The Tongariro Crossing walk has had a huge impact on the environment. They have 2000 people a day in the middle of summer, and up there it can be a real mess. There is only one set of toilets every six hours, so you know what is happening in between them. We have been up to Ketetahi and pulled out bags full of rubbish and beer bottles.[292]

As per the 1995 agreement, the Crown has clearly taken an active role in informing the public that Ketetahi Springs is privately owned land, and Paul Green, the conservator of the Tongariro Taupō Conservancy, has given evidence that DOC has 'worked hard in its publicity and through the Ketetahi hut warden to discourage walkers from visiting the springs and this has largely been successful'.[293] Tyronne (Bubs) Smith, however, stated that, while most tourists respected the signage 'informing everyone



Map 15.5: The Tongariro Alpine Crossing where it crosses the Ketetahi block

◄ Trampers on the Tongariro Alpine Crossing. The large numbers of people walking the crossing have created environmental problems of erosion and litter on the mountains.

▼ Trampers approaching a spectacular volcanic area on the Tongariro Alpine Crossing

The sign at Ketetahi Hot Springs. Although the sign advises that the land is private and trampers may pass over it but do not have access to the springs, it bears no mention of the history or the significance of this wāhi tapu to Māori.

that access through the private property has been granted by the Trust but this does not grant right of entry into the Springs area' (emphasis in original), there were nevertheless still a few tourists who wandered into the springs and left rubbish.[294] The Crown noted Arthur Smallman's point that the 'public might be more understanding if they were made aware of the reasons behind the closure'.[295] Mr Smallman commented:

> Part of the problem is that the DOC signs don't explain the history and spiritual significance of Ketetahi, they only refer to the fact that the springs are on private land. This sends the wrong message to people. I should say that we agreed to the wording originally, but I think that it needs to be revised.[296]

Paul Green, in cross-examination, also commented on the wording on the DOC signage:

> **Ms Feint:** What about the issue of the sign? Because there was a point made by one of the Tribunal members that the sign that announces to the public that the Ketetahi Springs are private land doesn't actually explain why that's a sensitive area and it doesn't ask people to respect the tapu of the area.
> **Mr Green:** I agree with you completely and the sign, the wording on the sign was provided by the Ketetahi Trust rather than ourselves and we expressed concern about the wording of the sign.[297]

Mr Smallman explained to us the importance to the owners of closing the springs to public access, stating that their vision is 'to uphold Ketetahi Springs as a wāhi tapu and a site of significance'. However, he also acknowledged the need to balance that against other considerations, such as the site's 'environmental and economic well being', bear ing in mind the needs of 'the owners of Ketetahi and Ngāti

Tūwharetoa as a whole'.[298] Agreeing on new wording for the sign would seem to us to be a good first step forward.

Overall, our view is that for many decades the Crown's record on respecting the owners' property rights was not at all good, and did not maintain the standard required under the Treaty.

15.6 Property Rights – Tribunal Findings

15.6.1 Property rights to geothermal resources

The CNI Tribunal's report *He Maunga Rongo* has found that the Taupō Volcanic Zone, the geothermal fields contained within it, and the surface manifestations of these fields are taonga of great cultural, spiritual, and economic importance.[299] On the basis of this finding, the scientific and cultural evidence presented by Dr Severne, and the cultural evidence provided by kaumātua, we find that the Tongariro–Ketetahi and Tokaanu–Waihī fields, and the surface manifestations of these fields as found, for example, at Ketetahi Springs and Lake Rotoaira, are taonga of cultural, spiritual, and economic importance. As at 1840 Māori possessed and exercised rangatiratanga over the three layers of the geothermal resource. Because these geothermal resources of te kāhui maunga are taonga, the Crown is bound under article 2 of the Treaty to actively protect the iwi, hapū, and people of the area in their possession and use of the resource.[300] For ownership to be removed, there must be consultation with, and informed consent by, those affected. Because there was no such consultation and informed consent, we find that affected claimants retain at least a Treaty interest in the geothermal resource in and under the inquiry district.

The Crown's application of British common law relating to water resources to geothermal resources in New Zealand failed to respect existing Māori possession and management of the geothermal resource. The Crown contends that, according to common law, the geothermal resource cannot be owned, and the regulation of it is therefore a 'legitimate exercise' of kāwanatanga. In our view, however, Māori affected by the Crown's expropriation of rights still retain kaitiaki rights in accordance with their Treaty interest (and augmented by residual proprietary interests where these exist), which should in all cases give them a say in what happens to the resource. In the recent *Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, that panel drew attention to the Wai 262 Tribunal's views on kaitiakitanga, and described it as 'the key Treaty right in all cases, no matter what the ownership status of the taonga'. As discussed previously (see section 14.13.2(7)), it noted that the Wai 262 Tribunal had found that kaitikitanga rights exist on a sliding scale.[301]

We further note the CNI Tribunal's view that, in any balancing of interests, 'Maori rights cannot be balanced out of existence', and neither is it sufficient to grant affected Māori 'a limited right to be consulted'.[302] We agree, and will have more to say on this in the second half of our chapter.

The Crown has breached its obligations under article 2 by ignoring or sidestepping Māori kaitiaki rights and responsibilities, which traditionally derived from their possession of all three layers of the geothermal resource (a possession still extant at the time of the Treaty) and which still subsist owing to their ongoing Treaty interest in the resource. We find this position unsustainable in the face of what already existed – a highly developed system of management and allocation of use according to tikanga. In light of that, we further find that the claimants have a right to be intimately involved in the ongoing management and control of the resource, including decision-making about the resource.

15.6.2 Ketetahi Springs

Those who held rangatiratanga over the Ketatahi geothermal taonga saw this as an indivisible entity and sought a communal title. The Crown made no provision for this. The nineteenth-century title system was not an appropriate way of protecting the tribally-held geothermal taonga at Ketetahi Springs. The Crown has shown no acceptance in its submissions of the effect of its policies and legislation on ngā iwi o te kāhui maunga, and apparently sees nothing wrong with just seven representatives being put on the title at the hearing in 1887. Nor does it recognise the consequences of its actions: despite knowing the great value of the springs to the tangata whenua, the Crown is

responsible for the loss of connection by some hapū members to their sacred taonga.

For decades, the Crown failed to recognise the tangata whenua's tino rangatiratanga over the springs by continually denying to Ngāti Tūwharetoa and its hapū the true extent of the area that the tribe, in 1886, requested to retain for themselves out of the Tongariro 1C block. What began as a mistaken belief by the court as to the area was seized upon by the Crown and persisted in, even in the face of the emerging facts. We find that the Crown breached its duty of active protection by failing to remedy the error until 1959, despite knowing of it. The Crown was wrong in its attempts to achieve a 'division' of the springs, when it was clear that the owners wanted to retain the whole of the springs and surrounding area for themselves and their descendents.

The Crown did not ensure that the court followed good processes. Although legislation was introduced in 1886 making it compulsory for 'a certified plan' to be deposited before a subdivision order could be signed, the Crown left open the loophole of being able to use the less stringent 1880 legislation where proceedings were already underway but not yet completed. By treating Ketetahi as a continuation of the Taupōnuiātia subdivision proceedings, Judge Scannell was able to opt for this expedient and, as a result, the subdivision order contained a serious error in the area of the springs. The court did not deliberately miscalculate the size of the block, but the lack of insistence on a proper survey before the court order was signed considerably raised the likelihood of a mistake. We find that the title determination process followed in the case of Ketetahi Springs served the needs of speed rather than safety, and was not adequate in Treaty terms.

The Crown also breached the clear text of article 2 of the Treaty, which guaranteed Māori their 'exclusive and *undisturbed* possession' of their properties (emphasis added). For almost seven decades, the Crown relentlessly sought the purchase of the springs and pursued its own agenda in the face of clear opposition from the owners of the Ketetahi block.

The Crown allowed a major tramping track to cross Māori land in the Ketetahi block, thus compromising the Māori owners' private property rights. The owners were not consulted about this use, nor did they consent to it.

15.7 Property Rights – Recommendations

We have addressed issues to do with the Tongariro Alpine Crossing, and the negative impacts on Ketetahi lands and waters, in both this chapter and in the DOC chapter. Our overall recommendations on the matter are those set out in the DOC chapter.

Aside from that, a particular concern is that of the Crown shareholding in Ketetahi. Because of the Crown's purchase of Kahui Te Heuheu's interest in 1928, which amounted to a quarter of one share, it currently holds 1/28th of all shares in the block. The remaining shares, meanwhile, have become fractionalised into smaller and smaller parts with each succeeding generation, to the point where they are now divided among over 500 owners. That the Crown has in this way become one of the four largest shareholders in the block is greatly resented by the tangata whenua and makes reconciliation between them and the Crown very difficult.

We recommend that the Crown offer to return its share in the Ketetahi block as part of a wider settlement process. While it is essentially up to the owners to decide how best to manage their land, one possibility is that the Crown's share in the block could be used as a way of bringing all iwi and hapū members who whakapapa to the block into its ownership. This change could be reflected in a change from the current Ahu Whenua Trust to a Whenua Topu Trust, which would mean that the landowners are no longer individually named; the land could be vested in the name of a common ancestor such as Ngātoroirangi.

15.8 The Development of the Resource – Introduction

This section looks at development possibilities against the background of Crown legislation relating to geothermal resources and geothermal areas.

The first phase of legislation, in the nineteenth century, involved the identification of geothermal features

(springs, geysers, hot pools) as areas of interest to tourism. In this inquiry district, Ketetahi Springs were identified for their tourism potential in the latter part of that century. On top of its moves to acquire the Ketetahi block, the Crown's encroachment on the land around the springs, via construction of the track, arose out of a desire to facilitate visitors being able to visit and view the mountain craters, and to bathe in the hot springs at Ketetahi on their way. The case study section of this chapter will assess the intent and actions of both Māori and Pākehā with regard to tourism opportunities at Ketetahi Springs.

The second avenue for development of the geothermal resource lies in the possibility of finding scientific and technological applications for one or more of its various aspects – for example, its heat, its fluids, or its minerals. In our inquiry district, the harnessing of geothermal heat for energy production was identified by Ngāti Tūwharetoa as a possible development option on both geothermal fields.[303] We will therefore review the legislative history of geothermal power generation, and in the case study sections assess the situation with both of the geothermal fields.

A point of agreement between the parties was that there is a Treaty-compliant way forward with respect to developing the geothermal resource. Both parties pointed to the Mokai power development as evidence of this. The claimants pointed out that Mokai, situated to the north of Taupō, is a precedent for the successful and sustainable small-scale development by iwi of their geothermal field.[304] The Crown agreed that, given the success of the Mokai station, '[d]evelopment of the geothermal resource by Māori under the current regulatory framework is possible.'[305]

15.9 The Development of the Resource – Claimant Submissions

15.9.1 A right to development

Counsel for Ngāti Tūwharetoa submitted that under article 2 of the Treaty 'the Crown has guaranteed that Ngāti Tūwharetoa may possess and exercise rangatiratanga over their taonga, which clearly includes Te Ahi Tamou.'[306] This submission has been dealt with in the first half of this chapter. Here we address Ngāti Tūwharetoa's development claim that '[o]ne aspect of the guarantee of tino rangatiratanga is that Māori have a consequential right to develop their taonga as they see fit, and the Crown has an obligation to protect and foster development.'[307]

Claimant submissions focused on past, current, and future development options for the geothermal resource. These development options included use for tourism and geothermal energy production. The core of the claimants' submissions lay in the premise that geothermal development rights are 'an incident of the right to possess and exercise rangatiratanga over that resource.'[308] For example, counsel for Ngāti Waewae argued that the claimants' interests in their geothermal taonga are not 'confined by traditional or pre-Treaty technology or needs'; rather, citing the evidence of Graeme Everton, the claimants' interests include 'development of the resources for economic benefit and by use of modern technology.'[309] The claimants allege that the Crown has breached the Treaty principles of active protection and the right to development.[310]

Ngāti Tūwharetoa go a step further and claim that '[t]he Crown has a duty to facilitate Ngāti Tūwharetoa's development of its resources', saying that '[t]his duty stems from the duty of active protection requiring the Crown actively to protect Māori interests.'[311]

15.9.2 Tourism development

The claimants submitted that the Crown, frustrated in its aim of obtaining ownership of the Ketetahi Springs, acted to remove the owners' own ability to develop their land and taonga. This in turn had the effect of preventing the owners from developing and benefiting from independent tourism ventures. Added to the fact that springs are surrounded on all sides by the National Park, this severely curtailed the rangatiratanga of the owners.[312]

As part of Ngāti Tūwharetoa's wider submissions on the commercial development of the mountains, counsel said of Ketetahi Springs:

> The Crown has failed actively to protect Māori interests. An example of this is DOC's action in constructing part of

Geothermal power station at Mokai, Taupō. Behind the station are glass houses, a dairy factory, and a worm farm.

the Tongariro Crossing track across the Ketetahi Trust's land, and its complicity in allowing walkers to access the Ketetahi springs. Further, although DOC received payment from concessions for the Tongariro Crossing, it made no payment to the Trust for the use of its land. As Chairman of the Ketetahi Trust explained, '*In effect, DOC were using the Ketetahi block as if it was part of the Tongariro National Park*'. It wasn't until proactive action was taken by the Ketetahi Trustees that DOC took the matter seriously. Now an agreement has been reached that the Trust will be consulted on concessions relating to the Tongariro Crossing. However, DOC does not pay compensation for a right of way or lease over the Trust's land. The Trust is now considering the possibility of tourism ventures. [Emphasis in original.][313]

15.9.3 Geothermal power development

In the claimants' view, the Crown has breached its duty to act reasonably and in good faith by not recognising and respecting their right of ownership and tino rangatiratanga over the geothermal resource which would have allowed them an active voice in decisions made about the geothermal resources.[314] This includes their ability to develop the resource as a right of possession.

Counsel for Ngāti Tūwharetoa claimants reinforced evidence they gave in the CNI inquiry, where George Asher argued that the customary relationship with water and geothermal resource was established by Tūwharetoa's ancestor, Ngātoroirangi. Asher contended that this ongoing relationship and association with special land

features had been 'sidelined in the interests of the "public good"'.[315] Loss of tino rangatiratanga has meant that Ngāti Tūwharetoa were now subject to the Crown's regulatory controls and the Crown's decision-making as to what constitutes appropriate protection, use, and development of the resource.

Ngāti Tūwharetoa claimants pointed the Tribunal to their intention of submitting a hapū-driven management plan to Environment Waikato for inclusion in the agency's geothermal policy statements and management policies. Their specific concerns for their taonga were expressed as follows:

- The control and management of geothermal resources has been removed from our hands
- We cannot ensure that the resource is used in a sustainable manner.
- Our ability to protect an important taonga in accordance with tikanga and kawa of nga hapu o Ngati Tuwharetoa has been removed.
- We have lost the ability to use the resource according to our needs and for our benefit according to our own tikanga.
- We do not have the capacity to make up our own minds about the commercial development of our taonga.[316]

15.9.4 Legislation

The claimants submitted that the Crown's regulation of geothermal resources in the inquiry district has 'severely constrained' their ability to sustainably develop the resource.[317] Counsel for Ngāti Tūwharetoa argued that the Crown has breached the Treaty principles of active protection and the right to development.

The claimants cited the Geothermal Energy Act 1953 as the leading legislative move which usurped the rights of Māori to develop their geothermal resources. Through this legislation, which remained in force until 1991, the Crown expropriated control over the use of geothermal resources. The Resource Management Act 1991 then continued to treat geothermal resources in the same way as the earlier legislation.[318]

Regarding the Crown's expropriation of the management of geothermal resources under these pieces of legislation, claimants for Ngāti Waewae asked the Tribunal to note the Ngāwha Tribunal's findings that:

> the Crown has acted in breach of the principles of the Treaty in failing to ensure that the Geothermal Act 1953 and s 354 of the Resource Management Act 1991 contain adequate provisions to fully protect the Treaty rights of the claimants in their geothermal resource.[319]

15.9.5 Development possibilities

Drawing on the evidence of Dr Severne, counsel for Ngāti Tūwharetoa noted that it has been confirmed that some level of geothermal development is viable on the Tokaanu–Waihī field from within the inquiry district.[320] The claimants have identified a 'desirable location' to access the geothermal resource on the southern flanks of Kakaramea, which is on the opposite side of the hill from Tokaanu.[321] Stephen Asher submitted in his brief of evidence that '[t]he land over which the field is located is owned by Ngati Tuwharetoa owners who control access to the blocks comprising the geothermal field'.[322] However, the claimants submitted that their ability to develop the resource from this point would be hindered by the proximity of the National Park, DOC's attitude, and Environment Waikato's categorisation of the field as a 'limited development' field.

Counsel for Ngāti Tūwharetoa also underlined Dr Severne's evidence that a 'small-scale development on the flanks of the Tongariro system [that is, in the Tongariro–Ketetahi field] is technologically feasible'. Dr Severne had stressed that she was speaking of the 'hypothetical potential' of such a development and she made 'no judgments as to whether such development is culturally or environmentally appropriate'. She considered that the decision was one for the hapū that holds mana over the resource.[323]

On the subject of the technology, the claimants noted that lessons had been learned from the 'widespread subsidence and a destruction of surface features' at Wairakei, further north, after development of a geothermal power station there in 1958. They pointed to Dr Severne's evidence about more recent developments in technology meaning that small-scale geothermal energy generation is now a viable and sustainable option and would have a

much lower impact on the resource and the environment. This has, they said, direct relevance to fields other fields in their rohe, including those at both Tokaanu–Waihī and Tongariro–Ketetahi.[324] While conceding the difficulties associated with the Tongariro–Ketetahi site, including being surounded by the National Park and having been designated by Environment Waikato as 'protected', counsel for Ngāti Tūwharetoa noted that a small-scale development might nevertheless be feasible.[325]

15.9.6 Limitations on use and development

We look here at submissions by the claimants about limitations on their use and development of the geothermal resource as a result of actions that can be traced back to Crown policy, practice, or legislative measures. Most such submissions focused on limitations on development, but Ngāti Hikairo pointed to loss of personal amenity as a result of at least one geothermal pool at Tokaanu being covered over during the diversion of the Tokaanu Stream for the TPD project.[326]

Ngāti Tūwharetoa submitted that '[p]rior development has hindered the ability to develop the existing fields'.[327] They particularly note that the TPD has limited the possibility of geothermal development near the hydro power station at Tokaanu because of the fear that extraction could cause subsidence leading to cracking there.[328]

A further concern raised by claimants in relation to the Tokaanu–Waihī field was the geothermal leakage from a bore made by the government in 1942 known as the Healy bore. Ngāti Tūwharetoa claimants submitted that this leakage 'causes significant waste and runs down the system and hampers the chances of development'.[329] The claimants allege that the Crown has breached the Treaty principle of active protection by failing to protect the geothermal resource and surface manifestations from degradation.[330]

Another issue raised was the limiting effect of the national park. Ngāti Waewae witness Graeme Everton, a trustee of various Māori trusts in the region, said: 'It feels like our people are penalised because they hold land around a National Park'. He was but one of a number who commented on the park's negative impact on their development goals. Referring particularly to the geothermal resource, he said:

> I think there are potential activities for our hapū, and others of Tūwharetoa, using this geothermal resource that will be in harmony with the environment. I don't think that DOC are at all motivated to assist us or even contemplate supporting us using this resource. In contrast I think that DOC, in concert with the Regional Council, have made it difficult for us to use that resource. We effectively can not use our geothermal resources as a source of business development for our hapū. It is my view that the conservation values have overrun the values of protecting the economic status of the hapū.[331]

The final limitation the claimants identified was the regulatory restriction placed on the fields by Environment Waikato. This body is the regional authority, which, under the RMA, has statutory decision-making powers over the Tongariro–Ketetahi and Tokaanu–Waihī geothermal fields. Environment Waikato has classified the former field as 'protected' and the latter field as 'limited development'.[332] Counsel for Ngāti Tūwharetoa argued that this management system impacts 'upon the capacity of hapū to undertake development on hapū and Lake Rotoaira Forest Trust land in this field'.[333]

In sum, the claimants viewed the barriers to their ability to develop the geothermal resource as all directly attributable to Crown actions. The claimants have been 'severely constrained' by loss of land, the creation of the national park, the existence of the TPD, and the Crown's nationalisation of geothermal development rights resulting in their loss of rangatiratanga and kaitiakitanga over the resource.

15.10 The Development of the Resource – Crown Submissions

15.10.1 A right to development

The Crown did not accept that it has a 'positive obligation to foster Māori commercial development' of the geothermal resource in the National Park inquiry district.[334] Rather, it pointed to the Court of Appeal's 1993 decision in *Te Runanganui o Te Ika Whenua Inc Society v*

Attorney-General that 'the right to development does not extend to the right to generate electricity from water'.[335] The Crown argued that this ruling 'must also apply to the claim to a development right to generate power from geothermal resources'.[336] It did, however, hold out the possiblity that settlement with local iwi could include 'greater opportunity for iwi and hapū to commercially develop geothermal resources should they consider that appropriate'.[337]

Addressing the right to development in a wider sense, the Crown submitted that

> any right of development must co-exist with other rights and other principles of the Treaty. As such, the notion of a right of development must be compatible with the basic standards of reasonableness and balancing of interests.[338]

15.10.2 Legislation

With regard to the legislative governance of the geothermal resource, the Crown repeated the position it took in the CNI inquiry: it argues that the legislative progression from the Geothermal Energy Act 1953 and the Water and Soil Conservation Act 1967 to the RMA has not at any point extinguished Māori customary rights to geothermal water or fluids. The Crown maintains that '[i]f any rights do exist, then these have been regulated not appropriated'.[339] That said, the Crown is of the view that in this inquiry district the Tribunal did not receive enough evidence on the 'underlying basis' of the legislative regimes governing geothermal resources for it to determine whether the legislation was Treaty-compliant for National Park Māori.[340]

The Crown contends that the RMA, as the current legislative regime governing the geothermal resource, allows for both the continuation of Māori traditional use of the resource, as well as Māori participation in the commercial development of the resource, 'as has occurred with the Mokai geothermal system'.[341] On top of the RMA, the Crown also points to the provisions of sections 4 and 81 of the Local Government Act 2002 as providing 'adequate' scope for Māori consultation in decision-making regarding the management of the geothermal resource.[342]

The Crown rejects the Tribunal's findings in the *Ngāwha Geothermal Resources Report*. That Tribunal examined the Crown's delegation of powers for the management and allocation of resources under the RMA and found that the 'Crown cannot avoid its Treaty duty of active protection by delegation to local authorities or other bodies'.[343] It further found that the Crown had a duty of active protection which should ensure that 'Māori are not unnecessarily inhibited by legislative or other administrative constraint from using their resources according to their cultural preferences'.[344] The Crown argued that the Ngāwha Tribunal went too far and that the regulation of geothermal energy under the RMA and earlier geothermal legislation is a 'legitimate exercise of governance under Article 1'. The RMA, in the Crown's view, 'strikes an appropriate balance in recognising the interests of Māori'.[345] The Crown submitted that the control and regulation of geothermal resources is

> based on the reasonable state objective of common benefit; as the resource is considered incapable of private ownership the Crown controls and regulates the conservation and management of the resource in the interests of all citizens.[346]

15.10.3 Development possibilities

The Crown submitted that '[i]t is not clear from the evidence presented in this Inquiry to what extent development of the geothermal resource in the National Park Inquiry District is feasible'.[347]

15.10.4 Limitations on use and development

With respect to Māori use and development of the Ketetahi Springs, the Crown acknowledged that their location within the overall area of the National Park 'may inhibit the use of the springs by owners in some respects' and 'would likely impact on potential development'.[348]

The Crown acknowledged that the status of neighbouring land as conservation estate 'will influence the available options for use of the Ketetahi Springs' in that there might be 'competing interest between conservation of the National Park and the wishes of the owners of the springs'. The Crown regarded the regulatory framework it had put in to deal with such competing interests as a 'legitimate exercise and reflection of kāwanatanga'. In any case, said

counsel, given that Māori had not yet made any proposals of their desire to participate in either tourism or geothermal power development at Ketetahi, it was difficult for the Crown to elaborate more on exactly what impact the status of the neighbouring park land would have on iwi development ambitions.[349]

The Crown made no submission in response to claims of loss of amenity caused by a geothermal pool being covered over during the diversion of the Tokaanu Stream for the TPD project.

15.10.5 Tourism development

The Crown did not make any specific submissions relating to the use of Ketetahi for tourism purposes. In relation to the concession system that DOC is operating, the Crown accepts that 'legislation has been enacted that regulates the tourism industry (for example, through the need to apply for concessions to operate within the National Park)'.[350] However, it does not accept that iwi have been shut out from economic opportunities in the National Park.[351] There is

> no evidence that Māori have been excluded from applying for concessions within the National Park, or elsewhere in the inquiry district, or from undertaking or participating in enterprise around the National Park.[352]

The Crown further submitted that 'DOC evidence has demonstrated a willingness to facilitate tangata whenua participation in appropriate concession activities'.[353] Regarding tourism opportunities as a right of development, the Crown denied any responsibility for facilitating Māori involvement, stating that 'the Treaty does not require the Crown to facilitate Māori entry or participation in any form of commercial industry, be it tourism or otherwise'.[354]

15.11 The Development of the Resource – Submissions in Reply

In response to the Crown's rejection of the *Ngawha Geothermal Resource Report*, counsel for Ngāti Hikairo repeated their earlier submission that the Ngāwha Tribunal's findings are directly applicable to the National Park inquiry.[355] Ngāti Hikairo also restated their submission that the Crown's regulation of geothermal resources through various legislation 'has failed to provide a system according sufficient priority and scope for the exercise of authority in the geothermal resource particularly in relation to their management'.[356] In response to the Crown's dismissal of any obligation upon the Crown to promote Māori development of the geothermal resource, counsel for Ngāti Tūwharetoa argued that their rights were 'based on property rights protected by the Treaty'. In the iwi's view, 'the Crown has a heightened duty of active protection in this regard given the insufficiency of Ngāti Tūwharetoa's remaining lands, their inability to fully utilise them, and the concomitant importance of the geothermal resource for future development'. Counsel added that it was 'disappointing that the Crown has not engaged on this issue'.[357]

15.12 The Development of the Resource – Tribunal Analysis

The Crown's initial interest in geothermal areas was from the perspective of tourism. Therefore, we begin with legislation and policy for tourism, and then look at that covering the generation of energy.

15.12.1 Tourism in thermal areas: legislation and policy

The first piece of legislation relating to geothermal areas in New Zealand was the Thermal Springs Districts Act 1881. The main aim was to open up the central North Island to international and domestic tourism development.[358] The notion of public good, or national use, was encapsulated in the Crown's intention for the thermal springs to attract both domestic and international visitors.[359] The legislation enabled the Crown to target and more readily acquire any land containing springs and other geothermal features. This had serious implications for Māori land, potentially giving the Crown a purchasing monopoly over areas that were valuable to Māori. As early as 1874, William Fox was urging the Crown to purchase the major geothermal

features, and the Crown was ever alert for opportunities to acquire them.[360]

The legislative landscape over the central North Island thermal areas until the 1950s was thus characterised by the Crown's targeting of thermal areas for tourism development. Crown aspirations and actions with regard to Ketetahi Springs were driven by the potential for tourism development of the springs and the national park. While the legislation never actually alienated the geothermal fields in the National Park inquiry district itself, the Crown had a clear policy of purchasing geothermal surface features as part of its drive to open up the central North Island for tourism.

15.12.2 Thermal energy generation: legislation and policy

The first state regulation of the geothermal resource for energy production came in 1952 in the form of the Geothermal Steam Act 1952, which vested in the Crown the 'sole right to take, use, and apply geothermal steam for the purpose of generating electricity'.[361] As the *Ngawha Geothermal Resource Report* has noted, it was an Act that gave the Crown 'wide-ranging powers to facilitate its own involvment in the production, transmission and sale of electricity generated from geothermal steam'.[362] As part of this endeavour, one objective of the Act was effectively to 'protect the areas which the Crown had selected for electricity generation'.[363] It did this by instituting, in proclaimed areas, a licensing regime for the sinking of any new bores. The Act did, however, allow the continued use of pre-existing bores at the same or lesser levels, and no permit was required for such continuing use, unless the relevant Minister, having regard to the public interest, directed otherwise.[364] The statute did not expressly terminate Māori customary rights in respect of their geothermal resources.

It is interesting here to note the definitions outlined in 1952. Firstly, a 'bore' meant:

> any well, hole, or pipe which is bored, drilled, or sunk in the ground for the purpose of investigating, prospecting, obtaining, or producing geothermal steam, or which taps or is likely to tap geothermal steam.

The definition of 'geothermal steam' included 'steam, water, water vapour, and every kind of gas, and every mixture of all or any of them, that has been heated by the natural heat of the earth'.[365] We are not aware of any proclamation of a geothermal steam area under the 1952 Act in or near our inquiry district, but we note that that the passing of the Act precluded Māori from any future use of geothermal steam to generate electricity, should they have wished to do so.

The Geothermal Steam Act, however, was inadequate to serve the Crown's increasing interest in the use of geothermal energy. The Ngāwha Tribunal surmised that in part this was because 'other industrial uses of geothermal steam and heat were being embarked upon or contemplated'.[366] The following year, the Geothermal Energy Act 1953 was enacted. The widened coverage of that Act is evident from its definition of 'geothermal energy', which included 'every kind of matter derived from a bore and for the time being with or in any such steam, water, water vapour, or mixture'.[367] It thus also covered minerals in solution in geothermal systems.[368]

The Act now vested in the Crown 'the sole right to tap, take, use and apply geothermal *energy* on or under the land . . . whether the land has been alienated from the Crown or not' (emphasis added).[369] And if the Crown did alienate land by lease or sale, it retained exclusive rights to use the geothermal resource on that land.[370] With regard to non-Crown land, the Act gave the Crown special powers to take land of 'national importance', in a similar manner to takings under the public works legislation.[371]

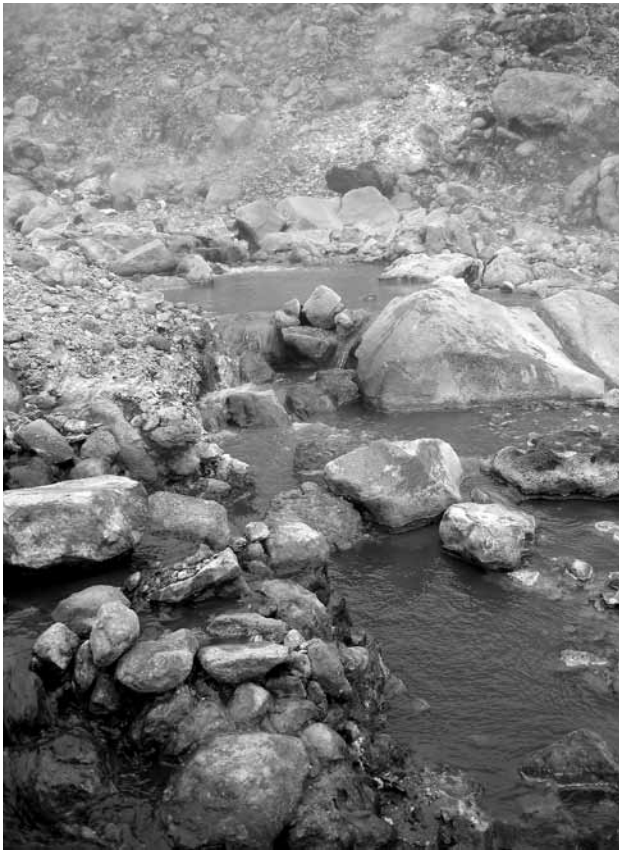
In addition to vesting in the Crown the sole right to extract the geothermal resource for power generation, the Act also put in place further measures to control or limit the sinking of bores for other purposes. As with the 1952 legislation, the Minister could declare designated 'geothermal energy areas', within which the Crown had the sole right to 'sink any bore, or to tap or take, use, or apply geothermal energy'.[372] Within these areas, the Crown also retained the sole right of geothermal energy exploratory investigation. Outside of these areas, however, landowners retained the right to sink bores, without the requirement of a licence, for investigating geothermal activity.[373]

Geothermal vent and pool. Steam and gas rise from a thermal pool reminiscent of the Pink and White Terraces.

Claimant counsel in the Ngāwha inquiry offered this useful summary of the Geothermal Energy Act 1953, which the Ngāwha and CNI Tribunals have also found fit to reproduce:

> The purpose of the Geothermal Energy Act 1953 (and its predecessor, the Geothermal Steam Act 1952) was to put geothermal resources on a similar statutory footing to electricity generation from *water*. As noted by Boast, the legislative framework therefore links geothermal resources with water, rather than with other *energy* resources such as petroleum, coal or uranium. Interestingly, the legislation does not vest the ownership of the geothermal resource in the Crown – as the Petroleum Act 1937 currently does with regard to petroleum – but instead treats it as an energy resource akin to water. The fact that water itself is an energy resource highlights the conceptual difficulties of adequately categorising geothermal water (particularly in view of its mineral content). [Emphasis in original.][374]

The 1953 legislation did not expressly extinguish any existing rights. Thus, as the CNI Tribunal has said, 'any customary or aboriginal title of the claimants' to the geothermal energy of the Taupō volcanic zone (TVZ) were arguably left intact along with their treaty rights.[375] However, in practice the significant extension of Crown control over geothermal resources did not leave any space for Māori to exercise tino rangatiratanga over the resource. Furthermore, as the CNI Tribunal found, the Act's restriction of usage to existing domestic purposes did not adequately reflect Māori connection with their taonga. As that Tribunal said, 'the resource was important for much more than domestic purposes; it was a resource that people depended on to sustain their way of life'. We



Stream with steam and boulders. The steam arising from this stream is evidence of geothermal activity.

agree that the Māori relationship with their taonga cannot be reduced to 'domestic purposes'.[376]

Two legislative moves in the 1960s further changed the way that the geothermal resource was managed, essentially devolving the administration of the Act to local authorities. The Geothermal Energy Amendment Act 1966 provided for local authorities to construct and operate geothermal works themselves and also allowed the Minister of Works to delegate to them the Crown's power of licensing others' use of the geothermal resource.[377] Following this amendment, the Water and Soil Conservation Act, which was passed in 1967, classified 'geothermal steam' as 'natural water'. A later amendment in 1981 widened the classification further to include 'water or steam or vapour heated by geothermal energy, whatever its temperature'. The result of this was that people wishing to use these aspects of the geothermal resource for generating electricity (as opposed to using them for domestic purposes) faced greater administrative demands as they were now required to obtain a water right from a regional water board as well as a geothermal licence under the 1953 legislation.[378]

15.12.3 The Resource Management Act 1991

The RMA consolidated legislation governing land, air, and water resources in New Zealand with the principal purpose being to 'promote the sustainable management of natural and physical resources'.[379] Under section 5(2), 'sustainable management' means:

> managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
>
> (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
>
> (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

(1) *Geothermal resources: section 354*

The substantive provisions of the Geothermal Energy Act 1953 were repealed by section 354(1) of the RMA. With regard to geothermal resources, the section maintained the key provisions of the earlier legislation, stating essentially that the Crown would retain its existing rights of use and regulation.[380] The RMA is still the current legislative control on the regulation of geothermal resources in New Zealand.[381]

The Act also stated that the new legislative regime did not affect 'any right, interest, or title, to any land or water acquired, accrued, established by, or vested in, the Crown'

before the date on which the 1991 Act came into force, and 'every such right, interest, and title' was to continue after that date as if the Geothermal Energy Act had not been repealed.[382]

Three issues will be central to our analysis of the adequacy of the RMA in regard to the relationship between Māori and their geothermal taonga in the National Park inquiry district:

- the adequacy of customary use rights;
- the granting of sufficient priority to Māori interests in the allocation and regulation of geothermal resources by local government; and
- whether the Crown is acting in a Treaty-compliant manner by delegating the control of geothermal resources to local government authorities.

(2) *The adequacy of customary use rights*

Under section 14(3)(c) of the RMA, Māori retained their customary use rights in the geothermal resource. The Act stipulated that Māori were not prohibited from 'taking, using, damming, or diverting' geothermal water if

> the water, heat, or energy is taken or used in accordance with tikanga Maori for the communal benefit of the tangata whenua of the area and does not have an adverse effect on the environment.[383]

Two issues arise out of this clause which, at face value, is designed to allow for the continued use of the resource by the tangata whenua of the area. First, by limiting their rights to solely customary uses, it does not provide for the full extent of Māori interests in the taonga. As various Tribunals have argued, use rights in natural resources should not be frozen at 1840 and thus limited to traditional uses. This will be explored more fully in the discussion of the right to development and with reference to the specific case studies of Tokaanu and Ketetahi.

The second issue that arises with reference to section 14(3)(c) is that these customary use rights are conditional. The clause at the end of paragraph (c) allows for the 'take' of geothermal fluids only if it 'does not have an adverse effect on the environment'.[384] Thus, if a field is being over-exploited, by any number of users, the Māori right to take for customary purposes can be affected. As the CNI Tribunal stated:

> It appears that the RMA procedures cannot guarantee priority for Māori even in terms of customary use of the surface and subsurface resources on their land as regulated by Māori law and for Māori cultural purposes, where over-exploitation of the resource in an area is leading to adverse environmental effects.[385]

(3) *Balancing of interests*

Under section 6 of the RMA, persons exercising functions and powers under the Act 'shall recognise and provide for' matters of national importance. Among the seven items listed, two are particularly relevant here:

> (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
>
> . . . . .
>
> (g) the protection of recognised customary activities.[386]

Under section 7, authorities were also required to 'have particular regard to' a list of other interests, including, at paragraph (a), kaitiakitanga. In *Ko Aotearoa Tēnei*, the Tribunal was of the view that,

> Where, in the balancing process, it is found that kaitiaki should be entitled to priority, the system ought to deliver kaitiaki *control* over the taonga in question. [Emphasis in original.][387]

The Crown's view, however, is that through the provisions of the RMA, an appropriate balance is already struck between the public's geothermal energy needs and the interests of Māori. In this district inquiry, as in the CNI inquiry, the Crown adopted the opinion of the chief justice in *Attorney-General v Ngāti Apa* 2003, namely that

> [the RMA's] system of management of natural resources is not inconsistent with existing property rights as a matter of

custom. The legislation does not effect any extinguishment of such property.[388]

The Crown argued that customary rights have been 'regulated not appropriated'.[389] The Crown's position is that it does not consider the geothermal resource capable of ownership, and that the regulation of it is a legitimate exercise of kāwanatanga under article 1 of the Treaty.[390]

In that context, we note the view of the Ngāi Tahu sea fisheries Tribunal, which said:

> The Crown in the exercise of its powers of governance in the national interest clearly has a right, if not a duty, to make laws for the conservation and protection of valuable resources such as the sea fisheries. But such power should be exercised with due regard to the interests of the owners of such resources. In the case of their sea fisheries guaranteed to Maori by the Treaty, *the Crown should first consult with Maori on proposed conservation measures and ensure that Maori interests are not adversely affected, except to the extent necessary to conserve or protect the resource*. Failure by the Crown to so act is inconsistent with Maori tino rangairatanga over their sea fisheries.[391] [Emphasis added.]

Although the Crown does not regard the geothermal resource as capable of ownership, we have already noted that the tangata whenua possessed it at the time of the Treaty, and have never knowingly and explicitly relinquished that possession. We therefore found that tangata whenua who exercised customary rights over the geothermal resource retain a Treaty interest in it.

In *Ko Aotearoa Tēnei*, the Tribunal has argued that, at present, the RMA provides a nominal accommodation of kaitiaki control and partnership, but that it is not delivering. That Tribunal concludes that the RMA has

> not delivered appropriate levels of control, partnership, and influence for kaitiaki in relation to taonga in the environment. Indeed, the only mechanisms through which control and partnership appear to have been achieved are historical Treaty and customary rights settlements.[392]

(4) *Crown delegation to local authorities*

The implication of the Treaty of Waitangi Act 1975 is that the Crown is expected to act consistently with the principles of the Treaty, in that, where any Act, proposed legislation, regulation, Order in Council, policy, or practice is inconsistent with the principles of the Treaty, Māori may bring a claim about the matter to the Tribunal.[393]

The Crown has delegated most of its authority to carry out the duties of the RMA to local authorities. Along with that delegation is the requirement for the local authority to '*take into account* the principles of the Treaty of Waitangi' when making decisions (emphasis added).[394] However, as the Ngāwha Tribunal noted:

> Implicit in the requirement to 'take into account' Treaty principles is the requirement that the decision-maker should weigh such principles along with other matters required to be considered, such as the efficient use and development of geothermal resources.[395]

In short, whereas the Crown itself is required to act consistently with the principles of the Treaty, that responsibility was significantly watered down under the Crown's delegation of authority to regional councils. Essentially, local authorities were not obliged to be Treaty-compliant in their decisions. The Ngāwha Tribunal found that this aspect of the legislation was 'fatally flawed'.[396]

The Ngāwha and CNI Tribunals recommended that the RMA be amended so that Crown delegates are required to 'act in a manner that is consistent with the principles of the Treaty of Waitangi'.[397] The Tauranga stage 2 Tribunal, however, has pointed out that it is the Crown that is the Treaty partner, not local bodies, and that, despite a delegation of functions, the Crown itself remains responsible for the overall Treaty compliance of the functions so delegated. That Tribunal noted that, under the Local Government Act 2002, the auditor-general has a responsibility to monitor local government performance and expenditure, but pointed out that the measure used is the letter of the law, not the standards of the Treaty.[398] The CNI Tribunal, for its part, commented that Māori concerns are 'merely being

listed or selectively integrated into RMA planning documents with fleeting references to tikanga, kaitiakitanga and the identification of taonga for protection'.[399]

Worth noting here is that central government can offer further direction to local authorities by issuing national policy statements and national environment standards. National policy statements outline objectives and policies for matters of national significance that are relevant to achieving the purpose of the Act.[400] A national environment standard is a regulation under sections 43 and 44 of the RMA which prescribes technical standards, methods, or requirements for environmental matters.[401] A national policy statement in respect of freshwater management has recently been issued, and one already exists for electricity transmission.[402] However, at present there is no such document or direction from the Crown regarding geothermal resources. The CNI Tribunal found in 2008 that:

> The legislative scheme of the RMA is deficient without some guidance from the Crown through the development of a national policy statement recording the nature and extent of Māori rights. That is because the Act on its own does not accord Central North Island Māori sufficient protection to ensure that their customary rights and their Treaty interests are provided for.[403]

There is also no relevant national environmental standard. The nearest is perhaps electricity transmission, and there are standards in development for 'ecological flows and water levels', among other things.

The recent *Ko Aotearoa Tēnei* report reinforced these earlier Tribunals' comments about the lack of guidance from central government, observing that

> National standards and policies could have removed a great deal of work for local authorities by providing necessary guidance for them to apply and implement in a manner suited to the expertise and resources available at council level.[404]

In short, beyond the general requirements of part two of the RMA, there is currently no direction from the Crown to its delegates on how they could provide for the nature of Māori interests in geothermal resources.[405] The CNI Tribunal recommended that the Crown should 'promulgate a national policy statement and guidelines', and it further suggested that CNI Māori should play a central role in this. This has not yet occurred, nor are we aware of any Crown intentions to do so.

The *Ko Aotearoa Tēnei* report is the most recent in a series of Tribunal reports calling for reform of the RMA.

(5) *Environment Waikato and regional planning*

The origins of the provisions in the Environment Waikato regional plan relating to geothermal fields may be found in a paper by Katherine Luketina of Environment Waikato, in conjunction with Ronald Keam and Leonie Pipe of the University of Auckland Physics Department. This paper was aimed at determining 'a rational approach for establishing criteria for protection by defining Significant Geothermal Features'. Among the criteria used were rarity, vulnerability to natural changes, and vulnerability to artificial changes.[406] Leading on from that work, Environment Waikato drew up a classification framework to help it 'determine the most suitable management approach for each system'. Using this framework, it has classified all the region's geothermal systems into five categories: 'development'; 'limited development'; 'research'; 'protected'; and 'small'. The Tokaanu–Waihī field is classified as limited development, which means that 'takes that will not damage surface features are allowed'. Tongariro–Ketetahi is however classified as protected, with a note that it is 'mostly within Tongariro National Park, a World Heritage Area'. The website explains:

> Protected systems contain vulnerable geothermal features valued for their cultural and scientific characteristics. Their protected status ensures that their underground geothermal water source cannot be extracted and that the surface features are not damaged by unsuitable land uses.[407]

On the iwi and hapū side, Ngāti Tūwharetoa drew up an *Environmental Iwi Management Plan* as long ago as 2003.

Sections 61, 66, and 74 of the RMA say that local authorities must take such plans into consideration when formulating district plans, regional plans, and regional policy statements. A whole section of Ngāti Tūwharetoa's plan is devoted to the geothermal resource, and other sections are also of potential relevance – notably those mentioning flora and fauna (which could conceivably cover the 'extremophiles' that live in geothermal environments) and the extraction of sulphur. Issues mentioned in relation to the geothermal resource include concerns that:

- the management of geothermal resources is controlled by statutory authorities as opposed to ngā hapū o Ngāti Tūwharetoa;
- the geothermal resource is not being sustainably utilised and managed;
- lack of scientific information relating to particular geothermal areas may lead to an ineffective and wasteful use of the resource; and
- intellectual property rights issues are not being discussed with ngā hapū and opportunities are not being made available to them.[408]

Alongside that, hapū with mana whenua in the area under which the Tokaanu–Waihī field sits came together in 2004 to form a working group. Their aim was 'to prepare a hapu-driven management plan for the field based on their tikanga and cultural values, to determine the protection and sustainable management and use of the geothermal resource'. The intention was for the plan to feed in to Environment Waikato's 'regional geothermal policy statements and management policies'.[409]

Environment Waikato's current regional plan largely came into force on 28 September 2007, although 'Variation 2', the geothermal module, did not become operative until late the following year. A further minor variation and some new geothermal maps were put out in late 2010.[410] Under section 7.4 (policies relating to the geothermal resource), the plan provides for 'limited new extractions' in the Tokaanu–Waihī field, as long as these can be undertaken 'without adverse effects on the Significant Geothermal Features'. For protected systems such as Tongariro–Ketetahi, however, provisions for use are limited to '[o]nly existing and small-scale new uses including scientific investigation and remediation or mitigation of past adverse effects'. The policy also indicates that it is possible for 'any person' to request a change in the classification of a particular system and sets out the procedure for doing so.[411] Under a heading of 'Geothermal Characteristics Valued by Tangata Whenua', section 7.5 of the plan specifies that the regional council will

> encourage and assist tangata whenua as Kaitiaki to identify particular geothermal surface features and specific geothermal resource management matters of traditional and contemporary *cultural* value. [Emphasis added.][412]

The section makes no reference to any other 'traditional and contemporary values' of tangata whenua, such as those relating to their health or their economic wellbeing.

Section 8 then sets out the rules and regulations for obtaining resource consents for activities within each category of field and identifies the assessment criteria.[413] (We note that Ngāti Tūwharetoa's *Environmental Iwi Management Plan* carries helpful information to assist any of its hapū, whānau, or individual members wishing to apply for such a consent.[414]) Under 'Environmental Results Anticipated' (section 7.7), the regional plan identifies one of the benefits of regulation as:

> People and communities being able to provide for their social, economic and cultural wellbeing through the appropriate use, development and protection of the Regional Geothermal Resource.[415]

We assume that 'people and communities' can be taken to include the tangata whenua.

15.12.4 A Treaty right to development

As we stated in the introduction to this report, the right to development arises from the Treaty principles of active protection, partnership, reciprocity, mutual benefit, and equity.

We have noted the Crown's position, based on the decision of the Court of Appeal given by President Cooke in *Te Runanganui o Te Ika Whenua Society v Attorney*

General.[416] Based on this decision, the Crown submitted that 'the Courts have held that a right to development does not extend to the right to generate electricity from water'.[417] The court held that

> however liberally Maori customary title and treaty rights may be construed, one cannot think that they were ever conceived as including the right to generate electricity by harnessing water power. Such a suggestion would have been far outside the contemplation of the Maori chiefs and Governor Hobson in 1840.[418]

It went on:

> The essence of what has been said above is that neither under the common law doctrine of aboriginal title, nor under the Treaty of Waitangi, nor under any New Zealand statute have Maori, as distinct from other member of the general New Zealand community, had preserved or assured to them any right to generate electricity by the use of water power.[419]

The Crown submitted that, since the technology to generate electricity from geothermal resources did not exist until after the Second World War, the Court of Appeal's view 'must also apply to the claim to a development right to generate power from geothermal resources'.[420]

In the subsequent *Te Ika Whenua Rivers Report* of 1998, the Tribunal responded to the Court of Appeal:

> We do not disagree with the comment of the Court of Appeal that Maori, as distinct from other members of the community, have not had preserved or assured, through customary title, any right to generate electricity by the use of water power. What we do say is that under the Treaty Maori were entitled to the full, exclusive, and undisturbed possession of their properties, which would include their rivers. As part of that exclusive possession, they were entitled to the full use of those assets and to develop them to their full extent. This right of development would surely include a right to generate electricity. The ability to exercise that right, however, depends on present-day circumstances, not on the position as at 1840.[421]

We concur with this Tribunal. During our inquiry, the Crown made no submissions in response to this finding. It did, however, submit that 'the Crown does not accept as a general rule that it has a positive obligation to foster Māori commercial development of the geothermal resource'.[422]

We therefore now turn to examine development rights to geothermal resources as they have been interpreted by the Tribunal and the courts during the last three decades. As background, since the 1988 *Report on the Muriwhenua Fishing Claim*, the Tribunal has been clear that Māori were entitled to develop their resources, take up new technologies, and access new markets. And, as early as 1983, the Motunui–Waitara claim rejected the notion that Māori rights were to be 'fossilised' as at 1840.

Three levels of development rights have been identified and applied in previous inquiries before the Tribunal and the courts. These three levels were first accepted in the majority finding of the *Radio Spectrum Management and Development* inquiry in 1999. These were:

- the right to develop resources to which Māori had customary uses prior to the Treaty (development of the resource);
- the right under the partnership principle to the development of resources not known about in 1840 (development of the Treaty); and
- the right of Māori to develop their culture, language, and social and economic status using whatever means are available (development of Māori as a people).[423]

With respect to the geothermal claim before us, all three levels of development are relevant: the geothermal resource was used by Māori prior to the Treaty; as a Treaty partner Māori would have equal right and opportunity to develop uses for the resource, in accordance with new technologies that were not known or available to them before 1840; and there is a clear link to be made between the development of geothermal resources and a potential benefit to the local iwi and hapū's economic status.

Of greatest relevance to the issues before this Tribunal, the nature of the Treaty right to develop, and the role and duties of the Crown, have been recently reviewed and systematically considered by the CNI Tribunal. In doing so, it

drew on over 10 other Tribunal reports, from 1988's *Report on the Muriwhenua Fishing Claim* to the more recent, and it considered key Court of Appeal and Privy Council cases. At the request of the Crown, the Tribunal set out its view of how the Treaty right of development applies to the geothermal resource in today's circumstances. The Tribunal expressed its views in a set of general propositions relating to several key areas of development, namely tourism (centred on geothermal features, volcanic mountains, and rivers and lakes, including recreational fishing), energy (geothermal and hydro), forestry, and farming. Most of these are common to both the CNI and National Park inquiry districts. We set out the CNI Tribunal's key findings below.

The CNI Tribunal further highlighted the prejudice that Māori suffered as a result of the Crown vesting in itself the exclusive right to develop the geothermal resource for power generation, under the Geothermal Energy Act 1953. The Crown failed 'to inform itself of the nature and extent of Maori customary rights in the resource' and 'to recognise and provide for the customary rights . . . of Central North Island Maori', and thus it 'foreclosed on Maori opportunities to participate in joint-development ventures for geothermal power'.[424] There is a clear connection to be

The CNI Tribunal's Findings on Treaty Development Rights

In its 2008 report *He Maunga Rongo*, the CNI Tribunal wrote:

> In agreement with other Tribunals, we find that Central North Island Māori have the following Treaty rights:
>
> - As property owners, Maori have a right to develop the properties and taonga guaranteed to them by the Treaty if they so choose and under their own authority (tino rangatiratanga).
> - They have a right to develop their properties and taonga by any means that they consider appropriate. This includes new uses or technologies that were unknown in 1840.
> - They have a right to retain a sufficient land and resource base to develop in the Western economy, in accordance with their preferences, and to be actively protected in the retention of such a base.
> - They have a right to share in the mutual benefits envisaged by the Treaty and promised repeatedly by ministers and officials.
> - They have a right to develop as a people in terms of their culture, language, and socio-economic advancement.
>
> In agreement with other Tribunals, we also find that the Treaty right of development extends to:
>
> - intangible as well as tangible taonga;
> - 'other properties' not necessarily specified in either of the Treaty texts; and
> - the right of Maori property owners to develop or profit from resources in which they can be shown, on the facts, to have had a proprietary interest under Māori custom (and that this is so even where the nature of that property right is not recognised, or has no equivalent, in British law, and therefore encompasses rivers, lakes, and the water resource contained therein).
>
> We further find that this right of development includes:
>
> - equal access to development opportunities for the above properties and taonga, on a level playing field with other citizens;
> - positive assistance from the Crown where appropriate in the circumstances, which may include assistance to overcome unfair barriers to development, some of them of the Crown's making; and
> - the opportunity for Maori to participate in the development of Crown-owned (formerly Maori) or Crown-controlled property, resources, or industries in their rohe, and to participate at all levels.[1]

made between the loss of property rights and the loss of the right to the development of the geothermal resource, and thus the loss of the financial benefits from the use of the resource. The CNI Tribunal found that:

> Central North Island Māori have been prejudiced by the Crown failure to acknowledge their Treaty rights and interests in the geothermal resource, resulting in their being excluded from the process of managing and developing the resource, despite its central importance in their everyday life.[425]

Also, in the CNI Tribunal's view:

> The Crown ought to have paid a royalty or rental for each of the geothermal stations to those Māori who owned the land within which the geothermal resource was contained, and the hapū or iwi who exercised tino rangatiratanga over it.[426]

The above extract is only a short summary of a very thorough treatment of the issue in chapter 20 of *He Maunga Rongo*, and we direct readers to that chapter for more detail. However, we would note that we are in overall agreement with the CNI Tribunal's characterisation of the modern Treaty right to develop the geothermal resource. Ngā iwi o te kāhui maunga have been prejudiced in the same manner as central North Island Māori, and we acknowledge that a large part of this prejudice is iwi and hapū loss of financial benefit from the use of the resources – notably, in the case of our inquiry, for Ngāti Tūwharetoa and Ngāti Hikairo. In that context, we notice a comment by Crown counsel in the recent urgent inquiry into the claim about freshwater and geothermal resources, to the effect that, although the ownership of these resources was not on the table for negotiation, there were mechanisms that could provide cultural redress and sometimes also 'commercial redress tailored to the resource in question'.[427]

As to the issue of whether the Crown had a duty to foster the development of the resource, this issue was not substantially argued before us with regard to geothermal power or in regard to tourism development at Ketetahi and on the Tongariro Alpine Crossing.

15.12.5 Case study 1: the Tokaanu–Waihī field

Having discussed the relevant legislation, and noted the Crown's ambitions for tourism development based around geothermal features in the TVZ, we now take a more intensive look at both areas of geothermal activity within the National Park inquiry district.

The evidence and submissions of claimants in our inquiry were focused on actions of the Crown that they argue have prevented and continue to actively prevent Māori from developing their specific geothermal resources. The claimants submitted that all of these actions are in breach of article 2 and the principles of the Treaty. We again reiterate that the Crown, for its part, 'does not consider that any Treaty breach has arisen following Crown actions or omissions concerning geothermal resources within the National Park Inquiry district'.[428]

As we have noted earlier in this chapter, the Tokaanu–Waihī field overlaps the boundary between the Tribunal's National Park and CNI inquiry districts. It likewise overlaps block title boundaries. Claimant evidence furthermore indicates that several hapū hold mana whenua there – namely, Ngāti Kurauia, Ngāti Turumākina, Ngāti Tūrangitukua, and Ngāti Rongomai. Those hapū also acknowledge that '[o]ther hapu of Ngati Tuwharetoa may have claim to customary rights over this resource'.[429]

No surface features of the Tokaanu–Waihī field (such as hot pools, geysers, or springs) lie within our inquiry district, so its tourism development potential is not a matter for this inquiry. Of direct relevance, however, are the options identified by claimants to develop the resource for power generation purposes from within the inquiry district.

That said, it is not clear in the evidence put to the Tribunal how far south into the inquiry district the geothermal field does extend, and the Tribunal's assessment of the claimants' right to develop the resource is necessarily hypothetical at this point. Furthermore, we must assess the case as it is put to us currently, as we do not know what technologies will become available in the future.

Environment Waikato submitted in evidence a map showing the geothermal field extending to the Kakaramea

saddle then on in a slight curve round to Mount Tihia. The field would thus appear to be beneath three blocks – namely, Part Tokaanu B, Waimanu, and Part Waimanu[430] – of which the affected areas would all appear to be contained within the Crown-owned Pīhanga Scenic Reserve (added to the National Park in 1975, as we saw in chapter 8).[431] However, given that we did not have the benefit of evidence before us as to how Environment Waikato fixed this southern boundary on their map, we must consider the possibility that the field could extend further south, under Māori-held land around Lake Rotoaira and other Waimanu blocks. Indeed, Dr Severne's doctoral thesis on the Tokaanu–Waihī geothermal system noted the difficulty of defining the southwestern boundary 'on the flanks of the Kakaramea–Tihia massif'. She cited access to the area, as well as the effect that the terrain had on the hydrology of the system, as the main reasons for that uncertainty.[432]

Some claimant witnesses also mentioned the presence of puna (springs) around Lake Rotoaira. The Lake Rotoaira Indigenous Knowledge Project submitted in evidence that 'There were many puna in the lake at the lower end of this area, hence the name commonly associated with this area being Ngapuna'.[433] They noted that Nancy Hallet 'recalls the existence of warm puna near the shoreline . . . [and] steam rising from the water line'.[434] It is not known whether these puna are connected with either the Tokaanu–Waihī system or the Tongariro system. We note this evidence here for the sake of completeness, and further note that scientists have discounted the possibility of the Tongariro and Tokaanu fields themselves being interconnected.[435]

George Asher, speaking for Ngāti Kurauia, was one who expressed frustration over the impact of the Crown's legislation relating to geothermal resources, contrasting former times, where the tangata whenua had complete freedom of decision-making and action with regard to the Tokaanu field, with the present, where the hapū finds itself 'though no conscious act on its part, having to go cap in hand to the local authorities and the Crown to enjoy and utilize its precious taonga'.[436]

(1) *Development potential*

What are the possibilities for geothermal power development on the Tokaanu field? Irrespective of whether the Rotoaira puna form part of the Tokaanu–Waihī field, Dr Severne was of the view that '[t]he Tokaanu system can be accessed from the National Park side of the Saddle on the southern flanks of Kakaramea (within the National Park Inquiry District)'. Her assessment was that the southern side of the Tokaanu–Waihī field was 'a desirable location for development due to the lack of surface manifestations and the fact that it is a remote location removed from Tokaanu'.[437] In contrast to the large and damaging power developments at Wairakei and Ohaaki, Dr Severne noted that 'advances in technology for small geothermal generation (5–10MW) provide a low impact alternative for hapū investigating the possibility of electricity development'.[438] She explained what this might comprise:

> Such technological advancements include operating with small-scale fluid withdrawl, no surface discharge or total fluid reinjection, and a discreet station footprint to minimise visual impacts.[439]

The Mokai geothermal power station on the Tuaropaki lands approximately 25 kilometres northwest of Taupō was cited by claimants as an example of a well designed iwi-led geothermal power initiative.[440] We note from the Tuaropaki Trust's website that in addition to its small power plant, it has set up a hydroponic horticulture operation using the geothermal resource to heat the greenhouses.[441]

(2) *Proximity to the Tokaanu hydroelectric power station*

We also heard from the claimants, however, about significant obstacles that stood in their way, limiting their ability to realise their development ambitions. In her evidence to the CNI Tribunal and to this inquiry, Dr Severne made the point that the presence of the Tokaanu hydroelectric power station on the Waihī-Tokaanu field posed significant difficulties in the development of the Tokaanu field for geothermal power generation, as the 'effect of

extraction could cause the Tokaanu power station to sink and crack'. This possibility would make it very unlikely that 'resource consents would be granted, at least in that vicinity'.[442]

We note that the TPD has also affected surface geothermal features at Tokaanu. In particular, Merle Ormsby of Ngāti Hikairo pointed to the loss of her family's thermal pool known as Hinekapa, which was covered with landfill when the Tokaanu Stream's course was diverted, to suit the needs of the project.[443] Her sister, Tiaho Mary Pillot, added that the area concerned had 'been completely covered over with large boulders, concrete slabs, and chunks of asphalt, taken from Taumaranui where there had been a recent road slip. Lastly, pumice and top soil were added'.[444]

As recorded by the CNI Tribunal, other hot pools and springs in the area had also been lost when the level of Lake Taupō was raised after the installation of control gates at the lake's northern end.[445] This, too, was an impact of the TPD, although related to its Waikato section rather than the Tokaanu phase with which we are concerned in this report.

These combined impacts were suffered as a result of the Crown's need to advance the TPD. We are not clear whether the resulting prejudice has been compensated for in the settlement ratified by the Ngāti Turangatukia Claims Settlement Act 1999. We understand that the settlement was confined to the areas included in the Turangi Township Act 1964. To the extent that the losses have not been addressed they await the attention of and a response by the Crown.

Our particular concern here, however, is that any limitations now placed on the ability of the hapū to develop the geothermal field tend to compound the prejudice already suffered through those earlier losses of amenity.

(3) *Impact of the flow of Healy's bore on the field*

In 1996, Ngāti Kurauia, one of the hapū with with mana whenua over the field, formed a joint working group to

> explore ways in which it could influence the management regime of the Field and consider effective regimes for both protection and utilisation of the resource in a sustainable manner in keeping with our tikanga.[446]

One of a number of initiatives carried out by this group was a survey of the draw-offs from the field. All of the main draw-offs were found to have been created by the Crown. Healy's bore was reported to be discharging 'copious amounts of hot water onto the land surface and has been since the 1940's'.[447]

While lying outside of this inquiry's boundaries, Healy's bore is of interest to this Tribunal because it has a negative impact on the development capacity of the Tokaanu–Waihī geothermal system. Dr Severne told us about the origins of this bore, sunk in the mid-twentieth century as part of a government test programme in the area:

> In 1942 the Crown drilled four shallow bores to a maximum depth of 107 m in Tokaanu to further assess the value of the unusually high boron concentration. These were the first geothermal wells in New Zealand drilled outside the Rotorua area. These wells were grouted in the 1960s. However they are not stable and pose a danger.[448]

Healy's bore was one of these four bores and 'remains a concern as it has broken through and has been discharging reservoir fluids into a nearby stream for several years'.[449] It thus weakens the development potential of other parts of the field, including the part within our boundaries that has been identified by claimants for prospective small-scale power development in the future. Dr Severne emphasised to us that '[t]his mismanagement should be remedied as it is wasteful and the system is being run down as a result'.[450] Environment Waikato themselves admitted that Healy's bore 'loses geothermal fluid at a rate equal to the sum of all other takes'.[451]

Other information, however, indicates that the bore has created impressive silica sinter flats covered, in part, by yellow algae. Situated on the western boundary of the DOC-administered Tokaanu Thermal Park, the bore outflow is described as now being a 'spectacular site'.[452] Another study describes how thermal water erupts

Healy's bore, Tokaanu. Drilled by the government in 1942, the bore has since been abandoned, and geothermal activity has created a natural-looking mound of mineral deposits, as well as a geyser.

continuously from the bore, to a maximum height of two metres, and then 'flows out over a sinter apron 40 m long composed of numerous sinter terraces'.[453] That said, the site is surrounded by bush and not easily accessible, so unlikely to be visible from the visitor track in the thermal park.[454]

The regional authority, Environment Waikato, does not appear to have been charged with the task of properly capping the bore under the RMA, and nor does it appear to have developed any particular policy regarding it.

(4) *Environment Waikato regulations*

At this point, we return to Environment Waikato and the regulations we mentioned earlier. We did not have the benefit of receiving evidence directly from Environment Waikato but we note that the council appeared at length before the CNI Tribunal. That Tribunal's report records that Environment Waikato has aimed to 'achieve a balance in developing resources while also protecting them for future generations'.[455]

As we noted in our previous section, the Tokaanu–Waihī

field has been classified as a 'limited development' system. The Environment Waikato website describes the field as consisting of

> Many geysers, sinter-depositing springs, geothermal habitats, mud pools, and other vulnerable surface features, that do not appear to be significantly adversely affected by the many small to medium existing extractions. Limited new extractions may be accommodated without adverse effects on the Significant Geothermal Features but larger extractive uses would be likely to have significant adverse effects.[456]

The CNI Tribunal noted that, according to Environment Waikato,

> large scale energy extraction [from the Tokaanu–Waihi field] has the potential to exacerbate, damage, or destroy the remaining geothermal features. It may also cause heating of the ground and hydrothermal eruptions in populated areas, possibly resulting in ground subsidence causing the settlements of Tokaanu and Waihi to become flooded by Lake Taupō.[457]

When the 'limited development' classification was first applied, the affected hapū lodged a formal protest with the Environment Court. Stephen Asher, giving evidence in our inquiry, explained to us that the hapū challenged the Crown's 'assertion of the right to impose its own management regime over [their] geothermal taonga pursuant to legislation'. Furthermore, he said, Environment Waikato had not consulted with either the hapū or the legal landowners when it decided to impose the new classification of 'limited development'.[458]

George Asher, for his part, told us that his hapū's objection to Crown actions around the Tokaanu field is that 'we do not believe that this protection regime has been imposed with due regard to the exacting science that is required to base such decisions on'.[459] By failing to consult Ngāti Tūwharetoa, Mr Asher contended that the regional council's designation and rule is 'therefore arbitrarily based and predicated on a status quo notion that defies logic and is contrary to our tikanga'.[460]

Referring to the Crown's assumption of regulatory powers, Mr Asher contended that the Crown has 'completely ignored' the claimants' customary relationship to this taonga, 'as established by our ancestor Ngātoroirangi', in contravention of the Treaty. Rather, their rights and customary associations have been 'sidelined in the interests of the "public good"'.[461]

We shall return later to the issues raised here by the claimants, but first we need to look at our second case study.

15.12.6 Case study 2: the Tongariro–Ketetahi field

With regard to the Tongariro–Ketetahi field, the claimants raised the issues of both tourism development and geothermal power development. Predominantly, the site has been identified since the late nineteenth century for tourism development. However, the claimants also commented that, were it culturally and logistically feasible, a small-scale power development would also be possible on the flanks of Mount Tongariro.[462] This section will assess what has occurred in the history of development on the field and at the springs – from both Crown and iwi actions – and what could potentially occur in the future. The analysis is aimed at ascertaining whether any Crown actions or omissions have impeded Māori in their development ambitions for their taonga at Ketetahi.

As background and context to this case study, we briefly traverse the Crown's tourism development in the wider central North Island. From the 1880s, the Crown began to target geothermal lands more directly for control and acquisition. In large part, the rationale for this targeting was because these areas had been identified for their tourism potential. In 1881, the government passed the Thermal Springs Districts Act, which gave the Crown exclusive alienation rights over lands it proclaimed to be 'Thermal Springs Districts'. Dr Coombes notes that the Act was intended to apply to all of what William Fox had identified as the 'Hot Springs District',[463] and Fox's 1874 memorandum to Premier Vogel shows that he viewed the 'district' as including the geothermal features at Tongariro and the southern end of Lake Taupō at Tokaanu.[464] In the event, however, no land in the National Park inquiry district was actually declared under the Act.

As the CNI Tribunal articulated, under the Thermal Springs Districts Act the Crown had 'legislated for itself a possibility of developing the lands and resources . . . in partnership with Māori' but that this is not what happened in practice: 'Instead, it concentrated on purchasing the parts it wanted under monopoly conditions, and ignored the rest.'[465] That Tribunal further found that the practice of 'targeting' under the Thermal Springs Districts Act and later the Scenery Preservation Act, 'including the imposition of a form of Crown pre-emption for the purchase of land with geothermal features' was 'in breach of the principles of the Treaty of Waitangi and the Crown's duty to act reasonably and in good faith.'[466]

(1) *Early tourism developments*

If there was ever an opportunity for Ngāti Tūwharetoa to be able to participate culturally and commercially within a growing tourism framework, it was at Ketetahi from late in the nineteenth century. As a stream of new visitors began to arrive, many from overseas, seeking what today has become a commonplace tourism experience, Māori could have been active partners in the development of tourism in an emerging national park, the nation's first. However, as will be seen from what follows, this was not to be.

The development of a track across Tongariro has been discussed earlier in this chapter, and we noted there that it was clearly aligned with the Crown's ambitions to facilitate tourist movement up to the mountains. We also noted how the Crown allowed the track to be built on the Māori-owned Ketetahi block.

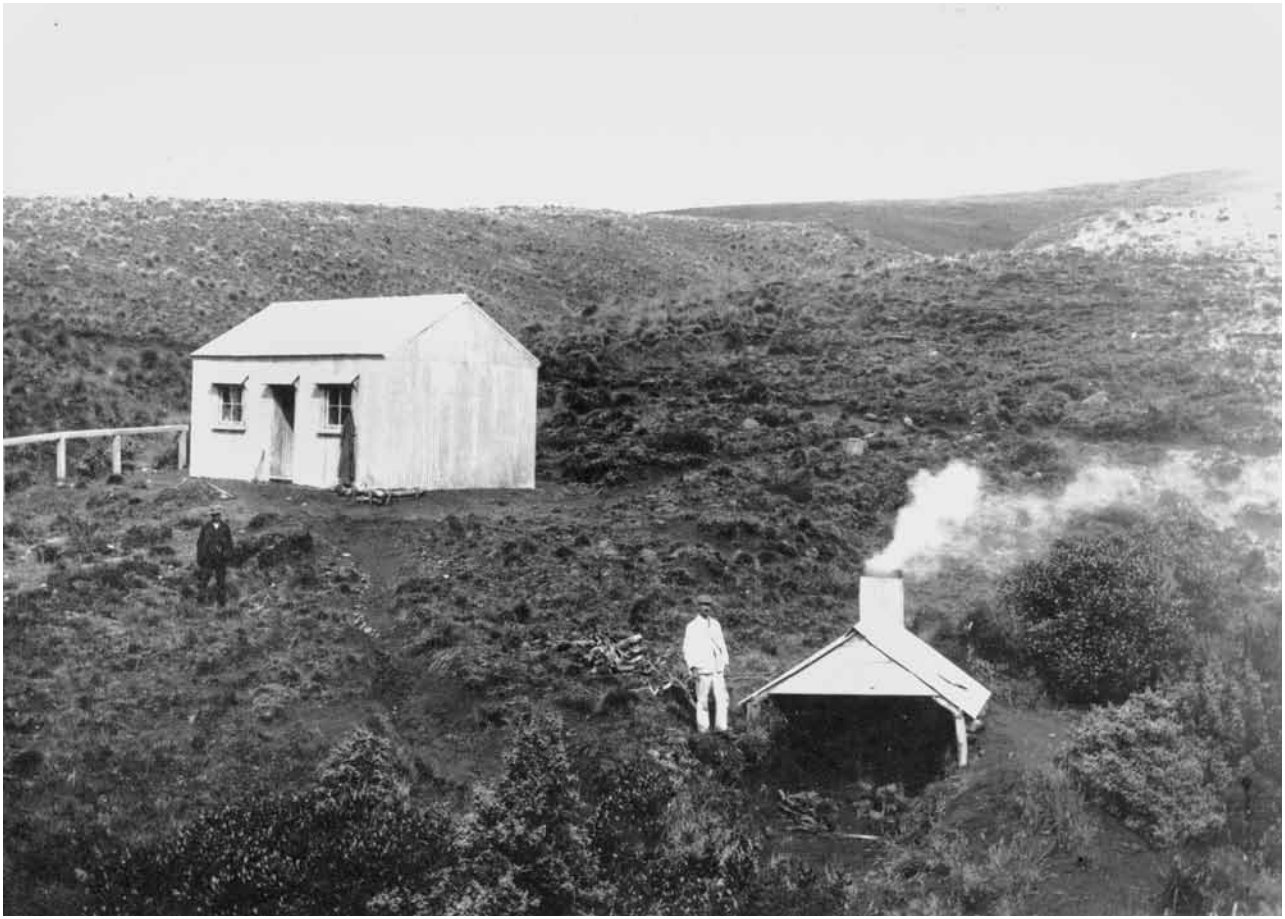
The era around the turn of the twentieth century stands out as a brief interlude of consultation between the Crown and Māori regarding tourism possibilities at Ketetahi Springs. As at 1898 the 'road' to Ketetahi consisted of bridle track extending from Ōtūkou native village to the Ketetahi Springs.[467] Percy Smith reported to Murray, the Whanganui roading surveyor, about his plans to erect huts at Ketetahi Springs and at Waihohonu on the eastern side of Tongariro. He had met with Te Heuheu that year about the construction of these huts. Te Heuheu was particularly interested in a hut at Ketetahi which would provide his people with good potential to guide tourists up to their springs and further up the maunga. Smith wrote:

> Te Heuheu was here yesterday and at his request I have told him that you will arrange with him as to their erection. Possibly he will supply the timber and cartage. . . . He desires that Keepa Pouatata should be appointed to act as guide for Tongariro, Ngauruhoe and Ruapehu and that he and his people would supply to visitors their coaches and conveyances, charging them a rate to be fixed between you and him. They proposed to require visitors to pay 5/-for any time from one day to a month which they may wish to spend at Ketetahi Hot Springs in any of the houses, or that the scale should be fixed by the Government. Te Heuheu will be at Tokaanu on Monday next so I wish you to confer with him and try to co-operate.[468]

This piece of correspondence tells us three things. First that Te Heuheu desired Ngāti Tūwharetoa be involved in guiding visitors up to the springs. Secondly, that this was clearly identified as a commercial venture, with Ngāti Tūwharetoa aiming to gain as income a standard rate of five shillings from each visitor they took to their land. Thirdly that they wished for a hut to be built at Ketetahi to house visitors. Most importantly the building of this hut was to be seen as a joint venture between Te Heuheu and the Crown, with Te Heuheu providing the 'timber and cartage' and Murray arranging construction.

Subsequently another surveyor, Robert Reaney, followed up on Te Heuheu's proposal, and continued correspondence with the chief. Te Heuheu told Reaney that four other chiefs (unnamed by Reaney) were also interested in the matter.[469] The Crown also desired a hut to be built on the Eastern side of the mountain at Waihohonu. However Te Heuheu had, according to Percy Smith, 'no interest' in the Waihohonu site and further restated his focus on the establishment of a hut at Ketetahi so as to benefit from the tourist route from Tokaanu:

> It appears that the majority of tourists go to Tokaanu and arrange there with the guides to take them up the mountains, and that what Te Heuheu requires is a whare for these



Ketetahi Hut on the northern slope of Mount Tongariro, circa 1900. Before 1900, the Crown and Maori had discussed a number of development opportunities at Ketetahi Springs.

people to stay the night in as it is at present too far to get from Tokaanu to the springs and up the mountains and back in a day.[470]

Historian Cecilia Edwards points out that Reaney and Percy Smith agreed that Te Heuheu's proposed fee was too high; Reaney suggested two shillings per visitor for guiding by Tūwharetoa and accommodation at the hut. An arrangement was made whereby huts were erected at both the Ketetahi and Waihohonu sites by 1904, but Ms Edwards states there was 'no direct evidence' in the files she consulted 'to suggest whether Tūwharetoa did in fact provide tourist transportation and guiding services in the park at this time'.[471] Indeed she notes that the Department of Tourist and Health Resorts had 'arranged to have a Mr McSweeney from Tokaanu available to guide people visiting the mountain'. Ms Edwards comments: 'If he had no connections to Tuwharetoa, this would lend weight to the assumption that Te Heuheu's aspirations for securing guiding services had not been realised.'[472]

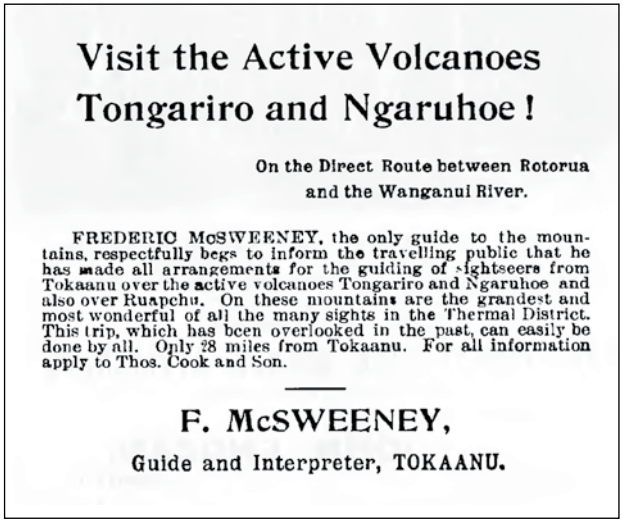
It seems, then, that, although Te Heuheu and Ngāti Tūwharetoa were initially keen on engagement in tourism opportunities with regard to the springs, little came of it. From the evidence before the Tribunal, it appears that despite the hope held out in the initial correspondence between Te Heuheu and Percy Smith, Māori had little opportunity to participate actively in tourism initiatives in those early days. Rather, Ms Edwards characterised the relationship concerning the development of tracks and huts 'to be one of consultation, not co-management'.[473] As we shall see, this would continue to be the case later in the century, when the Department of Tourist and Health Resorts went on to work with recreational groups to establish tourism infrastructure more widely thoughout the park.

In hearings, counsel for Ngāti Tūwharetoa questioned Dr Coombes about why joint tourism ventures never came to anything in the early days. He cited a number of reasons, among them a lack of finance from the government side. The idea for a joint venture at Ketetahi, he said, was dependent on Crown finance and Māori land and labour, 'but the Crown had to invest some money to see it happen and they just didn't have the money to do that'.[474] He also noted the limited roading infrastructure in the central North Island as a major obstacle to Māori ambitions to participate in tourism development: 'Tongariro continued to be a distant side-trip from the main tourism destinations'.[475]

Of the early twentieth century, Dr Coombes summarised the position as being that,

> With the entrenchment of 'scenery preservation' ideals after 1907, any efforts to negotiate for joint projects at Ketetahi were abandoned in favour of attempts to acquire Māori land.[476]

In 1908, the Crown set aside further funds for the development of the springs area, keeping in mind its intention to ultimately purchase the land and integrate it into the park. £600 was allocated to spend on a caretaker's hut at the springs 'in order chiefly to protect Native flora and possibly make some small provisions for accommodation of tourists'.[477] Dr Coombes notes that '[i]t is unclear whether these possibilities had been negotiated with the owners'.[478] Despite financial provision, no caretaker's hut or additional tourist accommodation was ever built at Ketetahi.



Visit the Active Volcanoes
Tongariro and Ngaruhoe!

On the Direct Route between Rotorua and the Wanganui River.

FREDERIC McSWEENEY, the only guide to the mountains, respectfully begs to inform the travelling public that he has made all arrangements for the guiding of sightseers from Tokaanu over the active volcanoes Tongariro and Ngaruhoe and also over Ruapehu. On these mountains are the grandest and most wonderful of all the many sights in the Thermal District. This trip, which has been overlooked in the past, can easily be done by all. Only 28 miles from Tokaanu. For all information apply to Thos. Cook and Son.

F. McSWEENEY,
Guide and Interpreter, TOKAANU.

Advertisement extolling the virtues of the thermal district, 1902

In 1914, administrative responsibility for the park was transferred to the Department of Tourist and Health Resorts, where it remained until 1921. This has been detailed in chapter 11. Following the initial gestures of collaboration over the building of the visitors' hut at Ketetahi, in 1904, the hut's use and maintenance was bedevilled for many years afterwards by confusion over whether or not it was on park land. If it was, the implications were that it could be used by park visitors and also that it was the park board's responsibility to maintain.[479] If it was not, and was, rather, on the Ketetahi block, the implication was that it was both the property and the responsibility of Ngāti Tūwharetoa. Much of this debate was confused by the Crown's repeated attempts to limit the size of the Ketetahi block to 20 acres, rather than the 92 acres it actually was. By mid-century, the hut had fallen into considerable disrepair.

The hut had obviously continued in use, however. In 1925, the park board received a complaint that 'Māoris

Trampers at Ketetahi Hut, 1954. By the time this photograph was taken, the hut was in definite need of repair.

. . . are in the habit of using the Spring for curing various skin diseases and that they camp in the hut while there and leave it not only dirty but probably infected with loathsome diseases'. Asked by the park board to investigate, the warden commented that neither he nor his predecessor had ever seen Māori at the hut. Irrespective of who responsible for the untidiness, however, the hut was clearly being used. The warden went on to comment on the question of ownership and responsibility:

> The building is situated about half a mile below the Ketetahi Springs and although the hut is well within the Park area it has been built too near the Springs and *possibly* the Maoris claim the rights to the hut. [Emphasis in original.][480]

Dr Coombes argues that when the warden described the hut as being 'well within the Park area' he must have been relying on the Biggs survey, which Dr Coombes characterises as 'highly compromised'.[481]

In 1949, representations were made by recreational interests that both track and hut were in need of repair. Patrick Kearins, the member of parliament for Waimarino and soon to become a member of the national park board himself, relayed these concerns to the board and sought to clarify the situation regarding facilities at Ketetahi. In response, the board's secretary wanted to know if the access road, which was legal up to the boundary between Ōkahukura 8M and Tongariro 1C, had been formalised the rest of the way too, right up to 'the blowhole'. As to the hut,

he wanted clarification on whether it was located within the Park or the 'reserve'. The board indicated it would not repair the hut until it was sure that it was 'under any liability to repair it'.[482] After the hut was almost lost in a storm, the ranger suggested it would be 'better to pull the hut down and re-erect it a few chains higher up on a better site'.[483]

Meanwhile, Crown officials' concerns for the hut were, as we saw earlier, still grounded in ambitions to develop baths and accommodation at the springs.[484] However, these plans were contingent upon the Crown either purchasing or leasing the land from Ngāti Tūwharetoa – a situation which, as we have already discussed, was not considered an option by the tribe. Ultimately the Crown's inability to acknowledge Māori aspirations, namely that the block remain in iwi hands, foreclosed the possibility of realising either Crown or Māori tourism options at Ketetahi, and stymied any hope of a collaborative venture.

(2) *Contemporary tourism issues*

We have discussed the issues of tourism and guiding in chapters 11 and 12. In chapter 12, we looked at the different ways that the department managed concessions, leases, licences, permits, and easements within the park. In the context of the present chapter, we note claimants' concerns about DOC's practice of issuing concessions to tourism operators to guide visitors across the Tongariro Alpine Crossing, and therefore across the Ketetahi block in Māori ownership. The claimants stressed their role as kaitiaki of the Ketetahi Springs and were concerned about their cultural history being appropriated by tourist guides on the alpine crossing. Ngāti Hikairo raised these concerns in a meeting with DOC in 2000 and Te Maari Gardiner suggested that the guiding concessionaries should be required to pass a cultural awareness course.[485]

As Tyronne (Bubs) Smith from Ngāti Hikairo set out:

> The Department has not consulted with Ngati Hikairo since 2002 on the process of concessions, where we have always been highly critical of non-Māori advertising that their guides will give the Cultural history of the mountains.[486]

Under cross-examination by the Crown, Mr Smith expanded on this point:

> **Mr Soper:** . . . just to clarify then, your concern isn't so much about guiding per se but the way in which those guiding concessions are allocated and granted?
> **Mr Smith:** Ah, yes, yeah. The biggest concern, I suppose, for us is . . . of non-Māori basically advertising that they will give their clients our cultural history. And we believe that's our story to tell. And it's kinda like, like a Māori boy like me being on the Great Wall of China and telling people their history.[487]

Mr Smith appended to his evidence a list of people or groups who have been granted concession permits or research permits in the Tongariro National Park since the early 1990s. He noted, furthermore, that the department appears to have found what he called a 'back door' way of granting greater numbers of concessions on the Tongariro Alpine Crossing by 'omitting the "Tongariro Crossing" name and then using the "Northern Circuit" and the "Round the Mountain" track names' instead.[488]

The list of over 250 concessionaries operating in the National Park is heavily dominated by Pākehā-led organisations. According to Mr Smith, perhaps only half a dozen concessionaries, at most, were tangata whenua.[489] We did not receive evidence on the extent to which the number of concessions granted in each case reflected the number of concessions applied for. We accept, however, that limited Māori participation does not necessarily mean Māori satisfaction with the status quo.

In chapter 12, we discussed in detail DOC's treatment of the role of Māori in tourism. In its management plan for the period from 2006 to 2016, DOC makes a statement that it will 'encourage the Ngāti Tūwharetoa and Ngāti Rangi people to take an active role in guiding and interpretation of cultural World Heritage values in the park'.[490] We have already suggested that this policy could be made more specific and operational in relation to guiding and interpretation (see chapter 12, section 12.5.2(3)(i)). This position accords with that put forward by the Tribunal in *Ko Aotearoa Tēnei*, that DOC should 'formalise its policies for

consultation of tangata whenua about concessions within their rohe.'[491]

But claimant concerns did not only focus on the cultural and intellectual property side of concessions. The claimants noted, too, that when DOC received payment for concessions on the Tongariro Alpine Crossing, it was understood between the parties that the concession covered guides taking visitors across the Ketetahi block. Furthermore, in Arthur Smallman's view, DOC had sanctioned the use of the Ketetahi Trust's property by constructing the track over trust land. However, no payment had ever been offered to the trust for these people accessing their land.[492]

Mr Smallman told us that the Ketetahi Trust is now considering the possibility of its own tourism ventures:

> Some interested parties have approached us for discussions. For instance, multisports events organisers have asked for permission to cross our land and to work in conjunction with the trustees and employ members of Tūwharetoa.[493]

It is clear that the Ketetahi Trust is still considering the extent to which it wishes to engage in tourism development, and has yet to reach a firm decision. As we have seen in earlier references to the degradation of the track through the Ketetahi block and desecration of the springs, existing tourism ventures involving the land and its resources have not been without their negative effects for Māori.

However, there is a deeper malaise, rooted in the tangata whenua's long history of interaction with government departments, of which their interaction with DOC has now become a part. This was revealed in cross-examination of Te Hokowhitu Taiaroa by claimant counsel:

> **Ms Wakefield:** So, are you saying that DOC see tangata whenua as just one of a number of interest groups with interests in the Park?
> **Mr Taiaroa:** Definitely, definitely – and that's very very clear in the make-up of the Conservation Board. Yeah, not to belabour the point you just have everyone else, in terms of whatever society . . . whatever fishing club, represented there, and then the people, the tribe that has most to with our thing, our mountains here, and the tribes that bestowed it upon the nation are not being involved all that much in terms of the numbers game.[494]

In short, DOC is found wanting by the owners of Ketetahi in terms of its performance, as measured against its legislative obligation to 'give effect to the Treaty'. Mr Smallman summed up best practice from a tribal standpoint:

> The vision is to uphold Ketetahi Springs as a wāhi tapu and a site of significance, while balancing its cultural, spiritual, environmental and economic well being for the owners of Ketetahi and Ngāti Tūwharetoa as a whole.[495]

(3) *Potential science- or technology-related developments*

As we have already noted, Ngāti Tūwharetoa claimant witness Dr Severne says that there is potential for geothermal energy development in the Tongariro field.[496] She refers to work by Fraser Walsh from 1997.[497] Speaking from a scientific point of view, she states that

> [a] small scale development on the flanks of the Tongariro system is technologically feasible and would provide the landowners with an economic asset that could potentially have low visual and environmental impact.[498]

But Dr Severne properly points out that there are many and complex cultural and environmental issues to weigh up in reaching a decision on a development of this nature. In her view, the hapū having 'mana over the [geothermal] resource in question' should be afforded the 'right to consider whether development is appropriate or not'.[499] Dr Severne stressed that

> protecting and nurturing the resources for future generations is of primary importance for Tūwharetoa, and this is particularly true for the Tongariro system, which is unique and still largely in a pristine state.[500]

At present, neither Ngāti Tūwharetoa nor Ngāti Hikairo have this right because Environment Waikato has classified the Tongariro–Ketetahi geothermal system as 'protected'. The 'protected' category assigned to the Tongariro system denotes:

> systems where only sustainable use can occur. These are geothermal systems that require particular care to ensure that any use of the geothermal resource is sustainable and has no discernable effect on significant natural geothermal characteristics because:
>
> 1. the system supports a substantial number of surface features that are moderately to highly vulnerable to the extraction of fluid;
> 2. the system is largely or wholly within a national park or world heritage area; or
> 3. there is evidence of a flow of subsurface geothermal fluid to or from a system described in 2.

As we have already noted, 'the Tongariro system', which includes Ketetahi, is classified as protected because it is 'mostly within Tongariro National Park, a World Heritage Area'.[501] In its closing submissions, the Crown affirmed Dr Severne's realistic acknowledgement that proximity to the national park may hinder any investigation of geothermal development potential at Ketetahi.[502] Perhaps more limiting still, however, is Environment Waikato's indication that a 'protected' status also means a field's underground geothermal water source is not allowed to be extracted.[503] We have no indication as to whether Ngāti Tūwharetoa or Ngāti Hikairo have considered any other science- or technology-based possibilities.

(4) *Scientific sampling at Ketetahi Springs*

On top of the issues around trampers crossing their land, the claimants further raised concerns about the intrusion and indeed the trespassing on their land and taonga by scientists. Dr Severne agreed that government scientists and others, even in the recent past, had sometimes been cavalier as to the rights of the owners of the Ketetahi Springs:

> **Mr Soper:** And just to further clarify . . . [you] say the research was initiated by Crown organisations. Can you tell us which organisations that was? . . .
> **Dr Severne:** DSIR and University of Auckland and University of Waikato.
> **Mr Soper:** And do you know when that was? Was that some time ago or? . . .
> **Dr Severne:** '60s, '60s through to late '80s.
> **Mr Soper:** Okay, thank you. . . . you refer to this being frequent and disguised under conservation research permits. And again, could you just clarify what you mean by 'disguised' under those permits 'cause my understanding would have been that those permits would only relate to DOC-owned land?
> **Dr Severne:** Yes, exactly. They would need a permit to go up to the areas around Red Crater and Tama Crater. And they would sample, while they would sample that area they would come back and sample Ketetahi Springs and obviously the DOC permits don't cover Ketetahi Springs.
> **Mr Soper:** So, was it not so much disguised under the permits but they went beyond what the permits allowed them to do?
> **Dr Severne:** Yes.

Taking this line of thought further, counsel for Ngāti Tūwharetoa also raised the issue of intellectual property.[504] Noting that samples taken without the owners' consent had been sent offshore and held in archives in foreign universities, and also that the same taking of samples had occurred at Tokaanu, she highlighted Dr Severne's point that

> The ownership of ideas and discoveries has no regard for the knowledge of tangata whenua accumulated through generations of traditional use and care for such taonga, and nor does it recognise their rights of rangatiratanga over those taonga.

In short, the problem was not only the entry and taking without permission but also the controlling thereafter of the 'knowledge gained from that research and intellectual property rights in "discoveries" made'.[505]

The situation, in respect of Ketetahi, is somewhat muddied by the Crown shareholding, which we understand is administered by DOC. However, the attitude is consistent with the Crown's longstanding disregard of the owners' rights – their rangatiratanga and kaitiakitanga – over the springs. It will be addressed in part by our recommendation in relation to Ketetahi Springs and serves to strengthen the case for return to Māori of the Crown shareholding.

Counsel acknowledged that, at the time of hearing, the Wai 262 Tribunal was considering the issue of intellectual property in relation to the Treaty and its principles but invited us to make findings.[506] We prefer to point readers to chapter 6 of that Tribunal's report.

We now consider whether any Crown actions or omissions have impeded Māori in their science- or technology-related development ambitions for their geothermal taonga.

15.12.7 Crown impediments to Māori science- or technology-related development ambitions

The Geothermal Energy Act 1953 removed the possibilities for Māori to develop their geothermal taonga for purposes such as power generation, by vesting in the Crown the regulation of the resource and an almost exclusive right to develop it. The section of that Act (retained in the RMA) which limited customary use to 'domestic use', does not go far enough in acknowledging the interest of iwi and hapū in their taonga. Māori should not be constrained to their pre-Treaty needs and use in respect of their geothermal resources and their right to develop these resources. Under the 1953 legislation, continued usage by Māori changed from being that of people in possession and control, akin to ownership of the resource, to total management and control by the Crown.

Environment Waikato is the designated consent authority which governs the use of the geothermal resource in our inquiry district. Currently consent authorities must act in accordance with the RMA statutory regime. That regime requires authorities only to 'have particular regard to kaitiakitanga.'[507] Again, the provision is neither wide enough nor strong enough to cover the Māori interest in use of the geothermal resource. We endorse the recommendation of the Ngāwha and CNI Tribunals that the RMA should be amended so that Crown delegates, in this case Environment Waikato, be required to 'act in a manner that is consistent with the principles of the Treaty of Waitangi.'[508]

The claimants see the Environment Waikato classifications of 'limited development' over the Tokaanu field, and 'protected' status over the Tongariro–Ketetahi field, as major obstacles. In classifying the fields without reference to the tangata whenua, the delegated authority is impinging upon iwi and hapū's tino rangatiratanga and their status as kaitiaki. Their right to be involved in decisions over the resource derives from it being a recognised taonga, over which they traditionally had rangatiratanga and of which they were kaitiaki. In our inquiry district, we have no doubt that Māori wished to retain that rangatiratanga, as demonstrated not least by their ongoing struggle to retain ownership of Ketetahi Springs. But their rangatiratanga, even where the ownership of land with surface manifestations has been retained, has been diminished in that they can no longer exercise full control. By appropriating control, and delegating management to regional authorities under the RMA without sufficient safeguard of Māori Treaty rights, the Crown has failed to fulfil its Treaty obligations.

That is not to say, however, that we would expect Māori tino rangatiratanga over the resource to be unfettered. As the Crown has often said, there needs to be a balancing. To give tino rangatiratanga virtually full sway, in every case, with little or no place for the Crown or the interests of the people of New Zealand more generally, would be no more just than the present situation which gives kāwanatanga virtually full sway. The Treaty envisaged partnership. By the same token, this cannot be achieved, in the case of the geothermal resource, by limiting Māori to domestic uses and requiring local authorities to merely 'have regard to' their kaitiakitanga role.

At this point, we feel it is important to stress that, as with the Crown, the tangata whenua have strong interests

in the sustainability of the resource. Here again we cite the evidence of Dr Severne who insisted that the primary obligation of tangata whenua as kaitiaki is to protect and care for the geothermal taonga.[509] In terms of development options, we note with approval the Crown's submission that an agreed settlement with local iwi and hapū could include 'greater opportunity for iwi and hapū to commercially develop geothermal resources should they consider that appropriate'.[510] In this context, it is important to clarify that 'commercial development' need not be limited to, or even imply, power generation. We have already noted that the Tuaropaki Trust operates a hydroponic horticulture venture using their geothermal resource. We also note with interest a comment on Environment Waikato's website to the effect that 'DNA analysis, a multi-billion dollar industry world-wide, is only possible with the use of a microbe discovered in Yellowstone National Park, USA'.[511] Of course, there is no guarantee that research at Ketetahi would result in anything as momentous. However, the site has already been described as 'a very good quality example of a nationally uncommon habitat type' and the field's 'protected' status does not seem to preclude investigation as long as the surface features remain undamaged.[512] Furthermore, to judge from the Yellowstone example, the presence of a national park does not represent an insurmountable barrier either. In the case of the Tokaanu–Waihī field, there are of course no surface features within our inquiry district so we presume that research of that nature is not an option. However, we have already noted that Environment Waikato accepts it might be possible to accommodate '[l]imited new extractions . . . without adverse effects on the Significant Geothermal Features' on the field.[513] Certainly the concerns about possible damage to the Tokaanu hydro station need to be taken seriously, but in light of Dr Severne's assessment that the southern side of the Tokaanu–Waihī field might represent a possible location for power development, given its 'remote location removed from Tokaanu', it seems that a small low-impact project of some sort may not be beyond the realms of possibility.[514] That said, we also note her comment about the difficulty of defining the southwestern boundary of the field, due in part to uncertainty about the effect of the terrain on the hydrology of the system, meaning that the field may not, in any case, extend under Māori-held land.[515] Again, research would seem to be in order to clarify what opportunities might exist.

As to the Healy bore, it has now been discharging geothermal fluid for more than six decades, at a rate which is, by Environment Waikato's admission, 'equal to the sum of all other takes'. While it appears the site may have acquired a degree of intrinsic value over the years, by virtue of the 'impressive . . . sinter flats' that have developed below the outflow, there is no evidence that the regional authority, or anyone else, has conducted an evaluation of whether that consideration is important enough to outweigh the implications of fluid loss for the field as a whole.[516] We note in particular that a failure to take action with regard to capping the bore may be prejudicing the claimants in respect of their development rights, by lessening the possibility of a resource consent being granted for any activity involving extraction elsewhere on the field. In our view, it is a matter requiring urgent attention, where the Crown, iwi, and the regional council need to work together to evaluate the situation and resolve a long standing grievance.

We now consider whether any Crown actions or omissions have impeded Māori in their tourism development ambitions for their geothermal taonga.

15.12.8 Crown impediments to Māori tourism development ambitions

Ngāti Tūwharetoa, through Te Heuheu, showed clear interest in tourism and guiding opportunities around the turn of the nineteenth century. However, Crown ambitions, focused on the acquisition of Ketetahi for the National Park, meant Māori were accorded minimal opportunities for involvement in tourism ventures.

Over the second half of the twentieth century, the Ketetahi Springs, despite remaining in Māori ownership, became part of the hugely popular tramping track called the Tongariro Crossing (now the Tongariro Alpine Crossing), which so far as we are aware still crosses the Ketetahi land block held by the Ketetahi Trust. Throughout these years, Māori owners have demonstrated a steadfast determination to retain possession of

the springs, as we have discussed in the first part of this chapter. However, the Crown has essentially treated the Ketetahi block as if it were a part of the park. In particular, it has allowed the granting of large numbers of concessions to tourism operators, including concessions that allowed non-Māori guides to take visitors across the Tongariro Alpine Crossing and the Ketetahi block – an activity which often included recounting aspects of tribal history and traditions in relation to the springs and maunga. DOC received revenue from these concessions, none of which was passed on to the owners of the Ketetahi block. More recently, we are told, an agreement has been reached that the trust will in future be consulted on concessions relating to the Tongariro Crossing. However, at the time of our hearings, DOC still did not pay compensation for a right of way or lease over the trust's land.[517] These Crown actions and omissions have resulted in prejudice to the iwi and hapū who uphold the springs as a sacred taonga. In particular, they led to the desecration of the area containing the springs, and indeed even the springs themselves – although we welcome the fact that since 1995 the Crown has taken more active steps to warn visitors not to stray from the track. The Crown has also excluded the tangata whenua from any share of the financial benefit it has derived from concessionaries' use of the trust's land and the tribe's intellectual property.

The trust has indicated that they are still 'considering the possibility of tourism ventures'.[518] Consequently we cannot find the Crown has specifically failed in its duty to protect Māori right to development in recent years; there is no specific evidence that the Crown actions have obstructed such endeavours. Nor, on the other hand, is there any evidence that the Crown has encouraged and facilitated such activities.

In terms of past history, however, the evidence tends to demonstrate that within our inquiry district ngā iwi o te kāhui maunga in general, and particularly the owners and kaitiaki of Ketetahi Springs, have been marginalised in terms of participation in tourist development relating to their geothermal resource. The Court of Appeal's findings in *Ngāi Tahu v Director General of Conservation*, already discussed in chapter 12, again have particular relevance.[519] As we noted there, the court found that Ngāi Tahu should be afforded a 'degree of priority' in their commercial whale watching activities off the Kaikoura Coast. That finding has been taken up in the Waitangi Tribunal's *Ko Aotearoa Tēnei*. Emphasising the 'special relationship between tangata whenua and taonga within their rohe', that Tribunal recommended that 'DOC amend its policies and practices to give tangata whenua interests in taonga "a reasonable degree of preference" when the department makes decisions about commercial activities in the conservation estate'.[520] We agree. In particular, we recommend that Ngāti Tūwharetoa be afforded 'a reasonable degree of preference' if they decide they wish to set up or participate in tourism ventures involving their geothermal taonga at Ketetahi.

15.13 The Development of the Resource – Tribunal Findings and Recommendations

15.13.1 Scientific and technological development

In 1840, the Crown guaranteed to actively protect the owners under article 2 of the Treaty in their possession, use and enjoyment of their taonga so long as they wished to retain it. At the point where the Treaty of Waitangi was signed, the geothermal resource was a taonga widely used for domestic and customary purposes by ngā iwi o te kāhui maunga and was integral to their survival throughout the area of the TVZ.

We agree with the Motunui-Waitara Tribunal's 1983 finding that the Treaty did not intend to 'fossilise a status quo'.[521] That Tribunal argued that the 'Treaty is capable of a measure of adaptation to meet new and changing circumstances provided there is a measure of consent and an adherence to its broad principles'.[522] In the geothermal context, we endorse the CNI Tribunal's finding that Māori also have the right to 'develop their properties and taonga by any means that they consider appropriate. This includes new uses or technologies that were unknown in 1840'.[523] Any other view would be to argue the case that Māori should be fishing with bone fishhooks and going to war with taiaha.

Māori in the National Park inquiry district have been

significantly prejudiced by the Crown's appropriation of control and management of geothermal resources under the Geothermal Steam Act 1952, the Geothermal Energy Act 1953, and currently under the RMA. In particular, Māori tapping and use of the resource since 1953 has effectively been limited by legislation to 'domestic' purposes, which severely curtails their rangatiratanga over their taonga and their ability to undertake any science- or techology-based commercial development of it.

With regard to the management of the two geothermal fields in this inquiry district, Environment Waikato is the Crown's designated consent authority and has classified the geothermal fields as 'limited development' for Tokaanu–Waihī, and 'protected' for Tongariro-Ketetahi. It appears from the evidence that this classification system has been applied without consultation with Māori, thus failing to recognise their Treaty rights and interests in the geothermal fields.

We reject the Crown's position that the RMA effectively balances the interests of Māori with other interests. The Crown should not be permitted to hide behind this proviso if it means that the Crown, via local authorities, is failing to protect Māori customary rights and rights to development. Local authorities require more explicit guidance than that currently provided. The CNI Tribunal has recommended that the Crown consult with Māori to prepare and promulgate a national policy statement to guide regional planning processes in respect of the geothermal resource.[524] We endorse this recommendation and draw attention to our parallel recommendation regarding a national policy statement on Māori participation in resource management (see section 14.14.4). Māori and Crown both have a clear interest in sustainable management of the geothermal resource and the management regime should recognise this partnership. To that end, we recommend that the Crown find mechanisms that will allow iwi and hapū to become involved, along with Environment Waikato, in joint management of the Tokaanu–Waihī and Tongariro–Ketetahi geothermal fields.

Given the prejudice which has occurred, we recommend that the Crown provide resources for further research into the possibility of small scale geothermal energy projects or other geothermal-related development opportunities within the National Park inquiry district.

We draw attention to the situation with regard to the uncapped Healy bore, which has now been discharging significant amounts of geothermal fluid for over six decades. The bore's impact on the Tokaanu–Waihī field is such that it lessens the possibility of a resource consent being granted for any activity involving extraction elsewhere on the field. A failure to cap the bore thus prejudices National Park claimants in respect of their development right. While the bore site itself appears to have acquired a degree of intrinsic value, by virtue of the sinter terraces that have built up there over the years, there is no evidence that this has been a decisive factor in failing to cap the bore. Indeed, there is no evidence that any particular policy has been developed with respect to the bore. It is time this matter was resolved. We therefore recommend that the Crown, iwi, and the regional council work together to evaluate what might be the best way forward and, in doing so, resolve a long standing grievance.

15.13.2 Tourism development

Crown actions in allowing Tongariro Crossing concessionaries to guide tourists through the Ketetahi block have impinged upon the owners' article 2 rights as land and resource owners. These actions have prejudiced the iwi and hapū who uphold the springs as a sacred taonga. Crown actions and omissions relating to these concessions have also prejudiced opportunities for the owners of Ketetahi Springs to engage in, and benefit from tourism ventures involving their taonga.

Our discussion of Crown actions and omissions in relation to tourism development of the geothermal resource is closely interlinked with our discussion relating to DOC, in the period 1987 to 2007, discussed in chapter 12. The failures of the Crown to address issues to do with the Ketetahi block and the Tongariro Alpine Crossing has been one of the factors in the recommendation there that the Tongariro National Park be taken out of DOC control, vested in a new form of title, and managed by a statutory authority which will enable the Crown and iwi to engage

in the type of co-management which was envisaged by Horonuku Te Heuheu in 1887.

15.14 Concluding Comment

Ownership of the geothermal resource raises extremely complex issues. For one thing, Māori views of rangatiratanga, custodianship, possession, and use do not translate neatly into a European view of ownership. For another, the resource itself is complex. Each geothermal system exists at three levels. In our own inquiry area (like that of the CNI inquiry), there is at the deepest level the underground heat resource of the TVZ. Then there are individual fields within the TVZ. Lastly, within the fields, there are various surface manifestations. In addition, the resource comprises several different elements, notably the heat, water, steam, vapour, and minerals mentioned in New Zealand's legislation. There are, too, associated life-forms that can live nowhere else, some of which may themselves prove quite valuable one day, with further research. All these matters have implications for the control, management, preservation, and use of the resource. We have touched upon some implications in the present chapter, but there is doubtless more that could be said.

The resource goes much wider than our National Park inquiry district, and looks likely to grow in importance in terms of the nation's economy. The Crown told us that its legislation has not at any point extinguished Māori customary rights to geothermal water or fluids; rather, 'If any rights do exist, then these have been regulated not appropriated.'[525] This in itself invites further discussion about which Māori rights in the resource might subsist and how they can be better recognised – noting that Māori saw (and see) themselves as not only having rights but also responsibilities, such as kaitiakitanga. The Crown has said that no-one (including the Crown) can have outright ownership of the geothermal resource. It seems to us that outright rangatiratanga and possession in the traditional style is no longer an option in modern world, either. However, the Treaty was predicated on partnership, and a pragmatic way forward needs to be found. Perhaps a more fruitful approach, therefore, might be to analyse both world views and identify exactly what attributes go to make up each. Which attributes are likely to be most helpful to ensuring that the resource can be of ongoing benefit to the nation? Where there is not congruity between the systems, how can some or all of the differing attributes best be accommodated? Given the complexity of the geothermal resource, it seems to us important to ensure that both partners are fully involved so as to be able to draw on the best of what each partner has to offer.

Notes

1. Chris Winitana, brief of evidence, 20 April 2005 (doc G1), p 25. The emphasis is the author's own.
2. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 4; Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker and Friend Ltd, 1993); Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (Wellington: Brooker and Friend Ltd, 1993)
3. Charlotte Severne, brief of evidence, 15 September 2006 (doc G11), p 1
4. A map of the location of these is to be found in 'Lake Rotoaira Indigenous Knowledge Project', accompanying maps (doc G41(c)).
5. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1471
6. Document G11, p 2
7. G J Cox and B W Hayward, *The Restless Country, Volcanoes and Earthquakes of New Zealand* (Auckland: Harper Collins, 1999), p 40 (as quoted in Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1471)
8. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1503
9. Document G11, p 3
10. '"Ketetahi": The Horns of Tongariro', *Evening Post*, 15 November 1917, p 2
11. 'Popular Track on on Mt Tongariro to be known as the Tongariro Alpine Crossing', Department of Conservation media release, 26 October 2007, http://doc.govt.nz/about-doc/news/media-releases/2007/popular-track-on-mt-tongariro-to-be-known-as-the-tongariro-alpine-crossing/, accessed 11 August 2011
12. The tunnel extends from the intake at the north end of Lake Rotoaira down under Mount Tihia – west of Mount Pīhanga – to the Tokaanu penstocks: see John Martin, ed, *People, Politics and Power Stations: Electric Power Generation in New Zealand, 1880–1990* (Wellington: Bridget Williams Books and Electricity Corporation of New Zealand, 1991), pp 228–229.
13. Waitangi Tribunal, *Turangi Township Report 1995* (Wellington: Brookers, 1995), p 142
14. Document G11, p 9
15. Counsel for Ngāti Rangi, closing submissions, 15 May 2007 (paper 3.3.33), pp 88–89

16. Che Philip Wilson, brief of evidence, 10 February 2006 (doc A61), p 10; paper 3.3.33, p 88
17. Paper 3.3.33, p 88
18. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1486–1487
19. A W Reed and R Calman, *Reed Book of Māori Mythology* (Auckland: Reed Publishing, 2004), pp 229, 382. Note that Reed and Calman also refer specifically to Te Pupū and Te Hoatu as 'fire gods.'
20. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1488
21. Ferdinand von Hochstetter, *New Zealand: Its Physical Geography, Geology and Natural History, with Special Reference to the Results of Government Expeditions in the Provinces of Auckland and Nelson* (Stuttgart: J G Cotta, 1867), p 391 (as quoted in Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1468)
22. These are the surface manifestations. We now know that there are also submarine volcanoes, including Whakatane mountain, in the seas beyond White Island. See J A Gamble, I C Wright, and J A Baker, 'Seafloor Geology and Petrology in the Oceanic to Continental Transition Zone of the Kermadec–Havre–Taupo Volcanic Zone Arc System, New Zealand', *New Zealand Journal of Geology and Geophysics*, vol 36, no 4 (1993), pp 417–435.
23. James Cowan, *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folk-Lore* (Wellington: Tongariro National Park Board, 1927), p 29 (Cecilia Edwards, comp, 'Document Bank to "Tongariro National Park: The Legislative Regime and Park Management, 1894–1952"', 6 vols (document bank, Wellington: Crown Law Office, [2005]), vol 6 (doc A53(f)), p 2046)
24. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Auckland: Reed Books, 1959), p 461
25. Ariki Piripi (Alec Phillips), brief of evidence, 12 September 2006 (doc F10(a)), p 8. Te Maari Gardiner also references both stories, but noted in the first that Te Maari I bathed in the crater as well: see Te Maari Gardiner, *He Ohaaki na nga Matua Tupuna ko Okahukura: The Story of a Tuwharetoa Wharepuni* (Tūrangi: Otukou Marae Committee, 1993), p 20.
26. Tiaho Mary Pillot, brief of evidence, 4 September 2006 (doc F6), p 6; Merle (Maata) Ormsby, brief of evidence, 4 September 2006 (doc F9), p 5
27. Document F9, p 13. Te Maari Gardiner also recounts the crater exploding around the time of Te Maari II's death in 1869: see Te Maari Gardiner, *He Ohaaki na nga Matua Tupuna ko Okahukura*, p 34.
28. Document G1, pp 22–23. Mr Winitana also told us that another possible explanation is that the name Ketetahi relates to the third and topmost basket of knowledge brought to earth by Tawhaki. The name was given to the springs to commemorate the successful conclusion of Ngātoroirangi's spiritual journey on the pathway to Io: see Chris Winitana, brief of evidence, 28 September 2006 (doc G25), p 6.
29. Counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2007 (paper 3.3.42), pp 184, 186
30. Counsel for Ngāti Tūwharetoa, closing submissions, 7 June 2007 (paper 3.3.43), p 297
31. Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker and Friend Ltd, 1993), p 133; paper 3.3.42, p 186; paper 3.3.43, p 296
32. Paper 3.3.42, p 186; paper 3.3.43, p 296
33. Claimant counsel, generic submissions on National Park management and environmental law, 15 May 2007 (paper 3.3.34), p 3
34. Counsel for Ngāti Tūwharetoa, fourth amended statement of claim, 26 July 2005 (claim 1.2.14), p 56
35. Paper 3.3.43, p 296
36. Paper 3.3.42, p 205
37. Claim 1.2.14, pp 55–56
38. Paper 3.3.43, p 299
39. John Stephen Paurini Karamu Asher, brief of evidence, 1 October 2006 (doc G38), app 1, pp 8–9; paper 3.3.43, p 384
40. Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa, The Shadow of Ngati Tuwharetoa: A Traditional & Oral History Report – "Nga Korero a Ngati Tuwharetoa"' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc G17), pp 45–46
41. Paper 3.3.42, pp 186–187; paper 3.3.43, p 298
42. Resource Management Act 1991, s 354(1)(a) (as cited in paper 3.3.42, p 186)
43. Counsel for Ngati Waewae, closing submissions, 28 May 2007 (paper 3.3.41), p 128
44. Waitangi Tribunal, *Ngawha Geothermal*, p 141; paper 3.3.41, p 128
45. Paper 3.3.43, p 299
46. Ibid
47. Counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), p 85
48. Paper 3.3.41, pp 127–128; paper 3.3.42, p 184; paper 3.3.43, p 297
49. Tyronne Andrew Smith, brief of evidence, 28 September 2005 (doc G24), p 23; paper 3.3.42, p 184
50. Paper 3.3.43, pp 296–297
51. Paper 3.3.42, pp 185–186
52. Paper 3.3.43, p 296
53. Ibid
54. Paper 3.3.42, p 185
55. Paper 3.3.43, p 297
56. Ibid
57. Robyn Anderson, 'Tongariro National Park: An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005) (doc A9), p 21; paper 3.3.42, p 184
58. Counsel for Ngāti Hikairo, consolidated statement of claim, 22 July 2005 (claim 1.2.2), p 33
59. Paper 3.3.43, p 297; claim 1.2.2, p 33; claimant counsel, generic closing submissions on environmental issues, 15 May 2007 (paper 3.3.28), pp 2–3
60. Paper 3.3.43, p 297
61. Paper 3.3.42, p 187; claim 1.2.15(a), p 99; doc G17, p 259
62. Paper 3.3.42, p 187
63. Paper 3.3.43, p 297

64. Ibid, p 298
65. Ibid
66. Paper 3.3.33, p 89
67. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 14, p 3
68. Ibid
69. Ibid, pp 4, 19
70. Ibid, p 14
71. Ibid, p 13
72. Ibid, p 15
73. Ibid, p 14
74. Ibid
75. Ibid, p 4
76. Ibid
77. Ibid, p 16
78. Ibid, p 17
79. Ibid, p 14
80. Ibid, p 17
81. Ibid, p 18
82. Ibid, pp 18–19
83. Ibid, p 4
84. Ibid
85. Ibid, p 17
86. Ibid, p 4
87. Ibid, pp 7, 9
88. Ibid, pp 4, 6–10
89. Ibid, p 10
90. Ibid
91. Ibid, pp 4, 10–11
92. Ibid, pp 5–6; paper 3.3.42, p 57
93. Paper 3.3.45, ch 14, p 9
94. Ibid
95. Ibid, p 11
96. Ibid, p 12
97. Ibid
98. Ibid, pp 12–13
99. Counsel for Ngāti Tūwharetoa, submissions in reply, 11 July 2007 (paper 3.3.60), p 30
100. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), pp 280–281
101. Paper 3.3.45, ch 14, p 4
102. Ibid
103. 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), vol 1, p 269
104. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wellington: Legislation Direct, 2012), p 71
105. Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resources Claims* (Wellington: Brooker and Friend Ltd, 1993); Waitangi Tribunal, *Ngawha Geothermal*
106. Waitangi Tribunal, *Ngawha Geothermal*, p 21
107. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1544
108. Paula Berghan, 'Block Research Narratives of the Tongariro National Park District, 1865–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A5), p 14
109. Arthur Te Takinga Smallman, brief of evidence, 29 September 2006 (doc G34(a)), p 2; Iwikino (Sonny) Piripi, brief of evidence, 4 September 2006 (doc F2), pp 3–4; Cecilia Edwards, 'Tongariro National Park: The Legislative Regime and Park Management' (commissioned research report: Crown Law Office, 2005) (doc A53) p 72
110. Document A9, p 21
111. Document G11, p 4
112. Edward J Wakefield, *Adventure in New Zealand from 1839 to 1844: With Some Account of the Beginning of the British Colonisation of these Islands*, 2 vols (Auckland: Wilson and Horton, 1971), vol 2, pp 99–100
113. Paranapa Rewi Otimi, brief of evidence, 27 April 2005 (doc G6), pp 3–4
114. Ringakapo Tirangaro Asher Payne, brief of evidence, 26 April 2005 (doc G37(a)), p 7
115. Dulcie Gardiner, brief of evidence, 22 April 2005 (doc G2), p 4
116. Ibid, p 5
117. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1503; Evelyn Stokes, *The Legacy of Ngātoroirangi: Māori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000) (Wai 1200 R01, doc A56), pp 70–75
118. Ferdinand von Hochstetter, *Geology of New Zealand: Contribution to the Geology of the Provinces of Auckland and Nelson*, translated by C A Fleming (Wellington: Government Printer, 1959), pp 140–141
119. Ibid, p 143
120. Document G24, p 23; doc G11, p 3; doc G34(a), p 2
121. Paper 3.3.43, p 297
122. Waitangi Tribunal, *The Whanganui River Report*, p 301
123. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1542
124. 'Hot Springs District of the North Island, (Letter from the Hon W Fox to the Hon the Premier)', 1 August 1874, AJHR, 1874, H-26, pp 1–5
125. J Ballance, 20 May 1887, NZPD, 1887, vol 57, p 401
126. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 101
127. Ibid
128. Ibid, pp 120–121
129. Ibid, vol 4, p 1498
130. Ibid
131. Ibid, p 1499
132. Ibid, p 1543
133. Waitangi Tribunal, *Ko Aotearoa Tēnei, Taumata Tuarua*, vol 1, p 269
134. Waitangi Tribunal, *Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, pp 257–258
135. English Laws Act 1858, s 1
136. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1552
137. Waitangi Tribunal, *The Petroleum Report* (Wellington: Legislation Direct, 2003), pp 19–20 (as quoted in Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1553)

138. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1553
139. Geothermal Steam Act 1952, Geothermal Energy Act 1953. These pieces of legislation will be explored more fully later in this chapter in relation to the harnessing of geothermal energy and claimants' development rights.
140. Paper 3.3.45, ch 14, pp 11, 13, 15
141. Thermal Springs Districts Act 1881, s 5(3) (as quoted in George Te Waaka Eruera Asher, brief of evidence, 6 October 2006 (doc G52(a)), p 20)
142. Thermal Springs District Act 1881, ss 6, 6(7)
143. Schedule 1 of the Counties Act 1876 describes the East Taupō County as being

> bounded towards the North by the Tauranga and Whakatane Counties, hereinbefore defined, from Uira Gorge to Tawhiwhau Mountain; thence towards the East, South and again towards the East by Whakatane and Wairoa Counties, hereinbefore defined, to Trigonometrical Station No 65A on the Kaweka Range; thence towards the South and West by the Hawke's Bay and Whanganui Counties, hereinbefore defined, to the summit *of Mount Ruapehu; and thence again towards the West by right lines from peak to peak to Mount Tongariro*, and thence by the eastern boundary of West Taupo County, hereinbefore defined, to Uira Gorge, the commencing point. [Emphasis added.]

144. Waitangi Tribunal, *Mohaka River Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 1
145. Ibid, pp 63–64
146. Waitangi Tribunal, *Petroleum Report*, pp 39–40
147. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1564
148. Ibid
149. Waitangi Tribunal, *The Whanganui River Report*, p 337
150. Ibid, p 50
151. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1266
152. Ben White, *Inland Waterways: Lakes*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1998), pp 226, 236–237
153. Evidence of Gilbert Mair, 'Minutes of Rotorua Lakes Case: application for investigation of title to the bed of Rotorua Lake, October 1918', CL 174/1/1, Archives New Zealand, Wellington, pp 233–237 (as cited in White, *Inland Waterways: Lakes*, pp 91, 100)
154. Document G6, p 6
155. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, p 104
156. Taupō Native Land Court minute book 4, 4 February 1886, fols 119–120; Taupō Native Land Court minute book 9, 21 September 1887, fols 265–266
157. The Native Land Court Act 1886, s 59
158. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua: The Report on the Turanganui a Kiwa Claims 2004*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 445–446
159. Ibid, p 446
160. Native Lands Act 1865, s 30
161. 'Important Judgements Delivered in the Compensation Court and Native Land Court, 1866–1879' (Auckland: Henry Brett, 1879), pp 19–20; see also Tom Bennion and Judi Boyd, *Succession to Maori Land, 1900–52*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1997), pp 5–6
162. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, pp 499–500
163. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 532
164. Ibid, p 533
165. Ibid, p 534
166. Ibid, p 535
167. Ibid
168. Ibid
169. Paper 3.3.43, pp 296–297
170. Document G24, p 23
171. Document F10(a), p 3
172. Ibid
173. Ibid, pp 3–4
174. Document G11, p 4
175. See paper 3.3.45, ch 14, pp 4, 10–11
176. Brad Coombes, 'Tourism Development and its Influence on the Establishment and Management of Tongariro National Park' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2007) (doc I1), pp 126, 128, 285
177. Māori Land Information System of the Māori Land Court
178. Paper 3.3.43, p 296
179. Taupō Native Land Court, minute book 9, 21 September 1887, fols 265–266
180. 'Notes re Ketetahi Hot Spring Reserve', typescript, undated (attachment to memorandum to under-secretary for Native Affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington), p 2 (Robyn Anderson, comp, 'Document Bank to "Tongariro National Park: An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park"' (document bank, Wellington: Crown Forestry Rental Trust, 2005) (doc A9(a)(5))
181. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, p 2 (doc A9(a)(5))
182. We note that it is likely that as a young clerk in the Native Department, John Te Herekiekie Grace relied on notes and material from his father John Edward Grace and uncles William Grace and Lawrence Grace who were all employed by the Native Department at some stage in their careers over the late nineteenth and early twentieth centuries. However, in 1930 John Te Herekiekie Grace appears to be the only Grace in the Native Department: see 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, p 2 (doc A9(a)(5)).

183. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, p 2 (doc A9(a)(5))
184. Ibid
185. Native Land Court Act 1880, s 56. This section was retained in the 1886 and 1887 Native Land Legislation.
186. Brad Coombes, 'Tourism Development and its Influence on the Establishment and Management of Tongariro National Park' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2007) (doc I1), p 109
187. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, p 1 (doc A9(a)(5))
188. Keith Pickens, under cross-examination by Karen Feint, 29 November 2006, Ohakune Returned and Services Association Working Men's Club (transcript 4.1.12, p 287)
189. Native Land Court Act 1886, s 21
190. Keith Pickens, 'Operation of the Native Land Court in the National Park Inquiry District' (commissioned research report, Wellington: Crown Law Office, 2005) (doc A50), p 237; doc A5, p 7
191. Native Land Court Act 1886, s 115
192. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, p 2 (doc A9(a)(5))
193. Under-secretary for Native Affairs to registrar, Native Land Court, Wanganui, 30 January 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington (Paula Berghan, comp, 'Supporting Papers to "Block Research Narratives of the Tongariro National Park District"', 15 vols (supporting papers, Wellington: Crown Forestry Rental Trust, 2004) (doc A5(a)), vol 1, p 54)
194. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for Native Affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, p 2 (doc A5(a), vol 1, p 49); Judge Scannell, court order for Ketetahi block, 24 September 1887, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 53)
195. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, pp 2–3 (doc A9(a)(5)); doc I1, p 110
196. Document A50, p 272
197. W Cussen, authorised surveyor, to chief surveyor, Auckland, 27 June 1895, ABWN 7609 w5021/825 22922, pt 1, Archives New Zealand, Wellington (as quoted in doc I1, pp 111–112)
198. Document I1, p 112
199. While the Crown made payments against the Tongariro 1C block from 1889 to 1900, purchase was not confirmed until 1903: see document A5, p 319.
200. Document I1, p 113
201. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, p 3 (doc A5(a), vol 1, p 50)
202. S Percy Smith to chief surveyor, Auckland, 19 August 1896, ABWN 7609 w5021/825 22922, pt 1, Archives New Zealand, Wellington (Brad Coombes, comp, 'Supporting Documents to "Tourism Development and its Influence on the Establishment and Management of Tongariro National Park' (supporting documents, Wellington: Crown Forestry Rental Trust, 2007) (doc I1(a)), p 1)
203. Document I1, pp 108, 114–116
204. Paper 3.3.45 ch 14, p 8
205. Document I1, pp 100–105, 113–117
206. William C Kensington (for chief surveyor) to H Biggs, government surveyor, Hamilton, 18 September 1896, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc I1(a), p 2)
207. H I Biggs to J H Baker, assistant surveyor-general, 10 October 1896, ABWN 7609 w5021/825 22922, pt 1, Archives New Zealand, Wellington (doc I1(a), p 3)
208. Assistant surveyor-general to surveyor-general, 19 October 1896, minute appended to H Biggs to assistant surveyor-general, 10 October 1896, ABWN 7609 w5021/825 22922, pt 1, Archives New Zealand, Wellington (doc I1(a), p 3)
209. Document I1, p 115
210. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, p 3 (doc A9(a)(5))
211. Whanganui Native Land Court minute book 128, 22 April 1964, fol 233
212. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 428
213. Document A53, p 72
214. E Phillips Turner to under-secretary for lands, 7 March 1908, L&S 4/362 box 0060 1502, Department of Conservation, Wellington (as quoted in doc A53, p 72)
215. Document A53, pp 75–76
216. Ibid, pp 21–22
217. Document I1, p 123
218. Document A53, p 80
219. Ibid, p 81
220. Ibid, pp 85–86; doc A5, p 10
221. Under-secretary for Native Affairs, memorandum to Native Minister, 17 February 1913, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 117)
222. Under-secretary for Native Affairs, memorandum, 4 August 1912, cited in under-secretary for native affairs, memorandum to Native Minister, 17 February 1913, MA-MLP 1 1913/10, Archives New Zealand, Wellington, pp 1–2 (doc A5(a), vol 1, pp 117–118)
223. Rhodes, cited in under-secretary for native affairs, memorandum to Minister of Native Affairs, 17 February 1913, MA-MLP 1 1913/10, Archives New Zealand, Wellington, pp 1–2 (doc A5(a), vol 1, pp 117–118)
224. Document A53; under-secretary for lands to Minister of Lands, 27 August 1912, L&S 4/362, Department of Conservation, Wellington, p 1 (Cecilia Edwards, comp, 'Document Bank to "Tongariro National Park: The Legislative Regime and Park Management, 1894–1952"' (document bank, Wellington: Crown Law Office, [2005]), vol 3 (doc A53(c)), p 1093)

225. Document A9, p 176
226. Document A53, pp 96–97
227. Ibid, p 98
228. Document I1, pp 127–128
229. D Craig to valuer general, 8 July 1913, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A9(a)(211))
230. Document I1, p 128; doc A53, p 116
231. C B Jordan to general manager of tourist and health resorts, 29 May 1918, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 95); doc A53, p 116; doc I1, p 128
232. Document I1, p 128; doc A53, p 117
233. C B Jordan, memorandum for registrar, Aotea District Māori Land Board, Wanganui, 13 December 1919, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 86); handwritten note, not dated, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 87); Crown offer for Ketetahi Springs, 12 December 1919, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 88); direction to summon meeting of owners, 12 December 1919, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 89); doc A53, pp 116–117; doc I1, p 128
234. Registrar, Aotea Māori District Land Board, to under-secretary for native affairs, 13 March 1920, MA-MLP 1 1913/10, Archives New Zealand, Wellington, pp 1–2 (doc A5(a), vol 1, pp 81–82); doc I1, p 129; doc A53, pp 117–118; doc A9, p 177
235. Registrar, Aotea Māori District Land Board, to under-secretary for native affairs, 13 March 1920, MA-MLP 1 1913/10, Archives New Zealand, Wellington, pp 1–2 (doc A5(a), vol 1, pp 81–82); doc A53, pp 117–118
236. Registrar, Aotea Māori District Land Board, to under-secretary for native affairs, 13 March 1920, MA-MLP 1 1913/10, Archives New Zealand, Wellington, pp 1–2 (doc A5(a), vol 1, pp 81–82)
237. 'Notes of an Interview between the Hon Te Heuheu Tukino and the Hon W Nosworthy', 13 November 1920, TO 1/199 52/54, Archives New Zealand, Wellington, pp 3–4 (doc I1(a), pp 29–30)
238. Ibid; doc A53, pp 154–155
239. General manager to Minister of Tourist and Health Resorts, 19 November 1920, TO 1/199, 52/54, Archives New Zealand, Wellington, pp 1–2 (Cecilia Edwards, comp, 'Document Bank to "Tongariro National Park: The Legislative Regime and Park Management, 1894–1952"' (document bank, Wellington: Crown Law Office, [2005]), vol 2 (doc A53(b)), pp 602–603)
240. Document A53, p 119; doc I1, p 131
241. President, Ruapehu Ski Club, to general manager of tourist and health resorts, 19 November 1921, TO 1 52/36, pt 1, Archives New Zealand, Wellington (as quoted in doc I1, p 131)
242. General manager of tourist and health resorts to Minister for Tourist and Health Resorts, 19 June 1922, TO 1 52/54, Archives New Zealand, Wellington (as quoted in doc A53, p 156); doc A9, p 193
243. William Hughes Field, 25 October 1927, NZPD, 1927, vol 215, pp 230–231
244. Margin comment on under-secretary for native affairs to under-secretary for lands, 16 October 1928, ABWN 7609 W5021 box 825 22/9/22, pt 1, Archives New Zealand, Wellington (as quoted in doc I1, p 223)
245. Document A9, p 179; doc A5, pp 15–16
246. Grace to Ballance, 6 January 1886, LS 1 29805, Archives New Zealand, Wellington (as quoted in doc A9, p 63)
247. Document A53, p 190; doc I1, pp 224–225
248. Document A53, pp 189–191
249. J Thomson, land purchase officer, to under-secretary for native affairs, 6 April 1929, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 68); doc A53, pp 189–191
250. Under-secretary for Native Affairs to L M Grace, 9 April 1929, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 67); doc A53, p 190
251. Native Land Court Act 1909, s 342(5)
252. Native Land Court Act 1909, s 343
253. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 307
254. Under-secretary for Native Affairs to Hemopō Pākau, 11 April 1929, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 64); under-secretary for native affairs to Takarea te Heuheu, 11 April 1929, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 65); under-secretary for native affairs to Kerara te Heuheu, 11 April 1929, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 66); doc I1, p 225
255. Under-secretary for Native Affairs to J Thomson, land purchase officer, 29 April 1929, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 63); doc I1, p 225
256. Under-secretary for Native Affairs to Native Minister, 12 December 1929, type-written note on J Thomson to under-secretary for native affairs, 7 December 1929, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 62); doc I1, p 228
257. Document A5, p 16; order in council, 13 January 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 59); doc I1, p 228
258. Document A53, pp 30–31
259. Under-secretary for Native Affairs to registrar, Wanganui Native Land Court, 30 January 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 54); chief surveyor to under-secretary for lands, 18 January 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 55); deputy commissioner of Crown lands to under-secretary for lands, 6 January 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 56)
260. 'Notes re Ketetahi Hot Spring Reserve', as appended to memorandum to under-secretary for native affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington, pp 1–4 (doc A5(a), vol 1, pp 48–51)
261. Native Department telegram to George Moon, 4 July 1933, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 41); under-secretary for native affairs to Native Minister, 4 July 1933, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 42); George Moon to Native Department, 26 June 1933,

MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 43)

262. Document A5, pp 17–19; L J Brooker to Head Office, 3 May 1955, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 38)

263. Director-general of lands to secretary for Māori affairs, 11 May 1955, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), vol 1, p 36); doc I1, p 286

264. Document I1, pp 280–288

265. Document I1, pp 289–291; 'Notes on Meeting of Maori Owners at Hirangi Pa', 10 August 1956, ABWN 7609 W5021/825 22922, Archives New Zealand, Wellington, p 1 (doc I1(a), p 96)

266. National Parks Authority, decision reached on Ketetahi Hot Springs, 11 March 1959, ABWN 7609 W5021/825 22922, Archives New Zealand, Wellington (doc I1(a), p 103)

267. Document A53, p 193; Māori land section draughtsman to chief surveyor, 2 March 1959, ABWN 7609 W5021/825 22922, Archives New Zealand, Wellington, pp 1–2 (doc I1(a), pp 101–102); Wanganui Māori Land Court, court orders dated 22 April 1964, 14 January 1886, 19 February 1959, and undated plan of Ketetahi block, Māori Land Court block order files (doc A5(a), pp 7–9, 12)

268. Document A53, p 103

269. V P McGlone, Lands and Survey Department, cited in minutes of inter-departmental meeting on the 'Protection and Control of the Lake Rotoaira Watershed', 30 June 1970, AANU 7740 W5159 21/75/12, pt 1, Archives New Zealand, Wellington, p 6 (Tony Walzl, comp, 'Supporting Papers to "Hydro-electricity Issues: The Tongariro Power Development Scheme"', 2 vols (supporting papers, Wellington: Waitangi Tribunal, 2005) (doc A8(a)), vol 2, p 898)

270. Paper 3.3.45, ch 14, p 9

271. Ibid

272. Document I1, pp 117–118

273. 'Reserves, Parks, Sanctuaries for Native Fauna, etc', 4 June 1898, AJHR, 1898, C-1, p vii; see also 'Reserves', 31 March 1879, AJHR, 1897, C-1, pp vi–vii

274. 'Report on Department of Lands and Survey', 23 June 1900, AJHR, 1900, C-1, p vii (doc I1, p 121)

275. Moka Apiti and Crown Forestry Rental Trust, 'National Park Overview Mapbook, Part 2: A District Overview Map Book to Support Waitangi Tribunal Proceedings' (map book, Wellington: Crown Forestry Rental Trust, 2006) (doc A48(a)), pl 21

276. Document I1, p 117

277. Document A48(a), pl 44

278. Ibid, pl 23

279. 'Editorial', *Alpine Sport*, vol 4, no 6 (1 May 1934), p 3 (as quoted in doc I1, p 235)

280. Document I1, p 230

281. Document A9, p 210

282. Document I1, p 288

283. Ibid, p 289

284. Ibid

285. Ibid

286. Ibid, p 401; Aotea Māori Land Court minute book 53, 17 October 1995, fols 185–186

287. Evidence of Arthur Te Takinga Smallman, 28 September 2006 (doc G34), p 3

288. Ibid, p 4

289. Document G17, pp 117–118

290. Tongariro–Taupō conservancy team, *Tongariro National Park Management Plan – Te Kaupapa Whakahaere mo tte Papa Rēhia o Tongariro, 2006–2016*, Tongariro/Taupō Conservation Management Planning Series 4 (Tūrangi: Department of Conservation, 2006) (doc H4), p 156

291. Aotea Māori Land Court minute book 53, 17 October 1995, fols 185–186

292. Shelly Christensen, statement of evidence, 4 September 2006 (doc F8), p 15

293. Paul Montague Green, brief of evidence, 10 November 2006 (doc H3), p 23

294. Document G24, p 23

295. Document G34, p 4; paper 3.3.45, ch 14, p 13

296. Document G34(a), p 4

297. Paul Green, cross-examined by Karen Feint, Ōhakune Returned and Services Association Working Mens Club, 1 December 2006 (transcript 4.1.12, p 457)

298. Document G34(a), p 6

299. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1542

300. Ibid, p 1551

301. Findings of the Wai 262 Tribunal, as summarised in Waitangi Tribunal, *Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, p 69

302. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1673

303. Paper 3.3.43, p 383

304. Ibid, pp 382–383

305. Paper 3.3.45, ch 14, p 23

306. Paper 3.3.43, p 296

307. Ibid

308. Ibid, p 298

309. Paper 3.3.41, p 127

310. Claim 1.2.14, p 57

311. Ibid, p 64

312. Paper 3.3.42, p 185; claim 1.2.14, p 56

313. Paper 3.3.43, p 389

314. Ibid, pp 298–299

315. George Asher, brief of evidence, 29 April 2005 (Wai 1200 ROI, doc E39), p 24; paper 3.3.43, p 382

316. Tokaanu Waihi Geothermal Field Hapu Joint Working Group, 'Tokaanu–Waihi Geothermal Field: Preparation of Hapu Management Plan', PowerPoint presentation printout, not dated (doc G38, app 2), pp 8–9; paper 3.3.43, p 384

317. Paper 3.3.43, p 384

318. Ibid, p 382; paper 3.3.42, p 186; paper 3.3.41, p 128

319. Paper 3.3.41, p 128

320. Paper 3.3.43, p 383

321. Document G11, p 9
322. Document G38, p 15
323. Document G11, p 9; paper 3.3.43, p 383
324. Paper 3.3.43, p 382
325. Ibid, p 383
326. Paper 3.3.30, p 85
327. Paper 3.3.43, p 299
328. Ibid, pp 299, 384
329. Ibid, p 384
330. Claim 1.2.14, p 57
331. Graeme Everton, brief of evidence, 29 September 2006 (doc G36), pp 3–4
332. Paper 3.3.43, pp 384–385; 'Classifying Geothermal Systems', Waikato Regional Council, http://www.waikatoregion.govt.nz/Environment/Natural-resources/Geothermal-resources/Classifying-geothermal-systems/, accessed 13 June 2012
333. Paper 3.3.43, pp 384–385
334. Paper 3.3.45, ch 14, pp 14, 21
335. *Te Runanganui O Te Ika Whenua Inc Society v Attorney-General* [1994] 2 NZLR 20, 25; paper 3.3.45, ch 14, p 21
336. Paper 3.3.45, ch 14, p 21
337. Ibid, pp 21–22
338. Ibid, ch 15, p 8
339. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1577–1578; paper 3.3.45, ch 14, p 15
340. Paper 3.3.45, ch 14, p 18
341. Ibid, p 14
342. Ibid, p 21
343. Waitangi Tribunal, *Ngawha Geothermal*, pp 100–102; paper 3.3.45, ch 14, p 17
344. Waitangi Tribunal, *Ngawha Geothermal*, pp 100–102; paper 3.3.45, ch 14, p 16
345. Paper 3.3.45, ch 14, p 17
346. Ibid, p 18
347. Ibid, p 22
348. Ibid, pp 11, 22
349. Ibid, pp 11–12
350. Ibid, ch 15, p 9
351. Waitangi Tribunal, statement of issues for the Tongariro National Park Inquiry District, December 2005 (statement 1.4.2), p 88; paper 3.3.45, ch 15, p 9
352. Paper 3.3.45, ch 9, p 41
353. Ibid, p 42
354. Ibid, ch 15, p 8
355. Counsel for Ngāti Hikairo, submissions in reply, 6 July 2007 (paper 3.3.57), pp 19–20
356. Ibid, p 19
357. Paper 3.3.60, p 31
358. Large areas of the central North Island were declared thermal springs districts, but the Tongariro and Tokaanu areas were never declared as such under the Thermal Springs Districts Act 1881.
359. Document I1, p 33
360. Ibid, pp 26–27, 76–77, 81, 123–125
361. Geothermal Steam Act 1952, s 3
362. Waitangi Tribunal, *Ngawha Geothermal*, p 122
363. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1567
364. Geothermal Steam Act 1952, s 8
365. Ibid, s 2
366. Waitangi Tribunal, *Ngawha Geothermal*, p 123
367. Geothermal Energy Act 1953, s 2
368. Waitangi Tribunal, *Ngawha Geothermal*, p 123
369. Geothermal Energy Act 1953, s 3(1)
370. Ibid, s 3(2)
371. Ibid, s 8
372. Ibid, ss 3, 4
373. Ibid, s 5
374. Counsel for the claimants, opening submissions, 12 October 1992 (Wai 304 ROI, doc A53), pp 38–39; Waitangi Tribunal, *Ngawha Geothermal*, pp 125–126; Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1568
375. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1567
376. Ibid, p 1569
377. Geothermal Energy Amendment Act 1966, ss 2, 3
378. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1570–1573
379. Resource Management Act 1991, s 5(1)
380. Ibid, s 354(1)
381. Ibid, s 354(1)(a)
382. Ibid, s 354(1)
383. Ibid, s 14(3)(c)
384. Ibid, s 14(3)(c)
385. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1591–1592
386. Resource Management Act 1991, s 6
387. Waitangi Tribunal, *Ko Aotearoa Tēnei*, *Taumata Tuarua*, vol 1, p 272
388. *Attorney-General v Ngāti Apa* [2003] 3 NZLR, p 666, para 76; cited in paper 3.3.45, ch 14, p 15
389. Paper 3.3.45, ch 14, p 15
390. Ibid, pp 14, 17
391. Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 272
392. Waitangi Tribunal, *Ko Aotearoa Tēnei*, *Taumata Tuarua*, vol 1, p 273
393. Treaty of Waitangi Act 1975, ss 6, 8
394. Resource Management Act 1991, s 8
395. Waitangi Tribunal, *Ngawha Geothermal*, p 145
396. Ibid
397. Ibid, p 147; Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1591
398. Waitangi Tribunal, *Tauranga Moana 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, pp 475–476
399. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1591
400. Resource Management Act, s 45(1)

401. Ministry for the Environment, 'National Environmental Standards', Ministry for the Environment, http://www.mfe.govt.nz/laws/standards, accessed 28 May 2011
402. 'National Policy Statement on Electricity Transmission', 10 March 2008, *New Zealand Gazette*, 2008, no 58, pp 1631–1633; 'National Policy Statement on Freshwater Management', 9 May 2011, *New Zealand Gazette*, 2011, no 64, pp 1482–1486
403. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1589
404. Waitangi Tribunal, *Ko Aotearoa Tēnei, Taumata Tuarua*, vol 1, p 261
405. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1578
406. Ronald F Keam, Katherine M Luketina, and Leonie Z Pipe, 'Definition and Listing of Significant Geothermal Feature Types in the Waikato Region' (paper presented to the World Geothermal Congress, Antalya, 24–29 April 2005), http://www.geothermal-energy.org/pdf/IGAstandard/WGC/2005/0209.pdf, p 1
407. Waikato Regional Council, 'Classifying Geothermal Systems', Waikato Regional Council, http://www.waikatoregion.govt.nz/Environment/Natural-resources/Geothermal-resources/Classifying-geothermal-systems, accessed 13 June 2012
408. Ngāti Tūwharetoa Māori Trust Board, 'Ngāti Tūwharetoa Environmental Iwi Management Plan: 2003', 2002, pp 32, 34–35, 38
409. Document G38, p 15
410. Waikato Regional Council, 'Waikato Regional Plan', Waikato Regional Council, http://www.waikatoregion.govt.nz/Council/Policy-and-plans/Energy/Waikato-Regional-Plan/, accessed 13 June 2012
411. Waikato Regional Council, 'Geothermal Module 7.4: Policies', Waikato Regional Council, http://www.waikatoregion.govt.nz/Council/Policy-and-plans/Energy/Waikato-Regional-Plan/, accessed 13 June 2012
412. Waikato Regional Council, 'Geothermal Module 7.5: Geothermal Characteristics Valued by Tangata Whenua', Waikato Regional Council, http://www.waikatoregion.govt.nz/Council/Policy-and-plans/Rules-and-regulation/Regional-Plan/Waikato-Regional-Plan/7-Geothermal-Module/75-General-Non-Regulatory-Implementation-Methods/751-Geothermal-Characteristics-Valued-by-Tangata-Whenua/, accessed 13 June 2012
413. Waikato Regional Council, 'Geothermal Module 7.6: Regional Rules', Waikato Regional Council, http://www.waikatoregion.govt.nz/Council/Policy-and-plans/Energy/Waikato-Regional-Plan/, accessed 13 June 2012
414. Ngāti Tūwharetoa Māori Trust Board, 'Ngāti Tūwharetoa Environmental Iwi Management Plan 2003', p 43
415. Waikato Regional Council, 'Geothermal Module 7.7: Environmental Results Anticipated', Waikato Regional Council, http://www.waikatoregion.govt.nz/Council/Policy-and-plans/Rules-and-regulation/Regional-Plan/Waikato-Regional-Plan/7-Geothermal-Module/77Environmental-Results-Anticipated/, accessed 13 June 2012
416. *Te Runanganui O Te Ika Whenua Inc Society v Attorney General* [1994] 2 NZLR 20, 24–25; cited in paper 3.3.45, ch 14, pp 14, 21
417. Paper 3.3.45, ch 14, p 21
418. *Te Runanganui O Te Ika Whenua Inc Society v Attorney General* [1994] 2 NZLR 20, 24
419. Ibid, p 25
420. Paper 3.3.45, ch 14, p 21
421. Waitangi Tribunal, *Te Ika Whenua Rivers Report* (Wellington: GP Publications, 1998), pp 128–129
422. Paper 3.3.45, ch 14, pp 14, 21
423. Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wellington: GP Publications, 1999), pp 23–42
424. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1602, 1634
425. Ibid, p 1635
426. Ibid, p 1605
427. Waitangi Tribunal, *Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, p 103
428. Paper 3.3.45, ch 14, p 23
429. Evidence of George Te Waaka Eruera Asher, 6 October 2006 (doc G52(a)), p 19
430. Environment Waikato Regional Plan, geothermal variation, 2004, included in document D4. There is a more up-to-date version on the Environment Waikato website: 2008 geothermal variation: Waikato Regional Council, 'Policy and Plans: Energy', Waikato Regional Council, http://www.waikatoregion.govt.nz/Council/Policy-and-plans/Energy/, accessed 5 December 2012
431. Document A48(a), pl 15
432. Charlotte Severne, 'The Waihi–Tokaanu Geothermal System' (PhD thesis, University of Auckland, 1999), p 70
433. Lake Rotoaira Indigenous Knowledge Project, 2 October 2006 (doc G41), p 7
434. Ibid, p 8
435. George F Risk, Hugh M Bibby, Christopher J Bromley, T Grant Caldwell, and Stewart L Bennie, 'Appraisal of the Tokaanu-Waihi Geothermal Field and its Relationship with the Tongariro Geothermal Field, New Zealand', *Geothermics*, vol 31, issue 1 (2002), abstract
436. Document G52(a), p 20
437. Document G11, p 9
438. Ibid, p 8
439. Ibid
440. Ibid
441. Tuaropaki Trust, 'Temperature Controlled Horticulture', Tuaropaki Trust, http://www.tuaropaki.com/horticulture.asp, accessed 21 June 2012
442. Document G11, p 9; also cited in Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1621
443. Merle Maata Ormsby, brief of evidence, 14 August 2006 (doc E20), p 6
444. Tiaho Mary Pillot, brief of evidence, 14 August 2006 (doc E21), p 2
445. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1358
446. Document G52(a), p 20
447. Ibid, p 21
448. Document G11, p 6

449. Document G11, p 6
450. Ibid
451. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1621. We note that this was still the case as at 2009. See Brian White, 'An Updated Assessment of Geothermal Direct Heat Use in New Zealand', report prepared for the New Zealand Geothermal Association Inc, June 2009, p 30.
452. Wildland Consultants Ltd,' Geothermal Vegetation of the Waikato Region – An Update Based on 2007 Aerial Photographs: Appendix 1.15 Tongariro Geothermal Field', report prepared for the Waikato Regional Council (Rotorua: Wildlands, 2011), pp 430–431
453. B W Mountain, L G Benning, and J A Boerema, 'Experimental Studies on New Zealand Hot Spring Sinders: Rates of Growth and Textural Development', *Canadian Journal of Earth Sciences*, vol 40 (2003), pp 1656–1657, http://homepages.see.leeds.ac.uk/~earlgb/Publications/Mountain_Benning_CJES2003.pdf, accessed 31 August 2012
454. Wildland Consultants Ltd,' Geothermal Vegetation of the Waikato Region', pp 430–431; Charlotte Severne, 'The Waihi-Tokaanu Geothermal System', pp 98, 111–112
455. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1584
456. Waikato Regional Council, 'Classifying Geothermal Systems', Waikato Regional Council, http://www.waikatoregion.govt.nz/Environment/Natural-resources/Geothermal-resources/Classifying-geothermal-systems/, accessed 28 May 2011. We note that as of 31 March 2011 Environment Waikato has reverted to its legal name 'Waikato Regional Council', however for consistency with the evidence put to us we refer to the organisation as Environment Waikato.
457. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1621
458. Document G38, p 16
459. Document G52(a), p 22
460. Ibid
461. George Te Waaka Eruera Asher, brief of evidence, 29 April 2005 (doc G7), p 24
462. Document G11, p 9
463. Document I1, p 26
464. Ibid
465. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 589
466. Ibid, vol 4, p 1563
467. 'Annual Report on Department of Lands and Survey', 4 June 1898, AJHR, 1898, C-1, p vii (as cited in doc A53, p 63)
468. Surveyor general to G T Murray, 17 November 1900, TO 1/26 1901/196, Archives New Zealand, Wellington (doc A53(a), p 177)
469. Reaney to surveyor general, 7 March 1901, TO 1/26 1901/196, Archives New Zealand, Wellington (as cited in doc A53, p 65)
470. Reaney to surveyor general, 28 March 1901, TO 1/26 1901/196, Archives New Zealand, Wellington (as quoted in doc A53, p 65)
471. She further notes that this point may be known in claimant communities. See document A53, p 66.
472. Document A53, p 66
473. Ibid, p 65
474. Brad Coombes, under cross-examination by Karen Feint, 14 February 2007 (transcript 4.1.13, p 96)
475. Document I1, p 94
476. Brad Coombes, 'Summary of "Tourism Development and its Influence on the Establishment and Management of Tongariro National Park"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2007) (doc I1(b)), p 6
477. General manager of tourist and health resorts to government balneologist, 21 October 1908, TO 1/70 1908/1909, pt 1, Archives New Zealand, Wellington (doc A53(c), p 939); doc I1, p 123
478. Document I1, p 123; see also doc A53, pp 75–76
479. Document I1, pp 221–222
480. Ibid
481. Ibid, p 222
482. F T Barber, secretary, Tongariro National Park Board, to commissioner of Crown lands, Wellington, 19 April 1949, ABWN 7609 W5021/825 22922 pt1, Archives New Zealand, Wellington (as quoted in doc I1, p 280)
483. Extract from ranger's report, 1953, TNP 15, Department of Conservation, Tūrangi (as quoted in doc I1, p 280)
484. Document I1, pp 289–291
485. Meeting between Department of Conservation and Ngāti Hikairo, 'Concessions and General Matters', 6 December 2000, COC 158/COC 108, Department of Conservation, Tūrangi, p 2 (doc G24, app C1)
486. Document G24, p 13
487. Tyronne (Bubs) Smith, under cross-examination by David Soper, 12 October 2006, Ōtūkou Marae, tape 16.20–16.30
488. Document G24, p 13
489. Tyronne (Bubs) Smith, under cross-examination, Ōtūkou Marae, Rotoaira, 12 October 2006, tape 30.50–33.26
490. Document H4, p 170
491. Waitangi Tribunal, *Ko Aotearoa Tēnei, Taumata Tuarua*, vol 1, p 371
492. Document G34, pp 3–4
493. Ibid, p 6
494. Te Hokowhitu Taiaroa, under cross-examination by Raewyn Wakefield, Ōtūkou Marae, Rotoaira, 18 October 2006
495. Arthur Te Takinga Smallman, brief of evidence, 29 September 2006 (doc G43(a)), p 6
496. Document G11, p 9
497. F D Walsh, 'The Tongariro Geothermal System: Aspects of Geophysics, Alteration and Hydrology' (MSc thesis, University of Auckland, 1997) (as cited in doc G11, pp 3, 9)
498. Document G11, p 9
499. Ibid
500. Ibid, p 10
501. Waikato Regional Council, 'Classifying Geothermal Systems', Waikato Regional Council, http://www.waikatoregion.govt.nz/Environment/Natural-resources/Geothermal-resources/Classifying-geothermal-systems, accessed 28 May 2011
502. Paper 3.3.45, ch 14, p 22

503. Waikato Regional Council, 'Classifying Geothermal Systems', Waikato Regional Council, http://www.waikatoregion.govt.nz/Environment/Natural-resources/Geothermal-resources/Classifying-geothermal-systems, accessed 13 June 2012
504. Paper 3.3.43, p 298
505. Document G11, pp 6–7
506. Paper 3.3.43, p 298
507. Resource Management Act 1991, s 7(a)
508. Waitangi Tribunal, *Ngawha Geothermal*, p 147; Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1591
509. Document G11, p 10
510. Paper 3.3.45, ch 14, pp 21–22
511. Waikato Regional Council, 'What Lives in Geothermal Areas?', Waikato Regional Council, http://www.waikatoregion.govt.nz/Environment/Natural-resources/Geothermal-resources/What-lives-in-geothermal-areas/, accessed 15 June 2012
512. Wildland Consultants Ltd, 'Geothermal Vegetation of the Waikato Region', p 459
513. Waikato Regional Council, 'Classifying Geothermal Systems', Waikato Regional Council, http://www.waikatoregion.govt.nz/Environment/Natural-resources/Geothermal-resources/Classifying-geothermal-systems/, accessed 15 June 2012
514. Document G11, p 9
515. Severne, 'The Waihi-Tokaanu Geothermal System', p 70
516. Waikato Regional Council, 'Tokaanu–Waihi–Hipaua', Waikato Regional Council, http://www.waikatoregion.govt.nz/Environment/Natural-resources/Geothermal-resources/Geothermal-systems-map/Tokaanu---Waihi---Hipaua', accessed 20 February 2013; Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1621; Wildland Consultants Ltd, 'Geothermal Vegetation of the Waikato Region', pp 430–431
517. Paper 3.3.43, p 389; doc G34, pp 3, 4, 6
518. Paper 3.3.43, p 389; doc G34, p 6
519. *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA)
520. Waitangi Tribunal, *Ko Aotearoa Tēnei, Taumata Tuarua*, vol 1, p 371
521. Waitangi Tribunal, *Motunui-Waitara Report* (Wellington: Government Printing Office, 1983), p 52
522. Ibid
523. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 912
524. Ibid, pp 1593, 1635–1636
525. Paper 3.3.45, ch 14, p 15

Page 1246: The CNI Tribunal's Findings on Treaty Development Rights

1. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 3, p 912

Page 1182: Map 15.1

Source: Mike A Mongillo and Lynette Clelland, *Concise Listing of Information on the Thermal Areas and Thermal Springs of New Zealand*, Department of Scientific and Industrial Research Geothermal Report 9 (Wairakei: Geothermal Coordination Group, Department of Scientific and Industrial Research, 1984)

Page 1189: Map 15.3

Source: 'Plan Illustrating the Various Ways in which the Ketetahi Reserve Has Been Cut Out', plan, not dated (attachment to memorandum to under-secretary for Native Affairs, 17 February 1930, MA-MLP 1 1913/10, Archives New Zealand, Wellington (doc A5(a), p 52))

Downloaded from www.waitangitribunal.govt.nz

CHAPTER 16

NGĀ WHAKARĀPOPOTOTANGA: SUMMARY AND CONCLUSIONS

16.1 Introduction

This chapter provides an overview of our report summarising our findings and recommendations. In part I, we set the scene. In part II, we looked at political and military engagement. In part III, we considered land issues and the establishment of Tongariro National Park. Finally, in part IV, we examined the management of Tongariro National Park, and the ownership and development of natural resources.

16.2 Ngā Iwi o te Kāhui Maunga

This is the inquiry district characterised in legend and landscape by te kāhui maunga, the chiefly cluster of mountains. Iwi within the district have strong whakapapa links to each other. They are bound together by connections to te kāhui maunga. There are also strong whakapapa connections to some iwi who reside outside this district, who also see the mountains as symbols of identity. Each of the claimant iwi and hapū has its own history and identity and its own set of relationships with the Crown, historically and in the contemporary world. In this part of the North Island, Crown–iwi relationships have been honed over many generations in the case of Ngāti Tūwharetoa, or just one or two generations in the case of Whanganui.

This district, inland and elevated, had a demanding winter climate but a richness of seasonal resources, ika and manu especially. Small communities lived here year round, in favourable ecological niches around Lake Rotoaira in particular, and exercised mana whenua. Larger numbers of people travelled up the rivers each season, to share in the bounty of lakes and waterways, forest, and high altitude tussock lands. There were shared use rights and overlapping interests: the mat of whakapapa connections thickened with each harvest visit.

Because of the unique status of te kāhui maunga, this district was separated out from the Central North Island and the Whanganui inquiry districts. A large proportion of the district makes up the national park or some other form of conservation estate. Today, very little land is in Māori hands or in private ownership. The state owns more than eight out of every 10 hectares, and is by far the largest landowner.

The Tongariro National Park, visited by large numbers of winter and summer recreationalists and overseas visitors, gives a national importance to this district. So, too, does

the Tongariro Power Development (TPD), which captures and diverts water from the streams and rivers flowing from te kāhui maunga and uses the water to generate electricity for the national grid. Many of the claims heard by this Tribunal have arisen out of the creation of the national park, the current management of the park, or the operations of the Tongariro Power Development. The evidence brought to this inquiry sits alongside that brought to the Central North Island Tribunal (which has already put out its report), and to the Whanganui Tribunal. The three inquiries are closely interrelated.

In chapter 2, we discussed the traditional relationships of te kāhui maunga, where we found that whānau and hapū were the operational groups on the ground. Iwi were looked on as whakaruruhau, or a sheltering place in time of need. With the arrival of the Crown in this district, iwi played a much more proactive and strategic role in relationships with the Crown.

We need to acknowledge the central role of Horonuku Te Heuheu and his act of tukunga of the mountain peaks in our inquiry. But we set, alongside this, the importance of Ruapehu as the ancestral mountain of several of our claimant groups, and the acknowledged failure of the Crown to consult with Whanganui iwi at the point where the park was created. The long-term relationship between successive generations of the Te Heuheu line on behalf of Ngāti Tūwharetoa and the Crown is an asset for ngā iwi o te kāhui maunga and the Crown. It should not, however, be allowed to overshadow the needs and interests of the Whanganui iwi. To do so would perpetuate injustices, triggered by past actions of the Crown.

16.3 Towards Conflict, 1840–70: He Riri kei te Haramai

War came to the district in 1869, when Crown troops pursued Te Kooti. They pursued him at the request of Ngāti Tūwharetoa rangatira. Fighting occurred at Poutū and Te Pōrere in September and October and more than 40 people were killed. An intelligent strategist, Horonuku Te Heuheu was committed to protecting his people and their lands. While he may initially have been a hostage of Te Kooti, he later became that leader's willing supporter, until defeat at Te Pōrere necessitated a re-examination of his position for the benefit of his people.

The ambiguity of Te Heuheu's allegiance to Te Kooti may explain why the Crown never considered confiscation and only fleetingly discussed a 'cession' of land. The Crown initially kept a close eye on Te Heuheu after the wars, but he quickly resumed his leadership role in the tribe.

While the wars in and outside our inquiry district undoubtedly had detrimental effects for ngā iwi o te kāhui maunga, we found there was insufficient evidence in this inquiry to link those effects to Crown actions. As Te Kooti had made his intention to visit the region clear, and Te Heuheu and other Ngāti Tūwharetoa rangatira had requested Crown military assistance, 'invasion' is not an appropriate term for the Crown's military presence in the district. We have also heard no evidence of the execution of wounded or captured male prisoners at the battle of Te Pōrere. We do note that Te Pōrere is a significant historic site, and should be preserved accordingly.

16.4 Political Engagement, 1870–86: Ka Nui Ra te Rarureru o tēnei Whenua

In the wake of the wars of the 1860s, ngā iwi o te kāhui maunga worked hard to find ways to participate in the new economy and to ensure that peace prevailed. For many Māori in the 1870s and 1880s, their initial preference was to lease lands, and some chose to share in joint endeavours with Pākehā financiers and pastoralists. Ngāti Rangi and Ngāti Tama, who held lands at Rangipō–Waiū and Murimotu in the south of the district, were willing to provide grazing lands and hapū labour which would be matched with Pākehā capital and knowledge. Ngāti Tūwharetoa, similarly, had lands at Ōkahukura which they intended to combine with Pākehā finance, livestock, and expertise. The Crown, however, wished to have a direct involvement and, in the 1870s and 1880s, used pre-emption to block the option of private leases because it sought to acquire the land for its own purposes. Although the Crown's right to pre-emption was provided for by

the Treaty, in this instance the Crown advanced its own agenda at the expense of Māori, and iwi and hapū were denied the opportunity to manage or develop their own lands.

Leasing was not the only option, however. There were those of ngā iwi o te kāhui maunga who wished to use some lands themselves while releasing other lands to Pākehā settlers. Māori and Pākehā, they believed, would both benefit from such arrangements. Whanganui iwi and Ngāti Tūwharetoa followed similar but not identical strategies. Te Keepa, along with Pākehā lawyers Sievwright and Stout, created Kemp's Trust for Whanganui iwi, because the native land legislation did not provide for collective land management by Māori owners. The Crown, however, opposed the trust, considering it a threat to government processes and, in particular, to the goal of Crown purchasing. Kemp's Trust was one of many opportunities for the Crown to empower Māori to collectively manage their lands.

Another opportunity was the negotiations between the Crown and the tribes of the Rohe Pōtae alliance between 1882 and 1885. The negotiations will be discussed in more detail by the Rohe Pōtae Tribunal. Suffice to say here that the iwi involved in the negotiations, which included Ngāti Tūwharetoa and Whanganui iwi, saw them as an opportunity to determine an external boundary to their lands, with Māori komiti empowered to determine the internal boundaries. However, the Crown neither reformed the Native Land Court adequately, nor granted tribal komiti sufficient powers. Negotiations between Native Minister John Ballance and iwi leadership in the mid-1880s were positive, but in the end, Māori owners had reason to believe that Ballance's legislation would not provide them with sufficient control over their own lands, and the legislation was not used.

The Taupōnuiātia application to the Native Land Court in 1885 echoed many of the priorities expressed by the tribes involved in the Rohe Pōtae 'compact'. Ngāti Tūwharetoa saw the application as a way to protect tribal lands and control sales to avoid fragmentation. But the application was also due to Te Heuheu's anxiety that others were claiming Ngāti Tūwharetoa lands; he intended it to be an assertion of mana which would protect the Ngāti Tūwharetoa rohe. Despite Ballance's promises, and the fact that a Ngāti Tūwharetoa komiti had a role in arranging subdivisions, ultimately Ngāti Tūwharetoa were not empowered to collectively manage their own lands through their komiti. Overall, from the 1870s to the 1890s, the Crown had a number of opportunities to empower Māori to control alienation and manage their lands for the benefit of both Māori and settlers, but these were not adequately embedded in legislation or practice. Instead, the Crown pursued its own land acquisition agenda in the district.

16.5 The Operation of the Native Land Court in the 1800s

Previous Tribunals have reported on the native land title system in detail. In our inquiry, the Crown conceded that the 'failure to take adequate or timely steps to provide for communal governance mechanisms' breached the Treaty principles. That the Crown awarded titles to individuals rather than hapū or iwi was a breach of the Treaty, because it meant that land was more prone to partition, fragmentation, and alienation – and the Crown conceded that this contributed to the erosion of tribal structures. The Crown also acknowledged that survey costs were a burden on Māori, which it could have done more to alleviate.

Because Māori were subjected to the tenancy in common land tenure system, they were forced to take part in the tedious and costly process of hearing, subdivision, survey, and acquisition of individual shares, partition, and further acquisition of remaining individual shares, ad nauseum. The bitter irony was that in virtually all cases the effort and expense were wasted because the land ended up back in one title and under Crown ownership. In our inquiry, the Crown acknowledged that the imposition of tenancy in common exposed each Māori owner individually (and generally unadvised) to the determined, persistent, and often privileged attentions and intentions of purchase agents who, in our district, were more likely than not to be Crown agents, often acting under pre-emptive provisions in the legislation.

On the basis of the findings of other Tribunals, and the evidence presented to us, we found that the native land legislation led to processes that breached the Crown's Treaty obligations of partnership, good faith, and active protection.

16.6 Crown Purchasing in the 1800s

The evidence suggested that the Crown acquired 89,217 acres in the 1880s and 83,834 acres in the 1890s. Of these Crown acquisitions, 82 per cent were through purchase of individual shares, with the other 18 per cent via Crown survey awards and cessions. A further 8,700 hectares of Rangipō–Waiū was purchased in 1900. These two decades were the most intensive in terms of land alienation in this district. Over half of the total area of Māori land within our inquiry boundary had been acquired between 1880 and 1900, the great majority of it by the Crown.

The Crown has argued that purchases here were directed towards the preservation of the mountains and their surrounds as inalienable public lands. We found otherwise. The majority of the lands purchased through until 1900 were not used to this end. From the 1870s onwards the Crown embarked on a nationwide policy of purchasing land for settlement. Large areas of land purchased in this district were an extension of these policies. Indeed, there was a period when Crown purchases in other districts were curtailed because of lack of funds, yet the Crown still borrowed money under the authority of the North Island Railway Loan Application Act 1882 and used this to purchase lands in the upper Whanganui and southern Taupōnuiātia districts. Purchases in this district were part of a long-term goal of fostering economic development and settlement, and the Crown was not deterred by a lack of information about soil quality and farming potential. Lands were purchased here and on-sold to Pākehā settlers in the 1880s and 1890s.

In 1887, some 6.5 per cent of land in our inquiry district was awarded to the Crown to cover survey debts. Substantial liens remained in place after that point. As the Crown acknowledged, the burden of survey costs on Māori in this district was unduly heavy. We would add that it was particularly inequitable given that much of the land in the district ended up in the National Park where Māori interests were to a large degree sidelined. We found that the Crown did not uphold the principle of mutual benefit.

The Crown held pre-emption rights over our inquiry district for the majority of the last two decades of the nineteenth century. While the purchase monopoly was enacted in part to protect Māori from land speculation, it conferred on the Crown a serious obligation to protect Māori interests when conducting its operations. Based on the evidence available, the Crown paid owners in the lowest part of a range of values identified by officials at the time. In our view, that did not meet the standard of fairness expected under the Treaty.

The purchasing methods used in this district were similar to those used in other districts and documented in other reports. There was monopoly purchasing by the Crown, there were advance payments made to individuals before blocks came to the Native Land Court, and undivided share purchases. Purchase agents, sometimes salaried, sometimes paid on commission, were given conflicting responsibilities, and there were potential conflicts of interest. From the evidence available to us, the supervision of the Crown purchase agents, including the Grace brothers, did not meet the standard expected of the Crown under the Treaty.

The Crown obtained most of the land in our inquiry district through the standard practice of undivided share purchase. Previous Tribunals have found this practice undermined community ownership and collective decision-making and was in breach of the Treaty. We endorse those findings. In our district, this practice allowed the Crown to purchase substantial quantities of land in a relatively short amount of time – in breach of the principles of partnership, autonomy, and active protection.

16.7 Te Kāhui Maunga: The 'Gift' and Creation of the Tongariro National Park

At a meeting with John Ballance in January 1887, Te Heuheu agreed to tuku the mountains into joint

trusteeship to safeguard them. This was an invitation by Te Heuheu to the Queen to share his rangatiratanga and kaitiakitanga of the mountain blocks, thus forever guaranteeing the tribe's special relationship with their maunga. It was not Te Heuheu's confirmation of an English-style gift of the mountains to the Crown. Having examined all of the evidence put before us about the initial formation of the Tongariro National Park, we are of the firm view that using the phrase 'Noble Gift' to describe the transaction over the maunga is to misrepresent what was intended.

Te Heuheu's fundamental objective was to use Pākehā law to protect the mountains for the benefit of both Māori and Pākehā forever; as the Crown acknowledged, he intended to ensure he and his tribe would never lose their association with the maunga. The tuku was, in reality, the acceptance of a partnership with the Queen. The manner in which the Crown gave effect to the agreement reached between Ballance and Horonuku Te Heuheu was a drawn out process, fraught with difficulties. With hindsight, we can see that the minds of Te Heuheu and Ballance had not met, and there was a misunderstanding on the part of Ballance's agents as to how the agreement would be implemented.

The Crown should have inquired into the conditions of the tuku, and carefully recorded them at the time. When Ballance introduced the 1887 Tongariro National Park Bill in parliament, some Māori objected. The Crown did not explore or address these objections, or later complaints that arose in 1889. When the deed, which defined the ownership of the peaks, was drawn up to be signed in September 1887, the English text and the Māori text were incompatible. The Crown has conceded that the legal mechanisms which were used to give effect to the tuku were perfunctory. We agree. The Crown did not adequately consult with Horonuku Te Heuheu or Ngāti Tūwharetoa (still less with the other tribes of te kāhui maunga) or obtain informed consent when the Tongariro National Park Act was passed by parliament in 1894.

The Crown conceded that there was no evidence of any consultation or discussions with Whanganui Māori regarding the creation and establishment of the park, and that this was a breach of Treaty principles. The Crown legislated to establish the Tongariro National Park and included Te Heuheu in the governance of that park, yet failed to include Whanganui Māori, or to recognise their customary interests in Ruapehu and their rangatiratanga in the area. The Crown was fully aware of Whanganui interests in the southern portions of the park through the activity of its purchasing agents, but it chose to ignore them. The park as we know it today would not exist without the inclusion of Ruapehu and its surrounding lands. This failure to consult is a breach of the duty of good faith, as well as the principles of equal treatment and active protection.

The Crown conceded that it failed to honour the two express commitments made to Te Heuheu at the time of the gift. The first was that on Horonuku's death, his son Tūreiti would replace him as trustee for life. In 1914, the Crown abolished Tūreiti's trusteeship and did not re-establish it until 1922 after Tūreiti protested. The Crown's failure to consistently fulfil this condition was a breach of Treaty principles. The second was that Mananui's remains would be removed and a memorial erected to his memory. The Crown failed to facilitate the removal of Mananui's remains and the memorial that was erected (not until 1953) was to Horonuku rather than Mananui. The Crown's failure to adequately honour this commitment was also inconsistent with Treaty principles.

We note the Crown's acknowledgment that it did not erect a memorial to Te Heuheu until 1953, but would observe that the Crown has missed the point. A condition of the tuku was that a memorial be erected specifically to Mananui Te Heuheu. One hundred and twenty-four years after the tuku, there is still no memorial to Mananui in the Tongariro National Park: those memorials that exist are, rather, to his son Horonuku. The Crown's laxity in this matter is a breach of the principle of reciprocity and of its duty of good faith.

After compulsorily acquiring land for the park, the Crown never initiated compensation proceedings and it has conceded that its failure to act was a further breach of the Treaty and its principles. In particular, the Crown acknowledged its failure to purchase Rangipō North 8 (the location of a substantial part of Tūroa ski field) from

its owners, or identify or compensate them, before including the block in the National Park in 1907. Furthermore, the Crown consistently failed to address the situation in ensuing years. The Crown conceded that these actions prejudiced those who had interests in the block and constituted a breach of the Treaty and its principles. The Crown should now take prompt action to address its Treaty breaches.

16.8 Twentieth-century Land Alienation Issues

Land purchase legislation, which was reworked in 1900 and again between 1905 and 1913, was tested out when a new round of Crown purchasing began towards the end of the First World War. More than 32,000 hectares of land deemed suitable for small farm settlement was purchased in the northern and eastern portions of the district between 1919 and 1928, and further purchases continued through until the 1980s, although at a diminishing rate. As the Crown conceded, provisions to prohibit alienation to parties other than the Crown were not always used fairly and reasonably. Provisions to prevent landlessness were inadequate and the Crown failed to monitor their effects on Māori. Survey charges continued to be a burden which fell unfairly heavily on the sellers of land. We have reviewed the evidence presented to us, and found that the policies and practices followed by officials often benefitted the Crown at the expense of Māori landowners. Neither the legislation nor the Crown's purchasing practices provided active protection for Māori who wished to retain their land and resources.

In the twentieth century, some Māori land was acquired by the Crown to add to the Tongariro National Park and the Rongokaupō and Pīhanga Scenic Reserves, contrary to the wishes of the owners who wished to develop it economically. The Crown was entitled to take action in the national interest. However, in some instances, land was acquired without due regard for the owners' economic interests and without consulting them concerning the reasons for expanding the national park or seeking to gain their informed consent and willing cooperation. Where this occurred, there was a breach of the principle of partnership.

Many of the lands in the northern, western, and southern parts of the inquiry district, some of them adjacent to the North Island Main Trunk Railway, were covered with indigenous forest. Some blocks were purchased by the Crown and some retained by Māori. Milling and deforestation began in the 1900s and 1910s, but this was soon slowed by Crown policies designed to manage the remaining indigenous forests in a more careful manner. These were formalised in the Forests Act 1921–22 and the setting up of the State Forest Service.

With respect to forested Māori land, Crown policy went in two directions: the Crown would, if possible, purchase Māori land containing good timber; or where land was retained by Māori, the Crown would exercise control over the cutting of native trees on it. If Māori sold land to the Crown they lost potential income from logging and also lost access to customary foods. If they retained the land, they lost management control. The Crown's policy objectives were to: (a) protect the interests of Māori timber owners and ensure that they received full value for their timber; (b) curb the excessive exploitation of natural resources; and (c) in respect of land purchased for the Rongokaupō and Pīhanga Scenic Reserves and the extension of the Tongariro National Park, preserve the forest environment by putting it into the national conservation estate. There is little evidence, however, that the Crown consulted with the Māori owners of forest land, compensated them for any loss of economic opportunity, or took steps to involve them in a mutually beneficial endeavour. The Crown exercised its rights without consultation, thus failing to uphold the principle of partnership. In the particular case of Urewera 2A2, the Crown's adoption of a tendering structure that made it impossible for the owners to succeed in purchasing the land was a failure to meet the obligation to act in good faith. The principle of equity was ignored when logging companies were permitted to cut timber on land desired for the park, or even already acquired for it, but Māori owners were often not permitted to do the same.

Finally, in this section we note that parts of Ōkahukura 8M2 were incorporated into the Tongariro National Park in 1907. We recommend that the Crown undertake further research, and act upon the outcome, to ascertain whether or not compensation was ever paid for this acquisition. In regard to the gifting of Pīhanga peak to the Crown in 1921, we noted that in both Māori and British culture acts of generosity often create something of an obligation, at least of friendship and courtesy, for the recipient to reciprocate. Although in this case the expectations of the donors were not met at the time of the gift, there is now room for the Crown to reciprocate with a generous gesture. We recommend an expression of recognition and respect for the spiritual regard that the claimants express for this 'very special maunga', perhaps in the form of joint management of this part of the Tongariro National Park by the Crown and the former owners.

16.9 Twentieth-century Development Issues

The Crown did not monitor the rate of purchasing of Māori land in the nineteenth and twentieth centuries, yet it had a statutory and Treaty obligation to ensure that Māori were left with a sufficiency of land. However, it was the Crown itself that did most of the purchasing. The Crown also had an obligation to ensure that Māori had the opportunity to participate and prosper in the new economy, but Māori in this district were left with insufficient lands and resources to provide incomes in the cash economy or subsistence from customary foods. They received an insufficient return from the sale of lands to capitalise new economic ventures. They were, from the 1890s onwards, increasingly marginalised within the district's economy. We were given some evidence of deprivation among the Māori population in this area, and lack of access to electric power, despite being next to the TPD, but did not have enough information to make a full study of the causes or extent of socio-economic disadvantage. Loss of land clearly played some part in it, making it all the more important, in a situation where Māori retained less than 15 per cent of the total land area in the inquiry district, that economic development opportunities emerged to provide employment and livelihood, and build up capacity and business experience. Furthermore, we note that the small communities at Rotoaira, although situated right next to the TPD's main storage lake, still had to shoulder a high burden of cost if they wished to obtain a power connection. They did not automatically gain access to electricity.

In addition to reviewing the impact of Crown policies on the ability of Māori land owners to benefit from the industry based on indigenous forests in the district, we examined the success, or lack of success, of two land-based ventures, both involving the Crown and Māori, which operated in this district in the twentieth century. The first is a land development scheme at Taurewa; the second (and larger of the two) is an exotic forestry scheme at Rotoaira.

When the Crown set up a Māori land development programme in 1929, it made a genuine attempt to assist Māori landowners grappling with problems of multiple ownership and multiple titles to land. There was just one such scheme within the National Park district, namely the Taurewa scheme, which was set up in 1939 and operated under Crown management until 1991. There were problems at Taurewa from the outset that cannot be laid at the feet of the Crown: the land was of poor quality for farming, the access to the farm was difficult, and no one would know that the economics of pastoral farming would head into decline. Owners expected to benefit from government financial inputs and farm management experience, and obtain incomes, employment, and training. There were hopes that, ultimately, owners would be established on their own farms. These things were not to be: despite the funds expended, the scheme did not prosper or break even. There was a hope in the 1950s that five farms might be created but shifts in the profitability of back country farming precluded this. The scheme was wound up in 1991 and the land returned to the Māori owners free of debt. It is now leased to a non-owner.

The limited success of the Taurewa development scheme did not itself indicate a Treaty breach. The Crown

did, however, infringe the Treaty rights of Taurewa owners by inadequate consultation from the outset, and the fact that some owners' interests were amalgamated into the scheme without their knowledge or consent. The Crown also failed to facilitate owner participation in the working of the development scheme, or build up their capacity to farm and manage the land themselves. This did not accord with the principles of partnership and autonomy. The experience at Taurewa was not a happy one for Māori or for the Crown.

By the end of the 1960s the profitability of exotic forests on the Volcanic Plateau was well established. The New Zealand Forest Service and the forest industries wanted an assured supply of exotic timber, and the Department of Māori Affairs saw tree planting and forestry as a profitable way to use Māori land and provide employment for rural Māori. There were also environmental concerns that alternative forms of land use, such as farm development on the shores of Lakes Taupō and Rotoaira, would increase eutrophication of lake waters. The Crown was especially concerned that its investment in the TPD should be protected by tree planting in the Lake Rotoaira catchment.

These concerns were brought together when the Crown met with Māori owners to propose a 29,000-acre (11,741-hectare) forest in the Lake Rotoaira catchment area. The benefits to the Crown and Māori were canvassed and the Crown agreed to increase the area covered by the scheme. The Lake Rotoaira forest lease, covering an area of 47,987 acres (19,420 hectares) was signed and came into effect in April 1973. The lease is administered by the Lake Rotoaira Forest Trust on behalf of the (now) 9,000 owners. Some of the owners did not wish their lands to be included, so their concerns were heard and a process was set up for them to opt out.

The harvesting of the first crop began in 1999 and, under a variation in the lease, harvested areas are now removed from the lease and returned to the trust. The trust is now in a position to act as kaitiaki and entrepreneur. Māori interests and Crown interests have converged. The motivations of both parties were mutually understood at the point where the lease was signed and the forest established. Both parties have benefited, and both parties continue to benefit. In general, this partnership was positive and upheld Treaty principles.

16.10 Public Works Takings

Māori lands in this district were also taken for public works purposes: some 135 blocks in all with a total area of 6,000 hectares. The most numerous takings were for roads from the 1890s onwards, and for the TPD in the 1960s and 1970s. The largest takings were for military purposes: at Waimarino in the lead up to the First World War, and adjacent to Waiōuru during the Second World War. We have, in chapter 10, examined the takings in detail and the manner in which land was taken: all too often it occurred without proper consultation, and without consideration of alternatives or of the impact of the takings on Māori landowners.

We have made specific findings with regard to particular blocks in that chapter. We include a case study on Ōtūkou, where quarrying provided construction materials for the TPD. Huimako Bluff, adjacent to Ōtūkou Marae, was a very special place. Caves within the bluff provided burial places for tūpuna, and an urupā at the top of the bluff contained graves of more recently deceased loved ones. The bluff itself was a commanding site from which signals could be sent out in times of celebration or danger. It was a place of traditional importance and a wāhi tapu.

Rarely has a site like this seen such an array of Treaty breaches. Ministry of Works officials arrived in October 1964 and told the residents that the bluff was needed for TPD materials and that quarrying was about to begin. There would be blasting and flying rock; in the interests of safety, they should relocate to housing that would be provided. Quarrying initially took place for up to 24 hours a day and lasted for around six years (although the pace tailed off over that period). Some kōiwi had been removed to another burial place, but others had not – perhaps because their exact location was no longer known. Be that as it may, the Ministry of Works certification, part way through the operation, that there was no cemetery or burial ground there is, to us, unconscionable. The quarry site and the metal pit were not restored, but were instead

taken under public works legislation. Minimal compensation was paid for the land, and no payments have as yet been made for the metal taken. There have been multiple Treaty breaches and clear prejudice.

We recommend that land used for quarrying and metal extraction should not only be returned but be made clear and safe and returned in a usable condition, at no cost to the former owners or their successors. In addition, we recommend there should be compensation for the damage and destruction caused to the land and the ancestral remains, and in recognition of the distress caused. Further, in light of the Court of Appeal's judgment in *Minister of Works and Development v Hura*, it is our view that the Crown now owes a debt of honour in respect of any unpaid royalties on metal or rock extracted. In our view, not to make such a payment would in itself be a breach of the Crown's Treaty duty to act in good faith.

With regard to public works, we are especially concerned that lands which were taken by the Crown and which later became surplus to requirements, have not, as a matter of course, been returned. We have followed the *Tauranga Moana* and *Wairarapa ki Tararua* reports and underlined the pressing need for legislative reform. Public works takings have added to the burden of land loss in this district.

16.11 The Administration of the Tongariro National Park, 1887–1987

We have looked at the various legislative frameworks which applied to Tongariro National Park prior to 1987. As the Crown noted, it failed to consult with Whanganui iwi when it prepared the legislation, and it did not provide for Whanganui or Ngāti Rangi representation on the board from 1894 to 1987. We note that this included the tribes' relationship with and kaitiakitanga of taonga, and was in breach of the Crown's duties of good faith and active protection. Rather than just Ngāti Tūwharetoa, other tribes with interests in the park area should have been represented in the park's governance. The principle of equal treatment required it.

The Crown had a double responsibility in the case of Ngāti Tūwharetoa. The tuku signalled the release of te kāhui maunga into the protective custody of Pākehā law, to be held jointly and governed jointly for the benefit of both Māori and Pākehā. The two rangatira, Ballance and Horonuku Te Heuheu, agreed that life membership of the board for Te Heuheu and his successors was an additional component of that agreement. The 1887 Tongariro National Park Bill, brought to parliament by Ballance but never passed, offered the possibility of partnership in governance. However, when the Tongariro National Park Act was finally passed in 1894, it offered Te Heuheu's representative, Tūreiti, only a seat on a park board. There had been no proper consultation about this change to the legislation, nor tribal approval. In ensuing years, the role of Te Heuheu and his successors was diminished each time the size of the board was enlarged. Te Heuheu was not granted the role of a true partner with the Crown, either in high-level decision-making about government policy for the park or at the board table. The Crown acknowledged that it failed to consistently uphold Te Heuheu's position on the park board. The legislative framework, as far as Ngāti Tūwharetoa was concerned, fulfilled neither Treaty standards nor the terms of the tuku, and was inconsistent with the Crown's duty to act in good faith. It also meant that Ngāti Tūwharetoa were restricted in their ability to prevent harm to their taonga.

In our view, the failings of the statutory regime intensified the Crown's duty of active protection. The Crown submitted that there was little evidence that Māori suffered prejudice from park governance. We disagree. The Crown has sanctioned and supported a governance body which gave priority to non-Māori recreational use and enjoyment, and tangata whenua suffered the consequences. In particular:

- The Tongariro National Park Board, under the authorisation of the Crown, has allowed certain taonga within the park to be developed for commercial and recreational purposes, without any economic benefit to ngā iwi o te kāhui maunga.
- The Tongariro National Park Board has failed to prevent environmental degradation.
- The Crown has imposed its own view of which areas

within the park should be designated for special protection.

- The Crown has failed to protect tapu areas, particularly the peaks of te kāhui maunga, from culturally insensitive action.
- The Crown enshrined certain principles in the law that interfered with Māori customary rights to indigenous flora and fauna. The approach that was adopted legislated Māori rights out of existence without consultation or consent, and at a time when other groups, such as the Prison Service and the Army, were given special dispensation to continue certain practices within the park. Dispensations were not extended to Māori until 1983.
- The Crown, and the Tongariro National Park Board, failed to adequately respond to known threats to native birds and flora in the circumstances of the time. This interfered directly with Māori kaitiaki and customary rights.

We have found that the Crown, in its operation of the Tongariro National Park from 1894 to 1987, failed to recognise the rangatiratanga of Whanganui iwi, neglected to provide a partnership in the governance of the taonga of Tongariro National Park, and breached the principle of active protection of Māori interests. For ngā iwi o te kāhui maunga, this has had an irreversible effect. We do acknowledge, however, that the concept of the national park is a positive one, and looking towards the future, it has the potential to be a site of genuine partnership between the Crown and ngā iwi o te kāhui maunga.

16.12 The Department of Conservation, 1987–2007

The Conservation Act 1987 was an important pivot point in terms of Crown–iwi relationships. The Treaty clause in section 4 had the potential to remove the Treaty breaches evident from the earlier period. The wording of section 4 is very explicit: those who interpret or administer the Act are required to give effect to the principles of the Treaty of Waitangi. The Department of Conservation (DOC), set up by this Act, was charged with the management of conservation lands, and the administration of a set of 24 other Acts listed in the schedule to the Conservation Act.

DOC had been in operation for two decades by the time we received evidence and scrutinised the legislation, the policy documents, and the performance of DOC on the ground in the National Park district. We investigated: if ngā iwi o te kāhui maunga now have access to customary materials and wāhi tapu with the Tongariro National Park; if iwi and hapū are able to exercise kaitiakitanga there; if ngā iwi o te kāhui maunga are able share in the economic opportunities generated by the National Park; if the taonga o te kāhui maunga are now protected; if the environmental damage of the previous hundred years has been remedied; and if DOC–iwi relationships are now Treaty compliant. In particular, we wanted to know whether the Crown has now provided opportunity for ngā iwi o te kāhui maunga to exercise rangatiratanga over their taonga.

There are some important instances of knowledge sharing and joint endeavour, but in spite of the promise provided by section 4 of the Conservation Act 1987, we found that the Crown still fell short in Treaty terms. There are minimal opportunities for iwi and hapū to exercise kaitiakitanga over customary materials, wāhi tapu, and wāhi taonga within the conservation estate. Consultation has been used by DOC as a substitute for shared decision-making. Furthermore, consultation processes have been intermittent, partial, and incomplete. DOC has not worked in partnership with iwi to protect the peaks of te kāhui maunga. It has allowed the encroachment of infrastructure into sensitive areas and has failed to adequately address problems relating to rubbish and erosion caused by trampers crossing the slopes of Mount Tongariro, and the offence caused by sewage escaping downslope from the ski fields and villages. These are breaches of partnership and the active protection of Māori interests.

Despite their close attachment to these mountains, their knowledge of these special places, their tradition of manaakitanga, and their long history of playing host to those who visit, tangata whenua are marginal players in a tourism industry which brings substantial benefits to the regional and national economy. In this respect, ngā iwi o

te kāhui maunga have been limited in their ability to exercise rangatiratanga. Contrary to the principle of mutual benefit, Māori have been given only very limited or short-lived opportunities to participate in the commercial activities which bring visitors to Tongariro National Park.

The Crown presented us with a wide range of policy documents, which tended to prioritise the kāwanatanga of the Crown and find little place for the rangatiratanga of iwi. As we have already noted, the interplay between kāwanatanga and tino rangatiratanga is at the core of the Treaty relationship; neither is absolute. There are few clear provisions – in the legislation, the general policy documents, or in the management plan for the park – for ngā iwi o te kāhui maunga to effectively exercise rangatiratanga over their taonga.

At this point we link together our findings on the tuku in 1887, the taking of additional lands for the park, and on the operation of the Tongariro National Park from 1887 to 2007. The relationship – which promised so much in 1887 when Te Heuheu agreed to the sharing of the mountains, and when the Conservation Act was passed in 1987 – has delivered little. Neither the Treaty partnership, nor the partnership embedded in the tuku, has been honoured. There are no provisions for the iwi and hapū of te kāhui maunga to exercise rangatiratanga over their lands, their resources, and their taonga.

In this situation, we make recommendations that are specific to the Tongariro National Park. Our intention is to recognise the intentions of Horonuku Te Heuheu Tūkino IV in his act of tukunga when he invited the Queen to share with him rangatiratanga and kaitiakitanga of the mountains. This, in our view, will restore rangatiratanga to ngā iwi o te kāhui maunga, recognise the Crown–iwi partnership, and to provide livelihood and economic opportunity for iwi and hapū. We recommend that the park be taken out of DOC control and instead managed jointly by a statutory authority, on which both the Crown and ngā iwi o te kāhui maunga are represented. Under this arrangement, we recommend that title to the park be held jointly by the Crown and tangata whenua and made inalienable. This will require a new Tongariro National Park Act and a new form of title: we suggest a Treaty of Waitangi title which indicates that that is the result of a Waitangi Tribunal process.

The creation by this Act of a Statutory Authority, comprising the Crown and ngā iwi o te kāhui maunga for the governance and management of Tongariro National Park. This authority shall be responsible to the Treaty partners of the Tongariro National Park, and report directly and evenly to both. The specifics of this arrangement will be worked out as part of the Treaty settlement process.

The World Heritage status of Tongariro National Park will be confirmed within the terms of reference of the statutory authority.

16.13 Waterways and Customary Fisheries

Over centuries, ngā iwi o te kāhui maunga forged myriad ties to awa, puna, and moana: the connections were founded on whakapapa and kaitiakitanga. Control over waterways was exercised in accordance with tikanga Māori. For ngā iwi o te kāhui maunga, the waterways are, and have always been taonga, and their significance is manifold. Because of this, the Crown is bound under article 2 of the Treaty to actively protect customary ownership and use of the resource, until ngā iwi wish to relinquish it.

The Water and Soil Conservation Act 1967 and its successor, the Resource Management Act 1991, enabled the Crown to assume the right to determine and allocate water use rights. We found the Crown's assumption of these powers to be in breach of the Crown's duty to actively protect Māori in the possession, use, and enjoyment of their taonga. This breach was perpetuated by the RMA.

Despite the 1991 Act's express provision for Māori interests, we found that these aspects were generally not given the appropriate weight by those making decisions under the Act. The RMA fell short of its potential. We endorsed the recommendation of *Ko Aotearoa Tēnei* for a reform of the RMA regime, to ensure that 'those who have power under the Act are compelled to engage with kaitiaki in order to deliver control, partnership, and influence where each of these is justified'.

In terms of customary fisheries, kōaro, kōura, īnanga,

kākahi, and tuna are among the species that ngā iwi o te kāhui maunga fished customarily and are the subject of much traditional knowledge. We agree that these fisheries are their taonga. The introduction of species such as trout into the waterways of the inquiry district occurred without the consent of ngā iwi o te kāhui maunga, and thereby breached the principle of partnership. Prioritising the interests of anglers in this way over those of ngā iwi o te kāhui maunga was also a breach of the principle of equity.

The introduction of trout, without checks and balances, also amounted to a breach of the plain text of article 2 of the Treaty, the English text of which specifically guaranteed to Māori 'full exclusive and undisturbed possession of their . . . Fisheries . . . which they may collectively or individually possess so long as it is their wish and desire to retain the same'. The liberation of trout into the waterways of the inquiry district had a devastating effect on customary species and particularly on the population of kōaro residing in Rotoaira. The Crown's failure to actively protect Māori in the enjoyment of their customary fishery was exacerbated by the continued introductions that took place despite increased awareness of the negative impact of exotic species on customary fisheries from the 1930s.

We consider that the ability of the Lake Rotoaira Trust to control access to Rotoaira through the issue of access permits is an acknowledgement of the rangatiratanga of Ngāti Tūwharetoa. The provisions of part 1 of the Maori Purposes Act 1959, which sets out the management regime for Lake Rotoaira under the control of the trust, are unique in New Zealand's freshwater fisheries.

The principle of redress requires the Crown to use its best endeavours to help restore the tribal base and mana of ngā iwi o te kāhui maunga, and provide a remedy to the grievance caused by the Crown act or omission. In the case of fisheries, steps in this direction could include efforts to improve the health and ecology of waterways, including lakes Rotoaira and Rotopounamu.

16.14 The Tongariro Power Development

The TPD is one of the most important parts of this inquiry. It involves waters of great importance to ngā iwi o te kāhui maunga, and of considerable economic value to the Crown and the nation. The TPD was designed by the Public Works Department in the 1950s and constructed between 1964 and 1984. It covers a catchment of some 26,000 hectares and diverts waters from the Whanganui and Tongariro river systems into Lake Rotoaira, which provides temporary storage. Electricity is generated at Rangipō and Tokaanu and the waters released are then used to boost the capacity of the Waikato River power stations.

The Crown met with only Ngāti Tūwharetoa during the planning stages of the TPD. It met with the Ngāti Tūwharetoa Trust Board, but the primary intent of these meetings was to obtain land for the construction town which was built at Tūrangi. Māori who were present at these meetings were told about some dimensions of the scheme and were promised more information. The Lake Rotoaira trustees, who hold the title on behalf of the 11,310 beneficial owners, should have been consulted, but were not, and Whanganui iwi were neither informed nor consulted and gave no consent. The Crown bypassed the consultation requirements of the Public Works Act when it used an Order in Council, promulgated in October 1958, to proceed with the scheme. The Crown failed to consult fully and effectively with Māori; it privileged kāwanatanga over tino rangatiratanga and did not act in accordance with the principle of partnership.

The Crown acknowledged that Whanganui Māori were not consulted in relation to the TPD, and particularly were not consulted or notified of the 1958 Order of Council. The Crown further conceded that this was inconsistent with the Crown's duty of good faith, and demonstrated a breach of the Treaty. It follows from this concession that there can have been no disclosure of information, no negotiations, and no provision for compensation for damage done to the lands and waters of the Whanganui iwi.

As construction proceeded between 1964 and 1984, the impacts of the TPD across the volcanic plateau, and more specifically at Lake Rotoaira, became apparent. Māori were concerned and the general public were concerned. The condition of Lake Rotoaira became a contentious issue. Indeed, before construction had even started, the

Crown had withheld information about the lake's condition. Faced with the possibility of losing ownership of the lake, the Lake Rotoaira trustees had given the Crown an assurance that no claim for compensation would be made. Weighing up the evidence, we found that in its discussions and negotiations with respect to Lake Rotoaira, the Crown once more breached the principle of partnership.

The TPD, completed in 1984, has impacted on lakes and rivers. There has been loss of water quality, loss of habitat, and loss of kai. The largest impacts are those at Lake Rotoaira, which has been changed from a slow moving lake, well stocked with indigenous species of lake plants, indigenous fish, and trout, to a much faster moving water body. Kōaro have largely disappeared and the trout catch has been much reduced. Invasive species of water weed have appeared. The TPD is the major contributing factor to these changes; the impacts of the TPD on Lake Rotoaira are breaches of the Crown's duty of active protection towards Māori in the possession and enjoyment of their taonga. The Crown's actions have resulted in irreversible damage to what was formerly a bountiful larder (te kāpata kai) for the tangata whenua.

The evidence with respect to rivers and the fisheries in rivers is less complete. Barriers to fish migration have been created, either in the form of concrete structures or stretches of minimal flow or even dry river bed downstream from intakes. Numbers of long-finned eels above the TPD intakes on the Whanganui and Whakapapa rivers have declined. Operational releases of water, surplus to TPD needs, have resulted in surges of water on the Whanganui River. Claimants have expressed concerns about the losses of indigenous fish, and there is a need for more fisheries research, especially research that is better informed by indigenous knowledge. We see a need for comprehensive research to monitor the waterways of te kāhui maunga, including Lake Rotoaira, and to identify the mitigations which will best meet the needs of each iwi. We recommend that the Crown funds this research.

We have examined and reported in some detail on the operation of the regulatory regimes for the TPD. This has led us to make a set of recommendations designed to bring ngā iwi o te kāhui maunga into a decision-making partnership with the Manawatu-Wanganui and Waikato Regional Councils (Horizons MW and Environment Waikato). We have recommended that the Crown fund the preparation of a joint iwi management plan specifically for the waters of te kāhui maunga, and that the regional councils and the iwi enter into a partnership arrangement for the management of these waters. To add support to this arrangement, we have recommended that the Crown prepare a national policy statement for Māori participation in resource management. Each of these recommendations is designed to mesh with the current provisions in the RMA.

We further recommend the re-establishment of 'cultural flows' in ngā wai o te kāhui maunga to restore habitat, assist where practicable the recovery of indigenous fish, restore customary use, optimise Tira Hoe waka experience, and retain mana. Were this to be carried out, the evidence suggests that any attendant loss of water to the scheme could be more than compensated by better harnessing the power-potential of the water remaining.

We also recommend that the deed of 30 November 1972 be set aside and the Lake Rotoaira trustees be compensated, not just for damage done, but also for the value of the lake for water storage from the date of commercialisation. It is for the Crown to determine if the ongoing payments should be carried by the Crown or Genesis.

There is also a broader issue: the Crown's failure to pay for its use of any of the waterways in the TPD. On this issue, we have found a breach of the claimants' Treaty development right. This arose primarily in two ways. First, ngā iwi o te kāhui maunga retain residual property rights in their waterways. For Lake Rotoaira, they even retain full legal ownership of the bed. We recommend that these property rights be given due recognition. Licensing and leasing are options that have been rejected in the past but are still available. The claimants were (and are) entitled to be paid for the use and infringement of their property rights in the generation of electricity.

Secondly, we agreed with the claimants that the Crown 'misappropriated' to itself the sole benefit from the development of their taonga for hydroelectricity. This was not in keeping with Treaty promises and guarantees. While the TPD did create significant employment for local Māori

during its construction, this was a finite benefit, long since over. There is still, however, an opportunity today for ngā iwi o te kāhui maunga to become partners with the Crown in the hydroelectricity industry in their rohe, where that is their wish. We recommend that the Crown give effect to that development opportunity, partly to redress past breaches and partly to deliver on the Treaty development right and its promise that settlement would benefit both Māori and settlers, not just settlers.

In our view, the Crown nationalised all the benefits of the TPD while privatising its costs and burdens on the customary owners of its waterways. That situation must change if the Crown is to restore its Treaty relationships with ngā iwi o te kāhui maunga.

16.15 Geothermal Issues

Geothermal fields are important for Māori. On the basis of *He Maunga Rongo* and the scientific and cultural evidence presented to us, we found that the geothermal resources of te kāhui maunga – the Tongariro–Ketetahi and Tokaanu–Waihī fields, and the surface manifestations of these fields as found, for example, at Ketetahi Springs and Lake Rotoaira – are taonga of cultural, spiritual, and economic importance. For ownership to be removed, there would have to be consultation with, and informed consent by, those affected. Because there was no such consultation and informed consent, we found that the claimants retain, at the least, a Treaty interest in the geothermal resource in and under the inquiry district. Māori retain kaitiaki rights, which entitle them to a say in what happens to the resource. We found that the claimants have a right to be intimately involved in the ongoing management and control of the resource.

Both the claimants and the Crown pointed to the Mokai power development as evidence of a way to develop a geothermal resource. Ngāti Tūwharetoa have included geothermal development in their iwi management plans.

The Treaty did not intend for the world to remain static at 1840. In the geothermal context, we endorse the CNI Tribunal's finding that Māori have the right to 'develop their properties and taonga by any means that they consider appropriate, and that this includes new uses or technologies that were unknown in 1840'. We believe that New Zealand must move beyond the Court of Appeal's *Ika Whenua* decision, which, taken to its logical conclusion, would shut Māori out of meaningful involvement in any technology or field of endeavour not known at 1840.

Those who held rangatiratanga over the Ketetahi geothermal taonga saw the springs as an indivisible entity and sought a communal title. The Crown made no provision for this. The Crown attempted to achieve a 'division' of the springs, when it was clear the owners wanted to retain the whole of the springs and surrounding area for themselves and their descendents. For almost seven decades, the Crown relentlessly sought the purchase of the springs and pursued its own agenda in the face of clear opposition from the owners of the Ketetahi block. The Crown breached its duty of active protection, and clearly went against the text of the Treaty which guaranteed Māori the 'exclusive and *undisturbed* possession' of their properties (emphasis added). For many years, the Crown allowed a major tramping track to cross Māori land in the Ketetahi block, thus compromising the private property rights of the Māori owners. The owners were not consulted about this use, nor did they consent to it.

We recommend that the Crown offer to return the quarter of one share that it currently holds in the Ketetahi block, as part of a wider settlement process.

In terms of tourism, for many years, the Crown allowed Tongariro concessionaries to guide tourists through the Ketetahi block. This prejudiced the iwi and hapū who uphold the springs as a sacred taonga, and impinged upon the owners' rights under article 2. Crown actions and omissions relating to these concessions have also affected opportunities for the owners of Ketetahi Springs to engage in, and benefit from, tourism ventures involving their taonga.

Māori in the National Park inquiry district have been prejudiced by the Crown's appropriation of control and management of geothermal resources under the Geothermal Steam Act 1952, the Geothermal Energy Act 1953, and the Resource Management Act 1991. In terms of management, Environment Waikato has classified the two

geothermal fields apparently without consulting Māori. Despite the Crown's position that the RMA effectively balances the interests of Māori with other interests, we found this not to be the case. Māori and the Crown both have a clear interest in sustainable management of the resource and the management regime should recognise this partnership. We recommend the preparation of a national policy statement on the geothermal resource. In addition, given the prejudice which has occurred, we recommend that the Crown provide resources for further research into possible small scale geothermal energy projects or other geothermal-related development opportunities within the National Park inquiry district.

We draw attention to the Crown's failure to cap the Healy bore, opened in 1942, which impacts negatively on the Tokaanu–Waihī geothermal field. This omission prejudices the claimants in respect of their development right by lessening the possibility of a resource consent being granted for any activity involving further extraction. We recommend that the Crown, iwi, and regional council work together to evaluate what might be the best way forward and thus resolve a long standing grievance.

16.16 Towards a Settlement

The focus of this inquiry has been on the Tongariro National Park. We have reviewed the circumstances in which the park was created, and the boundaries extended, in part III and the manner in which the Crown has exercised management in part IV. On the basis of our findings in those chapters, and our examination of overseas case studies, we have suggested a better way forward, one which captures the spirit of the encounter between Horonuku Te Heuheu and John Ballance in January 1887. We recommend that the park be owned jointly by the Crown and ngā iwi o te kāhui maunga, and that it be managed and governed jointly by ngā iwi o te kāhui maunga and the Crown. Te kāhui maunga is a taonga of great importance: one to be held in trust for ngā iwi o te kāhui maunga and all New Zealanders.

We have found that the Crown committed numerous serious breaches of the terms of the Treaty and the Treaty principles. These breaches have had considerable economic, social, cultural, environmental, and spiritual repercussions for ngā iwi o te kāhui maunga. We have made our recommendations. Some of these pertain to specific blocks only; any additional details will need to be settled in negotiations between the parties with the Crown. For the Treaty breaches we have identified, substantial and culturally appropriate compensation is due, and quantum should be settled without delay.

16.17 Taurewa Forest

In June 2008, the Crown and eight iwi (Ngāi Tūhoe, Ngāti Manawa, Ngāti Rangitihi, Ngāti Tūwharetoa, Ngāti Whakaue, Ngāti Whare, Raukawa, and Te Paumautanga o Te Arawa) signed a deed to settle their forestry claims in the central North Island. This settlement took effect on 1 July 2009 and included the Taurewa Forest.

The preamble to the Central North Island Forests Land Collective Settlement Act 2008 states that:

> Under the terms of the deed of trust, 90% of the beneficial interest in the CNI forests land is to be held for the CNI Iwi Collective and the individual beneficial entitlement of each member of that Collective is to be determined by reference to the allocation process that has been agreed amongst those members and is set out in this Act. The remaining 10% of the beneficial interest in the CNI forests land is to be held by the Crown for a period of 6 years beginning on the date of vesting of the land in the company. The Crown agreed proportion will allow claims to the forests land by other CNI claimants who are not represented by the CNI Iwi Collective to be settled during that period of 6 years.

The Taurewa Forest is one of several areas[1] in the CNI licences that the Crown has identified as having claims from non-collective iwi. Consequently, the Crown is holding a share of the accumulated and future rentals relating to the Taurewa Forest for the settlement of these non-collective iwi claims.

Just prior to the signing of the deed, Ngāti Hikairo and groups affiliated to Whanganui iwi filed applications for

urgency with the Tribunal. These applications alleged that the settlement would affect their interests in the Taurewa Forest. On 22 May 2008, Judge Wainwright adjourned *sine die* those applications, but reserved leave for parties to renew their applications should the need arise. Judge Wainwright also recommended that the Crown and claimants meet to discuss the Taurewa Forest. Public meetings were held soon after, one at the Whanganui Race Course. Office of Treaty Settlements and Treasury officials attended to answer claimant questions.

The Tribunal refrains from any comment on the Erua and Karioi forests, the other two Crown forests in our inquiry district. The Erua Forest is outside the National Park inquiry district and the Karioi forest is substantially outside our district. We leave the Whanganui Tribunal to report on both these forests.

In respect of the Taurewa forest, the Tribunal finds that ngā iwi o te kāhui maunga retain beneficial interests in the forest and recommend the return of the proportionate Crown share of that asset to those groups not already covered by the CNI forestry settlement.

Notes

1. The others are Marotiri Forest, Waituhi Forest, Pureora Forest, and Waimihia Forest.

Dated at Wellington this 10th day of October 2013

Chief Judge Wilson W Isaac, presiding officer

The Honourable Sir Douglas Lorimer Kidd KNZM, member

Professor Sir Hirini Mead KNZM, member

Dr Monty Soutar, member

THE SEAL OF THE WAITANGI TRIBUNAL

Downloaded from www.waitangitribunal.govt.nz

APPENDIX I

NEW CLAIMS

As a result of a government policy change, 1 September 2008 was nominated as the last date on which historical claims could be filed with the Waitangi Tribunal (see section 6AA of the Treaty of Waitangi Act 1975). Once established, this deadline encouraged many claimants to submit claims.

The Tribunal received claims relating to districts where the Tribunal's inquiry had gone past the point at which new claims could be admitted. The National Park inquiry was one of them. By 1 September 2008, the hearings had closed a year earlier and the Tribunal's report was well underway. This meant that the new claims relating to this district could not be incorporated into this Tribunal's inquiry. However, because it is uncertain when, or whether, further inquiries will ever be held into claims in the districts where there have already been inquiries or Treaty settlements (or both), we felt that it was important to record for posterity the information that we hold about the new claims in this district.

This appendix to the report therefore serves as an acknowledgement of each of the five new claims that relate to this district. In relation to each, the following table:

- identifies who the claimant is (individual, group, or organisation);
- says how each new claim relates to other claimants and claims already in the inquiry;
- records our understanding of the matters alleged in the claim; and
- identifies where the report addresses similar claims issues.

This Tribunal makes no findings or recommendations specifically in relation to the claims listed below.

MIR 6043 – TAUREWA 1

Claimant

Ronald David Waldrom *aka* Harry *aka* Ronald David Ngahiraka *aka* Ronald David Erickson (Palmerston North)

Group or organisation

The claimant is of the Ngāti Pouroto hapū of Ngati Tūwharetoa ki Taupo.

Relationship to existing Wai 1130 groups

The principal claimant is the brother of an existing (now deceased) claimant, Leonard Erickson. Mr Erickson's claim was incorporated into the Ngāti Hikairo consolidated claim, represented by Raewyn Wakefield and Kensington Swan.

Key issues
The key issue concerns the taking by the Crown of the Taurewa 1 block for the purpose of forestry from people who had not sold the land. This claim was first brought to the Tribunal's attention by the claimant's brother.

The claimant states that he would like to essentially duplicate his brother's claim to the Tribunal in the name of his children (whom he lists in his claim). However, he later states that he would like to have his claim on record 'as a succession' to his brother's claim.

From the documentation provided, it appears that the claimant believes that since his brother is now deceased, the status of the original claim is in limbo. In particular, he refers to the fact that in July 2002 his brother amended his claim to no longer be a representative one on behalf of himself and Ngāti Pouroto but to be one for himself only.

However, this change in his brother's claim does not affect its validity in the report. It is still live and will be reported on by the Tribunal in the Native Land Court chapter of the National Park report.

Mir 6621 – Operation of the Native Land Court

Claimant
Casey Taupiri Herbert (Manurewa)

Group or organisation
The claim is made on behalf of the claimant and the Ngāti Parekawa, Ngāti Urunumia, and Ngāti Hari hapū.

Relationship to existing Wai 1130 groups
The hapū groups named do not appear on the existing Wai 1130 statement of claims.

Key issues
The key issue concerns the operation of the Native Land Court.

The claimant alleges that, owing to the policies, practices, actions, and omissions of the Crown in the Native Land Court, she has been prejudicially affected by the alienation of land in the National Park inquiry district.

The particular lands affected include Hauhungaroa 1C, Hauhungaroa 1D2D3, Whareroa Stream, Kowhai Flat, the Rangitukoia block, and the Whareroa Stream reserve.

However, neither the claimant nor claimant counsel appear to have realised that the lands specified in this claim are not part of the National Park inquiry district. Rather, they form part of the central North Island (Taupō) region and should therefore be considered with the other MIR CNI claims.

Mir 6719 – Urewera 2A2 Wai 1181

Claimant
Alexander Tatana (Foxton)

Group or organisation
The claimant is of Ngāti Raukawa and Ngāti Toa descent.

Relationship to existing Wai 1130 groups
The claim forms part of the Wai 1181 Perigo claim concerning the acquisition of the 12,000-acre Urewera block on the western slopes of Mount Ruapehu, for which Mr Tatana provided evidence in the National Park hearings.

Key issues
The key issue concerns officials at the Māori Land Court, especially those in the Māori Trust Section, who deprived Mr Tatana of a secured farming future.

The claimant alleges that the people employed in the Māori Land Court and the Māori Trust Section were deceitful in their dealings with him regarding the Urewera 2A2 block. He states that he tried to follow the process necessary to gain control of the block, as described by the then Māori Land Court district officer J E Cater, but that ultimately his wishes were ignored and the officials did as they pleased with the block.

The claimant alleges that these actions prejudicially affected himself and his family, depriving him of the future he was trying to build, and were inconsistent with the principles of the Treaty of Waitangi.

This particular claim already forms part of the Wai 1181 claim, which is still being considered by the National Park

Tribunal and, as such, this separate claim was not entirely necessary. It is possible that the claimant was concerned that amalgamation into the larger Wai 1181 claim would negatively affect his particular claim's status. However, Tribunal findings specifically relating to the issues raised in this claim will be made in the final report in the near future. At present, the claimant's grievances will be dealt with as a case study in the report's twentieth-century land and development chapter.

MIR 6729 – TURANGAPITO TE RANGIHIRO WAIMAURI CLAIM

Claimant

Richard John Te Tupu Turanga (Taumarunui) and Amanda Gawith

Group or organisation

The claim is made on behalf of Turangapito iwi and Te Rangihiro, the first chief of Ōkahukura Rotoaira.

Relationship to existing Wai 1130 groups

Neither the iwi nor the chief mentioned appear in the existing Wai 1130 statement of claims.

Key issues

The key issues of this claim are the imposition of government legislation on tangata whenua without agreement, resulting in landlessness, imprisonment without trial, and treatment like rebels.

The claim does not include enough specifics to be able to report on them in the National Park inquiry.

WAI 2192

Claimant

Te Ngaehe Wanikau (Tūrangi)

Group or organisation

The claim is made on behalf of Ngā Uri o Te Upoko o Tataia.

Relationship to existing Wai 1130 groups

Mr Wanikau is also a Ngāti Hikairo ki Tongariro claimant in the National Park inquiry district.

Key issues

The key issue concerns the forcible removal of the Te Upoko o Tataia Marae.

The claimants allege that, owing to the actions of the New Zealand government and its agents, Ngā Uri o Te Upoko o Tataia were prejudicially affected, in that they were made homeless and their urupā left alone, by the removal of Te Upokou o Tataia Marae.

In the 1960s, as part of the Tongariro power development scheme, the Crown acquired hapū land and established the Ōtūkou quarry, where it began blasting for metal. This action forced the relocation of the marae with no compensation paid out.

This claim regarding the removal of the marae has already been brought to the Tribunal's attention as part of the Ngāti Hikairo ki Tongariro consolidated claim. As such, the particulars of the marae removal will be included in the National Park report.

Downloaded from www.waitangitribunal.govt.nz

APPENDIX II

NOTES OF AN INTERVIEW BETWEEN TE HEU HEU TUKINO AND W NOSWORTHY

Notes of an Interview between the Hon Te Heu Heu Tukino, MLC, (of Lyall Bay, and Tokaanu), Chief of thess Ngata Tuwharetoa tribe, and the Hon W Nosworthy, Minister in Charge of the Department of Tourist and Health Resorts, at Wellington, on 13/11/20. Captain Vercoe, Native Interpreter, was also present.

Subject: Tongariro National Park.

CAPTAIN VERCOE: The Hon Tukino desires to see on the subject of the Tongariro National Park in which he is very much interested – especially in regard to the origination of it.

HON TUKINO: The native land contained in that Park was partitioned by the Court, and there were only two partitions made in 1887. The first sub-division was the four peaks of the mountains, and for a mile from the top of each peak there was a sort of circle made around each peak. Now that subdivision was made in favour of my Father by the Court. He was the only one in the Title of that partition, but I am not quite sure of the area. I think about 22,000 acres, but the remainder outside this boundary my Father put the Chiefs ot the different tribes on to. That year Mr Ballance heard about the sub-division being made. Mr Grace was Member for Tauranga. Mr Ballance wanted a report, and wired to Mr Grace. He took my Father to Rotorua to see him – my Father went there. When my Father arrived at Rotorua he saw Mr Ballance, and Mr Ballance made a request to him that he should sell the Mountains so that they might be made into a National Park; and my Father asked him how he desired the sale to take place, and Mr Ballance explained that his reason for buying the Mountains was in order that the property could become the property of the public of this country for all time. My Father then said to him that he was quite agreeable for all those Chiefs that he had put into the land (that is the other partition – being the land outside that boundary set out above) to sell, but he would not sell himself because his prestige depended on his retaining these Mountains which were the proud possessions of his forefathers from their very first ancestor. They had always been the property of the ruling Chief – not only that but his own Grandfather is buried on the top of Tongariro, and that is the reason why he would not sell the peaks of the mountains inside that boundary – outside that boundary the Government might

purchase; when my Father agreed to have the rest of the land bought by the Government, he asked Mr Ballance to have an Act passed by Parliammt making sacred the peaks of those mountains, and for those mountains to be his own property. When my Father made application to the Court to have those parts set aside as sacred, the Court told him that they had no power to do it, but that if he made application to the Prime Minister he would no doubt have that power conferred. Mr Lewis. who was then Under Secretary for Native Affairs, accompanied Mr Ballance at that time. When my Father returned to Taupo township, Mr Lewis followed him there. It was then that an agreement was entered into between my Father and Mr Lewis setting out the request made to the Prime Minister, whicn they agreed to, that this portion of the mountains should be held sacred. Mr Lewis made a statement to my Father in this manner:

That seeing the other Rangatiras my Father put into the other sub-division had consented to sell, and the Government were acquiring that part or the country, and also that the Prime Minister had agreed that the portion asked for by my Father be set aside for himself, and should be held sacred, he made a request at that time (Mr Allan Grace was Native Interpreter at this meeting) (that is, Mr Lewis made the request) that my Father should agree that the Queen be put into the Title along with himself, so that the Crown should be represented in the Title of that partition. I was present, and my Father (I was his only son) asked me what I thought about that arrangement. I then said to my Father that I thought he should agree to the request made by Mr Lewis, as it would be a very great honour to him to have the name of the Queen as co-owner, as it were, in that partition. It was decided that that should be – and that Queen Victoria should be a life member. When the Board was set up the Queen's name was mentioned as being a 1ife-member of the Board – my Father was to be a life member of the Board, and at his death I was to take his place, and be also appointed a life member of that Board durring my life-time. Then he signed that agreement.

An Act was brought down in 1894 – it was then Mr Ballance was defeated at the Elections, and another Prime Minister came into power. In that year – 1894 – I was appointed an Assessor to the Native Land Court, and I came down to Wellington, and was present at the time this Bill was brought down. Hone Taipea (?) was at that time Maori Member for the Western Electorate, and he asked me if I knew about this Bill being brought down. I told him that I knew about the arrangement with my Father and the Under Secretary, and Mr Ballance – my Father died in 1888, and I had taken his place. He told me to go to Captain Mair who was then Native Interpreter here. The Bill was to be pre sented to the House at 7.30 that evening – the contents of the Bill were set out in this manner: that there were no Maori rights at that time – I wrote my obje tion at that time and it was translated into English by Captain Mair. Mr Shelton was Under Secretary for Native Affairs at that time. Sir Robert Stout received my letter in Parliament. When the Bill was put before the House to be passed, and the Speaker asked if there were any objections, (I was present there at the time) Sir Robert Stout objected to the Bill passing through. The Speaker again put it to the House, thinking that perhaps it was just an objection not really meant, but Sir Robt Stout again objected to the Bill passing through. When he was asked why he objected to the Bill passing through the House, Sir Robert Stout said he had received a letter from the son of Tukino. The Bill was then held up. It was then referred to the Committee of Native Affairs of the Legislative Council. I was sent for by that Committee shortly afterwards to be present in connection with this matter. The Chairman of the Committee asked me if I was the son of Tukino, and how many children he had. I said I was his son, and that he had five, I being the only male. In the agreement it was stated that at my Father's death I was to take his place in connection with this matter. He then asked me where this agreement was. I told him that Mr Lewis had the agreement. We had a copy of it but Mr Grace had it at that time. The proceedings in connection with the Bill were then adjourned for a week until they had time to find where the agreement was. It was found, the Committee again assembled, and I was sent for. The agreement was written on a blue form. Mr Laurie Grace wrote the agreement out. I was then asked if

I could recognise the agreement, and said 'yes', and when it was shown to me, I recognised it. The Committee then undertook to have the Bill so framed that it would contain all the matters set out in the agreement. If you should be in possession of that Bill you will see that what I say is absolutely correct'.

HON MR NOSWORTHY: 'I will look it up'.

CAPTAIN VERCOE: 'You will find it in the Maori Land Act, 1894'.

HON TUKINO: 'That Bill was passed, and made law. It is my wish that the Department should do the best it can to further the interests of the Park because it is to my advantage – being one of the owners in that district. In 1914 Mr Grace told me that my name had been struck off this particular Board.'

HON MR NOSWORTHY: 'That is the Board of Trustees, is it not?'

HON TUKINO: 'Yes. When I heard that, of course I felt very grieved over it. My reason for being so grieved about the matter was that I am the only one in the Title to the Land. It was the wish of the then Minister in power that the name of the Sovereign should be included along with my name in the Title to the land. This is what I want to get at. As you are the Minister in Charge of Tourist Resorts, I want you to have my name put back as one ot the governing people in connection with that Park, and I want you to see that the Act of 1914 is either adjusted or struck out.'

CAPTAIN VERCOE: 'Perhaps you would explain whether the whole Board was struck out, or whether it was just the Hon Tukino's name'.

HON MINISTER: 'I would have to look that up'.

HON TUKINO: 'I want to tell you that I shall not cease being active in connection with this matter; if my name is not shown as one of the Trustees I shall certainly take steps and will continue to take steps to have my right asserted. I want you to understand that I would not consider money in any shape or form in connection with this matter. The prestige of my people depends upon our holding those Mountains for all time, or an interest in them; and money is nothing. If you gave me a million pounds tomorrow, I would not give the prestige which is contained in those Mountains. It is my mana. My grandfather's bones are resting on those places. That is all'.

HON MINISTER TO CAPTAIN VERCOE: 'You ask the Hon Tukino what attitude he takes up in connection with the Katitahi Springs, whether he will interlet to the Department if it is for part of the National Park?'

HON TUKINO: 'No, I cannot. Those Springs are included in the Boundary which was awarded under the Court of 1887 to that set out as the sub-division belonging to my Father. They are included in the mile described above – but there were about 20 acres in the ownership of which he allowed other Chiefs to participate. This was done because he recognised that they were medicinal Springs for the whole of the people'.

HON MR NOSWORTHY: 'I want to put up a Bathhouse there. I thought of putting up a Bathhouse for the Pakeha and one for the Maori. I cannot spend money on property which is not under the control of my Department'.

HON TUKINO: 'I would not like you to make it a moneymaking concern, but if it for the purpose of curing invalids or anything like that, I would be quite agreeable to give way to you'.

HON MR NOSWORTHY: 'I make no definite statement. I am willing to talk things over again. I would like to know from you whether there is any prospect of getting a settlement over that matter. I am not wanting it for the Pakeha alone. I recognise that the Maori has his rights, and equal rights with the European in regard to the use of the Springs. It is no use my asking Pakeha to spend money there if no security of tenure exists'.

HON TUKINO: 'I would like this particular matter left over between us just now to give me time to think about it. Of course I can see that the matter is a very important one, and should be considered'.

HON MR NOSWORTHY: 'The position as it stands today is almost foreign to me, and I must have time to consider the thing. and look into it. In regard to your own matter, if you will give me time, I will look into that'.

HON TUKINO: 'With regard to the Springs, I will look into it and see if I can help meet Pakeha in connection with the matter. Regarding the question about which I

came to see you: I have all the Orders of the Court in connection with the partition of the land surrounding these Mountains'.

HON MR NOSWORTHY: 'It is quite correct that subsection 1 of section 4 of The Tongariro National Park Act, l894, makes provision for the appointnment of Te Heu Heu Tukino to hold office as Trustee for life on the Board of Trustees constituted under that Act'.

HON MR NOSWORTHY (TO CAPTAIN VERCOE): 'Does he just want to get back on to the Board of Trustees? Would he be satisfied with that?'

CAPTAIN VERCOE: 'Is there such a thing as a Board of Trustees in existence – was it not washed out by the Act of 1914? I think you will find that that is so'.

HON MR NOSWORTHY: 'I will look into it'.

CAPTAIN VERCOE: 'His point Sir is this: he does not in any way wish to take an active part in the conduct or control of the National Park. All he wants is the right of his Father, and his Father before him to that land in his name'.

HON MR NOSWORTHY: 'He wants his name perpetuated alongside of the ruling Monarch of the Empire, as Trustees in joint with the Sovereign. He wants to be honorary trustee of the National Park?'

CAPTAIN VERCOE: 'That is just it. He does not want the name of His Father or his own name lost in connection with the thing'.

HON TUKINO: 'If the governing body should at any time be operating in connection with the Reserve, I would like to know what is going on around there in the interests of myself and my people'.

HON MR NOSWORTHY: 'I will 1et him have a record of what is being done'.

HON TUKINO: 'My reason for making this request is that I may be of considerable assistance to you, because if my people understand the position they would perhaps be of assistance to those officers of your Department who would be operating there, instead of being detrimental'.

DEED BETWEEN THE TRUSTEES OF LAKE ROTOAIRA AND HER MAJESTY THE QUEEN

THIS DEED made the 30th day of November 1972 BETWEEN
THE TRUSTEES OF LAKE ROTOAIRA a trust duly constituted pursuant to Section 438 Maori Affairs Act 1953 together with their successors in title executors administrators and assigns (hereinafter called 'the Trustees').
AND HER MAJESTY THE QUEEN her heirs and successors in title and permitted assigns acting by and through the Minister of Works (hereinafter called 'the Crown').

WHEREAS pursuant to section 438 of the Maori Affairs Act 1953 by Order dated 12 October 1965 the Maori Land Court at Tokaanu vested all that piece of land being the bed of Lake Rotoaira in the Trustees subject to certain trusts terms and conditions AND WHEREAS the Trustees are employed among other things by that Order to make arrangements or contracts with the Crown or any department thereof for the use of the water from the same Lake for hydro electric or other purposes and to arrange and decide on behalf of the Maori beneficial owners upon the conditions affecting the rights to carry out such works including fixing the consideration of compensation payable to the owners thereof AND WHEREAS the Crown is undertaking the construction operation and maintenance of certain public works known as the Tongariro Power Development for the generation of electricity AND WHEREAS the Crown has already made payments in full settlement of certain claims by the Trustees relating to their jetties, houses, buildings, installations and improvements at Lake Rotoaira AND WHEREAS construction operation and maintenance of the said public works may from time to time require altering the level or condition of Lake Rotoaira and may from time to time require entering on Lake Rotoaira and may from time to time require doing other things necessary for the construction operation and maintenance of the said public works AND WHEREAS the construction operation and maintenance of the said public works for the generation of electricity is in the public interest AND WHEREAS the provisions of the Public Works Act 1928 empower the Minister of Works from time to time to enter on any private land and carry out government works thereon AND WHEREAS the provisions of the Electricity Act 1968 empower the Minister of Electricity from time to time to construct provide and use such works appliances and conveniences as may be necessary directly or indirectly for generating electricity and alter the level or condition of any lake or stream for the generation of electricity AND WHEREAS

the Minister of Electricity in maintaining and operating the said public works and altering the level and condition of Lake Rotoaira for the generation of electricity will in normal circumstances raise and lower the level of Lake Rotoaira between 1850.5 feet above sea level and 1852.5 feet above sea level (Moturiki datum) AND WHEREAS in altering the level and condition of Lake Rotoaira as aforesaid the level of Lake Rotoaira may rise to 1854.5 feet above sea level (Moturiki datum) in times of extraordinary flood AND WHEREAS in altering the level and condition of Lake Rotoaira as aforesaid it may be necessary to lower substantially the level of Lake Rotoaira for killing and clearing lakeweed AND WHEREAS the Governor-General is empowered by Proclamation pursuant to the Public Works Act 1928 to vest land in the Crown for the generation of electricity AND WHEREAS the Maori beneficial owners of Lake Rotoaira have first derived their title thereto by the ancient customs and usages of the Maori people and the Maori beneficial owners of Lake Rotoaira bear a natural affection towards the Lake AND WHEREAS the Maori beneficial owners of Lake Rotoaira and the Trustees wish to retain their present title thereto AND WHEREAS the Maori beneficial owners have agreed and assured the Crown that the Crown may exercise its said lawful powers over the said Lake without paying compensation AND WHEREAS in consideration of the waiver by the Trustees of any rights to compensation the Crown has agreed to certain requests of the Trustees as herein contained NOW THEREFORE in consideration of and in pursuance of these premises THIS DEED WITNESSETH as follows AND the Trustees and the Crown COVENANT AND AGREE one with the other as follows:—

1. THAT the Crown shall have full power in respect of the said Lake to exercise all the rights and powers conferred on it by the Public Works Act 1928, the Electricity Act 1968 and the Soil and Water Conservation Act 1967 and any re-enactment or amendment of any of those Acts for the purpose of the maintenance and protection of the Tongariro Power Development Scheme and in particular the Crown may from time to time hereafter as it thinks fit alter the level and condition of the said Lake, construct operate and maintain such works as it may require to alter the level or condition of the said Lake and enter upon the said Lake to enable it to exercise and enjoy the rights and powers referred to herein.
2. THE Trustees shall not do cause to be done or permit to be done in or about Lake Rotoaira any act or thing which in the opinion of the General Manager of the New Zealand Electricity Department damages or threatens the said public works or the operation or maintenance of the said public works.
3. THE Trustees and the beneficial owners release and discharge the Crown and its successors in title its servants and agents from all liability to pay compensation under the Public Works Act 1928 or any re-enactment thereof or to pay valuable consideration or damages recoverable by action or otherwise or to make any other recompense whatsoever to the Trustees for any loss suffered by the Trustees or the beneficial owners arising out of the reasonable exercise and enjoyment by the Crown of the rights and powers referred to herein including the exercise from time to time of powers of entry and the alteration or condition of the said Lake
4. THAT except as hereinbefore provided the Trustees and the beneficial owners shall enjoy the rights powers and privileges available to them by law.
5. THE Trustees shall advise the Commissioner of Works or the General Manager of the New Zealand Electricity Department of their address and change of address for receipt of communications from the Crown AND any communication from the Trustees to the Crown may be addressed to the Commissioner of Works or the General Manager of the New Zealand Electricity Department at Wellington.
6. THAT the Trustees complying with their covenants and agreement herein expressed or implied the Crown will not exercise any statutory powers of compulsory acquisition of the title to the Lake for the purpose of the Tongariro Power Development.
7. THAT the Crown will amend the Rotoaira Trout Fishing Regulations 1959 so as to extend the operation of entry permits to include:—

(i) Any part of the Lake the title to which is not vested in the Trustees,
(ii) That portion of the Wairehu Canal from the Lake up to the first hurdle,
(iii) That portion of the Poutu Canal between Lake Rotoaira and the Poutu Dam that does not form part of the Poutu Stream,
(iv) Those portions of the streams running into the Poutu Stream between Lake Rotoaira and the Poutu Dam as become suitable for fishing or spawning as a result of the raising of the level of the Lake,

AND the covenants and agreements herein expressed or implied and on the part of the Trustees to be observed and performed shall extend to all the lands and/or waters to which the said Regulations as amended apply.

8. THE Crown acknowledges that the Trustees consider that the new lakes created by the Tongariro Power Development and known as Lake Otamangakau and Lake Te Whaiau should be included with the waters subject to the Rotoaira Trout Fishing Regulations 1959 and agrees that after these Lakes have been established and the fishing potential can be determined by the Crown shall review the responsibility for administration with a view to delegating to the Trustees such authority in relation to public use of the lakes as the Crown agrees is desirable in the interests of the Trustees, the general public and the New Zealand Electricity Department.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

SIGNED by PERCY BENJAMIN ALLEN the Minister of Works for and on behalf of Her Majesty the Queen in the presence of
WITNESS : [*R T Feist*]
ADDRESS : [*Solicitor*]
OCCUPATION : [*Wellington*]

SIGNED by HEPI TE HEUHEU as a Trustee for the time being of Lake Rotoaira in the presence of
WITNESS : [*R T Feist*]
ADDRESS : [*Solicitor*]
OCCUPATION : [*Wellington*]

SIGNED by PATERIKA HURA as a Trustee for the time being of Lake Rotoaira in the presence of
WITNESS : [*R T Feist*]
ADDRESS : [*Solicitor*]
OCCUPATION : [*Wellington*]

SIGNED by [*John Takakopiri Asher*] as a Trustee for the time being of Lake Rotoaira in the presence of
WITNESS : [*R T Feist*]
ADDRESS : [*Solicitor*]
OCCUPATION : [*Wellington*]

SIGNED by [*John Te Herekiekie Grace and Pei Te Hurinui Jones*] as Trustees for the time being of Lake Rotoaira in the presence of
WITNESS : [*R T Feist*]
ADDRESS : [*Solicitor*]
OCCUPATION : [*Wellington*]

SIGNED by [*Maraenui Iwikau]* as a Trustee for the time being of Lake Rotoaira in the presence of
WITNESS : [*R T Feist*]
ADDRESS : [*Solicitor*]
OCCUPATION : [*Wellington*]

SIGNED by [*Sam Karatea and Te Awhina K Wikaira*] as Trustees for the time being of Lake Rotoaira in the presence of
WITNESS : [*R T Feist*]
ADDRESS : [*Solicitor*]
OCCUPATION : [*Wellington*]

SIGNED by [*John Hura and Arthur Smallman*] as Trustees for the time being of Lake Rotoaira in the presence of
WITNESS : [*R T Feist*]
ADDRESS : [*Solicitor*]
OCCUPATION : [*Wellington*]

Downloaded from www.waitangitribunal.govt.nz

APPENDIX IV

SELECT RECORD OF INQUIRY

Select Record of Proceedings

1. Statements of Claim

1.1.1 ***Wai 37***

Margaret Makariti Poinga, statement of claim on behalf of Ngāti Hikairo, concerning the Ōkahukura block, undated, received 31 March 1987

(a) Margaret Makariti Poinga, statement of claim on behalf of Ngāti Hikairo, concerning the Ōkahukura block, undated, received 7 October 1991

(b) Margaret Makariti Poinga et al, amended statement of claim on behalf of Ngāti Hikairo, 8 December 2004

(c) Margaret Makariti Poinga and Alec Philips, amended statement of claim on behalf of Ngāti Hikairo, 8 December 2004

(d) Margaret Makariti Poinga, amended statement of claim on behalf of Ngāti Hikairo, 27 April 2006

1.1.2 ***Wai 48***

Te Aroha Ann Ruru Waitai, statement of claim on behalf of Tamaupoko, concerning Waimarino and other lands, undated, received 9 October 1987

(a) Te Aroha Ann Ruru Waitai, amended statement of claim on behalf of Tamaupoko, undated, received 1 May 1992

1.1.3 ***Wai 61***

Stephen Asher, statement of claim on behalf of Rotoaira Forest Trust et al, concerning Kaimanawa to Rotoaira lands, 9 June 1988

(a) Stephen Asher, amended statement of claim, not dated

1.1.4 ***Wai 81***

Te Aroha Ann Ruru Waitai, statement of claim on behalf of Tamaupoko, concerning the Tongariro National Park, 26 February 1988

1.1.5 ***Wai 146***

Kevin Amohia et al, statement of claim, concerning King Country lands, 13 June 1990

(a) Kevin Amohia et al, amended statement of claim, 27 June 1990

(b) Kevin Amohia et al, amended statement of claim, 27 September 2001

1.1.6 ***Wai 151***

Ropata Matiu Koroniria Gray et al, statement of claim on behalf of Ngāti Rangi, concerning Waiōuru and other lands, not dated

(a) Ropata Matiu Koroniria Gray et al, amended statement of claim Amendment, 6 April 2002

1.1.7 Wai 178
Stephen Asher, statement of claim on behalf of Lake Rotoaira Trust, concerning Lake Rotoaira, 25 February 1991
(a) Stephen Asher, amended statement of claim, 10 December 2001

1.1.8 *Wai 221*
Joan Akapita, statement of claim on behalf of Tamaūpoko, concerning Waimarino No 1 and other Railway lands

1.1.9 *Wai 226*
George Asher, statement of claim on behalf of Rotoaira Forest Trust & Tūwharetoa Trust Board, concerning Tūwharetoa Geothermal, 24 June 1991

1.1.10 *Wai 227*
Matiu Mareikura and others, statement of claim, concerning Raetihi and Mangaturuturu blocks, 19 February 2002
(a) Matiu Mareikura and others, amended statement of claim, 9 April 2002
(b) Matiu Mareikura and others, amended statement of claim, 5 December 2002

1.1.11 *Wai 467*
Noel Akapita, statement of claim, concerning the Tongariro National Park, undated, received 30 June 1994

1.1.12 *Wai 480*
Sir Hepi Te Heuheu, statement of claim on behalf of Ngāti Tūwharetoa, concering the conservation management strategy for Tongariro/Taupō, 1 March 1995

1.1.13 *Wai 490*
Karauia hapū of Ngāti Tūwharetoa, statement of claim on behalf of Karauia hapū of Ngāti Tūwharetoa, concerning the Tokaanu hot springs reserve, 22 February 1994
(a) Karauia hapū of Ngāti Tūwharetoa, amended statement of claim, not dated

1.1.14 *Wai 502*
Mahlon Nepia, statement of claim on behalf of Ngāti Tūrangitukua, concerning Tongariro National Park, 4 April 1995
(a) Lana Te Rangi, statement of claim on behalf Ngāti Tūrangitukua, concerning the Tongariro National Park, 8 May 2007

1.1.15 *Wai 554*
Hune Rapana and others, statement of claim concerning Taupō lands in Te Makotuku and Ruapehu survey districts, 12 October 1994

1.1.16 *Wai 555*
Mark Koro Cribb and others, statement of claim concerning the Taumatamahoe block, 12 September 1995
(a) Mark Koro Cribb and others, amended statement of claim, 16 February 1996
(b) Mark Koro Cribb and others, amended statement of claim, 26 March 2000
(c) Mark Koro Cribb and others, amended statement of claim, 13 March 2002

1.1.17 *Wai 575*
Tumu Te Heuheu, statement of claim on behalf of the Tūwharetoa Māori Trust Board, concerning Ngāti Tūwharetoa land and resources, 26 April 1996
(a) Tumu Te Heuheu, amended statement of claim, 5 November 2004
(b) Tumu Te Heuheu, amended statement of claim, 16 November 2004
(c) Tumu Te Heuheu, amended statement of claim, 8 December 2004
(d) Tumu Te Heuheu, amended statement of claim, 14 December 2004

1.1.18 *Wai 833*
Wiparaki Allen Pakau, statement of claim on behalf of Ngāti Hikairo and Ngāti Tūwharetoa, concerning Te Moana Rotoaira and resources, 17 August 1999
(a) Wiparaki Allen Pakau, amended statement of claim, 8 December 2004
(b) Wiparaki Allen Pakau, amended statement of claim, 7 December 2007
(c) Claimant counsel, memorandum, 12 June 2008

1.1.19 *Wai 836*
Patricia Henare and another, statement of claim on behalf of Te Puawaitanga Mokopuna Trust, Elenore Anaru Whānau Trust and Tira Taurerewa, concerning the Makotuku block IV, 26 July 1999

1.1.20 ***Wai 843***
Barbara Ann Lloyd, statement of claim, concerning Waimarino blocks and Waikune Prison, 23 March 2000

1.1.21 ***Wai 933***
Margaret Makariti Poinga and another, statement of claim on behalf of Ngāti Hikairo, concerning Lake Rotoaira and the Wairehu Stream, 20 August 2000
(a) Barbara Ann Lloyd, amended statement of claim, 8 December 2004
(b) Barbara Ann Lloyd, amended statement of claim, 8 December 2004

1.1.22 ***Wai 954***
Robert Wayne Cribb, statement of claim on behalf of Tamakana Iwi, concerning Tamakana Waimarino 1 block, 2 October 2001
(a) Robert Wayne Cribb, amended statement of claim, 13 March 2002
(b) Robert Wayne Cribb, amended statement of claim, 23 January 2003

1.1.23 ***Wai 965***
Leonard Hiraka Erickson, statement of claim on behalf of Ngāti Pouroto of Ngāti Tūwharetoa, concerning Taurewa 1 block
(a) Leonard Hiraka Erickson, amended statement of claim, 17 July 2002
(b) Leonard Hiraka Erickson, amended statement of claim, 8 December 2004
(c) Wai 965, 903, 1200
Leonard Hiraka Erickson, amended statement of claim, 12 June 2008

1.1.24 ***Wai 998***
John Manunui, statement of claim on behalf of Ngāti Hikairo and Ngāti Manunui of Ngāti Tūwharetoa, concerning the Whanganui River, 29 November 2001
(a) John Manunui, amended statement of claim, 14 October 2004

1.1.25 ***Wai 1029***
Monica Matamua, statement of claim on behalf of the descendants of Tamakeno and Ngāti Hinewai, concerning the Taurewa blocks, 24 October 2002

1.1.26 ***Wai 1044***
Rawinia Konui-Paul and others, statement of claim on behalf of the descendants of Te Huri Hokopakeke and Ngāti Te Ika of Ngāti Hikairo ki Tūwharetoa, concerning Ngāti Te Ika of Ngāti Hikairo ki Tūwharetoa lands and resources, 16 September 2002
(a) Rawinia Konui-Paul and others, amended statement of claim, 8 December 2004
(b) Rawinia Konui-Paul and others, amended statement of claim, 8 December 2004

1.1.27 ***Wai 1072***
Mathew Haitana, statement of claim on behalf of Ngāti Ruakopiri, concerning the Waimarino block, 23 December 2002

1.1.28 ***Wai 1073***
Chris Ngataierua, statement of claim on behalf of Ngāti Kōwhaikura, concerning the Waimarino block, 10 January 2003

1.1.29 ***Wai 1170***
Rangi Bristol and others, statement of claim on behalf of Te Tangata Whenua o Uenuku, concerning the lands of Te Tangata Whenua o Uenuku, 14 April 2004

1.1.30 ***Wai 1181***
Maria Annette Perigo, statement of claim on behalf of the descendants of Winiata Te Kakahi, concerning the Urewera 2A2 block, 12 May 2004

1.1.31 ***Wai 1189***
Kahukura Taiaroa, statement of claim on behalf of Ngāti Matakaha, concerning loss of lands in Waimarino block

1.1.32 ***Wai 1192***
Dean Hiroti, Patrick Te Oro, and Aiden Gilbert, statement of claim on behalf of Ngāti Maringi, concerning Waimarino block, 23 June 2004

1.1.33 ***Wai 1196***
Merle Maata Ormsby and others, statement of claim on behalf of Ngāti Tūwharetoa and Ngāti Hikairo, concerning the Tongariro Power Development Scheme lands, 01 February 2004

1.1.34 ***Wai 1202***
Rangi Bristol, Raymond Rapana, Dean Hiroti, Geraldine Taurerewa, Ngaire Janine Williams, and others, statement of

claim on behalf of themselves and the Te Tangata Whenua o Uenuku, concerning the Whanganui River Trust Board Act, 22 July 2004

1.1.35 ***Wai 1224***
Robert Wayne Cribb and another, statement of claim on behalf of the descendants of Uenuku Tūwharetoa, concerning the loss of lands and minerals, 23 September 2004
(a) Robert Wayne Cribb and another, amended statement of claim, 24 October 2006

1.1.36 ***Wai 1260***
John Reweti and others, statement of claim on behalf of Ngāti Waewae of Ngāti Tūwharetoa, concerning the lands in National Park and Taihape Inquiry, 14 February 2005
(a) John Reweti and others, statement of claim, 8 December 2005

1.1.37 ***Wai 1261***
Aiden Gilbert, statement of claim on behalf of Ngāti Tara, concerning the lands in National Park and Whanganui Inquiry, 17 May 2005

1.1.38 ***Wai 1262***
Tyronne Smith and another, statement of claim on behalf of Ngāti Hikairo ki Tongariro of Ngāti Tūwharetoa, concerning lands in the National Park, 2 June 2005
(a) Tyronne Smith and another, amended statement of claim, 8 December 2005

1.1.39 ***Wai 1263***
James Read and others, statement of claim on behalf of Te Uri o Rangiteauria, concerning the Waiōuru army base, Tongariro Power Development Scheme, Karioi State Forest, and railway lands, 8 June 2005
(a) James Read and others, amended statement of claim, 14 August 2006

1.1.40 ***Wai 1264***
Peter Clarke, statement of claim on behalf of Tutemohuta, concerning lands in the National Park, 10 June 2005

1.1.41 ***Wai 73***
Te Mataara Pēhi and others, statement of claim, concerning Waimarino lands, 11 October 1988
(a) Te Mataara Pēhi and others, amended statement of claim, 29 January 1998
(b) Te Mataara Pēhi and others, amended statement of claim, 21 November 2002
(c) Vacant

4. Transcripts and Translations

4.1.1 Transcript of cross-examination of G Park during Wai 262 hearing week 13, 20–23 May 2002

4.1.2 Transcript of cross-examination of G Park during Wai 262 hearing week 14, 4–7 June 2002

4.1.3 Transcript of cross-examination of T Walzl during Wai 1200 hearing week, 7–11 March 2005 (Wai 1200, 4.1.4)

4.1.4 Transcript of cross-examination of T Hearn during Wai 1200 hearing week, 14–18 March 2005 (Wai 1200, 4.1.5)

4.1.5 Transcript of cross-examination of B Coombes during Wai 894 hearing week, 28 November–3 December 2004

4.1.6 Transcript of first hearing, held at Maungārongo Marae, Ōhakune, 20–23 February 2006

4.1.7 Transcript of second hearing, held at Grand Chateau, National Park, 13–17 March 2006

4.1.8 Transcript of fourth hearing, held at Te Puke Marae, Raetihi, 15–19 May 2006

4.1.9 Transcript of fifth hearing, held at Powderhorn Chateau, Ōhakune, 28 August 2006, and Tirorangi Marae, Ōhakune, 29 August–1 September 2006

4.1.10 Transcript of sixth hearing, held at Papakai Marae, Tūrangi, 18–22 September 2006

4.1.11 Transcript of seventh hearing, held at Ōtūkou Marae, National Park, 11–13 October and 16–20 October 2006
(a) Transcription of evidence and cross-examination of P Ōtimi, 2 April 2007, seventh hearing, held at Ōtūkou Marae, National Park, 11–13 October and 16–20 October 2006
(b) Transcription of evidence and cross-examination of J Koning, 2 April 2007, seventh hearing, held at Ōtūkou Marae, National Park, 11–13 October and 16–20 October 2006

4.1.12 Transcript of eighth hearing, held at Ōhakune RSA Working Men's Club, 27–30 November and 1 December 2007

4.1.13 Transcript of extra evidential day, held at Waitangi Tribunal offices, Wellington, 14 February 2007

Select Record of Documents

* Document is confidential and unavailable to the public without leave from the Tribunal

A Series

A1 Robyn Anderson, 'Tongariro National Park Project – First Progress Report' (commissioned progress report, Wellington: Crown Forestry Rental Trust, 2004)

A2 Angela Ballara, 'Tribal Landscape Overview, c1800 – c1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts' (commissioned research report: Wellington, Crown Forestry Rental Trust, 2004)
(a) Angela Ballara, 'Summary of "Tribal Landscape Overview, c1800 – c1900 Taupo, Rotorua, Kaingaroa and National Park"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006)

A3 Robyn Anderson, 'Tongariro National Park Project – Second Progress Report' (commissioned progress report, Wellington: Crown Forestry Rental Trust, 2004)

A4 Nicholas Bayley, 'Murimotu and Rangipō–Waiū 1860–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2004)
(a) Nicholas Bayley, 'Revised version of Murimotu and Rangipō–Waiū 1860–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2006)
(b) Nicholas Bayley, 'Summary of "Murimotu and Rangipō–Waiū 1860–2000"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)
(c) Nicholas Bayley, 'Answers to Questions of Clarification', 23 February 2006

A5 Paula Berghan, 'Block Research Narratives of the Tongariro National Park District' (commissioned resource document, Wellington: Crown Forestry Rental Trust, 2004)
(a) Paula Berghan, comp, 'Document Bank to "Block Research Narratives of the Tongariro National Park District"', 15 vols (document bank, Wellington: Crown Forestry Rental Trust, 2004)

A6 Nicholas Bayley and Mark Derby, 'Tongariro National Park Management from 1980 to Present' (commissioned scoping report, Wellington: Waitangi Tribunal, 2004)
(a) Nicholas Bayley and Mark Derby, 'Summary of "Tongariro National Park Management from 1980 to Present"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)

A7 James Mitchell and Craig Innes, 'Whanganui and National Park Alienation Study' (commissioned research report, Wellington: Waitangi Tribunal, 2004)
(b) Craig Innes and James Mitchell, 'Summary of "Whanganui and National Park Alienation Study"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)
(c) Craig Innes and James Mitchell, 'Correction to Summary of "Whanganui and National Park Alienation Study"', 10 March 2006

A8 Tony Walzl, 'Hydro-Electricity Issues: The Tongariro Power Development Scheme Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005)
(a) Tony Walzl, comp, 'Document Bank to "Hydro-Electricity Issues – The Tongariro Power Development Scheme Report"', 2 vols (document bank, Wellington: Crown Forestry Rental Trust, 2005)
(b) Tony Walzl, 'Presentation Summary of "Hydro-Electricity Issues – The Tongariro Power Development Scheme Report"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006)
(c) Tony Walzl, 'Answers Provided in Response to Direction of the Presiding Officer, paper 2.3.50', 10 October 2006

A9 Robyn Anderson, 'Tongariro National Park – An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2005)
(a) Robyn Anderson, comp, 'Supporting Documents to "Tongariro National Park – An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park"'

A10 'Conference of Wanganui, Taupo and Waikato Maoris', February 1876

A11 A Walton, 'Settlement Patterns in the Whanganui River Valley, 1839–1864', *New Zealand Journal of Archaeology*, vol 16 (1994), pp 123–168

A12 John Te Herekiekie Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Auckland: Reed, 1959)

A13 Alan Ward, 'Whanganui ki Maniapoto: Preliminary Historical Report for Wai 48 and Related Claims' (commissioned research report, Wellington: Waitangi Tribunal, 1992)

A14 John Koning, *Lake Rotoaira: Maori Ownership and Crown Policy towards Electricity Generation 1964–1972* (Wellington: Waitangi Tribunal, 1993)
(a) John Koning, brief of evidence, 13 September 2006

A15 Cathy Marr, *Public Works Takings of Maori Land, 1840–1981*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1997)

A16 Donald M Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1996)

A18 Gary Hawke, brief of evidence, September 2000

A19 Robert Hayes, brief of evidence, 17January 2001

A20 Geoff Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983* (Wellington: Waitangi Tribunal, 2001)
(a) Geoff Park, 'Summary of "Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)
(b) Geoff Park, 'Summary of Part One of "Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)
(c) Geoff Park, 'Summary of Parts II and III of "Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)

A21 Donald M Loveridge, 'Executive Summary of "Maori Lands and British Colonization 1840–1865 – A Preliminary Analysis"' (commissioned summary report, Wellington: Crown Law Office, 2001)

A22 Tahu Kukutai, Ian Pool, and Janet Sceats, 'Central North Island Iwi – Population Patterns and Trends' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A23 Robert Hayes, 'Protection Mechanisms' (commissioned research report, Wellington: Crown Law Office, 2002)

A24 Robert Hayes, 'Summary of "Protection Mechanisms"' (commissioned summary report, Wellington: Crown Law Office, 2002)

A25 Gary Hawke, 'Capital, Finance and Development: Reflections on Economic Concepts and the Gisborne Inquiry' (commissioned research report: Wellington: Crown Law Office, 2002)

A26 Robert Hayes, 'Native Land Court (Leasing)' (commissioned research report, Wellington: Crown Law Office, 2002)

A27 Robert Hayes, 'Summary of "Native Land Court (Leasing)"' (commissioned summary report, Wellington: Crown Law Office, 2002)

A28 Robert Hayes, 'Summary of "Crown Purchasing"' (commissioned summary report, Wellington: Crown Law Office, 2002)

A29 Robyn Anderson, 'Whanganui Iwi and the Crown, 1865–1880' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)

A30 Robyn Anderson, 'Whanganui Iwi and the Crown, 1880–1900' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)

A31 Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)

A32 Keith Pickens, 'Summary of "Introduction and Operation of the Native Land Court in the Central North Island"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2004)

A33 Michael Macky, 'Crown Purchasing in the Central North Island Inquiry District 1870–1890' (commissioned research report, Wellington: Crown Law Office, 2004)

A34 Michael Macky, 'Summary of "Crown Purchasing in the Central North Island Inquiry District 1870–1890' (commissioned research report, Wellington: Crown Law Office, 2004)

A35 Peter Clayworth, '"Located on the Precipices and Pinnacles": A Report on the Waimarino Non-Seller Blocks and Seller Reserves' (commissioned research report, Wellington: Waitangi Tribunal, 2004)
(a) Peter Clayworth, 'Summary of" 'Located on the Precipices and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)
(b) Peter Clayworth, Responses to Written Questions from Claimant Counsel, 15 May 2006

A36 Philip Cleaver, 'The Taking of Maori Land for Public Works in the Whanganui Inquiry District, 1850–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2004)
(a) Philip Cleaver, 'Summary of "The Taking of Maori Land for Public Works in the Whanganui Inquiry District"' (commissioned research report, Wellington: Waitangi Tribunal, 2004)

A37 Crown Law Office, 'Summary Details of the Crown Acquisition of Central North Island Forest Lands', not dated

A38 Peter McBurney, 'Scenery Preservation & Public Works Takings (Taupo–Rotorua) c 1880–1980' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)

A39 Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', 2 vols (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2004)
(a) Bruce Stirling, 'Presentation Summary of "Taupo–Kaingaroa Nineteenth Century Overview"' (commissioned summary report, Wellington, Crown Forestry Rental Trust, 2006)
(b) Bruce Stirling, comp, 'Supplementary Supporting Documents to "Taupo–Kaingaroa Nineteenth Century Overview"'

A40 Tony Walzl, 'Whanganui Land, 1900–1970' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)

A41 Tony Walzl, 'Ngati Rangi Land Issues, 1840–1970' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)
(a) Tony Walzl, 'Summary of "Ngati Rangi Land Issues, 1840–1970"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006)

A42 TJ Hearn, 'Taupo–Kaingaroa Twentieth Century Overview: Land Alienation and Land Administration, 1900–1993' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)

A43 Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues' (commissioned research report, Wellington: Waitangi Tribunal, 2004)
(a) Cathy Marr, 'Summary and Response to Statement of Issues for "The Waimarino Purchase Report"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)

A44 Tony Walzl, 'Maori and Forestry (Taupo–Kaingaroa–Rotorua), 1890–1990', 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005)
(a) Tony Walzl, 'Presentation Summary of "Maori and Forestry (Taupo–Kaingaroa– Rotorua), 1890–1990' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006)

A45 Donald Loveridge, 'The Origins of the Native Land Acts and Native Land Court in New Zealand' (commissioned research report, Wellington: Crown Law Office, 2000)

A46 Donald Loveridge, 'Précis of "The Origins of the Native Land Acts and Native Land Court in New Zealand' (commissioned summary report, Wellington: Crown Law Office, 2005)

A47 Donald Loveridge, 'Summary of "The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey' (commissioned summary report, Wellington: Crown Law Office, 2005)

A48 Crown Forestry Rental Trust, 'Maps of the National Park Inquiry District – A Thematic Overview Map Book to Support the Waitangi Tribunal Hearings', 2005
(a) Crown Forestry Rental Trust, 'National Park Overview Mapbook, Part 2 – A District Overview Map Book to Support Waitangi Tribunal Proceedings', 2006

A49 Michael O'Leary, 'A Report on Upper Whanganui District Claims' (commissioned research report, Ōhakune: Central Cluster Claimants, 2005)
(a) Michael O'Leary, comp, 'Supporting Documents to "A Report on Upper Whanganui District Claims": Native Land Court Minute Book Transcripts and Copies'
(b) Charlotte Castle, comp, Michael O'Leary, 'Supporting Documents to Michael O'Leary, "A Report on Upper Whanganui District Claims": Historical Material on Ngāti Uenuku, Tamakana, Tamahaki'
(c) Michael O'Leary, 'Summary of "A Report on Upper Whanganui District Claims"' (commissioned summary report, Ōhakune: Central Cluster Claimants, 2006)

A50 Keith Pickens, 'Operation of the Native Land Court in the National Park Inquiry District in the 19th Century' (commissioned research report, Wellington: Crown Law Office, 2005)
(a) Keith Pickens, 'Summary of "Operation of the Native Land Court in the National Park Inquiry District in the 19th Century"' (commissioned summary report, Wellington: Crown Law Office, 2006)
(b) Keith Pickens, 'Some Key Dates and Documents: Taupo, Wanganui and Hastings Native Land Court Sittings, 1885–1887', November 2006
(c) Keith Pickens, reply to questions in writing regarding 'Operation of the Native Land Court in the National Park Inquiry District in the 19th Century', 2 February 2007

A51 Marian Horan, 'The Tongariro Power Development: Selected Issues' (commissioned research report, Wellington: Crown Law Office, 2005)
(rr) Marian Horan, 'Summary of "The Tongariro Power Development: Selected Issues"' (commissioned summary report, Wellington: Crown Law Office, 2006)

A52 Marian Horan, 'Government Lease Negotiations for Murimotu, Ruanui, Rangiwaea and Rangipō–Waiū, 1874–1885' (commissioned research report, Wellington: Crown Law Office, 2005)
(c) Marian Horan, 'Summary of "Government Lease Negotiations for Murimotu, Ruanui, Rangiwaea and Rangipō–Waiū, 1874–1885' (commissioned summary report, Wellington: Crown Law Office, 2006)
(d) Marian Horan, reply to questions in writing regarding 'Government Lease Negotiations for Murimotu, Ruanui, Rangiwaea and Rangipō–Waiū, 1874–1885', 2 February 2007

A53 Cecilia Edwards, 'Tongariro National Park: The Legislative Regime and Park Management, 1894–1952' (commissioned research report, Wellington: Crown Law Office, 2005)
(g) Cecilia Edwards, 'Summary of "Tongariro National Park: The Legislative Regime and Park Management, 1894–1952"' (commissioned summary report, Wellington: Crown Law Office, 2006)
(h) Cecilia Edwards, reply to questions in writing regarding 'Tongariro National Park: The Legislative Regime and Park Management, 1894–1952', 2 February 2007

A54 Paul Meredith, 'Upper Whanganui ki Tongariro: A Brief Paper Prepared for the Central Cluster Charitable Trust, National Park Inquiry' (commissioned research report, Wellington: Central Cluster Charitable Trust with Crown Forestry Rental Trust, 2005)
(a) Paul Meredith, 'Amended Report for "Upper Whanganui ki Tongariro: A Brief Paper Prepared for the Central Cluster Charitable Trust, National Park Inquiry"', April 2006
(b) Paul Meredith, 'Second Amended Report for "Upper Whanganui ki Tongariro: A Brief Paper Prepared for the Central Cluster Charitable Trust, National Park Inquiry"', May 2006

(c) Correspondence between Ngāti Rangipōutaka and Te Manu Tute and Te Wananga, 3 March 1877

A55 Michael Macky, 'Kemp's Trust' (commissioned research report, Wellington: Crown Law Office, 2005)
(a) Michael Macky, comp, 'Document Bank to "Kemp's Trust"'
(b) Michael Macky, 'Summary of "Kemp's Trust"' (commissioned summary report, Wellington: Crown Law Office, 2006)
(c) Michael Macky, 'Errata and Clarification for "Kemp's Trust"', 28 November 2006

A56 Andrew Joel, 'The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park' (commissioned research report, Wellington: Crown Law Office, 2005)
(a) Andrew Joel, comp, 'Document Bank to "The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park"'
(b) Andrew Joel, 'Summary of "The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park"' (commissioned summary report, Wellington, Crown Law Office, 2006)
(c) Andrew Joel, 'Tongariro National Park Peak Timeline of Selected Key Events' (commissioned timeline, Wellington: Crown Law Office, 2006)

A57 Leanne Boulton, 'Contextual Material on Maori and Socio-Economic Issues in the National Park Inquiry District, 1890–1990: A Scoping Report' (commissioned scoping report, Wellington: Waitangi Tribunal, 2006)
(a) Leanne Boulton, 'Summary of "Contextual Material on Maori and Socio-Economic Issues in the National Park Inquiry District, 1890–1990: A Scoping Report"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)
(b) Leanne Boulton, 'Appendix 2: Number of Maori Voters by Location and Iwi/Hapu Affiliations, 1908, to "Contextual Material on Maori and Socio-Economic Issues in the National Park Inquiry District, 1890–1990: A Scoping Report"', March 2006

A58 Russell Kirkpatrick, Kataraina Belshaw, and John Campbell, 'Land-Based Cultural Resources and Waterways and Environmental Impacts (Rotorua, Taupo and Kaingaroa), 1840–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)
(a) Russell Kirkpatrick, Kataraina Belshaw, and John Campbell, 'Summary of "Land-Based Cultural Resources and Waterways and Environmental Impacts (Rotorua, Taupo and Kaingaroa), 1840–2000"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006)
(b) Russell Kirkpatrick, Answers to Statement of Issues: Lake Rotoira, August 2006

A59 Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005)
(a) Bruce Stirling, 'Presentation Summary for "Kingitanga to Te Kooti: Taupo in the 1860s"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006)

A60 Tony Walzl, 'Maori and Forestry (Taupo–Rotorua–Kaingaroa), 1890–1990' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005)

A61 Che Philip Wilson, brief of evidence, 10 February 2006

A62 Colin Richards, first brief of evidence, 10 February 2006
(a) Colin Richards, replacement first brief of evidence, 22 February 2006

A63 Colin Richards, second brief of evidence, 10 February 2006

A64 Keith William Paetaha Wood, brief of evidence, 10 February 2006

A65 Te Whetumarama Mareikura, brief of evidence, 10 February 2006

A66 Tony James Davis Waho, brief of evidence, 10 February 2006

A67 Raana Virginia Mareikura, brief of evidence, English translation, 10 February 2006
(a) Raana Virginia Mareikura, brief of evidence, te reo Māori, 10 February 2006
(b) Raana Virginia Mareikura, replacement brief of evidence, 16 February 2006

A68 Mark Tumanako Gray, brief of evidence, English translation, 10 February 2006

A68—*continued*
(a) Mark Tumanaku Gray, brief of evidence, te reo Māori, 10 February 2006
(b) Mark Tumanako Gray, replacement brief of evidence, 22 February 2006

A69 Toni Waho, Che Wilson, Tūrama Hāwira, Esther Tinirau, and Hinurewa Poutu, 'Te Kāhui Maunga, Te Ahi Kā o Paerangi, Te Mana Whenua o Ngāti Rangi: Ngāti Rangi Customary Tenure Report', confidential, February 2006*
(a) Crown Forestry Rental Trust, 'Te Kāhui Maunga, Te Ahi Kā o Paerangi – Map book', confidential, February 2006*
(c) Correspondence between Alan Ward and Paul Harman regarding Wai 48, 27 June to 30 August 1991, confidential
(d) R Broughton, 'Legend Translation: A Unique Sketch Published for the First Time', confidential, not dated*
(e) Lease agreement produced by Tony Waho on behalf of Ngāti Rangi, confidential, February 2006*

A70 Robert Matthew Koroniria Gray, brief of evidence, 16 February 2006
(a) Robert Matthew Koroniria Gray, appendices to brief of evidence, 16 February 2006

A71 Robyn Anderson, brief of evidence, 17 February 2006

A72 Donald Loveridge, 'The Crown and the Opening of the King Country, 1882–1885' (commissioned research report, Wellington: Crown Law Office, 2006)
(a) Donald Loveridge, 'Summary of "The Crown and the Opening of the King Country, 1882–1885"' (commissioned research report, Wellington: Crown Law Office, 2006)

A73 Map 9, 'Turoa Ski Area (with Rangipo North 8 shown)', not dated

A74 Keith Wood, 'Karioi Rahui: Ngati Rangi Perspectives', February 2006

A75 Crown documents relied on cross-examination of Tony Walzl, February 2006

A76 B Gray, Ngāti Rāngi hearing week 1 powerpoint presentation, 23 February 2006

A77 B Gray, Ngāti Rāngi hearing week 1 DVD, 23 February 2006

A78 Memorandum of Agreement between Department of Conservation and Ngāti Rangi Trust, 5 December 1996

B Series
B1 'Ski-field Project to boost Ruapehu', *Dominion Post*, 10 March 2006, p A8

B2 Robyn Anderson, 'Interpolations regarding Reports A9, A29, and A30', 13 March 2006

B3 Cathy Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block), 1840–1920*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1996)

B4 Extract from J Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Auckland: Reed, 1959)

B5 Definiton of 'Gift'

B6 Documents relied on during cross-examination of Bruce Stirling
(a) Native Land Court Gazette Notices

B7 'Notes of Native Meetings held in Upper Wanganui, 1869'

B8 Map of Taupōnuiātia block showing inroads on 1884 Rohe Potae boundry

B9 Ngāti Hikairo ki Tongariro Trust, submission to draft Tongariro National Park management plan, January 2003

B10 Crown documents relied on during cross-examination of Philip Cleaver

B11 Crown Forestry Rental Trust, 'Te Reo Maori Sources Project, Part 1: Catalogue of Unpublished Material', 2006
(a) Crown Forestry Rental Trust, 'Te Reo Māori Sources Project, Part 2: Catalogue of Published Material', 2006
(b) Crown Forestry Rental Trust, 'Te Reo Maori Sources Project, Part 3: Unpublished Material', Alexander Turnbull Library, vols 1–5
(c) Crown Forestry Rental Trust, 'Te Reo Maori Sources Project, Part 4: Unpublished Material', Alexander Turnbull Library, vols 6–11

(d) Crown Forestry Rental Trust, 'Te Reo Maori Sources Project, Part 5: Unpublished Material', Alexander Turnbull Library, vols 11–15 and Auckland City Library, vols 1–3
(e) Crown Forestry Rental Trust, 'Te Reo Maori Sources Project, Part 6: Unpublished Material, Auckland Museum Library 1–4
(f) Crown Forestry Rental Trust, 'Te Reo Maori Sources Project, Part 7: Unpublished Material', National Archives MA 1–13
(g) Crown Forestry Rental Trust, 'Te Reo Maori Sources Project, Part 8: Unpublished Material', National Archives MA 71; MA Wang; Crown Purchase Deeds
(h) Crown Forestry Rental Trust, 'Te Reo Maori Sources Project, Part 9: Published Material', photocopies from Māori language newspapers; copies from Alexander Turnbull Library of the Māori language versions of the Tongariro National Park Bill 1887, Tongariro National Park Bill 1893 and Tongariro National Park Act 1894

C Series

C1 Bruce Stirling, transcript of key documents from MA 71/6, Tauponuiatia Royal Commission of Inquiry Papers, Archives New Zealand, 24 March 2006

C2 Site information, notes and maps for first day of site visits, 10 April 2006

C3 Site information, notes and maps for second day of site visits, 11 April 2006

C4 Site information, notes and maps for third day of site visits, 12 April 2006

D Series

D1 Māori language source documents from Niupepa Māori Newspapers translated by Prof H Mead

D2 Three Foot Six permit for the filming of the Lord of the Rings, as well as the variation to the permit that allow filming in the Tongariro National Park

D3 Current Tongariro National Park Management Plan, draft Tongariro National Park Management Plan and the Tongariro Taupō Conservation Management Plan

D4 Horizons Regional Council plans and strategies, Environment Waikato Plan and Statement, Ruapehu District Council district plan, and Taupō District Council proposed District Plan

D5 Ruapehu Alpine Lifts, licence documents for the Whakapapa Ski field including amendments to the licence Crown

D6 Ruapehu Alpine Lifts, licence documents for the Tūroa Ski field including amendments to the licence and a deed of assignment

D7 Information relating to the resource consent application for the Whakapapa/Iwikau sewerage scheme

D8 Information relating to the resource consent application for the lahar bund

D9 Department of Conservation, *Environmental and Risk Assessment for Mitigation of the Hazard from Ruapehu Crater Lake*, April 1999

D10 Information regarding the Crater Lake of Mt Ruapehu issue including submissions to the Minister of Conservation

D11 Jamie Mitchell, 'Quantitative Study of Māori Land Alienation and Management in the National Park Inquiry District' (commissioned research report, Wellington: Waitangi Tribunal, 2006)
(a) Jamie Mitchell, 'Summary of "Quantitative Study of Māori Land Alienation and Management in the National Park Inquiry District"' (commissioned summary report, Wellington: Waitangi Tribunal, 2006)

D12 Supporting documents to Crown memorandum 3.2.59, dated 28 April 2006, regarding the Ōtūkou Quarry

D13 Supporting documents to Crown memorandum 3.2.59, dated 28 April 2006, regarding the Ōtūkou Quarry

D14 Wharehuia Hemara, 'Central Claims Charitable Trust Oral and Traditional History Project' (commissioned research report, Ōhakune: Whanganui Central Claims Charitable Cluster, 2006)
(a) Wharehuia Hemara, 'Summary of "Central Claims Charitable Trust Oral and Traditional History Project"'

(commissioned summary report, Ōhakune: Whanganui Central Claims Charitable Cluster, 2006)

D15 Grant Young and Michael Belgrave, 'Northern Whanganui Cluster: Oral and Traditional History Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006)
(a) Grant Young and Michael Belgrave, 'Summary of Initial Draft of "Northern Whanganui Cluster: Oral and Traditional History Report"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2005)

D16 Matu Alexander Tatana, brief of evidence, 4 May 2006
(a) Matu Alexander Tatana, brief of evidence, 31 May 2006

D17 Waimarino County Council, application for vesting of Māori freehold land, 14 October 1966

D18 Māori Land Court, order vesting Urewera 2A2 block, 7 February 1967

D19 V P McGlone, commissioner of Crown lands, to district officer, Department of Māori Affairs, letter, 24 June 1968

D20 Alienation notice for the Urewera 2A2 block, 19 December 1968

D21 Extract from the *New Zealand Gazette*, 3 July 1969

D22 Māori Trust Office File: 4/4463 (vol 1: 22.09.25 to 24.12.47), supporting documents to memorandum 3.2.65

D23 Māori Trust Office File: 4/4463 (vol 2: from 24.02.48), supporting documents to memorandum 3.2.65

D24 Māori Trust Office File: 12D/16 to 4/4463 (was 12B–132), supporting documents to memorandum 3.2.65

D25 Monica Matamua, brief of evidence, 5 May 2006
(a) Monica Matamua, appendix A to brief of evidence, 5 May 2006
(b) Monica Matamua, appendix B, letter from Department of Māori Affairs to Judge Durie, regarding the amalgamation of titles in the Taurewa Development Scheme
(c) Monica Matamua, appendix C, letter from Judge Durie to Department of Māori Affairs, regarding the amalgamation of titles in the Taurewa Development Scheme
(d) Monica Matamua, appendix D, additional submissions in support for Taurewa Development Scheme
(e) Monica Matamua, appendix E, meeting of owners of the Taurewa Development Scheme, 28 July 1965

D26 'Land Alienated with the National Park Inquiry District circa 1881 – circa 1892'

D27 Robert 'Boy' Cribb, brief of evidence, 5 May 2006

D28 Ross Wallis, brief of evidence, 5 May 2006
(a) Ross Wallis, appendix to brief of evidence, 5 May 2006
(b) Ross Wallis, amended brief of evidence, 12 May 2006
(c) Ross Wallis, 'Appendix A: Correspondence to Tamahaki Incorporated Society', 12 May 2006
(d) Ross Wallis, 'Appendix B: Resume of involvement in Tribal Authorites, 12 May 2006
(e) Ross Wallis, 'Appendix C: Notice to the external agencies wishing to communicate with Tamahaki', 12 May 2006
(f) Ross Wallis, 'Appendix D: Correspondance between Tamahaki Council of Hapū and Ngāti Rangi Trust and the Proprietors of Waimarino Forests and Winstone Pulp International'
(g) Charlotte Sunde, Tod Taiepa, and Peter Horsley, 'Exploring Collaborative Management Initiatives between Whanganui Iwi and the Department of Conversation' (Palmerston North: Massey University, 1999)
(h) Te Puni Kōkiri, 'Review of the Department on Conservation, Te Papa Atawhai: Service Delivery to Māori', 1998
(i) Te Puni Kōkiri, 'Department of Conservation Te Papa Atawhai: Service Delivery to Māori: Key Stakeholder Interviews', 1998
(j) Te Puni Kōkiri, 'Follow up Review of the Department of Conversation's "Relationships with Māori"', 2002
(k) Native Land Purchases documents in relation to the gifting of the Maunga

D29 Turuhia (Jim) Edmonds, brief of evidence, 5 May 2006

D30 Rangimarie Ponga, brief of evidence, 5 May 2006
(a) Copy of the certificate of title for the three acres of land gifted by Rangimarie Ponga's grandfather

(b) Copy of the *New Zealand Gazette* notice for the taking of land from Waitahuparae Marae

D31 Roberta Rose Williams, brief of evidence, 5 May 2006

D32 Don Robinson, brief of evidence, te reo Māori, 5 May 2006

D32 (a) Don Robinson, brief of evidence, English version, 26 May 2006
(b) Don Robinson, appendices to brief of evidence, May 2006
(c) Don Robinson, amended brief of evidence, te reo Māori, 9 May 2006
(d) Don Robinson, amended brief of evidence, 9 May 2006
(e) Don Robinson, amended appendices to brief of evidence, te reo Māori, 9 May 2006

D33 Matiu Haitana, brief of evidence, 5 May 2006
(a) Matiu Haitana, second brief of evidence, 26 May 2006

D34 Aiden Hapimana Gilbert, brief of evidence, 5 May 2006

D35 Rosita Rauhina Dixon, brief of evidence, 5 May 2006
(a) Rosita Rauhina Dixon, replacement brief of evidence, 8 May 2006

D36 Morehu Paranihi Wana, brief of evidence, te reo Māori, 5 May 2006
(a) Morehu Paranihi Wana, brief of evidence, 5 May 2006
(b) Morehu Paranihi Wana, replacement brief of evidence, te reo Māori, 5 May 2006
(c) Morehu Paranihi Wana, replacement brief of evidence, 5 May 2006

D37 Rangihopuata Rapana, brief of evidence, 5 May 2006
(a) Rangihopuata Rāpana, appendix to brief of evidence, 5 May 2006

D38 Dean Te Oro Hiroti, brief of evidence, 5 May 2006

D39 Adam Haitana, brief of evidence, 5 May 2006

D40 Rangi Joseph Bristol, brief of evidence, 5 May 2006
(a) Correspondence between Department of Conservation and Mark McGhie, 18 May 2006
(b) Rangi Joseph Bristol, second brief of evidence, 26 May 2006

D41 Kahukura 'Buddy' Taiaroa, brief of evidence, te reo Māori, 5 May 2006
(a) Kahukura 'Buddy' Taiaroa, brief of evidence, 5 May 2006

D42 Maria Perigo, brief of evidence, 5 May 2006
(a) Maria Perigo, appendix A to brief of evidence, 5 May 2006
(b) Map of Urewera block, 5 May 2006
(c) Maria Perigo, amended brief of evidence, 25 May 2006

D43 Chris Ngataierua, brief of evidence, 5 May 2006

D44 Raymond Rapana, brief of evidence, 5 May 2006
(a) Raymond Rapana, appendices to brief of evidence, 11 May 2006
(b) Raymond Rapana, oral presentation, 16 May 2006

D45 Ngā Waiata Booklet, 5 May 2006

D46 Te Mataara Pēhi, brief of evidence, 5 May 2006
(a) Te Mataara Pēhi, amended brief of evidence, 11 May 2006
(b) Photo of celebration after the gifting of land for a school
(c) Panorama photo of Tongariro, Ngauruhoe, and Ruapehu mountains from Waimarino Plains
(d) Waiata
(e) Topia Peehi Tūroa Biography
(f) Hinewai whakapapa
(g) Te Korimako article regarding Topia Tūroa
(h) Whakapapa
(i) Minutes of General Meeting of Ngāti Uenuku at Raetihi Pa
(j) 'Taurewa Evidence – Conversation with Chris Kelly from Landcorp', 18 May 2006 (*no official or duplicate copy held*)
(k) Te Mataara Pēhi, attachment D to brief of evidence, not dated

D47 Barbara Lloyd, brief of evidence, 5 May 2006
(a) Ngāti Ruakopiri whakapapa
(b) Legal boundries of Waikune Prison

D48 Don Robinson, brief of evidence, 5 May 2006
(a) Don Robinson, amended brief of evidence, 11 May 2006
(b) Sandra Thomas, 'Report for Wai 221 Waimarino Claim' (commissioned research report, Wellington: Treaty of Waitangi Policy Unit, c 1991)
(c) Memorandum from the Department of Lands and Survey, 15 September 1902
(d) Whakapapa line from Tamakana, 11 May 2006

D48—*continued*
(e) Whakapapa line from Tamaupoko, 11 May 2006
(f) Great-grandparents and Te Kai-o-roto Hamuera's obituary
(g) Articles from *Te Tiupiri*, 10 May 1898
(h) Articles from *Te Tiupiri*, 7 June 1898
(i) Articles from *Te Tiupiri*, 9 November 1898
(j) Whakapapa – Aotea line showing link to Tamakehu
(k) Articles from *Te Waka Māori o Niu Tirani*
(l) Don Robinson, second amended brief of evidence, 11 May 2006

D49 June Cain, brief of evidence, 8 May 2006

D50 Arin Matamua, brief of evidence, 8 May 2006

D51 Aiden Hapimana Gilbert and Clive Te Iwimate, joint brief of evidence, 5 May 2006
(a) Picture of Wanganui and West Coast (North Island) Platoons, Māori Pioneer Battalion
(b) Family tree of Tuatapa
(c) Tamakana to Matiu
(d) Family tree of Tūwharetoa
(e) Family tree of Maringirangi
(f) Family tree of Rakauri
(g) Family tree of Tamatea-Pokai-Whenua
(h) Family tree of Marokowhara
(i) Family tree of Maahuta
(j) 'All-in-One Tree of Tuwharetoa: Toi-te-hua-tahi to Tamakana'
(k) Family tree of Rongomaihuia
(l) Family tree of Glenis Tonihi
(m) Family tree of Hinewaitai

D52 Central Claims Cluster, map book, not dated

D53 Correspondance between Department of Conservation and Uenuku Tribal Authority

D54 Documents concerning Raetahi block

D55 Native Land Court documents

D56 Documents concerning Rangataua block

D57 Documents concerning Waimarino block

D58 Documents concerning Urewera block

D59 Ngāti Hinewai, map book, not dated

D60 Maraekowhai, minutes, te reo Māori
(a) Maraekowhai, minutes, English

D61 Census data from *Appendix to the Journal of the House of Representatives*, 1881

D62 Department of Lands and Survey memorandum, 24 June 1968

D63 Extracts from James Belich, *Making Peoples* (New Zealand: Penguin Press, 1996)

D64 Plan of National Park proposed to be made at Tongariro

D65 Te Herenga Manganui a te Ao, Powerpoint presentation on compact disc

D66 'Te Maemae A Tamahaki' waiata with translation

D67 Answers to issues raised from fourth hearing week from A Gilbert, briefs of evidence, documents D51 and D34
(a) Answers to issues raised from fourth hearing week from A Gilbert, briefs of evidence regarding Mata Ihaka and Winiata Te Kakahi, documents D51 and D34

E Series
E7 Cathy Marr, 'Answers to Written Questions of Clarification Regarding Waimarino Purchase: the Investigation and Creation of Reserves in the Waimarino Block and Associated Issues', June 2006

E8 Tracey Hickman, brief of evidence, 24 July 2006

E9 Jarrod Bowler, brief of evidence, 24 July 2006

E11 Grant Young and Michael Belgrave, 'Ngati Haua: Oral and Traditional History Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006)
(a) Michael Belgrave and Grant Young, 'Summary of 'Ngati Haua: Oral and Traditional History Report"' (commissioned summary report, Wellington, Crown Forestry Rental Trust, 2005)

(b) Grant Young and Michael Belgrave, answers to written questions, October 2006

E12 Tony Walzl, 'Environmental Impacts of the Tongariro Power Development Scheme' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006)
(a) Tony Walzl, 'Presentation Summary of "Environmental Impacts of the Tongariro Power Development Scheme"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006)

E13 Che Philip Wilson, brief of evidence, 11 August 2006*

E14 Turuma Thomas Hawira, brief of evidence, 11 August 2006*

E15 Tony Waho, brief of evidence, 11 August 2006

E16 Janice Arahanga-Epiha, brief of evidence, 11 August 2006

E17 Ngāti Rangi Waterways Policy Document, 2002

E18 Ross Wallis, brief of evidence, 14 August 2006

E19 Rangi Bristol, brief of evidence, 14 August 2006
(a) Rangi Bristol, amended brief of evidence, 16 August 2006

E20 Merle Maata Ormsby, brief of evidence, 14 August 2006

E21 Tiaho Mary Pillot, brief of evidence, 14 August 2006

E22 Nyree Nikora, brief of evidence, 14 August 2006
(a) Nyree Nikora, map of National Park district showing sites of significance

E23 Raana Virginia Mareikura, brief of evidence, 11 August 2006

E24 Kevin Amohia Hikaia, brief of evidence, 15 August 2006
(a) Map of Ngāti Hāua Rohe by Percy Smith, 1800s

E25 Gerrard Albert, brief of evidence,18 August 2006

E26 Tony Waho, brief of evidence, 18 August 2006

E27 Jim Turuhia Edmonds, brief of evidence, 18 August 2006

E28 Neil Wood, brief of evidence, 18 August 2006

E29 Ida Rahera Taute, brief of evidence, 18 August 2006

E30 Karen Wood, brief of evidence, 18 August 2006

E31 Whetumarama Mareikura, brief of evidence, 18 August 2006

E32 Anihira Henry, brief of evidence, 18 August 2006

E33 Archie Taiaroa, brief of evidence, 18 August 2006
(a) Archie Taiaroa, picture of niu poles
(b) Archie Taiaroa, picture of Topine Te Mamaku
(c) Archie Taiaroa, picture of Tamahina pou site

E34 'Bo' Rangi, brief of evidence, 18 August 2006

E35 Tony Walzl, 'Exotic Forestry Leases' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006)
(a) Tony Walzl, 'Summary of "Exotic Forestry Leases"' (commissioned summary report, Wellington: Crown Forestry Rental Trust, 2006)
(d) Tony Walzl, answers provided in response to direction 2.3.50 of the Presiding Officer, 10 October 2006

E36 Ngāti Hāua Claimant Mapbook, 25 August 2006

E37 Ann Beaglehole, 'The Taurewa Development Scheme 1939–2006' (commissioned research report, Wellington: Waitangi Tribunal, 2006)
(a) Ann Beaglehole, answers to questions in writing regarding 'The Taurewa Development Scheme 1939–2006', 24 November 2006

E38 Correspondence of Manawatu–Wanganui Regional Council regarding resource consents

E39 Environment Waikato, resourse consent certificate in regards to Rotoira Channel desilting, 27 May 2002

F Series
F1 Matthew Howell, brief of evidence, 4 September 2006

F2 Iwikino Sonny Piripi, brief of evidence, 4 September 2006

F3 Edwina Moana, brief of evidence, 4 September 2006

F4 Patrick Piripi Phillips, brief of evidence, 4 September 2006

F5 Te Wharerangi Sonny Te Ahuru, brief of evidence, 4 September 2006

F6 Tiaho Mary Pillot, brief of evidence, 4 September 2006

F7 Terrill Campbell and Georgina Poinga, brief of evidence, 4 September 2006
(a) B Bargh and B Young, 'Okahukura and Taurewa Blocks, Ngati Rakeipoho/Hikairo: Progress Report', 10 June 1992

F8 Shelly Christensen, brief of evidence, 4 September 2006

F9 Merle Maata Ormsby, brief of evidence, 4 September 2006
(a) Merle Maata Ormsby, powerpoint presentation, 19 September 2006

F10 Ariki Piripi (Alec Phillips), brief of evidence, 4 September 2006
(a) Ariki Piripi (Alec Phillips), brief of evidence, 12 September 2006

F11 Patricia Henare and Vivienne Kopua, brief of evidence, 6 September 2006

F12 Robynne Anaru, brief of evidence, 8 September 2006

F13 Tia Bayley, brief of evidence, 11 September 2006

F14 Peter Tukiterangi Clarke, brief of evidence, 11 September 2006
(a) Correspondence from Woodward Law to Landcorp regarding Hikuwai Lands Group, 15 September 2006
(b) Correspondence from Woodward Law to Hon Mark Burton regarding purchase of Landcorp's Taupō basin lands by tangata whenua, 15 September 2006

F15 Ratana Wall, brief of evidence, 11 September 2006
(a) Ratana Wall, lineage of Kurapoto and Maruwahine, 21 September 2006

F16 Matiu Pitiroi, brief of evidence, 11 September 2006

F17 Jim Hill, brief of evidence, 11 September 2006

F18 Kathryn Rose, 'Whanganui Maori and the Crown: Socio-Economic Issues' (commissioned research report, Wellington, Crown Forestry Rental Trust, 2004)

F19 Te Tuari Heremaia, brief of evidence, 15 September 2006

F20 Tuatea Smallman, brief of evidence, 15 September 2006
(a) Tuatea Smallman, 'Nga Pakanga ki Tongariro', 19 September 2006

F21 Lana Te Rangi, brief of evidence, 15 September 2006
(a) Lana Te Rangi, amended brief of evidence, 20 September 2006

F22 Genesis Energy, 'Volcanic Activity Management Plan for the Tongariro Power Scheme', issue 1, September 2006

F23 Maps of the Tongariro power development scheme

F24 Arthur Grace, brief of evidence, 15 September 2006

F25 Arthur Parish, brief of evidence, 15 September 2006
(a) Map of Tongariro Prison lands
(b) Map of Tongariro Prison Farm
(c) Hautu 4 map
(d) Map of Tongariro Prison Farm land acquisitions
(e) Map of Tongariro Prison Farm disposals
(f) Map of Tongariro Prison Farms current land holding
(g) Plan of Hautu block 4B2BA and 4B2BB
(h) Taupo District Council, 'Hautu Block 4B2B1, ortho – photography flown 9/99'
(i) Arthur Parish, 'Excerpt from Work-in-Progress concerning the Hautu Block Determinations', 21 September 2006
(j) Bibliography to Mr Parish's work

F26 George Asher, 'Māori Plantation Forests – A Challenge for Sustainable Forest Management'

F27 P Majurey, aids for questioning Tony Walzl, 20 September 2006

F28 George Asher, Ngāti Tūwharetoa powerpoint document

F29 'Tongariro Power Development Hearing Committee Decision', 30 August 2001

F30 Environment Court decision on Tongariro Power Development, 2004

F31 High Court judgment on Tongariro Power Development Decision, 29 August 2006

F32 Power point presentation of photos of Ngāti Hikairo site visit, 18 September 2006

G Series

G1 Chris Winitana, brief of evidence, 20 April 2005

G2 Dulcie Gardiner, brief of evidence, 22 April 2005

G3 George Ketu, brief of evidence, 22 April 2005

G4 Whakapumautanga Darkie Downs, brief of evidence, 26 April 2005

G5 James Hemi Biddle, brief of evidence, 26 April 2005

G6 Paranapa Rewi Ōtimi, second brief of evidence, 27 April 2005
(a) Paranapa Rewi Ōtimi, third brief of evidence, 27 April 2005

G7 George Asher, brief of evidence, 29 April 2005

G8 Russell Feist, brief of evidence, 13 September 2006

G9 Charles Mitchell, brief of evidence, 13 September 2006

G10 Bruce Stirling, brief of evidence, 13 September 2006
(a) Bruce Stirling, supporting documents to brief of evidence, September 2006

G11 Charlotte Severne, brief of evidence, 15 September 2006

G12 Brad Coombes, 'Making "Scenes of Nature and Sport" – Resource and Wildlife Management in Te Urewera, 1895–1954' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003)

G13 Brad Coombes, 'Preserving "A Great National Playing Area" – Conservation Conflicts and Contradictions in Te Urewera, 1954–2003' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003)

G14 Crown counsel, fourth memorandum, posing questions of clarification for witnesses in the eighth hearing week, 8 October 2004

G15 Brad Coombes, responses to questions of clarification from Crown counsel, 2004

G17 Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa, The Shadow of Ngati Tuwharetoa: A Traditional and Oral History Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006)*
(b) Translation of selected pages from 'Te Taumarumarutanga o Ngati Tuwharetoa, The Shadow of Ngati Tuwharetoa: A Traditional and Oral History Report', 24 November 2006*

G18 Ngāti Tūwharetoa, map book, not dated*

G19 Ngaiterangi Smallman, brief of evidence, 28 September 2006

G20 Hineumu Daisy Curran, brief of evidence, 28 September 2006

G21 Te Ngaehe Wanikau, brief of evidence, 28 September 2006
(a) Te Ngaehe Wanikau, second brief of evidence, 28 September 2006
(b) Te Ngaehe Wanikau, photos presented during first brief of evidence
(c) Te Ngaehe Wanikau, photos presented during second brief of evidence

G22 Harold Te Pikikotuku Maniapoto, brief of evidence, 28 September 2006

G23 Tui Adams, brief of evidence, te reo Māori, 28 September 2006
(a) T Adams, brief of evidence, 28 September 2006

G24 Tyronne Smith, brief of evidence, 28 September 2006

G25 Chris Winitana, brief of evidence, 28 September 2006

G26 Tūroa Karatea, brief of evidence, 28 September 2006

G27 John Manunui, brief of evidence, 28 September 2006

G28 Dennis Te Watene Manunui, brief of evidence, 28 September 2006

G29 Lois Jean Tutemahurangi, brief of evidence, 28 September 2006

G30 Daniel Winiata Paranihi, brief of evidence, 28 September 2006

G31 Puruhi Smith, brief of evidence, 28 September 2006

G32 John Reweti, brief of evidence, 28 September 2006*
(a) John Reweti, second brief of evidence, 29 September 2006*

G33 Topia Rameka, brief of evidence, 28 September 2006
(a) Topia Rameka, amended brief of evidence, 18 October 2006

G34 Arthur Smallman, brief of evidence, 28 September 2006
(a) Arthur Smallman, replacement brief of evidence, 29 September 2006
(b) Arthur Smallman, Map: Tongariro Crossing, Ketetahi Springs, 20 October 2006

G35 Te Teira Tibble, brief of evidence, 29 September 2006

G36 Graeme Everton, brief of evidence, 29 September 2006

G37 Ringakapo Asher Payne, brief of evidence, 29 September 2006
(a) Ringakapo Asher Payne, brief of evidence, 26 April 2006

G38 John Asher, brief of evidence, 1 October 2006

G39 Stephen Asher, brief of evidence, 2 October 2006

G40 Rangikamutua Henry Downs, brief of evidence, 2 October 2006

G41 'Lake Rotoaira Indigenous Knowledge Project', 2 October 2006
(a) Maps accompanying 'Lake Rotoira Indigenous Knowledge Project', 2 October 2006
(c) 'Lake Rotoira Indigenous Knowledge Project', maps, compact disc, 21 November 2006

G42 Maria Nepia, brief of evidence, 4 October 2006

G43 Rangi Bristol, affidavit in support of urgent recommendations, 2 October 2006

G44 Tony Smallman, brief of evidence, 4 October 2006
(a) Tony Smallman, amended brief of evidence, 20 October 2006

G45 Te Hokowhitu Taiaroa, brief of evidence, 4 October 2006
(a) Te Hokowhitu Taiaroa, map showing Whakapapa ski area boundaries, 18 October 2006

G46 Arthur Grace, brief of evidence, 4 Octobter 2006

G47 'Effective Governance – Case Study: Lake Taupo Forest Trust', 5 October 2006

G48 New Zealand Forest Owners Association, 'Forestry Bulletin: George Asher, "A Tangata Whenua Perspective"', 2003

G49 Robert Severne, brief of evidence, 6 October 2006

G50 Dickson Ellis Chapman, brief of evidence, 29 April 2005

G51 Louis Chase, brief of evidence, 6 October 2006

G52 Georger Asher, brief of evidence, 6 October 2006
(a) George Asher, amended brief of evidence, 18 October 2006
(b) George Asher, photograph showing vandalised private road sign, 18 October 2006
(c) George Asher, collection of correspondence between J Asher, Secretary Lake Rotoaira Trust, and W Birch, Minister of Energy, 18 October 2006

G53 *Te Ao Hou, Māori Magazine*, 13 October 2006, extract

G54 Translation of deed of conveyance, 23 September 1887

G55 Ngāti Waewae maps, 16 October 2006

G56 WH Grace, 'Clear Statement in the Maori Language', 23 September 1887

G57 Paranapa Ōtimi, whakapapa chart, 17 October 2006

G58 Ngāti Maniapoto map, 17 October 2006

G59 Extract from Tokaanu Māori Land Court minute book 39, 17 August 1960

G60 Tumu Te Heuheu, statement on behalf of Ngāti Tūwharetoa, 20 October 2006

G61 Sir Hepi Te Heuheu, foreword, in Robert Greenway, *The Restless Land: Stories of Tongariro National Park* (Tūrangi: Tongariro–Taupō Conservancy, Department of Conservation, and Tongariro Natural History Society, 1998)

G62 Tumu Te Heuheu, 'The Tongariro Heritage – A Personal Perspective'

G63 Waitangi Tribunal, 'The Tongariro National Park, New Zealand', 20 October 2006

G64 Sir Hepi Te Heuheu, foreword, in Craig Potton in *Tongariro: A Sacred Gift* (Auckland: Lansdowne Press, 1887)

G65 '$11m Raised from Life Ski Passes', *Dominion Post*, 5 September 2006

G66 Donna Hall, M Taylor, and L Dickson, answers to written questions to Arthur Grace, 31 October 2006

G67 Counsel for Tamakana Council of Hapū, memorandum regarding copy of map 14 from Central Claims Cluster map book (map A) and map as returned by Mr Downs showing the boundary of Rangipō North 8 agreed to in the 1990s

H Series

H1 TJ Hearn, 'Crown Land Purchasing in the National District Park Inquiry District, 1900–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006)

H2 Doris Johnston, brief of evidence, 10 November 2006

H3 Paul Green, brief of evidence, 10 November 2006

(k) Paul Green, amended brief of evidence, 20 February 2007

H4 Department of Conservation, *Tongariro National Park Management Plan: Te Kaupapa Whakahaere mo Te Papa Rēhia o Tongariro, 2006–2016*, Tongariro/Taupō Conservation Management Planning Series 4 (Tūrangi: Department of Conservation, 2006)

H5 Marriage certificate for Te Kahui Te Heuheu and LM Grace, 13 March 1885

H6 Whanganui No 9 timeline

H7 Map showing Mt Ruapehu, gift area, pristine area, and skifield facilities

H8 Ronald Whittier Little, brief of evidence, 1 December 2006

I Series

I1 Brad Coombes, 'Tourism development and its influence on the establishment and management of Tongariro National Park'(commissioned research report, Wellington: Crown Forestry Rental Trust

I2 Terrill Campbell, 2006)

I3 Matiu Haitana, affidavit, 8 January 2007

I4 Don Robinson, affidavit in support of an application for an urgent hearing into the sale of Raurimu Farm by Landcorp, 8 January 2007

I5 Raymond Rapana, affidavit in support of an application for an urgent hearing into the sale of Raurimu Farm by Landcorp, 11 January 2007

I6 Tongariro National Park Board, 'Tongariro National Park Board meeting – held at the Chateau Tongariro over the period 12–14 May 1978'

I7 Angela Ballara, 'Central North Island Inquiry – Comments on the Waitangi Tribunal's Statement of Issues', 5 April 2005

I8 Brian Hauauru Jones, affidavit, 12 February 2007

19 Tony Walzl, 'Ngati Tuwharetoa Socio-Economic Analysis Report, 1865–1970' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2007)
(a) Tony Walzl, 'Appendix 1 – Report on 2001 Census and Tuwharetoa Kaumatua Interviews'

110 Paratene Ngata, translation of Journal of Paratene Ngata, Ngata Family collection, by Willie Kaa
(a) Paratene Ngata, original Māori entry in Paratene Ngata, journal, Ngata Family collection, by Willie Ka

GLOSSARY

The definitions in this glossary were drawn from evidence presented to the inquiry and from the Māori Dictionary Online (John C Moorfield, 'Māori Dictionary Online', Auckland University of Technology, accessed 26 September 2013).

ahikaa burning fires of occupation; title to land through occupation by a group, generally over a long period of time
ariki senior leader, first born in a high-ranking family, paramount chief
arikitanga critical characteristics derived through mana whakapapa, mana tangata and mana whenua
atua the gods, spirit, supernatural being
aukati border, boundary marking a prohibited area, roadblock, discrimination (justice)
awa river, stream, creek, canal, gully, gorge, groove, furrow

haka a vigorous dance accompanied by actions and words, performed by a group
hakihaki skin disease, rash, itch, scabies; a contagious skin disease causing severe itching; skin conditions described as 'school sores'
hapū clan, section of a tribe
harakeke New Zealand flax (*Phormium tenax* and *P cookianum*)
Hawaiki ancestral overseas Māori homeland
He here kia mohio the principle of informed decision making
hui meeting, gathering, assembly
huia the largest species of New Zealand wattlebird (*Heteralocha acutirostris*), especially noted for its striking tailfeathers, now extinct

ika island, isle
īnanga New Zealand freshwater fish (*Galaxias maculatus*)
iwi tribe, people

kai food
kaimoana seafood
kāinga home, village, settlement
kaitaka early type of Māori cloak
kaitiaki guardian, protector; older usage referred to kaitiaki as powerful protective force or being
kaitiakitanga the obligation to nurture and care for the mauri of a taonga; ethic of guardianship, protection
kaiwhakawā judge, umpire, adjudicator
kaka a large New Zealand forest parrot (*Nestor meridionalis*)

kākahi a New Zealand freshwater mussel (*Echyridella menziesi*)
kākahu cloak
kākāpō a large flightless nocturnal parrot (*Strigops habroptilus*)
kanohi ki te kanohi in person, face-to-face
karakia prayer, ritual chant, incantation
kaumātua elder
kaupapa topic, policy, programme, agenda
kāwanatanga government, governorship, authority
kererū New Zealand wood pigeon (*Hemiphaga novaeeseelandiae*), also known as kūkupa in the Far North
kete basket, bag
Kingitanga Māori King movement
kiore Polynesian rat (*Rattus exulans*)
kiwi native flightless nocturnal bird of the genus *Apteryx*
kōaro New Zealand freshwater fish, whitebait species (*Galaxias brevipinnis*)
kōha gift
kōiwi human bone, corpse
kōkako species of New Zealand wattlebird (*Callaeas cinerea*)
kōkiri attack, assault, charge, offensive, strike, body of men rushing forward
kokopu New Zealand freshwater fish (*Galaxias fasciatus*)
komiti committee
kōrero story, stories; discussion, speck, long speech
kōura freshwater crayfish (*Paranephrops planifros* and *P zealandicus*)
kutae mussels

mahinga kai food-gathering places
mana authority, prestige, reputation, spiritual power
manaakitanga the ability to host visitors appropriately; hospitality, kindness
mana motuhake separate identity, autonomy – mana through self-determination and control over one's own destiny
mana tangata power and status accrued through one's leadership talents, human rights, mana of people
mana whakapapa power and status accrued through one's ancestors
mana whenua, manawhenua customary rights and authority over land and taonga; the iwi or hapū which holds mana whenua in an area
manu bird, kite – any winged creature including bats, cicadas, butterflies, etc
Māoritanga Māori culture, practice, and beliefs
māpou small tree (*Myrsine australis*)
māra kai community garden, edible garden
marae enclosed space or courtyard in front of a wharenui where formal welcomes and community discussions take place; also the area and buildings surrounding the marae
mātaitai seafood, shellfish

mātauranga education, knowledge, wisdom, understanding, skill
maugna mountain, mountains
mauri life principle or living essence contained in all things, animate and inanimate
miro evergreen coniferous tree endemic to New Zealand (*Prumnopitys ferruginea*)
moana sea, ocean, large lake
morihana introduced goldfish or carp species (*Carassius auratu* or *Cyprinus carpio*)

nga iwi me nga hapū o te kāhui maunga the iwi, hapū and people of the mountain
ngahere bush, forest
niu (niu pole) pole used for religious ceremonies
noa ordinary, not restricted, a state of relaxed access

ope taua battalion, troops
oritetanga the principle of equality

pā fortified village, or more recently, a village
pāhake old man, senior; adult
Pākehā New Zealander of European descent
Pai Mārire the Christian faith developed by Te Ua Haumēne in Taranaki which is still practised by some, including Waikato Māori
Papakāinga original home, home base
Papa-tū-a-nuku earth mother deity, partner of Rangi-nui
parera the New Zealand grey duck (*Anas superciliosa superciliosa*)
paru a type of black mud used for dyeing
paru pango black mud
patu weapon, club
paua abalone, a univalve shellfish of the genus *Haliotis*
pipi a common edible bivalve shellfish (*Paphis australis*)
puaka heavy mist and dew
pūkeko the purple swamp hen, a member of the rail family (*Porphyrio porphyrio*)
puna spring, well, pool
putatara a trumpet made from a conch shell

rāhui, rāhui whenua temporary ban, closed season, or ritual prohibition placed on a area, body of water or resource
rangatira tribal leader
rangatiratanga, tino rangatiratanga chieftainship, self-determination, the right to exercise authority; imbued with expectations of right behavior, appropriate priorities, and ethical decision-making
Rangi-nui, Ranginui-te-pō sky father deity, partner of Papa-tū-a-nuku
rārangi matua defensive lines

raruraru trouble, problem
raupō a swamp plant (*Typha orientalis*), also known as bulrush, whose stems were used for construction and decoration
repo a swamp, bog, or marsh
rohe traditional tribal area, territory
rongoā traditional Māori healing, medicinal qualities
rūnanga council, board, assembly

tāiko the magenta petrel or Chatham Island tāiko (*Pterodroma magentae*), one of the world's rarest seabirds, which nests on the Chatham Islands
takiwā district, area, territory, vicinity, region
tāngata tiaki Māori fisheries guardians
tāngata whenua indigenous people of the land; local people with strong whakapapa links to the area
tangi, tangihanga funeral rites for the dead
taonga a treasured possession, including property, resources, and abstract concepts such as language, cultural knowledge, and relationships
tapu sacred, sacredness, separateness, forbidden, off limits
taua war party, army
Tautiaki ngangahau the principle of active protection
Te Ika-a-Maui North Island of New Zealand
Te Kāhui Maunga the people of the mountain
Te Wai Pounamu South Island of New Zealand
tikanga traditional rules for conducting life, custom, method, rule, law
tikanga Māori Māori traditional rules, culture
tītī a native muttonbird (*Puffinsus griseus*), sooty shearwater
toitoi a small native freshwater fish (*Gobiomorphus cotidianus*), also known as the common bully
tōtara a tall podocarp tree endemic to New Zealand (*Podacarpus totara*)
tuaahu a holy place or sacred altars
tūi a native passerine bird of the honeyeater family (*Prosthemadera novaeseelandiae*)
tuku to let go, release, give up
tukunga/tuku atu to release a treasure; gift
tupuna, tipuna ancestors, forbearer
tupuna awa ancestral river
tūrangawaewae domicile, place where one has rights of residence and belonging through kinship and whakapapa

uri descendant
urupā cemetery

wāhi taonga historical sites or places of great Māori significance; Māori cultural heritage sites
wāhi tapu sacred place
wāhine woman/women
wai tapu sacred water
waiata song
waka canoe
waka tūpuna ancestral canoe such as Te Arawa, Tainui, Aotea, Kurahaupō, Mātaatua, and Tākitimu
wānanga tertiary institution; traditional school of higher learning
whakamanamana to rejoice, exult, glorify, boast, strut
whakanoa to remove tapu; to free things that have the extensions of tapu, without affecting intrinsic tapu
whākapapa genealogy, ancestral connections, lineage
whakatapua to make sacred; to keep inviolate the object under discussion
whakatauāki, whakataukī proverb, saying
whakatika i te mea he the principle of redress
whakawhanaungatanga the principle of partnership
whānau family, extended family
whanaunga relative, relation, kin, blood relation
whanaungatanga ethic of connectedness of blood; relationships, kinship; the web of relationships that embraces living and dead, present and past, human beings and the natural environment
whangai foster child, adopted child
whānui width, breadth
whare house
wharekai dining hall
wharenui meeting house
whenua land, placenta
whenua ahuareka a pleasant land to behold
whio a threatened species of waterfowl endemic to New Zealand (*Hymenolaimus malacorhynchos*), also known as the blue duck

Downloaded from www.waitangitribunal.govt.nz

SELECT BIBLIOGRAPHY

Note: Where an item is on the record of inquiry, the record number is given at the end of the entry.

Alington, Margaret Hilda. *Unquiet Earth: A History of the Bolton Street Cemetery*. Wellington: Wellington City Council and the Ministry of Works and Development, 1978

Allen, Elizabeth C. *In the Hills of the Waimarino: The Human Story of the Development of the District*. Wanganui: Wanganui Newspapers, 1984

Allen, George Frederic. *Willis's Guide Book of the New Route for Tourists*. Wanganui: Willis Printer and Company, 1894

Anderson, Robyn. 'Tongariro National Park: An Overview Report on the Relationship Between Maori and the Crown in the Establishment of the Tongariro National Park'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2005 (doc A9)

———. 'Whanganui Iwi and the Crown 1865–1880'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A29)

———. 'Whanganui Iwi and the Crown 1880–1900'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A30)

Armitage, Derek, Melissa Marschke and Ryan Plummer. 'Adaptive Co-management and the Paradox of Learning'. *Global Environmental Change*. No 18 (2008)

Asher, George. 'Maori Plantation Forests – A Challenge for Sustainable Forest Management'. Conference paper, March 2003 (doc F26)

———. 'A Tangata Whenua Perspective'. New Zealand Forest Owners Association, *Forestry Bulletin*, Spring 2003 (doc G48)

Baldock, Edgar. 'The New Zealand Prison System'. *Journal of Criminal Law and Criminology*, vol 29, no 2 (1938)

Ballara, Angela. 'Tribal Landscape Overview, c 1800 – c 1900, in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A2)

———. *Iwi: The Dynamics of Maori Tribal Organisation from c 1769 to c 1945*. Wellington: Victoria University Press, 1998

Bargh, Brian J. *The Volcanic Plateau*. Waitangi Tribunal Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1995

Bayley, Nicholas. 'Murimotu and Rangipō–Waiū 1860–2000'. Commissioned research report, Wellington: Waitangi Tribunal, 2004 (doc A4)

———. 'Murimotu and Rangipō–Waiū 1860-2000'. Commissioned research report, Wellington: Waitangi Tribunal, 2004 (doc A4(a))

Bayley, Nicholas, and Mark Derby. 'Tongariro National Park Management from 1980 to the present'. Commissioned research report, Wellington: Waitangi Tribunal, 2004 (doc A6)

Beaglehole, Ann. 'The Taurewa Development Scheme, 1939–2006'. Commissioned research report, Wellington: Waitangi Tribunal, 2006 (doc E37)

Belich, James. *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*. Auckland: Auckland University Press, 1986

Bennion, Tom, and Judy Boyd. *Succession to Māori Land, 1900–1952*. Waitangi Tribunal Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1997

Berghan, Paula. 'Block Research Narratives of the Tongariro National Park District, 1865–2000'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A5)

Berkes, Fikret. 'Evolution of co-management: Role of Knowledge Generation, Bridging Organizations and Social Learning'. *Journal of Environmental Management*, vol 90, 2009

Best, Elsdon. *The Maori As He Was*. Wellington: Dominion Museum, 1924

Binney, Judith. *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki*. Auckland: Auckland University Press, 1995

Boast, Richard. *Buying the Land, Selling the Land: Governments and Māori Land in the North Island 1865–1921*. Wellington: Victoria University Press, 2008

Boulton, Leanne. 'Contextual Material on Maori and Socio-Economic Issues in the National Park Inquiry District, 1890–1990: A Scoping Report'. Commissioned scoping report, Wellington: Waitangi Tribunal, 2006 (doc A57)

Boston, Jonathan, John Martin, June Pallot, and Pat Walsh, eds. *Reshaping the State: New Zealand's Bureaucratic Revolution*. Auckland: Oxford University Press, 1991

Bracken, Thomas. *The New Zealand Tourist*. Dunedin: Union Steamship Company, 1879

Britton, Steve, Richard Le Heron, and Eric Pawson, eds. *Changing Places in New Zealand: A Geography of Restructuring*. Christchurch: New Zealand Geographical Society, 1992

Burrows, John, and Ross Carter. *Statute Law in New Zealand*. Wellington: LexisNexis, 2009

Buck, Sir Peter (Hiroa, Te Rangi). *The Coming of the Maori*. Wellington: Maori Purposes Fund Board, 1950

Butcher, Geoff, John Fairweather, and David Simmons. *The Economic Impact of Tourism on Kaikoura*. Tourism Research and Education Centre Report 8, Lincoln University, 1998

Butler, Petra. 'Human Rights and Parliamentary Sovereignty in New Zealand'. *Victoria University of New Zealand Law Review*, vol 35 (2004)

Byrnes, Giselle. *Boundary Markers: Land Surveying and the Colonisation of New Zealand*. Wellington: Bridget Williams Books, 2001

Cant, Garth, and Russel Kirkpatrick, eds. *Rural Canterbury: Celebrating its History*. Wellington: Daphne Brasell Associates, 2001

Carlsson, Lars, and Fikret Birkes. 'Co-management: Concepts and Methodological Implications'. *Journal of Environmental Management*, vol 75 (2005)

Cheyne, Christine. 'After Consultation: The Challenge Facing Democratic Governance'. *Political Science*, vol 50, no 2 (1999)

Clayworth, Peter. 'Located on the Precipices and Pinnacles: A Report on the Waimarino Non-Seller Blocks and Seller Reserves'. Commissioned research report, Wellington: Waitangi Tribunal, 2004 (doc A35)

Cleaver, Phillip. 'The Taking of Maori Land for Public Works in the Whanganui Inquiry District: 1850–2000'. Commissioned research report, Wellington: Waitangi Tribunal, 2004 (doc A36)

Coombes, Brad. 'Cultural Ecologies of Te Urewera I: Making "Scenes of Nature and Sport": Resource and Wildlife Management in Te Urewera, 1895–1954'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2003 (doc G12)

———. 'Tourism Development and its Influence on the Establishment and Management of Tongariro National Park'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2007 (doc I1)

Cooper, Barbara. *The Remotest Interior: A History of Taupo*. Tauranga: Moana Press, 1989

Cowan, James. *Lake Taupo and the Volcanoes*. Turangi: Tongariro Natural History Society, 1902

———. *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*. 2 vols. Wellington: Government Printer, 1922

———. *The Tongariro National Park, New Zealand: Its Topography, Geology, Alpine and Volcanic Features, History and Maori Folklore*. Wellington: Tongariro National Park Board, 1927

Cox, Geoffrey J, and Bruce W Hayward. *The Restless Country, Volcanoes and Earthquakes of New Zealand*. Auckland: Harper Collins, 1999

Cross, Suzanne, and Brian Bargh. *The Whanganui District*. Waitangi Tribunal Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1996

Crown Forestry Rental Trust, 'Te Taumarumarutanga o Ngati Tuwharetoa: The Shadow of Ngati Tuwharetoa: A Traditional and Oral History Report'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2006 (doc G17)

Davies, Russell. *History of Public Works Acts in New Zealand, Including Compensation and Offer-Back Provisions*. Wellington: Land Information New Zealand, 2000

Department of Conservation. *Tongariro National Park Management Plan: Te Kaupapa Whakahaere mo Te Papa Rēhia o Tongariro 2006–2016*. Department of Conservation: Turangi, October 2006 (doc H4)

———. *Tongariro National Park: Management Plan*. 2 vols. Tūrangi: Department of Conservation, 1990

———. *Whakapapa/Iwikau Sewerage Scheme: Assessment of Environmental Effects and Resource Consent Applications*. Commissioned research report, Wellington: Department of Conservation, 2001 (doc D7)

Downes, Thomas William. *Old Whanganui*. Christchurch: Capper Press, 1915

Easton, Brian. *In Stormy Seas: the Post-War New Zealand Economy*. Dunedin: Oxford University Press, 1997

Edwards, Cecelia. 'Tongariro National Park – The Legislative Regime and Park Management, 1894–1952'. Commissioned research report, Wellington: Crown Law Office, 2005 (doc A53)

Edwards, Tracey, et al and NIWA.'The Condition of 43 Lakes in the Waikato Region Using LakeSPI'. Commissioned research report, xxx: Environment Waikato, 2008

Ferguson, Niall. *Empire: How Britain Made the Modern World*. England: Penguin Books, 2004

Genesis Power Ltd, 'Assessment of Environmental Effects'. Commissioned research report, Wellington: Gensis Power Ltd, 2000 (doc E12(l))

George, Merrilyn. *Ohakune: Opening to a New World*. Ōhakune: Kapai Enterprises, 1990

Gilling, Bryan D. 'The Nineteenth Century Native Land Court Judges: An Introductory Report'. Commissioned research report, Wellington: Waitangi Tribunal, 1994 (Wai 64, doc G5)

Gamble, John A, Ian C Wright, and Joel A Baker. 'Seafloor Geology and Petrology in the Ocean to Continental Transition Zone of the Kermadec-Havre-Taupo Volcanic Zone Arc System, New Zealand'. *New Zealand Journal of Geology and Geophysics*, vol 36, no 4 (1993)

Gardner, Julia. *First Nations Cooperative Management of Protected Areas in British Columbia: Tools and Foundation*. Vancouver: Canadian Parks and Wilderness Society and Ecotrust Canada, 2001

Gardiner, Te Maari. *He Ohaaki na nga Matua Tupuna ko Okahukura: The Story of a Tuwharetoa Wharepuni*. Turangi: Otukou Marae Committee, 1993

Gardiner, Wira. *Te Mura o te Ahi: The Story of the Maori Battalion*. Auckland: Reed, 1992

Grace, John Te Herekiekie. *Tuwharetoa: The History of the People of the Taupo District*. Auckland: Reed, 1959, reprinted 2005 (doc A12)

Graham, J C. *Ruapehu: Tribute to a Mountain*. Wellington: Reed, 1963

Grey, Sir George. *Polynesian Mythology and Ancient Traditional History of the New Zealand Race, as Furnished by Their Priests and Chiefs*. London: John Murray, 1855

Griffin, Graham. 'Welcome to Aboriginal Land – Anangu Ownership and Management of Uluru Kata Tjuta National Park'. *Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement and Sustainable Development – Studies in Forced Migration vol 10*. Edited by Dawn Chatty and Marcus Colchester. New York: Berghahn Books, 2002

Gudgeon, Thomas W. *Reminiscences of the War in New Zealand*. London and Auckland: Sampson Low, Marston, Searle and Rivington, and E Wayte, 1879

Gustafson, Barry Selwyn. *The First 50 years: a History of the New Zealand National Party*. Auckland: Reed Methuen, 1986

Hancock, [**first namexxx**] 'TPD: NZ's Latest Power Story'. Commissioned research report, Wellington: Minster of Public Works, 1974

Harris, Aroha. 'Maori Land Title Improvement Since 1945: Communal Ownership and Economic Use'. *New Zealand Journal of History*, vol 31, no 1 (1997)

Hearn, T J. 'Crown Land Purchasing in the National Park Inquiry District: 1900 to 2000'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2006 (doc H1)

———. 'Taupo–Kaingaroa Twentieth Century Overview: Land Alienation and Land Administration; 1900–1993'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A42)

Henare, M, and E Douglas. 'The Pursuit of Partnership, Good Faith and Mutual Trust'. Royal Commission on Social Policy. *The April Report: Future Directions*. 4 vols. Wellington: The Commission, 1988

Heuheu, Tumu Te. 'The Tongariro Heritage: A Personal Perspective'. *Tongariro: The Annual*, vol 7 (1998), (doc G62)

Hiroa, Te Rangi (Buck, Sir Peter). *The Coming of the Maori*. Wellington: Maori Purposes Fund Board, 1950

Hochstetter, Ferdinand von. *New Zealand: Its Physical Geography, Geology and Natural History: With Special Reference to the Results of Government Expeditions in the Provinces of Auckland and Nelson*. Stuttgart: J G Cotta, 1867

Horan, Marian. 'Government Lease Negotiations for Murimotu, Ruanui, Rangiwaea and Rangipō–Waiū, 1874–1885'. Commissioned research report, Wellington: Crown Law Office, 2005 (doc A52)

Joel, Andrew. 'The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park'. Commissioned research report, Wellington: Crown Law Office, 2005 (doc A56)

Johns, Lennie, and Ira Johns. 'Pakira: Manawhenua'. Manawhenua report for Ngāti Tutemohuta and Karanga Hapū, 2005 (Wai 1200, doc D39)

Jones, Pei Te Hurinui. *Nga Iwi o Tainui*. Auckland: Auckland University Press, 1995

Kawharu, I H, ed. *Conflict and Compromise: Essays on the Maori Since Colonisation*. Wellington: A H and A W Reed, 1975

———. *Maori Land Tenure: Studies of a Changing Institution*. Oxford: Clarendon Press, 1977

Kemf, Elizabeth, ed. *The Law of the Mother: Protecting Indigenous Peoples in Protected Areas*. San Francisco: Sierra Club Books, c1993

Kerry-Nicholls, James Henry. *The King Country or Explorations in New Zealand: A Narrative of 600 Miles of Travel through Maoriland with a Treatise on the Origin, Physical Characteristics, and Manners and Customs of the Maori Race*. London: Sampson Low, Marston, Searle and Rivington, 1884

Kirkpatrick, Russell, Kataraina Belshaw, and John Campbell. 'Land-Based Cultural Resources and Waterways and Environmental Impacts – Rotorua, Taupo and Kaingaroa: 1840–2000'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A58)

Klein, U. 'Belief-views on Nature – Western Environmental Ethics and Maori World Views'. *New Zealand Journal of Environmental Law*. vol 4, 2000

Koning, John. *Lake Rotoaira: Maori Ownership and Crown Policy towards Electricity Generation, 1964–1972*. Waitangi Tribunal Research Series. Wellington: Department of Justice, 1993 (doc A14)

Kukutai, Tahu, Ian Pool, and Janet Sceats. 'Central North Island Iwi: Population Patterns and Trends'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2002 (doc A22)

Land Information New Zealand. *Review of the Public Works Act: Issues and Options*. Wellington: Land Information New Zealand, 2000

———. *Review of the Public Works Act: Summary of Submissions*. Wellington: Land Information New Zealand, 2000

Lacey, Terry de. 'The Uluru/Kakadu Model – Anangu Tjukurrpa. 50,000 Years of Aboriginal Law and Land Management Changing the Concept of National Parks in Australia'. *Society and Natural Resources*, vol 7 (1994)

Loveridge, Donald. *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*. Waitangi Tribunal Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1996 (doc A16)

———. 'The Crown and the Opening of the King Country, 1882–1885'. Commissioned research report, Wellington: Crown Law Office, 2006 (doc A72)

Maani, Sholeh A. 'Why have Maori relative income levels deteriorated over time?'. *The Economic Record*, vol 80, no 248 (2004)

McBurney, Peter. 'Scenery Preservation and Public Works Takings'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A38)

McHugh, Paul. *The Māori Magna Carta: New Zealand Law and the Treaty of Waitangi*. Auckland: Oxford University Press, 1991

MacKay, Joseph Angus. *Historic Poverty Bay and the East Coast, North Island, New Zealand*. Gisborne: J G MacKay, 1949

Macky, Michael. 'Crown Purchasing in the Central North Island Inquiry district, 1870–1890'. Commissioned research report, Wellington: Crown Law Office, 2004 (doc A33)

———. 'Kemp's Trust'. Commissioned research report, Wellington: Crown Law Office, 2005 (doc A55)

McLean, Robert, and Tricia Smith. *The Crown and Flora and Fauna: Legislation, Policies and Practices, 1983–98*. Wellington: Waitangi Tribunal Publication, 2001

Manuera, Eru, Tumu Te Heuheu, and Kevin Prime. 'The Conservation Estate, the Tangata Whenua'. Birckhead, Jim, Terry De Lacey and Laura Jane Smith, eds. *Aboriginal Involvement in Parks and Protected Areas*. Canberra: Aboriginal Studies Press, 1992

Marsdsen, Maori. Royal *The Woven Universe: Selected Writings of Rev Maori Marsden*. Edited by Te Ahukaramu Charles. Otaki: Estate of Rev Maori Marsden, 2003

Marr, Cathy. 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block and Associated Issues'. Commissioned research report, Wellington: Waitangi Tribunal, 2004 (doc A43)

Martin, John, ed *People, Politics and Power Stations – Electric Power Generation in New Zealand 1880–1990*. Wellington: Bridget Williams Books and Electricity Corporation of New Zealand, 1991

———. *People, Politics and Power Stations – Electric Power Generation in New Zealand 1880–1990*. Wellington: Electricity Corporation of New Zealand and Historical Branch of the Department of Internal Affairs, 1998

Martin, Thomas M. *A Concise and Practical View of Conveyancing in New Zealand*. Christchurch: Whitcombe and Tombs Limited, 1901

Martineau, Joel. 'Otter Skins, Clearcuts, and Ecotourists: Re-resourcing Haida Gwaii'. *Proceedings of the 1999 International Symposium on Coastal and Marine Tourism: Balancing Tourism and Conservation*. Edited by Marc Miller, Jan Auyong and Nina Hadley. Seattle: Washington Sea Grant Program, 2000

Mead, Hirini Moko. *Tikanga Māori: Living by Māori Values*. Wellington: Huia Publishers, 2003

Meredith, Paul. 'Upper Whanganui ki Tongariro'. Report commissioned by Central Cluster Charitable Trust, 2006 (doc A54(a))

Mills, Keri. 'The Changing Relationship between Māori and Environmentalists in 1970s and 1980s New Zealand'. *History Compass*, vol 7, no 3 (2009)

Ministry for the Environment. *Lake Managers Handbook: Fish in New Zealand*. Wellington: Ministry for the Environment, 2002

———. *Using the Cultural Health Index – How to Assess the Health of Streams and Waterways*. Wellington: Ministry for the Environment, 2006

Ministry of Fisheries. *Customary Fishing – Information Manual* (Wellington: Ministry of Fisheries, 2009

Mitchell, Jamie. 'Quantitative study of Maori land alienation and management in the National Park Inquiry district'. Commissioned research report, Wellington: Waitangi Tribunal, 2006 (doc D11)

Morton, Roberts, et al, 'Biological Conservation in New Zealand'. *Pacific Conservation Biology*, theme issue, 1995

Murray-McIntosh, Rosalind P, Brian J Scrimshaw, Peter J Hatfields, and David Penny. 'Testing Migration Patterns and Estimating Founding Population Size by Using Human DNA Sequences'. *Proceedings of National Academy of Science*, vol 95 (1998)

Natcher, David C, Susan Davis, and Clifford G Hickey. 'Co-management: managing relationships, not resources'. *Human Organization*, vol 64, no 3 (2005)

New Zealand Historic Places Trust. 'Central Region, Registration Report, Ruapehu/Rangitikei Pilot Project 2003–2005 Registration Report'. 6th draft, 16 March 2006

New Zealand Law Commission. *Study Paper 9: Māori Custom and Values in New Zealand*. Wellington: New Zealand Law Commission, 2001

Ngata, Apirana T. *Nga Moteatea: He Maramara Rere no nga Waka Maha, Part 1*. Auckland: Polynesian Society, 1988

Ngata, Apirana T, and Pei Te Hurunui. *Nga Moteatea: He Maramara Rere no nga Waka Maha, Part II*. Wellington: Polynesian Society, 1961

O'Leary, Michael. 'A Report on Upper Whanganui District claims'. Commissioned research report, xxx: Central Cluster Claims, 2005 (doc A49)

Oliver, W H, ed *Dictionary of New Zealand Biography: Volume One, 1760–1869*. Wellington: Department of Internal Affairs and Bridget Williams Books, 1990

———. *Dictionary of New Zealand Biography: Volume Two 1870–1900*. Wellington: Bridget Williams Books and Department of Internal Affairs, 1993

O'Malley, Vincent. *Agents of Autonomy: Maori Committees in the Nineteenth Century*. Wellington: Huia, 1998

Paranihi, Jacinta Huatahi. 'He Take Hei Pupuri Tonu i te Whenua: A Perspective on Hapū Formation in Māori Society'. Honours thesis, University of Otago, 2008

Parliamentary Commissioner for the Environment. *Public Participation in Environmental Decision-making*. Wellington: 1995

Park, Geoff. *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses concerning the Indigenous Flora and Fauna, 1912–1983*. Wellington: Waitangi Tribunal, 2001

———. *Ngā Uruora: The Groves of Life – Ecology and History in a New Zealand Landscape*. Wellington: Victoria University Press, 1995

Pawson, Eric, and Tom Brooking. *Environmental Histories of New Zealand*. Melbourne: Oxford University Press, 2002

Phillipson, Grant. 'An Appeal from Fenton to Fenton: the Right of Appeal and the Origins of the Native Appellate Court'. *New Zealand Journal of History*, vol 45, no 2 (2011)

Pickens, Keith. 'Operations of the Native Land Court in the National Park Inquiry District in the 19th Century'. Commissioned research report, Wellington: Crown Law Office, 2005 (doc A50)

Pohorama, Aroha, Merepeka Henley, Ailsa Smith, John Fairweather, and David Simmons. 'Whalewatch: Background and Evolution'. *Tourism Research and Education Centre Report No 7: The Importance of Tourism on the Maori Community in Kaikoura*. Christchurch: Lincoln University, 1998

Pomare, Sir Maui, and James Cowan. *Legends of the Maori: Mythology, Folk-Lore, Tradition and Poetry*. Auckland: Southern Reprints, 1987

Poole, Alick Lindsay. *Forestry in New Zealand: The Shaping of Policy*. Auckland, London: Hodder and Stoughton and English Universities Press, 1969

Pool, David Ian. *Te Iwi Maori: a New Zealand Population, past, present and projected*. Auckland: Auckland University Press, 1991

———. *The Māori Population of New Zealand, 1769–1971*. Auckland: Auckland University Press, with Oxford University Press, 1977

Porter-Bopp, Susanne. 'Colonial Natures? Wilderness and Culture in Gwaii Haanas National Park Reserve and Haida Heritage Site'. Masters thesis, York University, 2006

Potton, Craig. *Tongariro: A Sacred Gift*. Nelson: Lansdowne Press, 1987

Power, Trevor. 'Joint Management of Uluru – Kata Tjuta National Park'. *Environment and Planning Law Journal*, vol 19, no 4 (2002)

Te Puni Kokiri. *He Tirohanga ō Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as Expressed by the Courts and the Waitangi Tribunal*. Wellington: Te Puni Kokiri, 2001

Razzetti, Steve, ed *Top Treks of the World*. London: New Holland Publishing, 2 ed, 2007

Reed, Alexander Wyclif. *Reed Book of Māori Mythology*. Revised by Ross Calman. Auckland: Reed Publishing NZ Ltd, 2004

Risk, G et al, 'Appraisal of the Tokaanu-Waihi geothermal field and its relationship with the Tongariro geothermal field, New Zealand'. *Geothermics*, vol 31, no 1 (2002)

Roche, Michael M. *Forest Policy in New Zealand: An Historical Geography 1840–1919*. Palmerston North: Dunmore Press, 1987

Ross, W Hugh. *Turbulent Beginnings of Wanganui Settlement*. Ngongotaha: Faircroft Trust, 2004

Rowe, Dave K, G Konui, EJ Cudby, and Josh Smith. 'Comparisons of Trout Populations and Angler Catch Rates in Lake Rotoaira between the 1970s and the 1990s'. NIWA Client Report, 2000

Sadler, Karen Lesley. 'A Comparative Study of Co-Management Agreements for National Parks'. Masters thesis, University of Manitoba, 2005

Sinclair, Karen. *Prophetic histories – The people of the Maramatanga*. Wellington, Bridget Williams Books, 2002

Stevenson, Marc G. 'Decolonising Co-management in Northern Canada'. *Cultural Survival*, vol 28, no 1 (2004)

Stirling, Bruce. 'Taupo Kaingaroa 19th Century Overview Project'. 2 vols. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A39)

Stokes, Evelyn. *The Legacy of Ngātoroirangi: Māori Customary Use of Geothermal Resources*. Hamilton: University of Waikato, 2000

Sovereign Health Care Australia. 'Report of the evaluation of the Community Liaison Function at Uluru-Kata Tjuta National Park on behalf of Parks Australia North and the Uluru-Kata Tjuta Board of Management'. Commissioned research report, xxx: Parks Australia North, 2001
Sunde, Charlotte, Todd Taiepa, and Peter Horsley. *Occasional Paper No 3: Exploring Collaborative Management Initiatives between Whanganui Iwi and the Department of Conservation*. Palmerston North: Massey University, 1999 (doc 28(g))
Sutherland, I L G, ed *The Maori People Today: A General Survey*. Wellington: New Zealand Institute of International Affairs and New Zealand Council for Educational Research, 1940

Taylor, Richard. *Te Ika a Maui: New Zealand and its Inhabitants*. London: William MacIntosh, 1870
———. *Te Ika a Maui: New Zealand and its Inhabitants*. Wellington: AH and AW Reed, 1974
United Nations World Commission on Environment and Development. *Our Common Future*. Oxford: United Nations General Assembly and Oxford University Press, 1987
Waho, Toni, Che Wilson, Tūrama Hawira, Esther Tinirau, and Hinurewa Poutu. 'Te Ahi Ka o Paerangi: Te Mana Whenua o Ngāti Rangi: Ngāti Rangi Customary Tenure Report'. Commissioned research report, xxx: Ngāti Rangi Claims Committee, 2006 (doc A69)
Walzl, Tony. 'Environmental Impacts of the Tongariro Power Development Scheme'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2006 (doc E12)
———. *Exotic Forestry Leases*. Upper Hutt: Walghan Partners, 2006 (doc E35)
———. 'Hydro-Electric Issues: The Tongariro Power Development Scheme'. Commissioned research report, Wellington: Waitangi Tribunal, 2005 (doc A8)
———. 'Maori and Forestry – Taupo, Rotorua, Kaingaroa, 1890–1990'Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A44)
———. 'Ngāti Rangi Land Issues, 1840–1970'. Commissioned research report, xxx: Ngati Rangi, 2004 (doc A41)
———. *Ngati Tuwharetoa Socio-Economic Analysis, 1865–1970*. Lower Hutt: Walghan Partners, 2007 (doc 19)
———. 'Whanganui Land: 1900–1970'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2004 (doc A40)

Wai 575 Claims Cluster Steering Committee. 'Te Taumarumarutanga o Ngati Tuwharetoa: the Shadow of Ngati Tuwharetoa'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2006 (doc G17)
Waitangi Tribunal. *The Hauraki Report*. 3 vols. Wellington: Legislation Direct, 2006
———. *Te Ika Whenua Rivers Report*. Wellington: GP Publications, 1998
———. *He Maunga Rongo: Report on Central North Island Claims, Stage One*. Revised ed 4 vols. Wellington: Legislation Direct, 2008
———. *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
———. *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi*. Wellington: Legislation Direct, 2011
———. *Te Maunga Railways Land Report*. Wellington: Brooker's Ltd, 1994

Waitangi Tribunal. *The Mohaka ki Ahuriri Report*. 2 vols. Wellington: Legislation Direct, 2004
———. *The Mohaka River Report 1992*. Wellington: Brooker and Friend Ltd, 1992
———. *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*. 2nd ed Wellington: Government Printing Office, 1989
———. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*. 2nd ed Wellington: Government Printing Office, 1989
———. *Muriwhenua Land Report*. Wellington: GP Publications, 1997
———. *The Ngai Tahu Ancillary Claims Report 1995*. Wellington: Brooker's Ltd, 1995
———. *The Ngai Tahu Report 1991*. 3 vols. Wellington: Brooker and Friend Ltd, 1991
———. *The Ngai Tahu Sea Fisheries Report 1992*. Wellington: Brooker and Friend Ltd, 1992
———. *The Ngati Rangiteaorere Claim Report 1990*. Wellington: Brooker and Friend Ltd, 1990
———. *Ngāwha Geothermal Resource Report 1993*. Wellington: Brooker and Friend Ltd, 1993
———. *The Pouakani Report 1993*. Wellington: Brooker's Ltd, 1993
———. *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims*. Wellington: Brooker and Friend Ltd, 1993
———. *The Radio Spectrum Management and Development Final Report*. Wellington: Legislation Direct, 1999
———. *Report of the Waitangi Tribunal on the Kaituna River Claim*. 2nd ed Wellington: Government Printing Office, 1989
———. *Report of the Waitangi Tribunal on Lake Taupo Fishing Rights*. 2nd ed Wellington: Government Printing Office,1989
———. *Report of the Waitangi Tribunal on the Manukau Claim*. 2nd ed Wellington: Waitangi Tribunal, 1989
———. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*. 2nd ed Wellington: Government Printing Office, 1989
———. *Report of the Waitangi Tribunal on the Orakei Claim*. Wellington: Waitangi Tribunal, 1987
———. *The Report on the Management of the Petroleum Resource*. Wellington: Legislation Direct, 2011
———. *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*. 2 vols. Wellington: Legislation Direct, 2010
———. *Te Tau Ihu o te Ika a Maui: Report on Northern South Island Claims*. 3 vols. Wellington: Legislation Direct, 2008
———. *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*. 2 vols. Wellington: Legislation Direct, 2004
———. *The Turangi Township Report 1995*. Wellington: Brooker's Ltd, 1995
———. *Te Urewera: Pre-publication, Part II*. 2 vols. Wellington: Waitangi Tribunal, 2009
———. *The Wairarapa ki Tararua Report*. 3 vols. Wellington: Legislation Direct, 2010
———. *Te Whanganui-a-Orotu Report 1995*. Wellington: Brooker's Ltd, 1995
———. *The Whanganui River Report*. Wellington: Legislation Direct, 1999
Walker, Victor Thomas. *Te Kani-a-Takirau*. Masters thesis, Massey University, 1996
Walsh, F D. 'The Tongariro Geothermal System: Aspects of geophysics, alteration and hydrology'. Unpublished MSc Thesis. Auckland: University of Auckland, 1997

Walton, M K. 'The Population of the Lake Taupō Region, New Zealand, 1839–59'. *New Zealand Journal of Archaeology*. vol 8 (1986)
Ward, Alan. *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*. Auckland: Auckland University Press and Oxford University Press, 1973
———.'Whanganui ki Maniapoto', March 1992 (doc A13)
Ward, W C. *Fifty Years: A History*. Wellington: Dominion Sawmillers' Federation, 1967
White, Ben. *Inland Waterways: Lakes*. Waitangi Tribunal Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1998
White, P, et al, eds. *Atlas of Socioeconomic Deprivation in New Zealand*. Wellington: Ministry of Health, 2008
Williams, David Vernon. *Te Kooti Tango Whenua: The Native Land Court 1864–1909*. Wellington: Huia Publishers, 1999
Williams, Henry. *Te Wiremu – Henry Williams: Early Years in the North*. Wellington: Huia Publishers, 2011
Williams, H W, and Caroline Fitzgerald, eds. *Dictionary of the Maori Language*. 7th ed Wellington: Legislation Direct, 1971
Williams, William. *Christianity Among the New Zealanders*. London: Church Missionary Society, 1867
Williams, W L. *East Coast (NZ) Historical Records*. Gisborne: Poverty Bay Herald, 1871
Wilmshurst, Janet M, Atholl J Anderson, Thomas F G Higham, and Trevor H Worthy. 'Dating the Late Prehistoric Dispersal of Polynesians to New Zealand Using the Commensal Pacific Rat'. *Proceedings of the National Academy of Science*, vol 105, no 22 (2008)
Wright, M, and M M Roche. *The Egmont Box Company: A Study of Company Evolution in the Context of the White Pine Trade*. New Zealand Forestry Service working paper 87/3, 1987

Young, David. *Our Islands, Our Selves: History of Conservation in New Zealand*. University of Otago Press, Dunedin, 2004
———. *Woven by Water*. Wellington: Huia Publishers, 1998
Young, Grant, and Michael Belgrave. 'Ngati Haua: Oral and Traditional History Report'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2006 (doc E11)
———. 'Northern Whanganui Cluster: Oral and Traditional History Report'. Commissioned research report, Wellington: Crown Forestry Rental Trust, 2006 (doc D15)
Yska, Redmer. *Wellington: Biography of a City*. Auckland: Reed, 2006

Zaloumis, Andrew. 'MPAs and Indigenous Peoples: Co-Management as a Means of Respecting Traditional Culture and Strengthening Conservation'. *MPA News – International News and Analysis on Marine Protected Areas*. vol 12, no 2, 2010

Downloaded from www.waitangitribunal.govt.nz

PICTURE CREDITS

Pages 4–5: Tongariro National Park
Photograph by Glen Coates, Kahu Publishing Ltd; reproduced by permission of Kahu Publishing Ltd
Page 6: The National Park panel
Photogrpah by unknown; reproduced by permission of the Waitangi Tribunal
Page 32: *The Volcanic Region of Pumice Hills*
Painting by G F Angas (lithograph by G W Giles); from G F Angas, *The New Zealanders Illustrated* (London: Thomas McLean, 1847) (PUBL-0014-28)
Page 37: Ketetahi Hot Springs
Photograph by Craig Potton; reproduced by permission of Craig Potton Publishing
Page 44: Tūwharetoa i te Aupouri
Photograph by unknown (Alexander Turnbull Library, PA Coll-5671-53)
Page 50: Ōkahukura meeting house
Photograph by James Ingram McDonald (Alexander Turnbull Library, James Ingram McDonald collection, ½-049996-F)
Page 52: Ngongo, Lake Rotoaira
Photograph by the Burton Brothers (Alexander Turnbull Library, New Zealand Freelance collection, PA Coll-0785-1-041-01)
Page 54: *Motupoi Pah with Tongariro*
Painting by George French Angas (Alexander Turnbull Library, A-196-022)
Page 59: Te Heuheu and others
Drawing by unknown
Page 61: *Te Riri ka Ware Ware*
Drawing by Richard Taylor (Alexander Turnbull Library, E-296-q-153-2)
Page 62: Sketch of a taniwha
Drawing by unknown (Auckland Libraries, Sir George Grey special collections, 7-A3159)
Page 62: *The Tangihanga of the Wanganui Natives for Te Heuheu*
Drawing by Richard Taylor (Alexander Turnbull Library, E-296-q-117-2)
Page 77: Tōpia Tūroa
Photograph by unknown (Alexander Turnbull Library PA Coll-5671-42)
Page 80: Whakahou marae site
Photograph by Michael Belgrave; from G Young and M Belgrave, 'Northern Whanganui Cluster: Oral and Traditional History Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006)
Page 80: Native bush
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 81: Fertile Volcanic Farmland
Photograph by Bruce Valentine Davis (Alexander Turnbull Library, Bruce Davis collection, ¼-038741-F)
Page 81: Inhospitable terrain
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson

Page 82: Ruapehu, Ngāuruhoe and Tongariro mountains
Photograph by Craig Potton; reproduced by permission of Craig Potton Publishing
Page 84: *Camp Life in the New Zealand Bush*
Photolithograph by unknown; from the *Auckland Weekly News* Christmas supplement, 1908 (Alexander Turnbull Library C-065-006)
Page 85: Hapuawhenua Viaduct
Photograph by Albert Percy Godber (Alexander Turnbull Library, A P Godber collection, G-1886-½-APG)
Page 86: Manganui-A-Te-Ao
Photograph by Matiu Haitana; reproduced by permission of Matiu Haitana
Page 88–89: Te kāhui maunga and Lake Taupō
Photograph by H Christophers; reproduced by permission of H Christophers
Page 90: Tongariro River from Tūrangi
Photograph by T A'Hern (Alexander Turnbull Library F-30018-½ AAQT 6401, A61139)
Page 93: The crater lake on Mount Ruapehu
Photograph by Mr Clark (Archives New Zealand AAQT 6539/A66,565)
Page 94: Mangawhero River
Photograph by R Croad; reproduced by permission of the National Publicity Studios (Archives New Zealand, AAQT 6539/B3643)
Page 97: Upokongaro, Whanganui River
Photograph by John Pascoe (Whanganui Regional Museum, photographic collection, WR/S/17C)
Page 101: Mānuka
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 101: Toe toe
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 102: Pou-tū Stream
Photograph by unknown (Alexander Turnbull Library, PA Coll-2211-1)
Page 105: Kererū
Photograph by Herb Christophers; reproduced by permission of Herb Christophers
Page 106: Te Urewera
Photograph by Matiu Haitana; reproduced by permission of Matiu Haitana
Page 108: Koromiko
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 108: Horopito
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 109: Miro berries
Photograph by unknown; reproduced by permission of the Department of Conservation (10049487)
Page 109: Harakeke
Photograph by Herb Christophers; reproduced by permission of Herb Christophers
Page 110: Harakeke en masse in swamp
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 129: Reverend Thomas Samuel Grace
Photograph by James D Richardson (Auckland Libraries, Sir George Grey Special collections, 4-8122)

Page 130: Tōpine Te Mamaku
Photograph by Alfred Henry Burton (Alexander Turnbull Library, PA7-36-15)
Page 133: Sir George Grey, 1870s
Photograph by Daniel Louis Mundy (Alexander Turnbull Library, PA2-1182)
Page 138: Tukaroto Potatau Matutaera Te Wherowhero Tāwhiao
Photograph by unknown (Alexander Turnbull Library, F-50875-½)
Page 139: Hōhepa Tamamutu
Photograph by Samuel Carnell (Alexander Turnbull Library, S Carnell collection, G-22218-¼)
Page 140: Horonuku Te Heu Heu Tūkino IV
Photograph by unknown (Alexander Turnbull Library, Patrick Parsons collection, F-58438-½)
Page 143: Te Ua Haumene
Photograph by unknown (Alexander Turnbull Library, PA2-2533)
Page 144: Te Mawae
Photograph by unknown (Alexander Turnbull Library, PA Coll-6407-78)
Page 145: Hōri Kīngi Te Ānaua
Photograph by G W Bishop (Alexander Turnbull Library PA2-0280)
Page 146: Kereopa Te Rau
Photograph by Samuel Carnell (Alexander Turnbull Library, S Carnell collection, G-022022-¼)
Page 149: Te Herekiekie
Photograph by Edward Smallwood Richards (Alexander Turnbull Library, F-58429-½)
Page 150: Drawing of Te Kooti
Drawing by S Valda; reproduced by permission of the New Zealand Text Centre
Page 151: Te Kooti's flag, Te Wepu
Drawing by Gilbert Mair (Alexander Turnbull Library, A-173-031)
Page 152: Captain John Chapman St George
Photograph by Swan and Wrigglesworth (Alexander Turnbull Library, PA2-1452)
Page 157: Ōpepe
Photograph by unknown (Alexander Turnbull Library, Russell Duncan collection, PA1-O-141-82)
Page 163: Sir Donald McLean
Photograph by unknown (Alexander Turnbull Library, PA2-2603)
Page 165: Te Keepa Te Rangihiwinui
Photograph by unknown (Alexander Turnbull Library, F-3480-½)
Page 166: Diagram of the seige
Drawing by Henare Tomoana (Archives New Zealand, AD1/69, 1869/7112)
Page 167: Thomas McDonnell
Photograph by unknown (Alexander Turnbull Library, PA2-2601)
Page 168: Area of McDonnell's operations against Te Kooti
From Ormond Wilson, *War in the Tussock: Te Kooti and the Battle at Te Pōrere* (Wellington, 1961); reproduced by permission of the New Zealand Historic Places Trust
Page 169: Sketch of Te Pōrere
Drawing by Thomas McDonnell (Archives New Zealand, AD1/69, 1869/7144)

Page 170: Te Pōrere lower redoubt
Photograph by Trevor Hosking; reproduced by permission of the New Zealand Historic Places Trust (AR 2262)

Page 170: Te Pōrere upper redoubt
Photograph by Trevor Hosking; reproduced by permission of the New Zealand Historic Places Trust (AR 2264)

Page 172: Native bush behind Te Pōrere upper redoubt
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson

Page 173: Memorial plaque to Te Kooti's fallen at Te Pōrere
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson

Page 176: John Davies Ormond
Photograph by unknown (Alexander Turnbull Library, F-15884-½)

Page 196: 'Chateau Tongariro'
Image by unknown (Alexander Turnbull Library, Eph-E-TOURISM-ca-1932-01)

Page 196: Visit New Zealand
Image by unknown (Alexander Turnbull Library, Eph-E-TOURISM-1930s-08)

Page 197: Tongariro National Park
Image by Leonard Cornwall Mitchell (Alexander Turnbull Library, Eph-A-TOURISM-Tongariro-1930s-01-front)

Page 205: Lawrence Marshall Grace
Photograph by Hemus and Hanna (Alexander Turnbull Library, Sir John Grace collection, PA1-q-630-04-1)

Page 213: Kepa te Rangihiwinui
Photograph by unknown (Alexander Turnbull Library, PA2-1245)

Page 214: Raorikia village
Photograph by William James Harding (Alexander Turnbull Library, G-477-1/1)

Page 219: John Bryce
Photograph by William James Harding (Alexander Turnbull Library, PA2-0813)

Page 221: Wahanui, Ngāti Maniapoto chief
Photograph by the Burton Brothers (Alexander Turnbull Library, F-91903-½)

Page 230: On the war-path again
Drawing by William Hutchison (Alexander Turnbull Library, A-095-053)

Page 231: John Ballance
Painting by Philip Tennyson Cole (Alexander Turnbull Library, G-666)

Page 234: Digging the first sod for the Main Trunk railway
Photograph by Daniel Manders Beere (Alexander Turnbull Library, ½-096175-G)

Page 276: Māori waiting for a Native Land Court hearing
Photograph by William James Harding (Alexander Turnbull Library, G-13-1/1)

Page 279: Outside a land court sitting, Tokaanu.
Photograph by unknown; reproduced by permission of Ngāti Tūwharetoa

Page 280: John Edward Grace
Photograph by Hemus and Hanna (Alexander Turnbull Library, Sir John Grace collection, PA1-Q-630-04-2)
Page 286: William Henry Grace
Photograph by Robert Henry Bartlett (Alexander Turnbull Library, Sir John Grace collection, PA1-Q-630-13)
Page 294: Hitiri Te Paerata
Photograph by unknown (Alexander Turnbull Library, PA Coll-7512-03)
Page 298: Taonui Hīkaka
Photograph by unknown; reproduced by permission of the New Zealand Electronic Text Centre
Page 303: A group of Māori at Tapuaeharuru
Photograph by the Burton Brothers (Alexander Turnbull Library, PA Coll-5932-20)
Page 314: Francis Dart Fenton
Photograph by unknown (Alexander Turnbull Library, PA Coll-7489-01)
Page 324: Alfred Jerome Cadman
Photograph by unknown (General Assembly Library, parliamentary portraits, 35mm-00102-A-F)
Page 337: Upokongaro, Whanganui River
Photograph by William James Harding (Alexander Turnbull Library, G-8412-½)
Page 362: Sir James Henry Gunson and John Cullen
Photograph by unknown (Alexander Turnbull Library, PA Coll-7581-82)
Page 366: Henry Walker Mitchell
Photograph by unknown; reproduced by permission of the Rotorua Museum (Don Stafford collection, CP-3645)
Pages 366–367: The Waimarino Plains
Painting by John Stewart Tiffin (Alexander Turnbull Library, D-019-049)
Page 369: Edwin Mitchelson
Photograph by unknown (General Assembly Library, parliamentary portraits, 35mm-00124-a-F)
Page 376: North Island main trunk railway
Photograph by Kenneth Stewart Birrell (Alexander Turnbull Library, Kenneth Birrell collection, PA1-f-014-43-1)
Pages 378–379: Te Tarata
Painting by William Fox (Alexander Turnbull Library, WC-039)
Page 392: Grace brothers
Photograph by G E Page (Alexander Turnbull Library, Sir John Grace collection, PA1-Q-630-19-4)
Page 409: A survey party
Wood engraving by Eduard Ade after a sketch by Ferdinand von Hochstetter (Alexander Turnbull Library, PUBL-0121-354)
Page 414: Mount Ruapehu from Mount Hauhungatahi
Photograph by Hubert Earle Girdlestone (Alexander Turnbull Library, H E Girdlestone collection, PA1-O-188-18)
Page 443: John Ballance
Photograph by Alfred Martin (Alexander Turnbull Library, Tesla Studios collection, ½-70344-G)

Page 434: Horonuku Te Heuheu
Photograph by Samuel Carnell (Alexander Turnbull Library, S Carnell collection, ¼-022227-G)
Page 441: Tongariro's north crater
Photograph by Craig Potton; reproduced by permission of Craig Potton Publishing
Page 442: Tūreiti Te Heuheu
Photograph by unknown (Alexander Turnbull Library, ½-110709-F)
Page 445: Great Waihī land slip
Photograph by William Beattie (Auckland War Memorial Museum, DU 436.188 T64)
Page 446: Tongariro by moonlight
Wood engraving by James Henry Kerry-Nicholls (Alexander Turnbull Library, PUBL-0230-197)
Page 449: A lone figure on Mount Tongariro
Photograph by unknown (Alexander Turnbull Library, New Zealand News Ltd collection, PA1-Q-013-09-1)
Page 450: Te Keepa Puataata
Photograph by unknown (Alexander Turnbull Library, PA Coll-7489-23)
Page 452: Mita Taupopoki
Photograph by unknown (Alexander Turnbull Library, PA Coll-7512-01)
Page 453: Wīnete Paranihi and Kuini at Pāpakai
Photograph by the Burton Brothers (Alexander Turnbull Library, M A Ingle collection, PA7-37-09)
Page 458: Tōkena Te Kehakeha
Painting by Thomas Ryan (Auckland War Memorial Museum, PB14(2))
Page 460: Petera Te Whataiwi
Photograph by J McDonald; reproduced from William J Phillipps, *Carved Māori Houses of Western and Northern Areas of New Zealand* (Wellington: Government Printer, 1955), fig 85
Page 460: The elder Wairehu in front of Ōkahukura
Photograph by unknown; reproduced from William J Phillipps, *Carved Māori Houses of Western and Northern Areas of New Zealand* (Wellington: Government Printer, 1955), fig 95
Page 461: Puhaorangi 1, Waihi, Tokaanu
Photograph by J McDonald; reproduced from William J Phillipps, *Carved Māori Houses of Western and Northern Areas of New Zealand* (Wellington: Government Printer, 1955), fig 83
Page 477: Tōpia Peehi Tūroa
Photograph by S Whitten (Alexander Turnbull Library, PA2-1925)
Page 492: Waimarino block
Photograph by Matiu Haitana; reproduced by permission of Matiu Haitana
Pages 495–497: The deed of conveyance
Photograph by National Archives, Wellington; reproduced by permission of National Archives, Wellington
Page 519: Close view of the burial vault at Waihī
Drawing by Val Raymond; from Val Raymond, *Ngā Marae o Ngāti Tūwharetoa: Drawings of Marae around Lake Taupō* (Auckland: Reed, 1992)
Page 519: Burial vault at Waihī
Drawing by Val Raymond; from Val Raymond, *Ngā marae o Ngāti Tūwharetoa: Drawings of Marae around Lake Taupō* (Auckland: Reed, 1992)

Page 521: Proposed memorial to Mananui Te Heuheu
Drawing by R A Patterson; reproduced by permission of the Department of Conservation (LS 4/362 box 0060985)
Page 522: Pei te Hurinui Jones unveiling bust of Te Heuheu
Photograph by Morice Gladstone Peacock (Alexander Turnbull Library, Morrie Peacock collection, MP-0040-21)
Page 523: Bronze bust of Horonuku Te Heuheu
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Pages 526–527: Te Wai a Moe
Photographs by W H Thorley (Alexander Turnbull Library, W H Thorley collection, F-70107-½; F-70123-½)
Page 534: Southern Slopes of Mount Ruapehu
Photograph by Bobby Gray; reproduced by permission of Bobby Gray
Page 537: Rangiwaea Tāpiri and Tūroa Skifield
Photograph by Bobby Gray; reproduced by permission of Bobby Gray
Page 577: Dr Leonard Cockayne
Photograph by Stanley Polkinghorne Andrew (Alexander Turnbull Library, ¼-018377-G)
Page 578: Edward Phillips-Turner
Photograph by unknown; from the *Transactions and Proceedings of the Royal Society of New Zealand*, volume 68; reproduced by permission of the Royal Society of New Zealand
Page 579: Daisies and tussock
Photograph by Leonard Cockayne (Alexander Turnbull Library, Department of Lands and Survey collection, G-18345-½)
Page 598: Indigenous forest
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 601: Logging railway track
Photograph by unknown (Alexander Turnbull Library, F-29772-½)
Page 603: Sir Francis Henry Dillon Bell
Photograph by Stanley Polkinghorne Andrew (Alexander Turnbull Library, G-13506-¼)
Page 609: 'The cutting'
Image by Peter McIntyre; reproduced by permission of Simon McIntyre from Peter McIntyre, *Kakahi New Zealand* (Wellington: A H & A W Reed Ltd, 1972)
Page 617: Prime Minister Joseph Ward
Photograph by unknown; from the *Auckland Weekly News* supplement (Auckland Libraries, Sir George Grey Special collections (AWNS-19081112-6-5)
Page 617: Obelisk
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 618: Gamman's sawmill
Photograph by Albert Percy Godber (Alexander Turnbull Library, A P Godber collection, G-721-½-APG)
Page 619: Horses transporting timber
Photograph by Albert Percy Godber (Alexander Turnbull Library, A P Godber collection, G-2053-½-APG)

Page 620: Climax locomotive
Photograph by Albert Percy Godber (Alexander Turnbull Library, A P Godber collection, G-381-½-APG)
Page 628: The 'Daylight Limited'
Photograph by unknown; from *New Zealand Railways Magazine*, vol 8, no 10 (1 February 1934), reproduced by permission of KiwiRail (New Zealand Railways Corporation)
Page 631: Bush behind Ōhakune Railway Station
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 636: Mount Pihanga and Lake Rotopounamu
Photograph by Ross Baker; reproduced by permission of Ross Baker
Page 658: The Whakapapa River below Owhango
Painting by Peter McIntyre; from Peter McIntyre, *Kakahi New Zealand* (Wellington: AH & AW Reed Ltd, 1972), reproduced by permission of Simon McIntyre
Page 662: Taurewa
Photograph by Matiu Haitana; reproduced by permission of Matiu Haitana
Page 663: Old swing bridge over the Whanganui
Image by Peter McIntyre; from Peter McIntyre, *Kakahi New Zealand* (Wellington: AH & AW Reed Ltd, 1972), reproduced by permission of Simon McIntyre
Page 665: Hoani Te Heuheu
Photograph by Charles Bathurst Bledisloe (Alexander Turnbull Library, PA1-f-015-16)
Page 666: View over the Whakapapa River to Taurewa
Photograph by Raeburn Lange; reproduced by permission of Raeburn Lange
Page 669: Sonny Te Ahuru on horseback
Image by Peter McIntyre; from Peter McIntyre, *Kakahi New Zealand* (Wellington: AH & AW Reed Ltd, 1972), reproduced by permission of Simon McIntyre
Page 672: Log bridge to Whakapapa Island
Image by Peter McIntyre; from Peter McIntyre, *Kakahi New Zealand* (Wellington: AH & AW Reed Ltd, 1972), reproduced by permission of Simon McIntyre
Page 688: Clearing pine trees
Photograph by unknown; reproduced by permission of the Lake Rotoaira Forest Trust
Page 691: Exotic forestry near the TPD lakes
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 695: Lake Rotoaira Forest
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 699: Forest lands beside Lake Rotoaira
Photograph by unknown; reproduced by permission of George Asher, Lake Rotoaira Forest Trust manager
Page 726: Intersection of State Highways 47 and 48
Photograph by unknown (Alexander Turnbull Library, Department of Lands and Survey collection, F-15105-¼)
Page 728: Waimarino Plains
Photograph by Kenneth Stewart Birrell (Alexander Turnbull Library, Birrell album 4, PA1-f-014)
Page 728: Waiōuru military camp
Photograph by Gordon Onslow Hilbury Burt (Alexander Turnbull Library, F-36358-½)

Page 729: Soldiers eating
Photograph by Cooke (Auckland War Memorial Museum, H904)
Page 729: Army exercises at Waiōuru
Photograph by Cooke (Auckland War Memorial Museum, H903)
Page 730: New Zealand war cemetery
Photograph by Harold Gear Paton (Alexander Turnbull Library, War History collection, DA-06780)
Page 731: Taonui Viaduct
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 732: Hapuawhenua Viaduct
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 733: Whakapapa Scenic Reserve
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 736: Bridge over Moawhango River and access road
Photograph by C R Dyer; reproduced by permission of Archives New Zealand
Page 739: Morehu Downs
Photograph by unknown; reproduced by permission of Ngāti Tūwharetoa
Page 739: Tongariro National Trout Centre Sign
Photograph by unknown
Page 740: New road between Tokaanu and Lake Rotoaira
Photograph by unknown (Alexander Turnbull Library, Dominion Post collection, EP/1966/1427)
Page 745: Lake Rotoaira–Waimarino–Taupō Road
Photograph by Frederick George Radcliffe (Auckland Libraries, Sir George Grey Special collections, 35-R2242)
Page 754: Hautū Prison Farm
Photograph by unknown (Alexander Turnbull Library, New Zealand Free Lance collection, PA Coll-0785-1-190-01)
Page 759: Ōtūkou native settlement
Drawing by W G Harding (Alexander Turnbull Library, A-108-020)
Page 760: Huimako cliff, Ōtūkou
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 761: Ōkahukura, the meeting house
Photograph by Thomas Pringle (Alexander Turnbull Library, PA1-f-179-21-4)
Page 765: Ōtūkou Marae
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 767: Abandoned Ministry of Works houses
Photograph by Andrew Gregg; reproduced by permission of Andrew Gregg
Page 771: Ōkahukura, the meeting house at Ōtūkou Pa
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 774: Metal pit at Ōtūkou
Photograph by Russell Kirkpatrick; reproduced by permission of Russell Kirkpatrick

Page 775: Two kuia at Ōtūkou
Photograph by Russell Kirkpatrick; reproduced by permission of Russell Kirkpatrick
Page 798: The central volcanic plateau
Photograph by R Anderson; reproduced by permission of the National Publicity Studios, Archives New Zealand (AAQT 6539/B 7938)
Page 799: Volcanic soil
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 800: Koromiko
Drawing by Mary Hall; reproduced by permission of Archives New Zealand
Page 801: Native trees and bush
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 803: Hauhungatahi
Photograph by Matiu Haitana; reproduced by permission of Matiu Haitana
Page 807: Sir James Henry Gunson
Photograph by Herman John Schmidt (Alexander Turnbull Library, G-1348-1/1)
Page 808: Original board of directors, Chateau Tongariro
Photograph by unknown (Alexander Turnbull Library, Jonathan Dennis collection, PA1-0-758-14)
Page 826: Mountaineers on Te Heuheu Peak
Photograph by unknown (Alexander Turnbull Library, B H Thompson collection, F-81479-½)
Page 827: Cottage at Whakapapa
Photograph by unknown (Alexander Turnbull Library, F-49992-½)
Page 828: Police Commissioner John Cullen
Photograph by Stanley Polkinghorne Andrew (Alexander Turnbull Library, G-13786-1/1)
Page 828: Gentian bellidifolia
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 829: Heather
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 831: Chateau Tongariro opening
Photograph by unknown (Alexander Turnbull Library, Jonathan Dennis collection, PA1-0-758-17)
Page 832: Accommodation alongside the Chateau Tongariro.
Photograph by unknown (Alexander Turnbull Library, New Zealand Free Lance collection, F-50006-½)
Page 833: Skiers at Whakapapa
Photograph by Bruce Valentine Davis (Alexander Turnbull Library, B Davis collection, F-38762-¼)
Page 833: Skis standing in snow
Photograph by Bruce Davis (Alexander Turnbull Library, ¼-038731-F)
Page 834: Skiers on Mount Ruapehu
Photograph by Kenneth Stewart Birrell (Alexander Turnbull Library, Kenneth Birrell collection, PA1-f-014-69)
Page 837: 'Snow's better!'
Drawing by Neil Lonsdale; reproduced by permission of the Lonsdale family (National Library, A-309-160)

Page 838: Whakapapanui Stream
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 839: Ōhakune Mountain Road bridge
Photograph by unknown (Alexander Turnbull Library, Evening Post collection, EP/1958/2155-F)
Page 839: Ski fields and ski huts on Mt Ruapehu
Photograph by Mr Reithmaier; reproduced by permission of the National Publicity Studios, Archives New Zealand (AAQT 6539/A 91,274)
Page 845: Horse-drawn coaches stop at Waihohonu Hut
Photograph by unknown (Alexander Turnbull Library, F-19569-¼)
Page 850: Chateau Tongariro with Mt Ngāuruhoe
Photograph by unknown (Alexander Turnbull Library, New Zealand Railways collection, G-3892-½)
Page 853: Beginners' tow-rope, Mt Ruapehu
Photograph by unknown; reproduced by permission of Archives New Zealand, Wellington (C 593 680, AAQT W3537 6401, box 115, print A87374)
Page 858: Keith Wood
Photograph by Gail Imhoff; reproduced by permission of Keith Wood
Page 859: Che Wilson
Photograph by Gail Imhoff; reproduced by permission of Che Wilson
Page 861: Two mountaineers on Crater Lake, Mount Ruapehu
Photograph by unknown (Alexander Turnbull Library, New Zealand freelance collection, PA Coll-0785-1-036-01)
Page 868: Rat in a fantail's nest
Photograph by David Mudge; reproduced by permission of Nga Manu Images (10048620)
Page 869: Weasel
Photograph by Gerald Bruce-Smith; reproduced by permission of Gerald Bruce-Smith
Page 871: Pervasive heather
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 900: The gift plaque at Whakapapa
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 901: World Heritage plaque at Whakapapa
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 903: Aerial photograph above Mt Ngāuruhoe
Photograph by Lloyd Homer; reproduced by permission of GNS Science (41178/10H)
Page 905: Looking down the Bruce Road, Mt Ruapehu
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson)
Page 905: Mount Ruapehu and the Chateau from Whakapapa
Photograph by Herb Christophers; reproduced by permission of Herb Christophers, Department of Conservation
Page 906: North Island kaka
Photograph by Ross Henderson ; reproduced by permission of the Department of Conservation (10053925)

Page 911: Skiers at Whakapapa
Photograph by unknown (New Zealand Archives, Wellington, C593 680, AAQT W3537 6401, box 115, print A87375)
Page 913: Paul Green
Photograph by Kiri Te Wano; reproduced by permission of Paul Green
Page 916: Sir Hepi leading the haka at the centenary celebrations.
Photograph by Simon Edwards; from *The Daily News* Taumarunui, reproduced by permission of the *Daily News*, New Plymouth
Page 922: Huts and road at Iwikau
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 924: Tūroa skifield
Photograph by Herb Christophers; reproduced by permission of Herb Christophers, Department of Conservation
Page 927: 'Ski-field project to boost Ruapehu'
Photographs by unknown; reproduced by permission of the *Dominion Post*.
Page 930: Te Waiamoe
Photograph by Herb Christophers; reproduced by permission of Herb Christophers, Department of Conservation
Page 932: Whangaehu warning bells
Photograph by Herb Christophers; reproduced by permission of Herb Christophers, Department of Conservation
Page 932: Lahar path in the Tūkino area
Photograph by Herb Christophers; reproduced by permission of Herb Christophers, Department of Conservation
Page 933: Lahar warning system
Photographs by lahar webcam; reproduced by permission of Horizons Regional Council
Page 936: Walking the Tongariro Alpine Crossing
Photograph by Jimmy Johnson; reproduced by permission of Jimmy Johnson Department of Conservation
Page 938: Possum
Photograph by Rod Morris; reproduced by permission of Department of Conservation (10031592)
Page 938: Possum damage
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 939: Metal band on tree
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 940: Whakapapa community trapping project
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 940: Rat and stoat trap box
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 940: Releasing North Island brown kiwi
Photograph by unknown; reproduced by permission of the Department of Conservation (10044941)

Page 950: Uluru, Australia
Photograph by Paul Hamer; reproduced by permission of Paul Hamer
Page 952: 'Please don't climb Uluru'
Brochure by the Director of National Parks, Australia; reproduced by permission of the director of National Parks, Australia
Page 953: Tourists climbing Uluru
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 955: Windy Bay Forest
Photograph by Sam Beebe, Ecotrust; reproduced by permission of Sam Beebe
Page 958: Support Haida Nation Blockades
Photograph by John Bonnar; reproduced by permission of John Bonnar
Page 974: Whakapapaiti
Photograph by Matiu Haitana; reproduced by permission of Matiu Haitana
Page 982: A mountain torrent
Photograph by unknown (Alexander Turnbull Library, New Zealand News Ltd collection, PA1-q-013-09-2)
Page 985: Mount Ngāuruhoe and countryside
Photograph by unknown (Alexander Turnbull Library, New Zealand News Ltd collection, PA1-q-013-30-2)
Page 986: Tongariro River
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 988: Whanganui River at Te Pōrere
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 989: Mangaturuturu River
Photograph by Matiu Haitana; reproduced by permission of Matiu Haitana
Page 990: Flax bush
Photograph by Philippe Gerbeaux; reproduced by permission of the Department of Conservation (10054029)
Page 991: Group with kete and other flax items
Photograph by James Ingram McDonald (Alexander Turnbull Library, PA1-q-257-17-2)
Page 992: Whangaehu River at Tangiwai
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 993: Mangawhero River
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 1001: Whakapapa River
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 1005: Blue Lake, Red Crater, and Ruapehu
Drawing by Thomas A Ryan (Alexander Turnbull Library, A-176-011)
Page 1007: Lake Rotopounamu
Photograph by Lloyd Homer; reproduced by permission of GNS Science (5664/24)
Page 1008: Lake Rotoaira
Photograph by Andrew Gregg; reproduced by permission of Andrew Gregg
Page 1014: Mt Ruapehu and probably Whakapapanui Stream
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson

Page 1015: Whakapapanui Stream
Photograph by Bridget Hodgkinson; reproduced by permission of Bridget Hodgkinson
Page 1017: Kōaro
Photograph by Stephen Moore; reproduced by permission of the Department of Conservation (10049715)
Page 1019: Kōura
Photograph by unknown; reproduced by permission of the Department of Conservation (10024998)
Page 1019: Māori fishermen
Photograph by unknown (Alexander Turnbull Library, F-38200-½)
Page 1020: Common smelt
Photograph by Stephen Moore
Department of Conservation *Te Papa Atawhai* (10049722)
Page 1022: Māori group smoking eels, Koriniti
Photograph by James Ingram McDonald (Alexander Turnbull Library, PA1-q-257-79-1)
Page 1025: Making a hinaki
Photograph by James Ingram McDonald (Alexander Turnbull Library, F-37930-½)
Page 1026: Māori fishing nets and traps
Photograph by James Ingram McDonald (Alexander Turnbull Library, PA1-q-257-72-3)
Page 1029: Liberation of trout fry
Photograph by John Dobree Pascoe (Alexander Turnbull Library, John Pascoe collection, F-2059-¼)
Page 1031: Rainbow trout
Photograph by unknown; reproduced by permission of the *New Zealand Herald* (290905NZHAGTROUT01.JPG)
Page 1033: Catfish
Photograph by Glenn Maclean; reproduced by permission of the Department of Conservation (10037708)
Page 1035: Trout fishing from a waka
Photograph by unknown (Alexander Turnbull Library, Cowan collection, F-125116-½)
Page 1046: A successful angler in the Tongariro River.
Photograph by unknown (Alexander Turnbull Library, Eph-A-TOURISM-1930S-01-03)
Page 1068: Electricity pylons
Photograph by unknown (Alexander Turnbull Library, *Dominion Post* collection, EP-Energy-Hydroelectricity-Tongariro power project-09)
Page 1072: Italian tunnellers
Photograph by unknown (Alexander Turnbull Library, *Dominion Post* collection, EP-Energy-Hydro Electricity-Tongariro Hydro Scheme-02)
Page 1076: Control gates of the Wairehu Canal
Photograph by unknown (Alexander Turnbull Library, *Dominion Post* collection, EP-Energy-Hydroelectricity-Tongariro power scheme-06)
Page 1076: Construction of the Wāhianoa Aqueduct
Photograph by Olive Chatterley: reproduced by permission of Olive Chatterley
Page 1076: Moawhango Dam construction
Photograph by unknown (Alexander Turnbull Library, *Dominion Post* collection, EP-Energy-Hydroelectricity-Tongariro power scheme-05)

Page 7076: Tongariro River diversion
Photograph by unknown (Alexander Turnbull Library, *Dominion Post* collection, EP-Energy-Hydroelectricity-Tongariro power scheme-04)

Page 1077: View of Moawhango River
Photograph by unknown (Alexander Turnbull Library, *Dominion Post* collection, EP-Energy-Hydro Electricity-Tongariro Hydro Scheme-01)

Page 1079: Tokaanu Power Station
Photograph by unknown; reproduced by permission of Genesis Energy

Page 1079: Lake Ōtamangākau and Dam
Photograph by unknown; reproduced by permission of Genesis Energy

Page 1079: Wairehu Canal Outfall
Photograph by unknown; reproduced by permission of Genesis Energy

Page 1079: Lake Te Whaiau and Dam
Photograph by unknown; reproduced by permission of Genesis Energy

Page 1080: Butonyl lining Te Whaiau canal
Photograph by unknown (Alexander Turnbull Library, *Dominion Post* collection, EP-Energy-Hydroelecticity-Tongariro power scheme-07)

Page 1080: Te Waiau Stream
Photograph by Bridget Hodgkinson: reproduced by permission of Bridget Hodgkinson

Page 1081: Rangipō Dam
Photograph by unknown; reproduced by permission of Genesis Energy

Page 1082: Portrait of John Atirau Asher
Photograph by unknown; reproduced by permission of the Asher family (Alexander Turnbull Library, Asher family collection, F-190578-½)

Page 1083: Pāterika Hura
Photograph by unknown; from *Te Ao Hou* (Spring 1953), reproduced by permission of the Maori Purposes Fund Board (Archives New Zealand, AAMK W3495/26)

Page 1085: John Te Herekiekie Grace
Photograph by unknown; reproduced by permission of the Maori Purposes Fund Board (AAMK W3495, box 5, Māori Affairs folder)

Page 1087: 'You can't foist that sort of thing on the public!'
Drawing by Nevile Lodge; reproduced by permission of the Lodge family (Archives New Zealand, AAZU W3619, box 62, R15904984)

Page 1093: Fishing in the Tongariro River
Photograph by R Anderson; reproduced by permission of the National Publicity Studios and Archives New Zealand (AAQT 6539/A99,233)

Page 1095: 'Wait, Mr McIntyre – when we've finished you won't know her!'
Drawing by George Minhinnick; reproduced by permission of the *New Zealand Herald* (Archives New Zealand, AAZU W3619, box 62, R15904984)

Page 1120: Lake Rotoaira
Photograph by Bridget Hodgkinson: reproduced by permission of Bridget Hodgkinson

Page 1123: Dragline silhouetted against Lake Rotoaira
Photograph by unknown (Alexander Turnbull Library, *Dominion Post* collection, EP-Energy-Hydroelectricity-Tongariro Power Scheme-03)
Page 1125: Lake Rotoaira with Motuopuhi Island
Photograph by Andrew Gregg: reproduced by permission of Andrew Gregg
Page 1127: Poutū Canal and Dam
Photograph by unknown; reproduced by permission of Genesis Energy
Page 1129: Sir Archie Taiaroa
Photograph by unknown; reproduced by permission of Spencer Webster
Page 1130: Whanganui Intake
Photograph by unknown; reproduced by permission of Genesis Energy
Page 1132: Two whio
Photograph by Gerald Bruce-Smith; reproduced by permission of Gerald Bruce-Smith
Page 1136: Moawhango Dam
Photograph by unknown; reproduced by permission of Genesis Energy
Page 1137: Whitebait of the Kōaro
Photograph by E J Cudby; from R M McDowall, *New Zealand Freshwater Fishes: A Guide and Natural History* (Auckland: Heinemann, 1978), reproduced by permission of NIWA
Page 1184: Inside the Red Crater Tongariro
Photograph by Jimmy Johnson; reproduced by permission of Jimmy Johnson, Department of Conservation
Page 1185: Red Crater Tongariro
Photograph by Jimmy Johnson; reproduced by permission of Jimmy Johnson, Department of Conservation
Page 1186: The Ketetahi Springs
Photograph by unknown (Alexander Turnbull Library, PA1-q-913)
Page 1188: Geysers, Tokaanu
Photograph by D L Mundy (Alexander Turnbull Library, D L Mundy collection, PA1-f-042-13)
Page 1191: Te Maari Crater
Photograph by unknown (Alexander Turnbull Library, New Zealand News Ltd collection, PA1-q-013-10-2)
Page 1193: Hot springs or boiling ponds near Taupō Lake, 26 October 1844
Painting by George French Angas (Alexander Turnbull Library, A-020-038)
Page 1194: Children in hot pool
Photograph by C W Babbage (Alexander Turnbull Library, Babbage collection, ½-013335-G)
Page 1195: Hot mud pools near Tokaanu Hotel
Photograph by unknown; reproduced by permission of Archives New Zealand, Wellington (AAQT W3537 6401, box 117)
Page 1200: Ketetahi Springs
Photograph by Jock Phillips; reproduced by permission of Jock Phillips and Te Ara – The Encyclopedia of New Zealand
Page 1205: Geothermal surface features
Photograph by Andrew Gregg; reproduced by permission of Andrew Gregg

Page 1213: The Ketetahi Springs area
Photograph by Andrew Gregg; reproduced by permission of Andrew Gregg
Page 1222: Te Kāhui Grace
Photograph by unknown (Alexander Turnbull Library, PA Coll-7489-30)
Page 1228: The Tongariro Alpine Crossing
Photograph by Melvyn Smith; reproduced by permission of Melvyn Smith
Page 1228: The Tongariro Alpine Crossing
Photograph by Melvyn Smith; reproduced by permission of Melvyn Smith
Page 1229: Signpost at Ketetahi Hot Springs
Photograph by Andrew Gregg; reproduced by permission of Andrew Gregg
Page 1233: Geothermal power station, Mokai
Photograph by Jeremy Bright of Grabb for Image Excellence; reproduced by permission of Cheal Consultants Ltd
Page 1239: Geothermal vent
Photograph by Irene Koppel (Alexander Turnbull Library, Irene Koppel collection, PA Coll-6497-15-01)
Page 1240: Stream with boulders and steam
Photograph by Andrew Gregg; reproduced by permission of Andrew Gregg
Page 1250: Healy's Bore, Tokaanu
Photograph by Karen Britten; reproduced by permission of Karen Britten GNS Science
Page 1253: Ketetahi Hut
Photograph by George Leslie Adkin (Alexander Turnbull Library, GL Adkin collection, PA1-f-003-136)
Page 1255: Group at Ketetahi Hut
Photograph by unknown (Alexander Turnbull Library, F-018149-¼)

The National Park Tribunal would like to thank the many staff and contractors who provided us with valuable support in the production of this report. In particular, we acknowledge Andrew Gregg's significant contribution to the work of the National Park Tribunal in all aspects of its work. We also thank Eileen Barrett-Whitehead, Garth Cant, Alice Miller, Raeburn Lange, Jemima Jamieson, Susie Johnston, David Young, Redmer Yska, Nigel Murphy, Robyn Meehan, and Francis Cooke for their support at various times over several years. Providing valued reference checking, image research and other assistance were Hannah Boast, Jane Latchem, Elizabeth Whyte, Sarah Burgess, Bridget Hodgkinson, Carolyn Blackwell, Harry Chapman, Anita Rossbach, Steven Oliver, Clare Tattersall, and Elizabeth Walker. For mapping and production of the report, we thank Noel Harris, Dominic Hurley, and Richard Thomson.

There were many other staff, past and present, that assisted during the inquiry and the hearing of the claims. We thank the following claims coordinators: Becca Nesus, Potaua Biasiny-Tule, Tina Mihaere, Te Amohaere Hauiti-Parapara, and Jenna-Faith Allan. We also thank the following inquiry facilitators: Jaime Meikle, Mark Derby, Jamie Mitchell, Fiona Small, and Adam Heinz.