

Western Bay of Plenty District Council - Resource Consent Application number RM16-0204 to Bay of Plenty Regional Council

05/04/19

On behalf of Ngati Pikiao Environmental Society

Ngati Pikiao ki Tai subcommittee

27 Otimi St

Maketu RD 9

TE PUKE 3189

Written statement of evidence

1. My name is Raewyn Marcelle Bennett.
2. I live in Maketu. My whanau are ahi kaa¹ to Maketu. I belong to Iwi whose ahi kaa is predominantly along the Bay of Plenty coast. They are Ngati Pikiao, Ngati Makino, Ngati Whakaue and Ngaiterangi.
3. I am a volunteer for Ngati Pikiao on environmental issues.
4. I am semi-retired, self-employed and professionally undertake Maori socio-cultural, environmental and educational research.
5. I have a 34-year history of active involvement in Maori community developments and issues in the Bay of Plenty. Some highlights include being Ngaiterangi Iwi's first CEO and representing them a number of times in the drafting of the Declaration of Indigenous Peoples Rights at the United Nations in Geneva as well as the Working Group on Indigenous Populations meetings.

¹ ahikā

1. (noun) burning fires of occupation, continuous occupation - title to land through occupation by a group, generally over a long period of time. The group is able, through the use of *whakapapa*, to trace back to primary ancestors who lived on the land. They held influence over the land through their military strength and defended successfully against challenges, thereby keeping their fires burning.

See also [ahikāroa](https://maoridictionary.co.nz/), [ahikā](https://maoridictionary.co.nz/), [ahi-kā-roa](https://maoridictionary.co.nz/) <https://maoridictionary.co.nz/>

On one occasion I was elected co-chair of the Indigenous Peoples Education Committee at Geneva. I also have a Certificate UN Human Rights Processes (IPI Greenland)

6. I have worked voluntarily for all my Iwi and with the Tauranga Moana Maori District Council.
7. I have an Honours degree (1st Class honours) in Social Science from Waikato University. My majors are in Anthropology and Education. I have a Certificate in Adult Teaching.
8. I was the first elected Councillor for Mauao in the newly established Maori seats at the Bay of Plenty Regional Council, a seat I held for 3 trienniums. In that role I held the Chair of Strategic Policy for 2 trienniums.
9. I am a Certificated RMA decision maker with a Chair endorsement.
10. As a Councillor, I had a strategic role in ensuring that the Kaituna – Ongatoto re-diversion project happened. That represented a commitment that only an ahi kaa tangata would have the stamina and passion to pursue. That has been a 35year fight led firstly and fiercely by our Aunty Pia Kerr who passed in 2010.
11. At Whakaue marae, Maketu, 1989, where Te Arawa gathered to seek the Te Arawa fishing histories in response to the Maori Fisheries claims, to my surprise, the people present at the time, appointed my whanau to provide the customary fishing affidavit on behalf of Te Arawa, which we did and which I co-ordinated². Our whanau knowledge includes the Mataranga of the coast, some of which was included in that High Court affidavit.
12. At that point I made it my business to be active in the protection of our Maori relationship with the sea, and an advocate for the takutai and moana and Hinemoana and Tangaroa. A role which today is called a kaitiaki.
13. I lodged the claim WAI 676 for the restoration of Ongatoto, the Maketu estuary in the name of the ahi kaa roa o Maketu. This was intended to be

² (1999) IN THE HIGH COURT OF NEW ZEALAND AUCKLAND REGISTRY

NoCP 122SW1999

IN THE MATTER of The Judicature Amendment Act 1972; Declaratory Judgments Act 1908; the Maori Fisheries Act 1989 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 BETWEEN TE KOTA HITANGA O TE ARAWA WAKA TRUST BOARD...

inclusive of Maori who have lived here intergenerationally rather than by their Iwi affiliation. That claim is not fully settled.

14.I remain the Ngati Pikiao representative for various issues at the coast (ki tai). I am an executive member of the Ngati Pikiao environmental arm, the Ngati Pikiao Environmental Society and Chair Ngati Pikiao ki Tai committee.

15.This submission is part of that enduring saga to challenge colonisation and its effects on our estuary and our people, environmentally, culturally, socially and economically.

Context to this submission:

16.I want to clarify two issues that are misleading or can be misinterpreted in the application.

17.I do not represent Ngati Makino Iwi Authority or Ngati Makino Heritage Trust, neither do I want to. (p9)

18.I have never done or been paid to do a cultural impact assessment for this consent proposal for Ngati Pikiao.

Introduction to this submission:

19.On behalf of Ngati Pikao and Nga ahi kaa roa o Maketu, I object to the discharge from the TPWW plant being discharged to the Waiari and then from there into the Kaituna River and from there into the Maketu Estuary and the sea.

20.My reasons are based on three main issues which would have been resolved if the WBDC had addressed the cultural impacts properly and not tokenistically.

21.The chamber of rocks was not put forward by Ngati Pikiao as being a substitute for discharging to Papatuanuku, nor were we asked if it would be an acceptable substitute. It is only now through reading the resource consent application that I see that it is intended to be a substitute and meant to address cultural concerns. It is rejected by Ngati Pikiao

22.I am presenting a socio-cultural position, not a static, grass-skirts, 'cultural' position.

23.I have avoided any reference to statutory planning documents. I am not resourced to argue a legal case. My case is based purely on ensuring the socio-cultural position of Ngati Pikiao and nga tangata ahi kaa roa o Maketu is properly explained so that commissioners are fully informed on our objections and are justified in making changes to the consent as we are justified in presenting them.

24.Ngati Pikiao's objection is based on three main matters:

- A. It is abhorrent to our cultural ethics to discharge waste-water into water, even to wetlands.**
- B. It compromises our plans to restore the estuary**
- C. It impacts the moana and compromises our kaitiaki obligations to Hinemoana and Tangaroa.**

25. I have prefaced my dealing with those matters with a generic Maori perspective which is applicable to all these matters. This is to enable you to have a complete and not cursory understanding of the effects on our people from the continuous diminishment of our culture from uninformed RMA decision-making.

26. What I want you to take out of this, is that providing for resolution of Maori cultural impacts is also good for the environment.

My cultural approach

27. I recognise that my world-view maybe different to some other Maori and I recognise that there are Maori who quite happily exist without any or with very little connection to their culture, or who take out of Maori culture, only the parts that suit. I have relations like that.

28. This colonising situation provides a fertile ground for Council's and governments to run divide and rule strategies among Maori. It is also easier for Councils to pick and choose which Maori they will give more credence to.

29. The recent Kaituna Re-diversion appeal case was a prime example as was the Maketu sewage scheme.

30. I endeavour to represent a world-view which is kaupapa Maori based and least tainted by colonialism.

31. I speak as someone who is conscientized. In the Maori activist world, we refer to this as being de-colonised. We have an awareness of the effects of colonisation and the subtle assimilation of self-deprecating, learned behaviour associated with it. Maori children in general have to deal with this pressure on a daily basis.

32. We endeavour to think and act as Maori with an awareness of the needs of future generations and the aspirations of self-determination. We do not aspire to tick mainstream boxes, or to seek affirmation from non-Maori as to our worth.

33. Kura kaupapa Maori schools are a visible and tangible symbol of this way of thinking.

Generic Maori cultural perspectives:

Culture and Identity:

34. For Maori children in mainstream schools, where some 90% of Maori children attend, there is a need for a constant and positive re-affirmation of their identity, a big part of which is their relationship to their environment.
35. For children at kura kaupapa Maori schools, being Maori is the norm, but for them, there is still the loss of matauranga which has only been arrested in recent times.
36. There are gaps in understandings and knowledge (Matauranga Maori) which are essential to the fullest and healthiest expression of a Maori identity.
37. I would cite the state of the Maori language as being the most reliable and well-known gauge for all Maori cultural losses.
38. This loss of culture has been disastrous for Maori in general as the negative social statistics attest.
39. It is really heart breaking to face the fact that out of every Maori male child today, about 50% will end up in jail at some time of their life and that³ and they are more likely between the ages of 15-24, than any other population in the world, to die from suicide^{4 5}.
40. I have had students who ask why they had to go to jail to learn their culture.

³ Māori suicide rates were near twice as high as those of non-Māori in 2010–12 (RR 1.85, CI 1.64–2.10). The disparity was greater for females: Māori females were more than twice as likely as non-Māori females to commit suicide (RR 2.22, CI 1.76–2.81). Males overall had significantly higher suicide mortality rates than females. Young adults aged 15–24 years had the highest suicide rate.
<https://www.health.govt.nz/our-work/populations/maori-health/tatau-kahukura-maori-health-statistics/nga-mana-hauora-tutohu-health-status-indicators/suicide-and-intentional-self-harm> 050419

⁴ UNICEF Office of Research (2017). 'Building the Future: Children and the Sustainable Development Goals in Rich Countries', UNICEF Office of Research – Innocenti, Floren Innocenti Report Card 14 Children in the Developed World
www.unicef-irc.org A new **report by Unicef** contains a shocking statistic - New Zealand has by far the highest youth suicide rate in the developed world. BBC News

⁵ <https://www.stuff.co.nz/national/health/106532292/new-zealand-suicide-rate-highest-since-records-began> 050419

Maori well-being

41. The imminent professor Mason Durie⁶ refers to three simple goals for a framework for Maori educational achievement that one has to wonder why they seem so hard to achieve:

- *to live as Māori;*
- *to actively participate as citizens of the world; and*
- *to enjoy good health and a high standard of living.*

42. It is having the ability to live as Maori that this submission pursues and advocates for in this RMA process. Being able to live as Maori, requires a relationship with the environment. In coastal issues, that includes respecting our whakapapa to Hinemoana and Tangaroa, the Gods of the sea.

43. I have prepared many submissions as a kaitiaki trying to arrest the decline in the physical well-being of te Taiao and the re-affirmation of Maori identity. The two go hand in hand. Unfortunately, the rate of decline of the well-being of the moana and thus the Maori relationship with it, is hardly acknowledged by statutory decision-making bodies.

And they [current laws] sideline Māori and Māori cultural values from decisions of vital importance to their culture – for example, decisions about the flora, fauna and wider environment that created Māori culture, and decisions about how education, culture and heritage agencies support the transmission of Māori culture and identity. Iwi and hapū are therefore unable to fulfil their obligations as kaitiaki (cultural guardians) towards their taonga – yet these kaitiaki obligations are central to the survival of Māori culture.⁷

44. I have studied the decline of Ongatoro, the Maketu estuary and the loss of cultural connections, customs and activities. I will refer to this specifically later.

45. I prepared a cultural impact report on the Rena oil spill effects and in the research, I studied the Exxon-Valdez effects. I followed this with a trip to Alaska (paid by myself).

46. The Exxon-Valdez Oil spill disaster studies, proved through a longitudinal study, that indigenous peoples who have a close relationship with their environment (especially where the relationship involves a subsistence way of life), suffer more, psychologically, from technological disasters involving the environment, than do non-indigenous people.

47. The changes to Ongatoro caused by the diversion of the Kaituna River in 1957 are a good example.

⁶ A Framework for Considering Māori Educational Advancement, Mason Durie

⁷ <http://waitangitribunal.govt.nz/news/wai-262-ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

48. That is a very important point when talking about Maori cultural relationships with the environment. This discovery, aligns with Professors Durie's research on Maori health which reports:

*Taha wairua is generally felt by Māori to be the most essential requirement for health. It implies a capacity to have faith and to be able to understand the links between the human situation and the environment. Without a spiritual awareness and a mauri (spirit or vitality, sometimes called the life-force) an individual cannot be healthy and is more prone to illness or misfortune.... lack of access to tribal lands or territories is regarded by tribal elders as a sure sign of poor health since the natural environment is considered integral to identity and fundamental to a sense of well-being.*⁸

Impediments to achieving RMA cultural outcomes:

49. In the RMA issues, despite the reference to "cultural," cultural is only acknowledged, in my experience, to the extent it does not interfere with the economic imperative as driven by certain well-resourced sector groups and politicians.

50. "Cultural" is not recognised on the same level as "economic", "environmental" or even "social". I think this application is a good example.

51. Maori issues are generally given regard to as an after-thought, after the powerful lobby groups, and even after "community". I note the recent report by the Environmental Defence Society (EDS) report largely concurs⁹

*Agency capture of (particularly local) government by vested interests has reduced the power of the RMA to appropriately manage effects on the environment*¹⁰

52. Erosion of Maori culture through accumulated impacts is not seen as an issue that is defensible or can be upheld under the RMS. Yet every time a part of the environment is conceded, including "less than minor effects" under an RMA decision, a bit more of our culture and Mātauranga, is lost.

53. Cumulative, negative effects on the environment represent ongoing erosion of our culture without our permission.

54. The EDS report made the following observation:

*An important implication of loss of environmental quality is the very real impacts on cultural values. Loss of environmental values translates to loss of cultural identity and can have significant and often silent consequences for mana whenua.*¹¹

⁸ Durie, MH (1998) Whaiora: Māori Health Development (2nd Edition), Oxford University Press

⁹ Marie A Brown, Raewyn Peart, Madeleine Wright (2016) **Evaluating the environmental outcomes of the RMA**. A report by the Environmental Defence Society, June 2016
<https://www.ema.co.nz> (downloaded 29.09.16)

¹⁰ Ibid page 6, Para 4, Summary.

¹¹ Page 10 Marie A Brown, Raewyn Peart, Madeleine Wright (2016) **Evaluating the environmental outcomes of the RMA**. A report by the Environmental Defence Society, June 2016

55. Again, the EDS report highlights:

*A lack of effective strategy and oversight of decision-making has reduced the potential to protect environmental values, including the capacity to manage cumulative effects.*¹²

56. Advocating by this submission is to assist Maori kids in identity re-inforcement, to enable their reconnection with their Pacific – Polynesian identity and to support their well-being through a Maori cultural relationship with their river, estuary and moana.
57. This is not just about sailing the oceans in traditional craft. It is about a simple activity like being able to pick healthy abundant pipis and share them with those who are unable to collect pipis. That's how we on the coast used to teach a fundamental tenet of tikanga Maori called manaaki: respect and caring and sharing with others.
58. You pick pipis, you share them with those who can't collect pipis because they are sick or disabled or old. You get a sense of well-being from sharing and providing for your whanau.
59. It is about learning the stories that are abundant about piri and observing the state of the mauri while you are picking pipis. It's about practising karakia, to thank Tangaroa for providing and utu, (reciprocity) when called for.
60. It is about respecting the rocks which abound in our estuary because every rock has a connection to our ancestors and hold many stories.
61. It is about stopping the Maketu Community Board from excavating them because they think they have a right to do that. It is about challenging the badly worded resource consent which allows this behaviour by the Western Bay District Council without impunity.
62. There are other recent cases in Maketu where there has been no resource consent and the Bay of Plenty Regional Council has done nothing. Again we note that the EDS report has also reported this as an issue:

Monitoring and enforcement of the requirements of the Act is often lacking, despite comprehensive provisions and a range of tools being available. What little research that has been done in this area has generally reported poor overall rates of compliance, weak exercise of compliance monitoring functions by agencies and a failure to follow through and use formal enforcement tools in many cases.

¹² Marie A Brown,, Raewyn Peart, Madeleine Wright (2016) **Evaluating the environmental outcomes of the RMA**. A report by the Environmental Defence Society, June 2016

63. I refer to research which reflects our position of the effects on culture and environment for Maori:

While Western conservationists have tended to emphasise ecological impacts, kaitiaki are concerned at both ecological and cultural consequences of the losses. Cultural consequences include severance of links between people and the food species, reduced connections between people in the community, erosion of ways that kinship is maintained, severed transmission of cultural knowledge, and impaired health and tribal development. More fundamentally, the cultural- ecological degradation transgresses fundamental concepts of Māori worldview in ways that undermine cultural and individual identity. Such cultural consequences should not be overlooked in assessments of the impacts of loss of biodiversity and species abundance. Kaitiaki are now seeking to restore the health and abundance of mahinga kai (food gathering sites) to simultaneously accelerate restoration of nature and culture.¹³

Specific matters:

- 1. It is abhorrent to our cultural ethics to discharge waste-water into water, even to wetlands.**
- 2. It compromises our plans to restore the estuary**
- 3. It impacts the moana and compromises our kaitiaki obligations to Hinemoana and Tangaroa.**

It is abhorrent to our cultural ethics to discharge waste-water into water, even to wetlands.

64. The Waitangi Tribunal Report Wai 4¹⁴, is attached which attests to this assertion. You should also note that in the report Ngati Pikiao also referred to the issues of farm nutrients – and were ignored.

65. Now we have over a \$100 Million dollar debt trying to clean the Lakes up.

66. This supports my claim that what is good for Maori is good for the environment.

It compromises our plans to restore the estuary

67. Ahi kaa roa objected to the Ohau Diversion wall. However it was approved because the nutrient pollution impacts were less than other nutrient impacts from other sources along the river. The sustainable decision was deferred.

¹³ Dick, J., Stephenson, J., Kirikiri, R., Moller, H., and Turner, R. (2012) Listening to the Tangata Kaitiaki: Consequences of the loss of abundance and biodiversity in coastal ecosystems in Aotearoa New Zealand. *MAI Journal* 1: 117-130.

¹⁴ WAI 4

The ahi kaa of Maketu as I referred earlier, took a 35 year fight to get 20% of the river volume rediverted through the estuary. This is the first step in restoring our estuary.

68. The cultural impact assessment attached¹⁵ explains the social effects of the desecration of the estuary. This is attached. Our identity is tied to the estuary. If we restore the estuary, we believe we can address many of the social impacts. We are doing this ourselves as an assertion of our rangatiratanga and our kaitiakitanga.
69. The growth of the gang culture in Maketu has a direct, inverse relationship to the diminishing well-being of the estuary.
70. The biodiversity in the estuary has diminished so that the diversity reported in¹⁶ Murray 1978. Some species have disappeared. This includes kaimoana.
71. The only effort to deal with the nutrient pollutants in the estuary has been at a cost to Maketu residents of an increase in rates from about 700.00 pa to now 2900.00 per annum through a sewage scheme.
72. Given the 35 year fight and massive rates increase, is there not something wrong with this equation. Why are the poorest people in this chain the only ones paying to clean the estuary? While others keep polluting under the excuse the activity has only a minor effect?
73. The estuary continues to be impacted by nutrient pollutants, and no costs have been imposed on farmers to clean up their act. I attach here the reports from the BOPRC RDD committee reporting on the state of the estuary pollution.
74. Our restoration plans by the ahi kaa include dealing with the continuing nutrients pollution, the many anoxic areas in the estuary and reseedling of kaimoana.
75. We deliver a kaitiaki programme to the school preparing the next generation for their responsibilities to look after the estuary.

¹⁵ CIA Ongatoro

¹⁶ Ecology and geomorphology of Maketu Estuary, Bay of Plenty

Author:

Murray, Kenneth N.

Personal Author:

[Murray, Kenneth N.](#)

Publication Information:

[Hamilton, N.Z.] : University of Waikato, 1978.

76. At present we are Matauranga Maori monitoring. All these activities towards restoration are from our own funds.
77. It is not acceptable to us to have WBDC use the redirection as an excuse to say the nutrient pollution from the TPWWTP will be further diffused by the increase in water. This is a disgusting claim and revealing of their lack of recognition of cultural impacts and arrogant, flippant attitude.
78. A responsible authority would treat our estuary and us with respect, not misuse their power to keep us poor and our culture compromised and use our 35 year efforts as an excuse to keep polluting. This situation is an example of what EDS says in ref above:

Agency capture of (particularly local) government by vested interests has reduced the power of the RMA to appropriately manage effects on the environment¹⁷

It impacts the moana and compromises our kaitiaki obligations to Hinemoana and Tangaroa

79. Our kaitiakitanga of the sea is dependent on our respect of our ancestors. Again, our identity arises from our whakapapa to these deities, Hinemoana and Tangaroa. I named one of my grand-daughters Hinemoana. As kaitiaki its our responsibility to stop pollution of the sea. How does Council justify this colonial mentality?
80. Like the example above, I cannot understand why a Council would think that polluting the sea for another 35 years is acceptable. It isn't. We are not a 3rd world country. We have the means to stop pollution and accept the need to address climate change issues. The health of the sea is a critical part in addressing climate change.

In summary:

81. All of the arguments presented in this brief of evidence are consistent with the evidence that was presented, scrutinized, questioned and reported and recommendations made by the Waitangi Tribunal in the WAI 262 claim.
82. The report – 'Ko Aotearoa Tenei' ("This is New Zealand") – found that the Government had failed to comply with its obligations, under the Treaty of Waitangi, to ensure that guardian relationships between Maori and their *taonga* (their traditional knowledge and artistic works, and their culturally significant species of flora and fauna) were acknowledged and

¹⁷ Ibid page 6, Para 4, Summary.

protected, and recommends that future laws, policies and practices do acknowledge and respect those relationships.

Resolving impacts:

83. In this case, our impacts will be resolved by an appropriate and timely infrastructure which discharges treated wastewater to land. The land can then be planted (unlike a pile of rocks). I don't accept that the Council needs another 35 years to achieve this. I claim 5 years is plenty of time.
84. There are too many compromises in the consent condition. Whilst the consent says things to be done in a certain time, if they are not, there is nothing that can be done. I mean there has been very little advances since the consent was belatedly lodged.
85. Similarly, where the consent conditions refer to certain standards, if they are not reached, nothing will happen. I note that the BOPRC has some concerns also around authorities and their WWTP issues.

Kaituna River Claim

1 - Preliminary Pages

1 - Publication Information

REPORT OF
THE WAITANGI TRIBUNAL
ON
THE KAITUNA RIVER CLAIM
(Wai 4)

WAITANGI TRIBUNAL
DEPARTMENT OF JUSTICE
WELLINGTON
NEW ZEALAND

November 1984

Original cover design by Cliff Whiting,
invoking the signing of the Treaty of Waitangi and
the consequent development of Maori-Pakeha history interwoven in Aotearoa, in a
pattern not yet completely known, still unfolding.

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Wai 4
IN THE MATTER of the Treaty of Waitangi Act 1975

AND
IN THE MATTER of a claim by
SIR CHARLES BENNETT and
others in respect of a proposed nutrient pipeline to the Kaituna River

The Minister of Maori Affairs
Parliament House
WELLINGTON

FINDING OF THE WAITANGI TRIBUNAL
ON THE KAITUNA CLAIM

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

1 - Preliminary Pages

2 - Table of Contents

Contents

- 1.0 Record of Hearing
- 2.0 Introduction Lake Rotorua-A National Asset
- 3.0 The Maori Claimants
- 4.0 The Treaty of Waitangi
- 5.0 The Legal Status of the Treaty of Waitangi
- 6.0 The Treaty of Waitangi Act 1975
- 7.0 Kaituna Catchment Control Scheme
- 8.0 Land Disposal of Effluent
- 9.0 Issues Raised by the Claim
- 10.0 Recommendations of the Tribunal

Appendix Extract from the translation of the evidence of Te Irirangi Cairo Te Akiawa

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

2 - Record of Hearing

1 - People and Parties Involved

1. RECORD OF HEARING

1.1 This claim was lodged on 30 January 1978 by Sir Charles Bennett, of Maketu, the late Pokiha Hemana of Okere Falls, Tikitere Takuira Mita of Maketu, Stanley Newton of Mourea, Irikau Kingi of Rotorua City and Bob Kuni Roberts of Te Puke. They asked that the proposal for a nutrient pipeline to the Kaituna River be not proceeded with.

1.2 In February 1978 a copy of the claim was sent to the District Engineer, Ministry of Works, Rotorua, the Town Clerk, Rotorua City Corporation, and the Bay of Plenty Catchment Commission, Whakatane.

1.3 At first the claim was adjourned at the applicants' request to ascertain whether the project was to proceed and a water right was to be applied for. It was later adjourned to ascertain the outcome of certain water right applications and appeals, and also because the claimants considered that the project might not proceed irrespective of the outcome of those proceedings.

1.4 Following a decision of the Planning Tribunal of 2 December 1983 in respect of three appeals the claimants sought a hearing from this Tribunal.

1.5 Formal notice of the hearing was forwarded to the claimants and to:

The Secretary, Bay of Plenty Catchment Commission & Regional Water Board

Secretary, Arawa Maori Trust Board

Town Clerk, Rotorua District Council

Secretary, Ngati Pikiao Trust Maori Committee

T L John

The County Clerk, Tauranga County Council

The Secretary, Guardians of the Rotorua Lakes

Minister of Works and Development

Minister of Agriculture and Fisheries

Minister of Internal Affairs

Commissioner of Works and Development

Director-General, Ministry of Agriculture and Fisheries

Secretary of Internal Affairs

Commissioner for the Environment

The Director, National Water and Soil Conservation Authority

Director, Water Resources Council

Director-General, Department of Health

1.6 The claim was heard at Te Takinga Marae Mourea near Rotorua

(a) during the week commencing 23 July 1984 for the purpose of hearing the claimants and settling the issues, and

(b) during the week commencing 8 October 1984 for the purpose of hearing other interested persons and final submissions.

1.7 At the hearings the claimants were represented by H K Hingston, solicitor of Rotorua. He called a number of persons who outlined their opposition to the Kaituna Nutrient Pipeline and who spoke not only for the various hapu they represent. He called

S T Newton, kaumatua of Ngati Pikiao

J P Malcolm, member of Ngati Pikiao

T Wharehuia, kaumatua of Ngati Pikiao

Te A Welsh, kuia of Ngati Pikiao

Te I Te Akiawa, member of Ngati Pikiao

M Morehu, kaumatua of Ngati Pikiao, and

E Moke, member of Ngati Pikiao

In addition the concern and support of the Te Arawa tribes as a whole was expressed in the submissions of

A Wilson of Ngati Whakaue, chairman of the Arawa Maori Trust Board

T W Vercoe of Ngati Awa and Ngati Pikiao, secretary to the Board, and

E M Schuster, weaver, Maori Arts and Crafts Institute, Rotorua

Professor I H Kawharu, who holds the chair of Anthropology at Massey University, and Bishop M A Bennett, retired Bishop of Aotearoa, were called to give submissions on the history and interpretation of the Treaty of Waitangi and P G McHugh, a Fellow

of Sidney Sussex College, Cambridge, was called to make extensive submissions on legal aspects of the Treaty and relevant aspects of customary and colonial law.

L H Moore, solicitor of Rotorua, appeared for the Rotorua District Council and made general submissions. In addition he called

G S Roberts, District Engineer (Water and Drainage)

B H Underwood, Consulting Engineer and a director of Murry-North Partners Ltd., and

Dr W F Donovan, Consulting Biologist and a director of Bioresearches Ltd.

They gave extensive technical and expert evidence on the catchment as a whole, the historical development, waste water discharges to the lakes, the sewerage programme, and the nutrient pipeline, recent research into alternative disposal systems and recent research and current developments in sewage treatment.

The Bay of Plenty Catchment Commission and Regional Water Board was represented by T G Richardson, solicitor of Whakatane. He made extensive submissions on the role of the Board and reviewed the Nutrient Pipeline in the context of the Kaituna Catchment Control Scheme as a whole. He called W A Taylor, Water Resources Engineer to the Board, who gave evidence on the background, the present position and alternatives.

A Munro, Assistant Office Solicitor, is on record as appearing for the Ministry of Works and Development with B Curtis, B Rankin and N R Watson. N R Watson, however, presented the broad submissions in which he reviewed the role of the Ministry and certain statutory and case laws. Evidence in support of the Nutrient Pipeline was given for the Ministry by the following: A K Attwood, District Water and Soil Officer, Hamilton, an engineer who detailed the background to the Kaituna Catchment Control Scheme; Dr E White, Leader, Freshwater Section, Department of Scientific and Industrial Research, Taupo, who spoke on eutrophication of the lakes and river; Dr Cameron, Chief Public Health Officer, Ministry of Works and Development, Wellington, on waste water treatment and disposal with particular reference to the Rotorua District Council's sewage treatment plant and to options for effluent disposal; C Cowie, Deputy Director of the Water and Soil Directorate of the Ministry on the current position.

C N Northover, Office Solicitor, Wellington, appeared for the Commission for the Environment. He read a declaration by H H R Hughes, Assistant Commissioner, on the impact of the pipeline on the Kaituna River and Maketu Estuary, the impairment of Maori values and difficulties associated with the disposal of waste into inland water. Evidence was then given for the Commission by Dr C D Stevenson, section leader, Water Section, Chemistry Division, Department of Scientific and Industrial Research, Petone, on land treatment and disposal options for the Rotorua sewage effluent, and Dr P P Tortell, Senior Investigating Officer, Commission for the Environment, on the effect of a discharge to the Kaituna River on the rehabilitation of the Maketu Estuary.

H S Gajadhar, office solicitor of Wellington, made submissions on behalf of the Director-General of Agriculture and Fisheries.

For the Secretary for Maori Affairs, J Walker, office solicitor, Rotorua, urged greater Government examination of matters of customary law raised by P G McHugh with a view to possible legislative reform.

C J Richmond, Principal Environment Officer for the Wildlife Service of the Department of Internal Affairs, represented the Conservator of Wildlife. He made submissions on the potential impacts of proposed sewage effluent discharges to the waters in the catchment.

Dr A Miller, Medical Officer of Health, Rotorua, made submissions on behalf of the Director-General of Health on the health risks associated with a discharge to the Kaituna River. Further and more detailed evidence was then given by D G Till, Chief Bacteriologist of the National Health Institute and branch head of the Department of Health Public Health Laboratory Services.

E J Sherring, Deputy County Engineer, appeared for the Tauranga County Council.

Dr G R Fish, scientist, of Rotorua, made submissions on behalf of the Guardians of the Rotorua Lakes on the options of the pipeline discharge and discharge to the lake after further treatment and stripping.

Dr J M Harris, scientist, of Rotorua, and chairman of the Works and Water and Drainage Committee of the Rotorua District Council, made an independent submission in support of the claim on researches into nutrient stripping as an alternative to the pipeline.

M M Tindall of Maketu made independent submissions on his researches into the effect of the Kaituna River diversion on the Maketu Estuary.

1.8 A written submission was received without an appearance by B W Wilkinson of Maketu on behalf of the Maketu Action Group.

A brief statement in support of the claim was filed by W L O'Leary of Holdens Bay, Rotorua, without appearance.

Brief statements in support of the claim were filed in identical form by residents of Maketu, Te Puke and Mount Maunganui being H E Bragg, S E Bragg, M B Battersby, T R Lewis, V T Lewis, C M Lewis, T M Lewis and J Hoogstraten.

1.9 During the course of hearing the Tribunal heard a motion for disqualification. A finding thereon was despatched to the mover and to Counsel for the claimants.

1.10 The hearing of the claim was lengthy and complex and the Tribunal would like to record the assistance it received from all parties, and the hospitality given by Ngati Pikiao. The claimants' evidence was predominantly in Maori and we record the assistance given by J P Malcolm as interpreter.

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

3 - Finding Of The Tribunal

1 - Summary

2. INTRODUCTION

2.0 We recommend that the scheme to build a pipeline from the Rotorua Waste Water Treatment Plant to the Kaituna River should be abandoned. The cost of this proposal was first estimated at about \$3 million and it is now estimated to cost between \$11 million and \$12 million. The money has been allocated but we think it can be better spent in other ways as this Report will show.

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

3 - Finding Of The Tribunal

2 - Background

LAKE ROTORUA-A NATIONAL ASSET

2.1 For the last 20 years or more concern has been expressed at the deteriorating condition of Lake Rotorua, Weed growths have flourished from time to time, scum made up of colonies of algae has disfigured the surface of the water, sedimentation has caused deposits of mud to build up on the lake-bed and the water has become more clouded to a noticeable degree than it used to be 30 years ago.

This concern has been officially recognised and since the 1960's scientific observations have been made on the lake that have become progressively more intense. From 1978 the Regional Water Board and the Ministry of Works and Development have taken samples of lake waters every two months from ten different sites. (Evidence of Mr W A Taylor - Bay of Plenty Catchment Commission).

2.2 Rotorua City is a great centre of tourist activity and the lake has a place of importance in the attractions of the district second only to the thermal regions. It is used for recreational purposes, and in particular for trout fishing which attracts tourists from many parts of the world. If the lake were to be allowed to deteriorate the consequences for the tourist industry would be very serious indeed. This fact is not disputed by anyone and considerable amounts of public money have been spent to protect Lake Rotorua from continued degeneration. It is recognised on all sides as being a national asset of importance.

2.3 But Lake Rotorua does not exist on its own. It is one part of a connected series of waterways that affect each other. The outflow of the lake is through the Ohau Channel which leads into Lake Rotoiti, another beautiful body of water that has long been a tourist attraction. The outflow from Rotoiti is the Kaituna River, a stretch of water that flows for about 50 km from Lake Rotoiti to the sea. It is famous for the trout pools in its upper reaches, the Okere falls not far from Lake Rotoiti and for the rapids and waterfalls to be found as it makes its way to the Maketu Estuary on the coast of the Bay of Plenty. This estuary is large and distinctive. It has an important place in Maori life and history. It has also been a resort for sportsmen who have travelled to it for many years for all kinds of aquatic recreation and for duck shooting. We heard evidence from several quarters including a spokesman for the Maketu Estuary Protection Society (Mr M M Tindall), that left us in no doubt of the general importance that should be attached to the Estuary. We were told that the Commission for the Environment has recently completed a report on the locality.

2.4 We therefore feel justified in concluding that Lake Rotorua cannot be looked upon in isolation. Regard must also be had to the rest of the water system because if Lake Rotorua deteriorates so will Rotoiti, the Kaituna and Maketu. Anyone who doubts this

finding need look no further than to the evidence of Dr Edward White, leader of the Freshwater Section of the Dept. of Scientific and Industrial Research who told us in no uncertain terms that scientific study on Lake Rotoiti shows that the "... change in dissolved oxygen status over 26 years represents massive and rapid deterioration for a lake as large as Rotoiti. I see no prospect of either arresting this deterioration, or of restoring the lake, without reducing the quantity of nutrients entering Lake Rotorua."

2.5 The Ministry of Works and Development like everyone else saw the need to reduce the quantity of nutrients entering Lake Rotorua. It therefore proposed more than 20 years ago that the whole of the treated effluent from Rotorua City's sewerage system should be piped for a distance of 20 km and poured into the Kaituna River. That proposal has been steadfastly, almost doggedly, advanced by officials of this department ever since, until it became the only option open to the Rotorua District Council and the Bay of Plenty Catchment Commission. We think this proposal was a mechanical answer to a problem that is open to other solutions of biological or chemical kinds. With hindsight it seems to us to have been the response coming from the mind of an engineer, not the response that would be forthcoming from a biologist or a chemist. Advances in sewage treatment over the last 20 years have been considerable, and in the last 10 years, so we were told, they have been remarkable. Much more is known today about the treatment of sewage effluent than was known 20 years ago when the pipeline scheme was first devised.

2.6 If the Kaituna River and Maketu Estuary are to be regarded as part of the one water system starting with Lake Rotorua, the pipeline proposed will do no more than shift the problem from the lake to the river and the estuary. We have more to say about this later, but we have concluded that the whole water system should be seen as one complete entity and that all four parts of it - the two lakes, the river and the estuary - deserve protection from contamination and deterioration.

2.7 While we have referred to the Maketu Estuary we wish to make it clear that the related question of whether the river should be re-directed through the estuary was not in issue before us. We understand that that question is currently before the House of Representatives on a petition, and we make no comment on that aspect.

Nonetheless we were called on to consider whether the existing discharges of the Affco freezing works and the dairy company into the lower Kaituna River and the proposed discharge from the Te Puke Borough Council's plant already affected or would affect the river to the point where further pollution would not matter or even to the point that the re-diversion of the river could not be an option for the Maori people.

We considered that those issues must be severed from our inquiry as we cannot presume that those particular problems are incapable of independent resolution on the consideration of the diversion question by the House.

Kaituna River Claim

4 - The Maori Claimants

1 - Objections Raised

3. THE MAORI CLAIMANTS

3.1 The claim before us is made in the names of the late paramount Chief of Ngati Pikiao Pokiha Hemana, by Sir Charles Bennett and four other Maoris listed above. They come from Maketu, Te Puke, Okere Falls, Mourea and Rotorua but they are not the only claimants. They speak on behalf of the whole Ngati Pikiao people numbering over 2000 in population, one of the sub-tribes of Te Arawa. The ancestral land of Te Arawa stretches from Tongariro to the sea. The two lakes, the river and the estuary all lie within Arawa boundaries and all four bodies of water have an important place in tribal history and culture.

3.2 Te Arawa is a confederation of Maori tribes which are descended from the crew of the Arawa canoe that landed at Maketu many hundreds of years ago. From Maketu the voyagers and their succeeding generations moved inland occupying the central part of the North Island in terms of the tribal saying "... Mai Maketu Ki Tongariro ..." from Maketu in the Bay of Plenty on the sea-coast, to Mt Tongariro near Lake Taupo in the hinterland. Te Arawa comprises the tribes descended from Tuwharetoa living near Lake Taupo, and the tribes claiming descent from Tamatekapua living on the shores of the Rotorua lakes and surrounding districts down to Maketu itself. Their lands are shaped to European eyes rather like a long-handled pan, or to Maori eyes like a taha - a gourd or calabash. The wide interior lands of the central volcanic plateau and the Rotorua Lakes are in the bowl of the pan or the body of the calabash, and the Kaituna River runs down the handle of the pan or the neck of the gourd to the estuary and the sea at Maketu. Most other great Maori tribes have large expanses of coastline from which to fish and gather shellfish but Te Arawa for all the wealth of its forests, farms and horticultural development has a comparatively narrow strip of coast about 50 km in length, the main feature of which is the Maketu Estuary.

3.3 One of the sub-tribes of the Tamatekapua sector of Te Arawa is the Ngati Pikiao, who occupy most of the northern shores of Lake Rotoiti and the land alongside the upper reaches of the Kaituna as it follows its course to the sea. Their territory merges with the Tapuika people who live alongside the lower reaches of the river and down on the coastal plain.

3.4 The Maketu Estuary has always had great importance for Te Arawa. The very name Maketu is taken from the islands from which the Arawa canoe came and is the old name for the island of Mauke in the Cooks Group.

The stern anchor of the canoe (named Tuterangi Raruru) is said to have been placed at Te Awahou, roughly where the Kaituna River flows out to sea today following the diversion cut that was made in 1957. The bow anchor (called Tokaparore) was set

down at about the place where the Kaituna River used to flow out to sea at Maketu. The tribal importance of Maketu goes back through the ages to the very beginnings of the tribe in Aotearoa.

3.5 Kai Moana (food from the sea) has great significance for the Maori. It is almost as unthinkable for a Maori to entertain guests without seafood as it is for a European to offer a meal that has no meat. Maketu and the Kaituna River have been a rich source of fish, shellfish, eels, fresh-water crayfish (koura) and many other kinds of food. The estuary has been important for this purpose for generation after generation. After the Kaituna River diversion cut was made the main flow of the river no longer made its course through the estuary. We were told by the Bay of Plenty Catchment Commission Engineer Mr W A Taylor that the consequences to the estuary have now become obvious, and his evidence that the deterioration is serious was corroboration of what Mr Tindall had said on behalf of the Maketu Protection Society. The Assistant Commissioner for the Environment, Mrs Helen R H Hughes, informed us on this subject that there is already evidence of serious contamination at the present river mouth and real anxiety has arisen that shellfish there may not be fit for human consumption.

3.6 The claimants gave evidence of their strong opposition to the pipeline proposal. They said that to pump sewage effluent into the Kaituna River was objectionable on medical, social and spiritual and cultural grounds.

3.7 Medical grounds: They brought evidence to show that no matter how "pure" the effluent was, even if the usual indicator based on a faecal coliform count was low, there was still a risk of contamination of the river and the estuary by viruses which they said could be carried by sewage effluent even after it had been treated to the high standard maintained by the Rotorua District Council which controls the Waste Water Treatment Plant.

3.8 On this point Mr D W Till, Chief Bacteriologist in the Dept. of Health gave detailed evidence before us which included reference to studies made by Professor Margaret Loutit of the University of Otago who had reported that entero-viruses were found in significant numbers in sea water near a sewage outfall, in marine sediment collected from a depth of seven metres two kilometres offshore from a sewage outfall and in mussels collected as far as 2.5 km along the coast from a sewage outfall. He then went on to say:

"...In the same series of studies it has been reported that viruses can be transported in river waters for distances up to 20 km from a sewage treatment plant outfall and still remain viable for propagation by tissue culture..."

3.9 It may be that different water temperatures in different places will have an effect upon the distance that viruses from sewage effluent will travel in river waters, but clearly this evidence supports the claimants who say that the effluent is of great concern to them on medical grounds.

3.10 Social Grounds: The second objection, that the effluent should not be discharged into the Kaituna River on social grounds, is even more obvious. None of us would willingly go bathing or boating in waters containing sewage effluent. There is a

psychological revulsion from human waste that is probably common to all the peoples of the world. Mr W R Cameron, Chief Public Health Officer in the Ministry of Works and Development, spoke of this when he said that "...animal and in particular human wastes have always been considered to be revolting..." It needs but a moment's thought for all of us to recollect from our own experience incidents in which we have recoiled from contact with waste of this kind. On a larger scale one can recall the tremendous reaction in the City of Auckland 30 years ago when a proposal was floated to pipe sewage effluent into the waters of the Waitemata Harbour. Human psychological responses to sewage effluent are deep-seated and obvious. There is no doubt that the claimants have a sound basis to their objections to the Kaituna pipeline proposal on social grounds.

3.11 Spiritual and Cultural Grounds: It was in this part of the case that we heard evidence that was highly charged with emotion and remarkably convincing. Witness after witness came forward to support the claimants in their assertion that to mix waters that had been contaminated by human waste with waters that were used for gathering food was deeply objectionable on Maori spiritual grounds. We were told of Maori custom that requires water used for the preparation of food to be kept strictly separate from any kind for other purposes. We were given examples at length of the cultural traditions that illustrate long-standing rules governing the preparation and consumption of food. Of our own knowledge we knew that these rules are projected to a far-reaching degree, even to the point that it is extremely bad manners in Maori terms for anyone even to sit on a table that is used for eating food. And it is quite unacceptable for anyone to wash clothing, even tea towels, in a sink or basin that is used for preparation of food.

3.12 Customs and traditions such as these have their origins in common sense and elementary hygiene but of course they assume much greater importance when it comes to the disposal of human waste. The Kaituna River and the Maketu Estuary have long been an important source of food as we have already pointed out, and on cultural grounds the elders of the Ngati Pikiao tribe made it clear beyond any doubt that if the pipeline is built they will have to declare the river tapu so long as the sewage effluent discharge continues. Such a declaration would make it impossible for any food to be gathered from those waters and they would suffer a very serious loss as a result. This loss is not to be calculated solely in economic terms for the worth to them of the sea food and fish from the river is a valuable and important part of their sustenance. It would be a grave loss of tribal mana for the river and the estuary to be denied to them.

3.13 Despite the vehemence of the evidence, (of which we will give an example or two a little later) we saw a real inconsistency in the Maori position and we explored it carefully.

3.14 On the one hand the claimants were saying that to discharge the effluent into the river would lead to the waters being declared tapu. But on the other hand effluent is now being pumped indirectly into Lake Rotorua, yet no tapu has been declared on the waters of the lake. Furthermore we suspected, and we were proved to be right, that the Maori people, Ngati Pikiao and others, now fish in Lake Rotorua and in the Ohau Channel as well as in Rotoiti which receives the waters of Rotorua.

3.15 We questioned the claimants closely on this point. It was explained to us that the Ngati Pikiao people do not have an authority over Lake Rotorua. That body of water is not solely within their territory. The greater part is controlled by another sub-tribe, the Ngati-Whakaue near Rotorua City, and some other sub-tribes around other parts of the shore line. They told us that when Hongi Hika attacked Mokoia Island the bloodshed that resulted led to a tapu being placed on Lake Rotorua, but that tapu did not affect the Ngati Pikiao people. Tapu, they said, is a matter of territorial responsibility. They politely and pointedly refrained from comment on the attitude of other sub-tribes to the present situation in Lake Rotorua. But they said equally pointedly that the policy and responsibility of Ngati Pikiao was all too clear to them and the inevitable consequences all too plain. If the pipeline discharges effluent into the Kaituna River, then the river will have to be declared tapu and the waters will be closed off to them for all purposes so long as the discharge continues to flow.

3.16 Such a tapu would affect not only the fish in the water; it would also affect any vegetation that had contact at any time with the water, by which they meant not only vegetation that would be splashed by water at normal levels but anything that was covered by flood levels. They explained that along the banks of the river there grow plants of many kinds that have special value and importance. These are used for medicinal purposes and for weaving and dyeing and there was produced before us a wide range of handiwork from flax kits to feather cloaks that are made by the Ngati Pikiao people using vegetation, some of it rare, that is to be found in their tribal territory.

3.17 We spoke earlier of the depth of feeling shown in the evidence. Let us give some examples. Mata Morehu described the course of the Kaituna River from Lake Rotoiti downstream. He told us of the sequence of natural features, illustrating the history of each. He spoke with deep emotion of the place called Te Wai-i-rangi, a stretch of the water near to where the discharge is to take place as the pipeline is now planned. This spot on the river (a lovely clear pool from which the river flows on into a green tunnel of vegetation) was, he said, the place "where my ancestors returning from battle would go to the water and rid themselves of the tapu upon them after the bloodshed of warfare." He went on to speak of burial caves that line the river in the steep gorges through which it runs, all of which are sacred places to the Ngati Pikiao. If the river were to be placed under tapu these sacred places would become inaccessible. The silence in the meeting house as he spoke showed the close attention which all present, Maori and European alike, paid to his words.

3.18 Mrs Emily Schuster is a weaver of great skill and standing, not only in the local Maori community but throughout New Zealand. She conducts classes in arts and crafts and the products of her work were put before us. She spoke in detail of the raw materials she and her students gathered from the river banks and she told us, naming each, of the qualities of one type of vegetation after another. "In the Rotorua area," she said quite sadly, "we have progressed so much that the only place I can take the women is along the Kaituna River. The kiekie is essential and has to be specially treated. To get the true whiteness out of the kiakia it must be soaked in running water and the only place we can do this is the Kaituna..." Even to the untrained eye the quality of her workmanship was obvious, and the importance to her work of the flora on the Kaituna riverbanks was plainly evident. She told us that she "would lay down her life to save the Kaituna."

3.19 Another remarkable piece of evidence came from Te Irirangi Cairo Tiakiawa who recited the genealogy of his own family and the Ngati Pikiao people. This recitation was given without resort to notes or records and was an astonishing feat of memory. But to those knowledgeable in the Maori culture it was an almost unique performance because much of what was said is quite unrecorded and is the result of generation after generation of education in the traditional Maori way. Some of those present who might well be regarded as expert in Maori history pressed upon us the importance of the accumulated knowledge and to ensure that it is not lost we have decided to incorporate the whole of this part of the evidence in a special appendix to this finding of the Tribunal.

3.20 The Acting Chairman of the Arawa Trust Board, Mr Alec Wilson, came before us to say that no less than ten members of the Board were present to support the claimants. He said that he belonged to the Ngati Whakaue people and that for them Lake Rotorua no longer provided the food that they had long been accustomed to obtain from it.

He said to us:

"... We have to come here to ask our relatives for food. It is too late for us. The damage is done, The only fish in the lake is trout. None of the native fish is left in the Utuhina Stream nor in Lake Rotorua... This is our last stand. No other Tribunal gives us the opportunity to say what we feel and allows us to speak openly... We feel we are slowly and surely being crushed under the weight of Europeanism and it was a gleam of hope for us when the Waitangi Tribunal was formed..."

3.21 But perhaps the most dramatic moment in the whole hearing was when a white-haired elderly Maori man came forward and introduced himself as Tamati Wharehuia from Te Matai, an elder of his tribe and one of a long line of Chiefs who had lived by the Kaituna River for generations. (He is also known by the European name of Bob Roberts and is one of the claimants). He told us, as the others had done, of the importance of the river, of its prominent place in tribal history, of the events that had occurred from time to time and from place to place down the whole course of the waterway. He urged upon us the need to protect it from harm and likened the river to his own people whom he had a duty to protect from harm. Then, in a ringing voice he brandished his tokotoko (staff) and said to us:

"...If this scheme goes ahead I want to make it clear that I will myself have to take direct action. I will take the patu that has been handed down to me from my ancestors generation by generation and do injury to stop this thing. After that the law must take its course with me, but that is beside the point..."

3.22 These examples from the evidence are recorded here to show the depth of feeling that this scheme has aroused and to demonstrate that on spiritual and cultural grounds the opposition of the Maori people is deep-seated, intense and to a degree implacable. But that is not the end of the matter. Our task requires us to look at the whole of the evidence to see whether there is any practical alternative.

Kaituna River Claim

5 - The Treaty Of Waitangi

1 - The Maori Viewpoint

4. THE TREATY OF WAITANGI

4.1 The Treaty of Waitangi Act 1975 includes in its Schedule the text of the Treaty in both English and in Maori. (We have already pointed out in the Te Atiawa decision that there is a misprint in the Maori version. We do not propose to advert to it again.)

4.2 The claimants called as a witness an eminent scholar, Professor Hugh Kawharu, who holds the Chair of Anthropology at Massey University and is about to take up the Chair of Anthropology at the University of Auckland. As these appointments show, Professor Kawharu's distinctions include a high reputation for his learning on Maori culture and traditions throughout the academic world; apart from his other qualifications he has been awarded no less than three doctorates.

He was called to give evidence of the meaning of the Treaty to the Maori Chiefs who signed it and to the Maori of today so that we might better understand the Maori viewpoint on the principles covered by the Treaty. He tendered to us evidence comprising 18 typewritten pages amplified by oral explanations and additions. Throughout this section of our Finding on the claim the quotations are from his evidence.

4.3 In 1840 the Maoris in New Zealand clearly outnumbered the Europeans, perhaps by as much as 100 to one. It seems to be an agreed fact of history that until the last part of the fourth decade of last century Great Britain was not eager to add New Zealand to its list of Colonies. While trade extended here from Australia and elsewhere, Her Majesty's Government was not willing to accept the financial and military burdens of colonisation when the rewards of free trade could be reaped without corresponding expense. In 1835 a petition from a confederation of Chiefs promoted by James Busby seeking annexation by Great Britain received a guarded response but no positive action, which is not consistent with a desire for acquisition of New Zealand as a Colony. Other factors became important as the decade moved on; the French settlement at Akaroa and the arrival of French Catholic Missionaries aroused the interest of France; the United States began to show some signs of waning to add New Zealand to its possessions; the fact that the country was a safe refuge for convicts escaping from Australia and the growing lawlessness resulting from a lack of Government all led eventually to the instructions of Captain Hobson R.N. that brought him to the Bay of Islands at the beginning of 1840.

4.4 The Treaty that he offered for signature was not a unique document. Great Britain had made many such treaties with indigenous peoples in North America, West Africa, South Africa and elsewhere. Whether or not one of these treaties was used as a precedent is not known but it is clear that various drafts were prepared in the English language and one at least of the Maori versions is probably a copy of one of these

drafts. It is said that James Busby, Capt. Hobson and his secretary J. S. Freeman all played some part in the composition, but Professor Kawharu told us that the Maori version was compiled solely by the Rev. Henry Williams who was the head of the Anglican Church Mission in the Bay of Islands.

4.5 Translation from English into another language is a delicate art. Translation from Maori into English is also a delicate art. Some concepts are almost untranslatable; others have a delicate nuance that must be captured precisely to pass on the correct meaning. To give an example: if one, using English, wishes to describe a person as holding firmly to his beliefs in a particular matter he may be described as "a steadfast man", "a stubborn man" or "an obstinate man". Each of these three adjectives describes a person of fixed beliefs but the nuance in each case is quite distinct. The first is complimentary of the subject, the second though complimentary is rather more neutral, and the third is clearly deprecatory.

4.6 When the Rev. Williams sought to translate into Maori Article I of the Treaty by which the Confederation of Chiefs and the Individual Chiefs who were not members of the Confederation agreed to cede to Her Majesty the Queen of England "all the rights and powers of sovereignty" which they possessed over their territories, he sought a word in the Maori language that did not exist. There was no word for "sovereignty" as known to English law, a concept foreign to the Maori culture. So he reached into the recesses of missionary Maori and drew forth the word "kawanatanga" which is to be found in the Bible translation and in the Book of Common Prayer as meaning in the English version "governance".

4.7 In Article II, by which the Crown confirmed and guaranteed to the Maori signatories the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties, Mr Williams translated the guarantee as one of "...te tino Rangatiratanga" and went on to specify the land (ratou whenua) the estates (ratou kainga) and included the English reference to "forests fisheries and other properties" in the phrase "ratou taonga katoa" (all things highly prized).

Nothing much turns upon these last three phrases for present purposes but a great deal turns upon the words "kawanatanga" (sovereignty or governance) and "rangatiratanga" which has no exact equivalent in English, just as sovereignty has no exact equivalent in English, just as sovereignty has no exact equivalent in Maori. In Professor Kawharu's view the nearest one can get to "rangatiratanga" in English is to say it means "all the powers privileges and mana of a Chieftain" - or "chieftain-ness" in the widest sense.

4.8 The Professor explained to us that the discussion at Waitangi on whether or not the Treaty should be signed would have occupied a great deal of time and the Maori participants would not be likely to have paid much attention to the written words. Their attention would have been concentrated upon the ideas and arguments expressed orally in the debate, and in this connection they would have put much faith in the opinions expressed by the missionaries.

"...Customarily the Maori has had his options shaped almost as much by the impact of the oratory and the reputation of those whom he listens to on the marae as by the merits of the options themselves. This would certainly have been the case in 1840.

Thus the missionaries' reputation as honest men, reasonably coherent in the Maori tongue and knowledgeable in the ways of the European enabled them to persuade the Maori to sign the Treaty with a degree of success far beyond that which any others, particularly Hobson, could ever have achieved..."

4.9 In agreeing to cede "kawanatanga" to the Queen of England they would have known that by so doing they would be gaining "governance", especially law and order for which the missionaries had long been pressing.

"...the major problem arising from the first Article turns on the issue of sovereignty, a system of power and authority (as would have been intended by the Colonial Office) that was wholly beyond the Maori experience, a network of institutions ultimately to comprise a legislature, judiciary and executive, all the paraphernalia for governing a Crown Colony.

" The Maori people's view on the other hand could only have been framed in terms of their own culture; in other words, what the Chiefs imagined they were ceding was that part of their mana and rangatiratanga that hitherto had enabled them to make war, exact retribution, consume or enslave their vanquished enemies and generally exercise power over life and death. It is totally against the run of evidence to imagine that they would wittingly have divested themselves of all their spiritually sanctioned powers - most of which powers indeed they wanted protected. They would have "believed they were retaining their rangatiratanga intact apart from a licence to kill or inflict material hurt on others, retaining all their customary rights and duties as trustees for their tribal groups..."

4.10 The guarantee of their "rangatiratanga" was associated with the grant to the Crown of the right of pre-emption by the Crown of such lands "as the Proprietors thereof may be disposed to alienate" (Article II). Professor Kawharu is of opinion that this would not have assumed much importance for a Maori Chief in 1840. He goes on to say"

"...(it) is essential not to lose sight of the quid pro quo of the Treaty; that the collective surrender to the Crown of the power to govern was made primarily in return for the Crown's protection of each Chief's authority within his tribal domain..."

The right of pre-emption certainly became important later. When the Maori sold his land to the Crown for sixpence an acre and the Crown then sold the same land to settlers, almost immediately, for ten shillings an acre the Maori began to see unfairness. If the land was worth ten shillings an acre why was he not paid that price? The truth is, of course, that this policy was adopted to provide the Colonial Government with revenue - to Maori eyes, at the expense of the Maori.

4.11 We do not propose to embark upon a discussion of the ways in which the Maori claims that the Treaty has not been observed by the European. We can safely leave such matters to be decided from time to time as claims are brought before us. But we wish to adopt some observations by the Professor to draw attention to the importance of the Treaty of Waitangi to the Maori New Zealander. He can say, with absolute truth, that no other ethnic group in New Zealand has ever had such a solemn pact

made with it. The Maori New Zealander has a special place in our community so long as the Treaty of Waitangi stands in its present form.

4.12 Furthermore the Maori New Zealander can say that he and his forebears had an equally special part to play in the founding of our country. If he had not made the Treaty with the Queen of England, the European settlers would have been at his mercy - as they remained for nearly 20 years - for it was not until the 1860's or thereabouts that there was anything approaching equality in numbers between the two races. And when the Land Wars of the 1860's developed in Taranaki and the Waikato they would have been longer and more bloody if it were not for the Maori Chiefs who refused to participate in them because of the Treaty (and other reasons).

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

5 - The Treaty Of Waitangi

2 - The Legal Status

5. THE LEGAL STATUS OF THE TREATY

5.1 The Treaty of Waitangi has always assumed great importance in the eyes of the Maori. He believes that by the solemn agreement made with the Queen of England the peaceful colonisation of New Zealand became possible. He believes also that the Land Wars that occurred later in New Zealand's history were not the result of the Treaty but the result of failure to abide by it. We do not propose to go into the accuracy of those beliefs in this judgement, because the point arises squarely in another claim now before us and we will face that difficult matter in dealing with the claim (to the Manukau Harbour).

5.2 The European on the other hand generally regarded the Treaty as an historical event which does not have much impact on modern New Zealand. This view springs largely from the judicial decisions in cases when the legal consequences of the Treaty have been in question and which have led to the conclusion that it has no place in New Zealand law. Since the passing of the Treaty of Waitangi Act 1975, that conclusion may require reconsideration as we shall go on to explore later in this Finding of the Tribunal.

5.3 The legal effect of the Treaty of Waitangi has been described by the Privy Council in a passage frequently cited on this subject in the case of *Hoani Te Heu Heu v. Aotea District Maori Land Board* [1941] A.C. 308 at p. 324:

"....It is well settled that any rights purporting to be conferred by such a treaty of cession" (sc. The Treaty of Waitangi) "cannot be enforced in the Courts, except insofar as they have been incorporated in the municipal law..."

This has generally been taken to mean that the Treaty of Waitangi does not create any legal rights that the Courts can enforce.

[It should be noted that the authority thereafter cited in the judgement refers to rights that inhabitants of a territory may have had under the previous ruler, and acknowledges that any rights recognised by the new sovereign or its officers may be made good in the municipal Courts. This point may assume some importance as we proceed in this matter. See Lord Normanby's instructions to Capt. Hobson referred to in para. 5.6.7 below]

5.4 About 20 years later adopting the principle in the case just cited the New Zealand Court of Appeal re-affirmed it in *Re the Bed of the Wanganui River* [1962] NZLR 600, at p. 623 per Turner J.:

"...Upon the signing of the Treaty of Waitangi the title to all land in New Zealand passed by agreement of the Maoris to the Crown; but there remained an obligation upon the Crown to recognise and guarantee the full exclusive and undisturbed possession of all customary lands to those entitled by Maori custom. This obligation, however, was akin to a treaty obligation, and was not a right enforceable at the suit of any private person as a matter of municipal law by virtue of the Treaty of Waitangi itself. The process of recognition and guarantee was carried into effect by a succession of Maori Land Acts...."

5.5 Through the years there have been a number of examples of the Crown's solicitude towards the spirit of the Treaty. The Land Acts contained particular provisions for the protection of Maori customary and freehold land and for judicial supervision of alienations. More recently the Town & Country Planning Act 1977 has recognised the special relationship of Maori people with their ancestral land. (Sec. 3(1)(g)). Similarly the fisheries legislation from early times down to the current Fisheries Act 1983 has included a saving provision to protect existing customary fishing rights. When the claim was made to the bed of the Wanganui River it was defeated by a general provision as to the ownership of river beds in the Coal Mines Act 1925 (and its predecessor in 1903). Parliament therefore passed the Maori Purposes Act 1951 (and its successor in 1954) so as to empower the Court of Appeal to ascertain whether for the purposes of admitting a claim for compensation, the Maori claimants had been deprived of their rights to the river bed "by a side-wind rather than by express enactment". (T A Gresson J. on the subject of the foreshore in *Re Ninety Mile Beach* [1963] NZLR 461 at 477-8).

Another example of the care of the Crown to observe the spirit of the Treaty of Waitangi may be found in the statute that creates our own Waitangi Tribunal.

5.6 While it has been generally accepted that the Treaty creates no rights enforceable in a Court of Law, Mr P. G. McHugh, a Fellow of Sidney Sussex College, Cambridge, appeared before us to give us the benefit of his extensive researches which have led him to a contrary opinion. He produced to us a carefully written submission of considerable scholarship taking up 108 pages of typescript accompanied by 26 pages of footnotes. We have studied this material with the care it deserves and we now attempt to summarise his argument in the following propositions:

5.6.1 The Colonial policy of the British Crown included punctilious recognition of the rights of indigenous peoples wherever the British flag was raised.

5.6.2 That policy was demonstrated as far back as 1609, and as it was put to us:

"...The Colonial Office insisted upon and constantly recognised the land rights of native peoples in the Crown's colonies although it was not until the late nineteenth century that any substantial body of English case law began to develop on the matter..."

5.6.3 The Crown's right of pre-emption to be found in the Treaty of Waitangi emerged as a policy as early as 1618 in England's first colony in North America (Virginia).

5.6.4 The Privy Council in the 18th century acknowledged this policy in the case of the colony of Connecticut when it recognised Indian rights to land and the sole

capacity of the Crown to extinguish such rights and so imported into English law the beginnings of a body of Colonial law.

5.6.5 A Royal Proclamation of 1763 affecting the North American Colonies recognised the lawful right of North American Indians to their land and declared that such land could be acquired by fair purchase or by voluntary cession and not otherwise.

5.6.6 Recognition of aboriginal title to land is also to be found in the West African settlements where treaties were concluded with native peoples in 1788, 1791, 1807, 1818, 1819, 1820, 1821, 1825, 1826, and 1827 all of which can be seen as forerunners of the Treaty of Waitangi. Similar arrangements were made from time to time in South Africa.

5.6.7 By 1840 it was a settled principle of colonial law that the land rights of aboriginal people were protected by the Crown as evidenced by Lord Normanby's Instructions to Hobson:

"...(the Maori) title to their soil and to the sovereignty of New Zealand is indisputable and has been solemnly recognised by the British Government..."

5.6.8 For nearly forty years after the signing of the Treaty New Zealand Courts recognised and accepted these principles of colonial law as to the land rights of the Maoris.

5.6.9 After the Land Wars of the 1860's New Zealand Courts departed from these principles and in the case of *Wi Parata v. The Bishop of Wellington* (1877) Prendergast C. J. enunciated the proposition that the Treaty of Waitangi

"...could not transform the natives' right of occupation into one of legal character since, so far as it purported to cede the sovereignty of New Zealand, it was a 'simple nullity' for no body politic existed capable of making cession of sovereignty."

5.6.10 The proposition contained in the case just cited was wrong being based on a concept of international law and not on the established principles of colonial law. All cases that followed it were similarly wrong for the same fundamental reason. The dictum of the Privy Council in *Hoani Te Heu Heu v. Aotea District Maori Land Board* does not refer to the principles of colonial law, but to international law and is not material to the issue to be decided in that case.

5.7 We feel bound to say that there is much force in Mr McHugh's argument. For example the statement of principle in *Wi Parata* was criticised by the Privy Council much later in 1902 in the case of *Nireaha Tamaki v. Baker* [1840-1932] N.Z.P.C.C.371 in the following passage:

"...It was said in the case of *Wi Parata v. Bishop of Wellington* which was followed by the Court of Appeal in this case" (i.e. the judgement under appeal) "that there is no customary law of the Maoris of which the Courts of Law can take cognisance. Their Lordships think that this argument goes too far, and that it is rather late in the day for such argument to be addressed to a New Zealand Court... It is the duty of the Courts

to interpret the statute which plainly assumes the existence of a tenure of land under custom and usage which is either known to lawyers or discoverable by them..."

This dictum was not referred to in the advice given in the case of *Hoani Te Heu Heu v. Aotea District Maori Land Board* (above) (para 5.3).

5.8 But so far as land rights are concerned the principle in *Wi Parata* came to receive a measure of statutory recognition by the Native Land Act 1909 which provided that Maori title to customary land was not to avail against the Crown and went on expressly to declare that the Crown had power to extinguish Maori title to "customary land".

5.9 Nevertheless Mr McHugh goes one step further. He argues that although the 1909 Act tends to make all that happened in the Courts before that date (so far as the land ownership is concerned) a matter of historical interest only, yet the principles of colonial law which he identifies still apply to aboriginal property rights other than land, for example, to fisheries which were not affected by the Native Land Act 1909 and its successors in the legislation. He says that the Fisheries Act 1983 (Sec. 88 (2)) expressly protects Maori fishing rights and that as a consequence the Ngati Pikiao people have a legal basis for their claim to protect their fisheries in the Kaituna River resulting from applying the proper principles of colonial law to the Treaty of Waitangi.

5.10 No counsel appearing at our sittings made submissions in reply to Mr McHugh's arguments, and we did not hear an answer from the Justice Dept., the Crown Law Office, or any of the Government Ministries represented. The breadth of research may have presented them with a task too daunting to discharge in the time available, which is understandable. But the proposition advanced deserves close study because of its importance to all of us.

5.11 Tempting though it may be to reach a final conclusion on Mr McHugh's interesting argument, we do not propose to make any ruling on the matter. Our statutory authority is to make a finding as to whether any action of the Crown, or any statute of Order in Council is inconsistent with the principles of the Treaty. This wide power enables us to look beyond strict legalities so that we can in a proper case, identify where the spirit of the Treaty is not being given due recognition. Furthermore it may be that the very issues raised by Mr McHugh will come before the Courts again and it would not be seemly for this Tribunal to make a legal finding on a matter that may require the attention of the High Court, the Court of Appeal or (even more likely) the Privy Council itself.

5.12 Notwithstanding that attitude, we wish to record our indebtedness to Mr McHugh for his care and thoroughness which have helped us greatly to see the Treaty of Waitangi in its full historical perspective.

Kaituna River Claim

5 - The Treaty Of Waitangi

3 - The 1975 Act

6. THE TREATY OF WAITANGI ACT 1975

6.1 The enactment of the Treaty of Waitangi Act 1975 gave the Treaty a new status. Before the passing of that Act it had had no legal effect. After the passing of that Act the situation was quite different. Sec. 6(1) of the Act provides as follows:

"6. Jurisdiction of the Tribunal to consider claims - t(1) Where any Maori claims that he or any group of Maoris of which he is a member is or is likely to be prejudicially affected-

(a) By any act, regulations or Order in Council, for the time being in force, or

(b) By any policy or practice adopted by or on behalf of the Crown and for the time being in force or by any policy or practice proposed to be adopted by or on behalf of the Crown; or

(c) By any act which, after the commencement of this Act is done or omitted, or is proposed to be done or omitted, by or on behalf of the Crown-

and that the Act, regulations, or Order in Council, or the policy practice or act is inconsistent with the principles of the Treaty, he may submit that claim to the Tribunal under this section..."

6.2 Section 6 (6)(a) provides that the Tribunal has no jurisdiction in respect of "anything done or omitted before the commencement" of the Act. The statute came into force on October 10, 1975. From that date onwards any Act of Parliament that comes into force and prejudicially affects a Maori confers upon that Maori the right to make a claim if it can be shown that the statute in question is in conflict with the principles embodied in the Treaty. So also with any Regulation or any Order in Council. Furthermore if any act is done or is omitted on behalf of the Crown after October 10, 1975 and that act or omission prejudicially affects any Maori then a claim can be made. These are statutory rights enjoyed by Maori New Zealanders which have been conferred upon them because of the Treaty of Waitangi.

6.3 But, it seems to us, the Treaty of Waitangi Act has another more far-reaching effect. Any "policy of the Crown" that prejudicially affects a Maori gives rise to the right to make a claim. If the continuation in force of an Act of Parliament is the result of a policy of the Crown (to keep that Act in force) then any Act on the statute books that prejudicially affects a Maori may give rise to a claim no matter when it was passed by Parliament. The only limitation is that no claim can be made in respect of an act (i.e. action) that was done or omitted before October 10, 1975. The conclusion

that may be drawn from Sec. 6 of the Treaty of Waitangi Act 1975 is that any Act, Regulation or Order in Council that is now in force may give rise to a claim if it prejudicially affects a Maori no matter when that Act, Regulation or Order in Council came into being. (Sec. 6(1)(a)).

6.4 Furthermore it seems necessarily to follow that any Bill, or proposed Regulation or Order in Council or any proposed policy of the Crown must be measured against the principles of the Treaty because if any such legislation or policy conflicts with the principles of the Treaty and prejudicially affects a Maori, a claim could be made.

This is a remarkable result. From being "a simple nullity" the Treaty of Waitangi has become a document of importance approaching the status of a constitutional instrument so far as Maoris are concerned. It is not truly a constitutional instrument because conflict between an Act of Parliament or Regulation and the Treaty does not render the statute null and void. But it does expose the Crown to the risk of a claim that the statute in question is in conflict with the Treaty and to that extent it would seem prudent for those responsible for legislation to recognise the danger inherent in drafting statutes or regulations without measuring such instruments against the principles in the Treaty.

6.5 This leads us to the conclusion that there is ample room for the view that the Treaty of Waitangi is no longer to be regarded as "a simple nullity", that it is now part of an Act of Parliament, that it is in the nature of a statutory instrument and not something to be taken lightly by those responsible for introducing new legislation or enforcing legislation that already exists.

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

6 - The Kaituna Catchment Control Scheme

1 - A Survey Of All The Evidence

7. KAITUNA CATCHMENT CONTROL SCHEME

7.1 The Bay of Plenty Catchment Commission has wide responsibilities that include the whole catchment surrounding Lakes Rotorua and Rotoiti, the Kaituna River and the Maketu Estuary. In conjunction with the Ministry of Works and Development and with the Rotorua District Council it has sought and obtained approval for the Kaituna River Major Scheme. This development is already well under way and involves expenditure, including the Kaituna Pipeline (which is part of the Scheme) of twenty million dollars or thereabouts. For the last six years the Commission and the District Council have implemented the scheme and both bodies are extremely anxious that their expenditures should not be jeopardised by this Finding. They have explained that their respective ratepayers have had the benefit of a subsidy from the Government in the ratio of 7 to 1, and they were plainly very concerned during the hearing that this subsidy should not be disturbed. We gathered quite clearly that the subsidy is dependent upon full implementation of the Scheme (which includes the pipeline), and that the Ministry has made it clear that if the Scheme is not completed as planned (including the pipeline) then the subsidy is at risk. It needs only to be so stated for one to see that the Ministry may be seen as paying the piper and calling the tune. We return to this aspect later in this Finding.

7.2 The pollution of Lake Rotorua (and of Rotoiti) is not caused solely by the effluent from the Rotorua Waste Water Treatment Plant. The phosphorus and nitrogen nutrients in that effluent are an important part of the pollution but another very important source of nutrients is in the surplus water that runs off the farmland surrounding the lakes. Fertiliser spread on the pastures does not always penetrate the soil. Heavy rains cause surface flows on the land that pick up the fertiliser and wash animal droppings with it into watercourses that find their way into the lakes. The amount of nutrients contributed to the lakes in this way is not measurable, but the associated silts washed into Lake Rotorua each year have been variously estimated by expert opinions at amounts ranging from 30,000 tonnes to 50,000 tonnes per annum. If these figures are right it is not a matter for surprise that Lake Rotorua is silting up. Many of the streams flowing into the lake have their source in springs and carry minerals that also contribute to enrichment.

7.3 Apart from the pipeline the Upper Kaituna Scheme includes policies to fence off the watercourses from stock and to replace them with piped water supplies for the farms affected by such programmes. It also includes a policy of "retiring" land from farming use so that water running off such land will not carry nutrients into the lake. This is done by fencing off considerable areas which are then planted with trees. The evidence did not cover the point in detail but we were told by Counsel that the fencing of watercourses and retiring of land is very far advanced and has been going on for

about six years. It was explained to us that the cost has been very considerable and both the District Council and the Catchment Commission are anxious to ensure that the plans so carried into effect are not adversely affected by any recommendation we might decide to make.

7.4 The Lower Kaituna Catchment Scheme is largely concerned with controlling the effect of flooding that occurs on the coastal plain near the lower reaches of the river. We were told by Counsel for the Catchment Commission that thousands of hectares of land will benefit from a variety of flood-water control measures both directly and indirectly. These measures are wide ranging but they include the construction of stopbanks, widening river channels, the digging of major drains and installation of flood-gates and flood pumps to control ground water levels. The whole scheme in both the Upper and Lower Kaituna districts is imaginative and far reaching. An important part of the work for our purposes is the prevention of water run off from pasture land surrounding the lakes.

7.5 We made a particular point of enquiring whether the Scheme could go ahead without the pipeline. We were told that it could, and that the other benefits did not in any way depend upon the pipeline, although Ministry of Works witnesses emphasised to us that without the pipeline Lake Rotorua (and indirectly Lake Rotoiti) would continue to deteriorate. That was obvious if nothing was done to reduce the nutrients introduced into the lakes from the Waste Water Treatment Plant, and we grasped the point accordingly. But for our purposes we were assured that if the pipeline idea were to be abandoned the rest of the Scheme could continue. In other words it was clear to all that the Scheme as a whole did not depend upon the construction of the pipeline.

7.6 Counsel for the Catchment Commission, Mr T. S. Richardson, put forward typewritten submissions that had been carefully, even meticulously prepared. They were extremely helpful to us and we wish to acknowledge the courtesy he extended to the Tribunal by taking such care to acquaint us with all the relevant facts. He did not mince matters when it came to dealing with the claimants' case based on spiritual and cultural values. He said:

"...I have already made reference to the positive benefits which would flow on to the Maori people from the Scheme as a whole. I do not intend to demean the depth of the spiritual feelings which have been expressed to this Tribunal by discussing compromise. I suggest that the forcefully presented case for the Maori people does establish that the traditional rights ... are part of the Taonga Maori..."

Mr Richardson was acknowledging in this part of his submissions that the evidence we had heard of the effect on Maori spiritual and cultural values of discharging sewage effluent into the Kaituna River was almost unanswerable. But he went on to point out that what had been agreed to in 1840 could not possibly have included an understanding of the complexities of society 140 years later and urged upon us the importance of protecting the lakes from further harm.

7.7 Developing this point he went on to say:

"...The pipeline offers a measure of certain security to Lake Rotorua in the immediately foreseeable future. Rotorua District Council has the alternative of continuing to discharge into Lake Rotorua until June 1996 so long as it complies with its Water Right but it must be recognised that the debate over Lake Water quality is likely to continue and that there are likely to be other significant "events" which could militate against any continued discharge into the lake beyond that time. Moreover, to some extent, that option simply has the effect of transferring the Maori cultural and spiritual problem from one fishery to another. It avoids rather than comes to terms with the issues raised at this enquiry..."

One might, with all courtesy, make the reply that the pipeline does exactly the same thing in reverse - it has the effect of transferring the Maori cultural and spiritual problem from one fishery (i.e. Lake Rotorua) to another (i.e. the Kaituna River).

7.8 We had begun to wonder how the pipeline scheme arose in the first place. Towards the end of the hearing the District Engineer for the Rotorua District Council, Mr G. S. Roberts, supplied us with the answer. Speaking of the time when the waters of Lake Rotorua were about to be classified he told of a meeting in Rotorua in 1965 attended by interested parties when the topic was publicly discussed and the consequent need for the Rotorua City Council to provide a sewage treatment plant was raised as a resultant expense. He said:

"...In 1965... it was suggested by a Ministry of Works Officer at that meeting that my Council could well consider piping effluent to the Kaituna River and that the cost of the pipeline could be partly offset by a reduction in (the cost of) the degree of treatment required..."

He went on to say that the Tauranga County Council did not look favourably on such a suggestion and that his Council never seriously considered it. We should add that from our enquires the Rotorua District Council seems to have acted with a high sense of responsibility throughout this matter and has done its very best to protect the lakes from pollution as far as its finances have enabled it do so.

The Ministry of Works on the other hand seems to have fixed its attention on Lake Rotorua to the exclusion of the river and the estuary and has, right from the very outset seen only one solution - the pipeline - on which it has persistently insisted.

7.9 The Catchment Commission and the District Council have looked at matters quite differently. We have noted carefully the extent to which both bodies have gone, especially the Council, to explore possible alternatives. There was placed before us an impressive series of reports - three in this year alone - compiled by consultants retained by the Council exploring alternative ways of treating the effluent. We were not given precise figures but it is fairly safe to say that the Council has spent many thousands of dollars on consultants' fees to improve its waste water treatment and to make sure that no reasonable means of improvement is unexplored. By contrast we gained the distinct impression that the Ministry has not put anything like the same effort into such enquires. For example, we questioned some of the witnesses called by the Ministry of Works - senior officials - and asked what studies had been done on recent innovations, especially of a biological or chemical kind. We feel bound to say

that the answers we received, in both the words used and in the manner that they were uttered, did not inspire us with confidence.

7.10 To make matters plain we should say that each member of this Tribunal had the distinct impression that so far as the Ministry was concerned its officials were inflexibly of the view that only the pipeline scheme was acceptable and that nothing else could possibly do. In this we think they are not right. And we have reason to believe that both the Rotorua District Council and the Bay of Plenty Catchment Commission think they are not right either. Both bodies have separately and together made it clear to us that they have been drawn along the pipeline path by the departmental insistence that unless they accept the pipeline idea they would not be able to get the heavy government subsidy. That subsidy is important to them both because without it their ratepayers would never have been able to afford to finance the Kaituna River Major Scheme. The Ministry has controlled the subsidy. The subsidy has controlled the Scheme.

7.11 We think that philosophy is a distortion of what ought to be the case. The Scheme should be geared to the best possible protection for Lake Rotorua as a national asset. The subsidy reflects the importance which Government policy has rightly placed upon the Lake. But we say that Government policy should recognise not only the importance of Lake Rotorua - which is undeniable - but also the importance of Lake Rotoiti, the Kaituna River and the Maketu Estuary, because as we have said all four bodies of water are part of the one system, and all are a national asset.

7.12 It is on this point that we diverge from the view taken by the Ministry. It seems clear that nearly 20 years ago the Ministry through its officials saw the Kaituna River as being of comparatively little importance (see para. 7.8). This opinion we do not accept for reasons we have already given. Quite apart from the affront to Maori spiritual and cultural values, we say that common sense demands that every reasonable possible step be taken to protect the whole water system, and not just a part of it. The question that necessarily arises is what alternative exists if the pipeline is to be abandoned as an unacceptable scheme.

7.13 The key point in this whole matter is that certain nutrients - phosphorus and nitrogen - are enriching the lakes and causing eutrophication. Some proportion is caused by pastoral run off and natural flows, some proportion is caused by waste water effluent. No one seems able to apportion the quantities from each source because the pastoral run off cannot be accurately measured. Steps have been taken to reduce the run off but it may take several years before the trees that have been planted on the land that has been retired will reduce the flow of nutrients from pasture. Steps should therefore be taken to reduce the nutrients coming from the other source - the waste water effluent.

7.14 In 1975 Swedish consultants advised the Rotorua District Council to use a chemical process to reduce the flow of phosphorus, then thought to be the important element in eutrophication. As a result alum was added to the treatment process giving a third stage of treatment to Rotorua's sewage scheme. This process worked well for several years, but the increase in the quantity of effluent has been a difficulty and whereas it had been possible to extract up to 75% of the phosphorus for a time the

tanks now in use are not big enough to maintain that level of success. The present Water Right requires the Council to treat the effluent in such a way that no more than 7.5 tonnes of phosphorus are discharged into the lake annually. But recently the Council's experts informed it that the annual discharge is running at 15 to 20 tonnes per annum. (Mr Taylor, Water Resources Engineer to the Catchment Commission). If the alum treatment is to continue the plant must be increased in size, with consequent capital expense to the Council.

7.15 Nitrogen remains a problem. There is a difference of opinion among the experts as to whether nitrogen or phosphorus is the main cause of eutrophication. The best view at the moment seems to be to remove both elements. Sewage treatment knowledge has advanced rapidly in the last 10 years and we were told of a biological treatment called the Bardenpho process which seems to have been effective in South Africa and elsewhere. This first came to our attention in a private submission made to us by the Deputy Mayor of the Rotorua District Council, Dr J. M. Harris D.Sc., whose evidence was later confirmed by Mr B. E. Underwood, a consulting engineer and a member of the firm of consultants retained by the Rotorua District Council. He had supplied a series of reports to the Council which were also given to us. These showed that of recent years the Bardenpho process has come to be used in 40 plants around the world as at the time the report was prepared, mostly in South Africa and North America. The process is one of biological nutrient stripping effective under stringent conditions with both phosphorus and nitrogen. He said that only 3 or 4 plants had stripped phosphorus to the high degree needed to meet the Water Right for discharge into Lake Rotorua, but that more recently a process had been developed which indicated that more plants had been able to achieve the required performance. He was commendably cautious but in response to our questions told us that the advances in technology over the last 10 years have been very significant, and he expressed the view that the same kind of progress is likely to continue over the next decade.

7.16 Dr W. F. Donovan of Bioresarches Ltd referred also to the particular qualities of Sulphur Bay. At present the treated effluent from the City's Waste Water Treatment Plant is discharged to the Puarenga Stream and enters the lake at the bay a short distance away. He noted the acid conditions of the bay and that the phosphorus discharge from the plant appeared to be largely removed as the stream water flowed across it. A reduction in coliform bacteria was also attributed to a die-off in Sulphur Bay waters. In brief, the potential of the treatment plant effluent in terms of its nutrient concentration to lake waters is reduced by the passage of the effluent through that bay. We noted also that for those same reasons Sulphur Bay does not support fish or plant life. It is associated with thermal activity, has a visibly cloudy appearance and is not used by the Maori people or the general public for recreational or food-gathering purposes. Dr Donovan considered that if there were to be any discharge to the lake a discharge to Sulphur Bay would be an appropriate point both for its unusual chemical properties and for the lack of public use.

7.17 The Rotorua District Council is permitted under its present Water Right to discharge effluent into Lake Rotorua until 1996. It is about to embark upon a further development of its Waste Water Treatment Plant (Stage IV). Its District Engineer, Mr Roberts, informed us that if discharge into Lake Rotorua is to continue the Council would prefer to adopt a biological nutrient stripping process (Bardenpho or something similar) rather than a chemical stripping procedure. It has made financial provision to

enable work to proceed as soon as a final decision is reached as to whether the pipeline is to be built or not.

7.18 We are not qualified to assess with academic nicety all the technical data available - that is for expert opinion and expert advice. But we are required to make a Finding that takes into account in a common-sense way all the information placed before us. We are unanimously agreed that the pipeline proposal should not proceed - not only because it offends Maori spiritual and cultural values as it undoubtedly does - but because it is out of date and needlessly expensive. The cost of its construction has risen from \$3 million to about \$12 million. The biological nutrient stripping process is much less costly in terms of capital, and at least comparable in terms of annual expense. We were told that the cost of the pipeline and the extension to the Treatment Plant is estimated to amount in total to \$16,774,000. But the cost of those extensions and establishment of the biological nutrient stripping process is only \$9,500,000 (as estimated on current costs). This is a much cheaper proposition in capital expenditure, a saving of over \$7,000,000. The annual cost depends upon the level of subsidy which requires to be arranged with the Health Department. At present the Department has no allocation for a biological nutrient stripping process - no doubt because it is too new (in New Zealand) to fit an existing category. But if it received the current subsidy of 14% (as we think it most certainly ought to do) then the annual cost of running the process will be \$1,295,000 as against an estimate for the pipeline of \$1,165,000, an extra annual cost of \$130,000. If the subsidy allowed is increased to a ratio of 3 to 1 (because of the importance to the Nation of protecting the lakes) it will cost even less than the estimates say would be the annual maintenance cost on the pipeline.

7.19 This survey of the evidence leads us to conclude that as matters have been put before us, technological advances offer an alternative to the pipeline proposal, that both phosphorus and nitrogen nutrients must be stripped from effluent discharged into Lake Rotorua, that a biological nutrient stripping process is available to achieve that objective, and that it will provide a saving of \$7 million in capital expenditure, if it is established in place of the pipeline.

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

7 - Other Solutions

1 - Land Disposal Of Effluent

8. LAND DISPOSAL OF EFFLUENT

8.1 Dr C. D. Stevenson gave evidence on behalf of the Commission for the Environment in which he recommended that research be undertaken immediately to dispose of Rotorua's effluent on the land instead of discharging into water. Mr G. S. Roberts, District Engineer for the Rotorua District Council, gave us a useful table showing how different communities in New Zealand deal with waste water, and we produce it here.

TABLE VI

METHOD OF WASTEWATER TREATMENT AND RECEIVING WATERS FOR PRINCIPAL TOWNS OF NEW ZEALAND

Town Treatment Receiving Water

Whangarei Secondary Whangarei Harbour
North Shore Secondary and Ponds Stream
Auckland Secondary and Ponds Manukau Harbour
Hamilton Primary and disinfection Waikato River
Taupo Secondary Waikato River
Rotorua Tertiary Lake Rotorua
Tauranga Secondary Tauranga Harbour
Mt Maunganui Ponds Sea
Whakatane Ponds Sea
Gisborne Comminution Sea
Napier Comminution Sea
Hastings Comminution Sea
New Plymouth Secondary and Sea
disinfection
Wanganui Comminution Sea
Palmerston Nth. Primary Manawatu River
Feilding Secondary Stream
Porirua Nil Sea
Wellington Nil Sea and Harbour
Hutt Valley Milliscreen Sea
Nelson Ponds Sea
Blenheim Ponds Wairau River
Christchurch Secondary and Ponds Estuary
Timaru Comminution Sea

Dunedin Primary and disinfection Sea
Invercargill Primary Estuary

8.3 The table shows that no sizeable community in New Zealand uses land disposal to get rid of waste water effluent. It also shows how many principal towns and cities have no treatment or very little treatment for their sewage. Finally it shows that Rotorua treats its effluent to a third stage process of purification and so exceeds the standards of most other places in New Zealand.

8.4 In 1978 Mr Roberts attended a conference in Melbourne on land methods of waste water disposal and he put before us several possibilities of which he had learned then. It is probable that advances in this matter have been made over the last six years and we listened to his evidence recognising that much other information may now be available that was not known to him. He told us that there are three main types of land disposal:

8.4.1 Slow rate - which is simply an irrigation system that allows effluent to soak into the ground and in many cases vegetation growing as a result is cropped to produce a financial return. For the quantity of effluent coming from the Rotorua Treatment Plant a great deal of land would be necessary if this process were adopted. It does not seem to be a practical alternative in this case.

8.4.2 Overland Flow - which allows effluent to flow over land that has been graded or terraced with the result that increased rates of infiltration or soakage are possible and a greater quantity of effluent can be handled as a result. But even so the amount of land required, perhaps 1000 hectares, would make this a most expensive proposition. It does not seem to be a practical alternative either.

8.4.3 Rapid Infiltration - which allows effluent to soak into the ground from a number of specially constructed basins at various points and at rates of infiltration far greater than the other two types. It was estimated orally in evidence and therefore on a fairly imprecise basis that perhaps 30 hectares of land could be sufficient to deal with a quantity of effluent like Rotorua's rate of production.

8.5 It was urged upon us that the best way of dealing with Rotorua's effluent would be to combine biological nutrient stripping to remove the phosphorus and nitrogen and then to dispose of the effluent by the rapid infiltration process. Dr Stevenson thought this to be a practical possibility but when we raised it with witnesses from the Ministry of Works they explained that such a combination had not been studied. The claimants had suggested in a non-scientific way that the effluent could be piped or taken by road tanker to forest areas and disposed of by spray irrigation.

8.6 The first thing to be remarked upon these possibilities is that the quantity of effluent to be disposed of is very large - we were told it could be visualised as about 1000 tonnes of water every hour 24 hours a day for 365 days of the year. No doubt that was a generalisation but it was of help to us to grasp the volumes of waste water that are involved. Road tanker transport would, we think, be prohibitively expensive, and a pipeline may be as costly as the Kaituna proposal that is now in question. Furthermore it was suggested, not necessarily in an authoritative way, that spray irrigation in the forest could cause the trees to develop surface roots systems without a

properly developed taproot system and so make them vulnerable to uprooting in storms or high winds.

8.7 We were given examples of land disposal systems operating in other parts of the world. Most of them seem to be used in arid country, which may make them inapplicable to the Rotorua district, but Melbourne has used land disposal for many years and we were told that Christchurch did so from 1880 to 1962. We are inclined to suspect that little attention has been focused on land disposal in New Zealand because water disposal is so much easier and because of the ready access in this country to lakes, rivers and the sea. It may be that increasing quantities of effluent now demand much closer attention to the ecological consequences of water disposal, especially in the case of inland towns like Rotorua. We think that the consequences of putting raw sewage into the sea as is done in Wellington and elsewhere are becoming recognised as harmful and the point we make is that water disposal may not be as acceptable in the future as it has been presumed to be in the past.

8.8 Land disposal for Rotorua's effluent would be ideal as a means of reducing enrichment in the lakes. We cannot recommend it as a course to be adopted because we do not have enough information to make such a finding. Wide issues are raised by such a process - for example will groundwaters be contaminated by heavy metal deposits, would spray irrigation spread viruses through an aerosol effect and endanger health, would toxic substances of one kind or another enter the food chain through vegetation growing on land disposal areas?

8.9 We can only conclude that much more could be done to explore the possibility of land disposal of Rotorua's effluent and we recommend accordingly that urgent research work be undertaken to see whether this process combined with biological nutrient stripping will prove to be the solution for Lake Rotorua's problem of nutrient enrichment in the longer term.

Kaituna River Claim

8 - The Claim

1 - Issues Raised

9. ISSUES RAISED BY THE CLAIM

9.1 In this hearing, as in others, the Waitangi Tribunal has been careful to adopt a procedure that is uncomplicated, straightforward and fair to all parties. Claims can be made in the simplest of ways, a mere letter is sufficient in most cases so long as it is full and explicit enough for our staff to identify persons and parties who could be affected by it. We have eschewed strict procedural rules because it is our belief that the Tribunal should be easily accessible and its hearings so conducted as to be comfortable for those who have the right to ask its assistance. Cross-examination of witnesses is unusual and is permitted only by special leave of the Tribunal, but members of the Tribunal put such questions as they think are necessary. We hold our sittings on an appropriate marae - in this case Te Takinga Marae of the Ngati Pikiao on the western shore of Lake Rotoiti. Witnesses are free to speak in Maori or in English and as far as can be done we follow the protocol of the marae. All our sessions begin and end with a karakia (prayer) led by an elder of the marae, and all present eat together in the whare kai (dining room) during the adjournment in the middle of the day.

9.2 This procedure, so informal to a trained lawyer accustomed to the formalities of the pleadings and practice of the Courts, must be governed by a sense of fairness to parties affected by a claim. They come to a hearing knowing little about the details of the case because there may be no formal detailed statement of claim as required in Court procedure. To protect those parties we listen to all the claimant's witnesses and at the end of the claimant's case we identify all the relevant issues that the claimant has raised or which we think, in our jurisdiction as a Commission of Inquiry, ought to be explored. Usually we ask counsel for all parties to confer and submit to us issues they agree upon and offer argument in respect of others on which they cannot agree. This was done in the hearings before us and we settled the issues as set out below to which we give our answers in the light of this Finding. Once the issues have been settled we adjourn the hearing to allow the parties affected by the issues to prepare their respective cases in reply. By this procedure we believe we have found a satisfactory way to combine the advantages of informality with a proper degree of fairness to all concerned.

9.3 We now set out the issues in this case and our answers to each with added reasons where necessary.

9.3.1 ISSUE 1

Is the pipeline proposal the result of an action, policy or practice by or on behalf of the Crown, and if so, what is that action, policy or practice?

ANSWER: Yes. The Ministry of Works explicitly acknowledged by its Counsel Mr N. R. Watson that the construction of the pipeline to the Kaituna River was a policy of the Crown within the meaning of Sec. 6 of the Treaty of Waitangi Act 1975. This admission was properly made and is the foundation for our jurisdiction in this matter.

9.3.2 ISSUE 2

Will the proposed Kaituna River discharge prejudicially affect the claimants or is it likely to prejudicially affect them in all or any of the following ways:

(a) By contravening their spiritual or cultural values?

ANSWER: Yes. The evidence on this point was virtually unchallenged. See for example the admission of Counsel for the Bay of Plenty Catchment Commission (para. 7.6 above).

(b) By reducing the quality or quantity of their fisheries in the Kaituna River, the Maketu Estuary or the sea adjacent thereto?

ANSWER: Yes. If the pipeline is built and effluent discharged as proposed we accept that the Ngati Pikiao will be obliged to impose a tapu on the river with the result that the quality and quantity of their fisheries will be reduced to their disadvantage. As to the estuary we refer to para. 2.7.

(c) By rendering the catch of these fisheries unacceptable on spiritual or cultural grounds?

ANSWER: Yes for reasons already given.

(d) By rendering plant and other resources in and about the river less suitable for traditional purposes?

ANSWER: Yes. See the evidence of Mrs Schuster and others (para. 3.18 above).

9.3.3 ISSUE 3

Is the pipeline proposal inconsistent with the principles of the Treaty of Waitangi in the light of the Tribunal's findings above:

(a) In 1940 was the Kaituna River owned and had it been owned for many generations by the Ngati Pikiao sub-tribe and the Te Arawa?

ANSWER: Yes.

(b) Did these traditional rights of ownership carry with them the free and uninterrupted right to fish the river, the estuary and the sea, together with the use and enjoyment of the flora adjacent to it?

ANSWER: Yes.

(c) Have these traditional rights continued uninterrupted to this day?

ANSWER: Yes.

(d) Is the discharge into the Kaituna River of sewage effluent no matter how scientifically pure, contrary to Maori cultural and spiritual values?

ANSWER: Yes.

(e) Does the Treaty of Waitangi guarantee the continued enjoyment and undisturbed possession of the Taonga Maori?

ANSWER: Yes.

(f) Are the traditional rights referred to in paragraph (b) above part of the Taonga Maori?

ANSWER: Yes.

9.3.4 ISSUE 4

Having regard to the scheme as a whole, are there any practicable alternatives to the Kaituna pipeline (in this context practicable alternatives have to be considered in the light of Maori values as well as sound engineering practice)?

ANSWER: Yes. We refer to para. 7.13 et seq. of this Finding. Even this means of disposal is in the nature of a compromise. To mingle the effluent with the waters of Lake Rotorua is offensive to Maori spiritual and cultural values. But to find a practical solution we note and emphasise that the waters of Sulphur Bay are not used for any purpose (see para. 7.16) and this is the most practical course we can recommend in the absence of land disposal which is the preferred alternative, but which is not currently available.

9.3.5 ISSUE 5

In terms of S.6(1)(a) of the Treaty of Waitangi Act is the Water and Soil Conservation Act 1967 an Act for the time being in force which prejudicially affects the claimants in that it fails to make provision for, and hence implement and recognise the provisions of the Treaty of Waitangi?

ANSWER: Yes. The Water and Soil Conservation Act 1967 and related legislation does not contain any provision to enable Regional Water Boards or the Planning Tribunal to take into account Maori spiritual and cultural values. By contrast, the Town & Country Planning Act 1977 does make such provision in Sec. 3(1)(g). This gap in the Water and Soil legislation puts Maori objectors at a disadvantage and does not reflect the principle contained in Article II of the Treaty of Waitangi by which the Crown guaranteed to Maori New Zealanders, ("...to the Chiefs and Tribes of New Zealand, and to the respective families and individuals thereof...") the full exclusive and undisturbed possession of their Fisheries and other properties. Water quality is an integral part of fishery protection and a discharge at one place may have far reaching

effects in some other place to which the water in question flows. For example there are polluting discharges in the lower reaches of the Kaituna River under water rights granted to a dairy factory and a freezing works. Objections to these water right applications on Maori spiritual and cultural grounds were disallowed because the Tribunals had no jurisdiction to take them into account.

The Ministry of Works and Development, which is responsible for administering this legislation, informed us that it will recommend an amendment to the relevant legislation to remedy the omission which we find is in conflict with the principles contained in Article II of the Treaty of Waitangi.

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

8 - The Claim

2 - Recommendations

10. RECOMMENDATIONS

We Recommend

10.1 TO THE HONOURABLE THE MINISTER OF MAORI AFFAIRS THAT notice be taken of the Finding of this Tribunal that the policy of the Crown by which a pipeline is to be constructed to discharge effluent from the Rotorua District Council Waste Water Treatment Plant into the Kaituna River is contrary to the principles of the Treaty of Waitangi.

10.2 TO THE HONOURABLE THE MINISTER OF WORKS AND DEVELOPMENT

10.2.1 THAT the policy of the Crown by which a pipeline is to be constructed to discharge effluent from the Rotorua District Council Waste Water Treatment Plant into the Kaituna River be abandoned as being contrary to the principles of the Treaty of Waitangi,

AND

10.2.2 THAT research be undertaken into the possibility of disposing of such effluent by discharging the same on the land in a suitable and practical manner instead of discharging the same into Lake Rotorua,

AND

10.2.3 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.

10.3 TO THE HONOURABLE THE MINISTER OF WORKS AND DEVELOPMENT

and

TO THE HONOURABLE THE MINISTER OF HEALTH

10.3.1 THAT the present subsidy granted for the Kaituna River Major Scheme be altered to enable the Rotorua District Council to treat the effluent from its Waste Water Treatment Plant by a suitable biological or chemical stripping process without

loss of that subsidy so that phosphorus and nitrogen can be removed from that effluent up to the standard required by the water right now granted permitting the District Council to discharge such effluent into Lake Rotorua.

10.4 TO THE HONOURABLE THE MINISTER IN CHARGE OF THE
PARLIAMENTARY COUNSEL'S OFFICE

10.4.1 THAT the attention of the Chief Parliamentary Counsel and other appropriate officers be drawn to the Finding of this Tribunal with particular reference to the consequences of legislation being enacted that is in conflict with the principles of the Treaty of Waitangi.

DATED at Wellington this 30th day of November 1984.

E.T. Durie Sir Graham Latimer
Chief Judge of the Maori MEMBER OF THE TRIBUNAL
Land Court
CHAIRMAN

P. B. Temm Q.C.
MEMBER OF THE TRIBUNAL

THE SEAL OF
THE WAITANGI TRIBUNAL

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

9 - Appendices

1 - Appendix

APPENDIX

My name is Te Irirangi Te Pou O Uruika Tiakiawa; this is my full name and the name under which I was baptised.

In commencing I wish to take the discussion back to the beginnings of time to our ancestor Puhaorangi mentioned by an earlier speaker and Puhaorangi who descended from the skies came down to earth and there espied Te Kura-i-Monoa who was already the wife of Toi Te-Huatahi. Puhaorangi cohabited with her and begat Ohomairangi a male. Ohomairangi because of the circumstances of his birth is known by several names. Ohowhakataretare and Ohomatakamokamo. Ohomairangi had a son whom he named Muturangi and this is the Muturangi of historical renown whose pet happened to be an octopus and whilst at sea Kupe happened to come upon it and endeavoured to slay it. The octopus fled and careered throughout the ocean with Kupe in pursuit. It headed in the direction of Aotearoa finally ending up in Cook Strait where Kupe caught it and slew it.

Now Muturangi had a son whom he called Taungarangi. Taungarangi had Mawake and Mawake had Uruika the first. Uruika the first had Rangitapu and Rangitapu had Atuamatua. Atuamatua took to wife three women, the first of whom was Waiheketua. From Waiheketua he begat Rakauri and Rakauri had Ngatoro-i-rangi the navigator of the Arawa canoe. Atuamatua begat from his second wife Okarikaroa, Houmaitawhiti who had Kahumatamomoa, then Paeko then Tamatekapua. Tamatekapua the captain of the Arawa canoe had at one stage four wives and then decided to take a fifth wife in Te Motuotaku from the Mataatue canoe, and from his fifth wife he had Kahumatamomoe. Now Houmaitawhiti in the Islands had a pa called Tumuwahakairia and it was to here on the completion of the construction of the canoe that they dragged it. There were several people involved and their axes have gone down in history, some of them being Hauhau te Rangi and Tutauru.

We come to the point of the migration and the canoe set sail from a point called Waikuta. During the course of the voyage across the Pacific, Ngatoro-i-rangi had a practice of climbing on to the roof structure of the house to take his bearings from the stars and other heavenly bodies. During one of these exercises Tamatekapua perceived that a rope was tied to Kearoa's hair which Ngatoro-i-rangi held as he went out on to the building. Tametepakua removed the rope and tied it to the Kaimamoā before ravishing the wife of Ngatoro-i-rangi. He was eventually caught on one of these evenings and in his wrath and anger Ngatoro-i-rangi determined to scuttle the canoe and to send it to the bottom of the sea, and so he called upon the Gods of the Universe with whom he was in communication and so the hurricanes came, the storms came and the waves began to rise and the canoe was on the point of going down.

The womenfolk began to wail and children began to cry; Ngatoro-i-rangi finally relented and felt very sorry for his people that he appeased the waters and commanded the elements to desist and the waters were again calmed. The canoe arrived eventually at Whangaparaoa and from there it followed the coastline of the Bay of Plenty up past the Coromandel Peninsula and finally landed in the area of the Waitemata Harbour. Having landed there Ruao arrived on the scene soon afterwards. He had been deceived back in the Islands into staying behind and at the point, this point in history, Ruao had come upon Tamatekapua determined to chastise him. In their man to man battle Tamatekapua's nose bled and the island in the harbour was named after that incident, Te Rangi i Toto Ai Te Ihu Tamatekapua, in brief, Rangitoto.

The canoe returned from Waitemata towards the Bay of Plenty and at a point around Matata, Ngatoro-i-rangi released the two birds, Mumuhu and Takereto. These two birds were instrumental in navigating the canoe to New Zealand. The canoe returned from Matata and then we come to the point where he climbs Tongariro mountain; having ascended Tongariro mountain he was overcome with cold and snow and so he called forth for heat and fire from his people in Hawaiki where everything was tropical, and his two sisters Te Hoata and Te Pupu brought him some heat and they travelled underground, under water emerging at White Island; down again emerging in Rotorua; down again emerging at Wairakei and eventually arriving at Tongariro and Ngauruhoe.

In the meantime Tamatekapua on the canoe had arrived at Whakatane and espied the Mataatua canoe already in occupation there. He returned to Maketu where the Arawa canoe was finally beached and the people settled down to live. They had been at Maketu for some time when an ancestor by the name of Tuarotorua journeyed inland to explore the place. He arrived in this area here and discovered Lake Rotorua finally settling at Kawaha Point. Tamatekapua eventually moved further north to Moehau and died there.

Around about the time of Tuhoromatakaka's death Ihenga courted his female cousin and then with his family, also came inland to explore the area and he came by way of the track known as Ohakomiti down to Paripari-Te-Tai when his dog, after disappearing for some time reappeared and vomited up whitebait, then Ihenga realised he was near water. He journeyed on until finally landing on the shores of the lake which, because of the size of the particular bay, he was deceived into thinking the lake was a small lake. He called it Lake Rotoiti. They journeyed on around Lake Rotoiti and came towards the Ohau Channel which of course was un-named at the time. Ihenga's dog called Ohau drowned in the upper reaches of the channel at a place called Parewharewhatanga and in memory of his dog, Ihenga, named the channel Ohau. He journeyed on to the next lake, Lake Rotorua, which had as a name at the time, Nga-Wai-Karekare-O-Marupunganui. Marupunganui being the chief of the people, domiciled around these parts at the time, he later renamed the lake, Rotorua.

I mentioned these ancestors and this historical background to establish that we are the owners of these lakes and the river in question.

Tamatekapua had Kahumatamomoe; he married Hineitapaturangi and they begat Tawakemoetahanga; he married Tuparewhaitaita and they begat Uenukumairarotonga; he married Te Aokapurangi and begat Rangitihi.

Rangitihi Whakahirahira Rangitihi the garlanded one.

Upoko-i-Takaia ki Te Akatea whose head was bound up after injury with a vine. Rangitihi had four wives who were all princesses. Three of the wives were from Tapuika who lived on the lower reaches of the Kaituna River and they were all sisters to each other. The fourth wife was from Marumamao Mataatua descent. From his first wife, the first of the sisters Rongomaiturihuia Rangitihi had Rotorua and Tauruao. Now Rotorua had Whakairikawa, Whakairikawa had Tuteata. Tuteata had Rangikawekura, whom we shall mention later.

Tauruao a female married Tanemoetara from Whakatohea and Whanau-a-Apanui. Their descendants include Sir Apirana Ngata and the Anaru families. Rangitihi had from his second wife Kahukare two sons Rangiwhakaekeau and Rangiaohia. Rangi Whakaekeau and Rangiteaorere and Rangiaohia in the honoured ancestor of Ngati Rangitihi, From this third wife Papawharanui he had Tuhourangi. From his fourth wife Manawakotokoto he had three sons Rakeiao, Te Kawatapuarangi and Apumoana.

Te Kawatapuarangi married Rangikawekura mentioned earlier and they begat Pikiao the first. Pikiao the first had Rakeiti their first born was Te Epaorehua a female. Their second born was also a female; their third born was another female Te Tiukahapa. At this point Kawatapuarangi began to despair because he had no male heir to take his fame abroad and he put it to his son Pikiao like this:

"Pikiao-nui-a-kawa, i aitia koe i to wahine kia whiwhi he tane, ma wai taku kauae e to ki uta".

"Pikiao you have cohabited with your wife but who will take my fame abroad".

He advised his son Pikiao to abandon his wife and to go to Mount Pirongia in the Waikato and there approach a certain chief Ruaroa who had a maiden daughter Rereiao whom he might take to wife. Pikiao took the advice and left. In leaving, his wife took umbrage and murmured, "Pikiao you might continue to cohabit with me, the capacity to bear children is still with me". And this is borne out in the classical saying kei te tuhera tonu Te Awa-i-Takapuhaia, which is the name given to the stretch of water leading down into the Kaituna River.

Pikiao married Rereiao and begat Hekemaru whose descendant is now sitting on the throne in Waikato. On his return to his first wife Pikiao was confronted with a son that was born in his absence. Because of his irritation at the delay in getting a son he named the child Kawiti meaning the curve on the tattoos of my brow and from Kawiti my grandfather Hone is descended. Hone married Tamara and begat Ru and from Ru to myself. This gives me my grounds for expressing my outright objection to the proposal to release effluent into the Kaituna River, and we might talk about Pikiao the second the son of Tamakari. He had Parua who married Waiwaha. Again we come down to my grandfather Hone and Tamara eventually to myself.

These are my ancestors on the Ngati Pikiao side. I might say that one of my other ancestors married from far away from north Auckland a girl from there and they had 22 children, and I conclude my genealogy on this note. In discussing the Kaituna

River in particular there are rocks and fishing shoals associated with it. My elders Tiakiawa and Koma Tapsell and others would go to Maketu to fish and I would go with them. My grandfather would survey the seas and point out places where fish would likely be and so we took pioke which apart from eating was useful for the oil that could be applied to wood to preserve carvings. We took tamango which is a small fish. At a place called Otukehu a pa which is now called Te Awhe there is a tree which marks the spot. It is not far from Pukemaire. All these places are spoiled by pollution from the Tarawera River. There are other food shoals at Motiti and Moutohora known for their mussels. We don't only take fish for tangis. There is a place called Rahokatia between Motiti and Maketu. It is known for Kanai and Kahawai. It is not the practice to fish every day, we take fish only on three days in the month. And the month is the period of Huetanguru from September 25, 26 and 27 nights after the new moon.

Other speakers have spoken about the waters in the Kaituna. They say the water is pure but not by my thinking. This problem of effluent is a pakeha one. In the old days the ablution blocks called Paepaeturua were built away in remote places from the Marae because of the tapu nature of those places. Faeces might be used for sorcery purposes to hurt people through incantations and I have incantations that I know. Places where there was impending death were also placed under tapu, There is a rock in the sea which is known for mussels and Pirara. It is approached from Tetumu just off shore. I took a group there recently while we were staying at Whakaue marae.

I hope that these points will substantiate that we own this river, we have always owned it, we have never really surrendered ownership that authorities do as they please.

Waitangi Tribunal, Department of Justice, Wellington.

Kaituna River Claim

9 - Appendices

2 - List Of Reports

LIST OF REPORTS OF THE WAITANGI TRIBUNAL

Wai-1 Fishing Rights (Hawke) March 1978
Wai-2 Waiau Pa Power Station February 1978
Wai-4 Kaituna River November 1984
Wai-6 Motunui-Waitara March 1983
Wai-8 Manukau July 1986
Wai-9 Orakei November 1987
Wai-10 Waiheke Island June 1987
Wai-11 Te Reo Maori April 1986
Wai-12 Motiti Island May 1985
Wai-15 Fishing Rights (Te Weehi) May 1987
Wai-17 Mangonui Sewerage August 1988
Wai-18 Fishing Rights (Lake Taupo) October 1986
Wai-19 Maori 'Privilege' May 1985
Wai-22 Muriwhenua Fishing June 1988
Wai-25 Maori Representation (ARA) December 1986

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AN ASSESSMENT OF CULTURAL IMPACTS IN RELATION TO THE KAITUNA RE-DIVERSION & WETLAND CREATION PROJECT

Prepared on behalf of

Waitaba, Ngati Makino, Ngati Pikiao e³ Ngati Tunohopu

Prepared for

Bay of Plenty Regional Council



Prepared by

*Mauri Tau Solutions Ltd e³ Hinemoana Associates
Maketu, Bay of Plenty*

14 April 2014

Cover picture taken at Tangatarua marae, Rotorua

On the right is Ngatoroirangi, a poupou (wall-post) that originated from a wharenui built in 1906, Nuku te Apiapi, once extant close to Pohutu Geyser. Beside Ngatoroirangi is a newer poupou depicting his sisters, Kuiwai and Haungaroa, the gods credited with bringing thermal activity to Aotearoa. The heke (rafter) pattern above them is an abstract depiction of thermal mist and steam.¹

HE TIMATANGA KORERO

Ko Te Arawa te waka
Ko Matawhaura, ko Rangiuru, ko Otawa nga maunga
Ko Ngati Makino, Ngati Pikiao, Ngati Tunohopu, Waitaha nga iwi
Ko Kaituna te awa
Ko Ongatoro te moana
Ko Maketu te ukaipo o Te Arawa

Tihei mauriora!

DISCLAIMER

There have been many significant issues relating to the management of natural resources in Maketu. In particular the Kaituna River diversion and its impacts on Ongatoro has over the years been a topic of deep angst among ahi kaa. Iwi/hapu members and representatives consulted for this study often spoke from both a localized perspective and in a broad context of issues and the complex longer term effects of cumulative impacts.

The focus of the report is to identify and assess the cultural impacts associated with the Kaituna Re-diversion & Wetland Creation Project (and resource consents) that the Bay of Plenty Regional Council has been working on. The cultural impacts identified in this report specifically pertain to Waitaha, Ngati Makino, Ngati Pikiao and Ngati Tunohopu iwi.

This report is not to be quoted or used as a reference for other work without the express permission of the authors, the express permission of Waitaha, Ngati Makino Heritage Trust, Ngati Pikiao ki Maketu or Ngati Tunohopu representatives and including the client – the Bay of Plenty Regional Council.

¹ Debby Thyne 2009 “Walls That Speak Creative Multivocality Within Tangatarua” A thesis submitted to Auckland University of Technology in fulfilment of the requirements for the degree of Master of Philosophy (MPhil) School of Art & Design Primary Supervisor: Natalie Robertson

Table of Contents

HE TIMATANGA KORERO	i
DISCLAIMER	i
1.0 INTRODUCTION	1
2.0 METHODOLOGY	3
2.1 CONTRACTUAL OUTCOMES:.....	6
3.0 MANA WHENUA and AHI KAA HISTORY.....	7
3.1 MANA WHENUA:	7
3.2 WAITAHA, NGATI MAKINO, NGATI PIKIAO, TUNOHOPU	9
3.2 COLONIAL HISTORY and LAND CHANGES.....	12
3.4 EARLY COLONIAL DESCRIPTIONS of the ESTUARY and MAKETU ENVIRONMENT:.....	15
3.5 HISTORY of DRAINAGE in the MAKETU AREA:	16
PART 2	18
RESTORING the ESTUARY, RESTORING MAURI, RESTORING CULTURE.....	18
4.0 INTRODUCTION – OUR APPROACH:	18
5.0 The SUBSISTENCE ECONOMY	20
6.0 1924 AHI KAA “STATEMENT of VALUES”	24
6.1 IMPACT ASSESSMENT FRAMEWORK:	26
7.0 VALUES EXTRACTED:	26
7.1 WAIRUATANGA:	28
7.2 RANGATIRATANGA:	29
7.3 WHAKAPAPA:	29

7.4	WHANAUNGATANGA:.....	30
7.5	IDENTITY:.....	30
7.6	PAKIWAITARA.....	31
7.7	KAITIAKITANGA:	32
7.8	MANA:.....	33
7.9	MANAAKITANGA	33
7.10	MAURI.....	34
7.11	TAHA TINANA.....	34
8.0	INDIGENOUS KNOWLEDGE:.....	35
8.1	Ko NGATOROIRANGI te TOHUNGA, Ko ONGATORO te MOANA, ko MAKETU te WA- KAINGA. Traditional [Indigenous] Knowledge.....	36
8.2	INDIGENOUS KNOWLEDGE GLIMPSES of AHI KAA in MAKETU.	38
9.0	RESTORING the ESTUARY, RESTORING MAURI, RESTORING CULTURE	41
10.	CONCLUSION:.....	42
11.	RECOMMENDATIONS.....	42

PART ONE

1.0 INTRODUCTION

Maketu is a poor, rural Maori community and the 1996 census provides evidence of this and other generally negative socio-economic statistics. It never used to be.

In 1843, Shortland described Maketu people as “better fed and clothed than their neighbours because of their coastal location”². In 2006, the Ministry of Health index of deprivation ordinal scale assessed Maketu at a decile ‘10’ health status, ‘10’ representing the highest deprivation score on a scale of 1-10.

Unfortunately, just as indigenous peoples all over the world have had to do, we must provide proof of the negative effects on well-being and identity arising from being mere onlookers in the destruction of our environment. While we see the need to do that, what becomes irksome is the lengths we have to go to provide evidence of our cultural values. This issue is taken up in part 2.

There is increasing evidence linking the effects of disruption to indigenous peoples’ relationship to the environment to poor health. The Rena Cultural Impacts report on Maketu uncovered research that validates ahi kaa’s beliefs about the Maketu situation: that indigenous peoples suffer more when compared with the general population when harm is done to their environment.

The cultural loss from subsistence disruption should not be underestimated. The meaning of such activities to participants identifies the core cultural relevance of subsistence behavior. In a 1992 follow up study of Alaska Natives in Cordova, 80 percent agreed that sharing subsistence food reminded them of their childhood, 71 percent agreed that sharing subsistence food reminded them of times spent with grandparents, and 77 percent agreed that sharing subsistence brought them closer to other people and reminded them of what was good about life (Picou and Gill 1995).

Further, over 80 percent of the Alaska Natives agreed that collecting local foods was an important activity for them and 84 percent wanted their children to have the opportunity to participate in subsistence harvests³ (Picou and Gill 1995). The Exxon Valdez oil spill resulted in the contamination of subsistence resources for Alaska Natives, thereby directly disrupting cultural behavior and threatening future practices of cultural transmission.

Furthermore, by disrupting traditional patterns of subsistence production and distribution, exposure to oil spill had greater cultural significance for the Natives because these activities dominate the social relations and cultural framework of Alaskan Native communities. ...it was also perceived to be a

² Edwards Shortland Manuscripts, MS86A, unpaginated photocopy; Auckland University Library.

³ Picou, J. Steven and Duane A. Gill. 1995. The Exxon Valdez Oil Spill and Alaska Natives in Cordova: A User's Guide to 1991 and 1992 Survey Data. Draft report to the Regional Citizen's Advisory Council. Mississippi State University: Social Science Research Center.

*threat to the continued survival of Native culture and the individual identity that derives from it*⁴.

Notwithstanding all the above, the Rena disaster revealed other impacts which highlight how tangata whenua were severely disadvantaged over the years and at the time of the diversion. At no stage was any consideration given to the economic well-being of Maketu ahi-kaa as swamps were being drained and at the time of the various discussions over the diversion. The focus was on advantaging the economic well-being of colonials, farmers and the “nation”. With the Rena, there were immediate subsidies arranged for any business that may have been affected by the Rena disaster. However as we now know, the diversion was a similar disaster. We know it comes within the definition of “technological disaster”, as did the Rena. The only time ever Maori were considered was as a possibility to extract money from them. As the NZ Herald reports:

THE KAITUNA RIVER. FLOOD WATER PROBLEM. INSPECTION BY ENGINEERS
[by TELEGRAPH.—OWN CORRESPONDENT.] TE PUKE, Saturday.*

The question of dealing with the flood water of the Kaituna River is still demanding the attention of the River Board. No effective scheme within the means of the ratepayers has yet been adopted.

*A visit of inspection was made yesterday by Messrs. F. S. Dyson and Haskell, engineers to the Public Works Department. Mr. O. J. Hodge and other members of the River Board accompanied the engineers, who went by launch and made a careful examination of the river and its present outlet. A suggestion, has been made that the old outlet of the Kaituna River at Maketu should be reopened. **As this is the landing place of the Arawa canoe, it is of historical interest to the Arawa tribe, who may assist financially in the cost***⁵.

The newly formed Te Arawa Trust Board agreed to put up 1,000.00 pounds to have the estuary mouth returned to Maketu. They were astute enough to ensure the complimentary legislation⁶ excused their people from any rates or taxes, even if they did not manage to work out that they had no obligation to do so and that the river would have made its way back naturally and also that the return of the river mouth was about helping out framers, tangata whenua were only considered because the Public Works Dept were wanting to keep funding costs off farmers. Maybe, the Trust saw the request as affirmation of the Te Arawa rangatiratanga over the estuary.

Mason Durie, the eminent Maori psychologist, educationalist and scholar has noted⁷:

A secure Maori identity appears to be correlated with good health, and with better educational outcomes even in the presence of adverse socio-economic conditions.

⁴ Palinkas, Lawrence A.; Russell, John; Downs, Michael A.; Petterson, John S. Ethnic differences in stress, coping, and depressive symptoms after the Exxon Valdez oil spill. *Journal of Nervous and Mental Disease*, Vol 180(5), May 1992, 287-295. doi: page 292

⁵ THE KAITUNA RIVER. *New Zealand Herald*, Volume LXI, Issue 18844, 20 October 1924, Page 8

⁶ The Kaituna River District Act, 1926.

⁷ Durie, M. (2001) *Mauri Ora: The Dynamics of Māori Health*, Oxford University

The results of cultural dislocation and the ensuing loss of strength in identity may be observed in the number of Maoris in prison, reliant on state-funded benefits, and otherwise failing to reach their potential. Exactly the same phenomena is observable, and with similar intensity, whenever colonisation has displaced indigenous peoples and broken their connections with their culture.

The point we are making is that there were significant cultural impacts from taking the estuary away from tangata whenua and the Exxon spill studies gave credibility to ahi kaa's claims to their decades of angst. This cultural impact report highlights some of the connections to culture that were broken arising from the 1958 diversion, that contributed to that 2006 situation referred to above. We start by giving context to the present situation, by way of **mana whenua history** and reference to **land changes** arising from **colonialism**. For our tribal audience, of Ngati Makino, Ngati Pikiao, Ngati Tunohopu and Waitaha, we see the need to help them understand the mind-set of people who helped destroy the Maketu estuary. We then identify those **cultural values** associated with Ongatoro which **values which were evident** preceding the 1958 diversion and even immediately afterwards. Of course, to do that properly would mean writing an anthropological study on the Te Arawa ahi kaa of Maketu. There is not the time or the resources but we acknowledge the Bay of Plenty Regional Council's support to enable this report.

Our identity starts and finishes in Maketu. In Part 2, we identify the **values which were evident** preceding the 1958 diversion and immediately afterwards. We look at the literature that reflected the concerns of tangata whenua after the diversion and up till today. We then look at how the **proposed 20% re-diversion** may in turn affect those values which we want restored and which were unresolved post 1958 impacts. And how the re-diversion no 2 may impact them positively or negatively.

2.0 METHODOLOGY

As much as possible, we use previously published literature emanating from Maketu ahi kaa. Ahi kaa have a relationship to the estuary which is more than "ancestral" and ahi kaa status would with few exceptions, enable kaitiakitanga beyond mere theory. This is important because of the "ancestral connection" which almost gives as much status to non-ahi kaa. The kaitiakitanga links to the "ancestral" status should be to ensure and support the kaitiakitanga of the ahi kaa. To be the backstop should the ahi kaa become remiss in their kaitiakitanga.

The ahi kaa literature includes a folder of newspaper clippings on news items pertaining to the estuary and issues around its deterioration and restoration. These articles were collected by the ahi kaa and are stored in a folder at the Maketu Information Centre. It is a precious resource. We have also drawn on the affidavits that were prepared for the WAI 676 case, the Te Arawa fisheries case, and the Kaituna WAI 4 case. There are also submissions to various authorities over the years. All were lead by Maketu ahi kaa. The more recent WAI 262 case report, "Ko Aotearoa tenei", has helpful information on Maori and their relationship to the environment and brings

with it some excellent supporting research reports. Parks' report "Effective exclusion"⁸ is particularly pertinent in our case.

Special mention must be made of the 1924 letter addressed to Apirana Ngata from the ahi kaa of Maketu in 1924. This was discovered by researchers for the Ngati Makino claim in the National Archives. This letter forms the basis of part 2 of the report.

This report is mindful of and concurs with the recommendations given in the Akwe-Kon Guidelines⁹ published by the CBD secretariat. The guidelines provide a valuable checklist. They are also useful for political reasons by indigenous minority peoples for the weight that they add to the legitimacy of cultural impacts assessments reporting given the esteemed standing of Akwe-Kon development committee and publisher.

More specifically, the purpose of these Guidelines is to provide a collaborative framework within which Governments, indigenous and local communities, decision makers and managers of developments can:

(b) Properly take into account the cultural, environmental and social concerns and interests of indigenous and local communities, especially of women who often bear a disproportionately large share of negative development impacts;

(c) Take into account the traditional knowledge, innovations and practice of indigenous and local communities as part of environmental, social and cultural impact-assessment processes, with due regard to the ownership of and the need for the protection and safeguarding of traditional knowledge, innovations and practices;

(e) Identify and implement appropriate measures to prevent or mitigate any negative impacts of proposed developments;

(f) Take into consideration the interrelationships among cultural, environmental and social elements.

In defining a "cultural impact assessment", the Akwe Kon authors say:

a cultural impact assessment will generally address the impacts, both beneficial and adverse, of a proposed development that may affect, for example, the values, belief systems, customary laws, language(s), customs, economy, relationships with the local environment and particular species, social organization and traditions of the affected community;

Identifying those values, belief systems..etc. should not be interpreted to mean that they can be disengaged and individually ring-fenced from the way of living (culture) of the ahi kaa, which process forms the basic tool of planners. The ahi kaa values over-lap and together constitute

⁸ Park, Geoff, (2001) Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983 Waitangi Tribunal Wellington (WAI 262)

⁹ Akwé : Kon Guidelines Secretariat of the Convention on Biological Diversity <http://www.biodiv.org>

tikanga or principles for guiding how tangata whenua live as Maori. If one of these values is affected, it impacts on all the others. If several are affected it will be catastrophic. Given the erosion of our culture (way of life) through colonisation, it is taken for granted that further erosion of our culture through misappropriate recognition of our way of life by the authorities these days is unacceptable. We have all been informed through indigenous studies and Waitangi Tribunal claims on the damage of colonisation and there is no excuse to perpetuate the injustices.

We are also mindful that some decision-makers in authority still hold colonial views with regard to Maori and see cultural impact reports as giving preference to tangata whenua over other cultures. We wish!! Hence the need to be quite clear that our culture depends in the relationship we have with our environment to be sustained with integrity. And unlike other cultures, recent or otherwise, there has been no erosion of their cultural values through disconnecting them from the New Zealand environment. The difference is that our identity as Maori depends on it. As was recently reported in the WAI 262 Report,

...slowly generation upon generation as the people reacted to their new environment and the environment responded to its new residents, something distinctive began to take shape in the space between them... perhaps it was when the people and the environment reached a point of equilibrium that the former felt truly justified in calling themselves tangata whenua (people of the land) and their matauranga could credibly called Maori. Or, to put this another way, it was through inter-action with the environment that Hawaiikian culture became Maori culture.¹⁰

Besides the Treaty of Waitangi and the Akwe Kon Guidelines, there are other international instruments which also call on Governments to protect indigenous peoples' rights.

Article 9 of the Declaration of Indigenous peoples Rights¹¹, which the New Zealand Government has affirmed, says:

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

The Convention of Biological Diversity¹² holds at 8 (j), that

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and

¹⁰ Waitangi Tribunal (2011). Ko Aotearoa Tenei WAI 262: Te Taumata Tuatahi.page 6 www.waitangitribunal.govt.nz

¹¹ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

¹² <http://www.cbd.int/convention/text/default.shtml>

encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

Any form of forced assimilation or integration;

The Ahi Kaa have made use of every means available to remedy the environmental injustices which have been dumped on them, including the United Nations processes. In respect of the then proposed Ohau Channel diversion wall, with its diversion of Rotorua lakes nutrients into the Kaituna River, the ahi kaa having been unable to stop the wall through an appeal to the Environment Court, submitted to the 2006 United Nations "Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people", Rodolfo Stavenhagen, report¹³. Stavenhagen assessed the human rights situation of Maori in New Zealand, and made reference to the estuary impacts "the coastal site of Maketu a similar waste disposal built up in an estuary where the river had been diverted. Despite a Planning Court decision in 1990, the river has not yet been redirected." He called on the Government to get involved.

Finally, we have deliberately quoted whole texts of information instead of the academic small phrases. Our reason for this is to ensure that our people of Ngati Makino, Ngati Pikiao, Ngati Tunohopu and Waitaha have access to information that they do not normally find easy to access. We want them to be properly informed. This is our way of ensuring the report information moves from the ownership of academics and institutions and goes someway to meeting the information needs of the ahi kaa. Also in the course of gathering the information, various bias have been noted. By quoting a fuller context we hope to avoid bias. This technical aberration does not detract from the report's purpose: to provide an accurate and honest explanation of the impacts on the culture or way of life of tangata whenua iwi of Ngati Makino, Ngati Pikiao, Ngati Tunohopu and Waitaha from the re-diversion. We seek better decision-making having drawn attention to the harm from biased and uninformed, colonial decision-making of the past.

2.1 CONTRACTUAL OUTCOMES:

The contract with the Bay of Plenty Regional Council seeks the contractor to: "On behalf of Waitaha, Ngati Makino, Ngati Pikiao and Ngati Tunohopu, assess and report on the cultural impacts of the proposed Kaituna River Re-diversion and Wetland Creation Project".

¹³ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum MISSION TO NEW ZEALAND Economic and Social Council E/CN.4/2006/78/Add.3 10 March 2006

3.0 MANA WHENUA and AHI KAA HISTORY

3.1 MANA WHENUA:

Maketu is the birthplace of the Te Arawa nation, the final anchorage place of the Te Arawa waka. The Maketu estuary, Ongatoro, takes its name from the esteemed and tapu navigator and Tohunga, Ngatoroirangi. The Maketu Peninsula, Okurei, was named by the captain of the waka, Tamatekapua. From here the ancestors who came on the waka explored their new homeland. Waitaha's descendants remained largely coastal peoples, being as far north as Coromandel and dominating the Western shores of Tauranga Harbour. The Ngati Makino branch of Waitaha had interests not only on the coast but as far inland as the Lake Rotoehu. Tamatekapua's descendants include Pikiaro and Tunohopu. By the time these latter Iwi had emerged as Iwi in their own right, iwi tensions within the Te Arawa nation were being played out by way of many Te Arawa inter-tribal feuds and skirmishes. These conflicts in the time of Ngati Tunohopu's ascendancy were to be voluntarily put aside in order to address the greater threat coming from a non-Te Arawa iwi, the Ngai te Rangihouhiri.

Ngai te Rangihouhiri (Ngaiterangi) were to eventually displace Te Arawa control and mana in Maketu and along the coast on either side of Maketu. Despite the unity of the Te Arawa iwi, they were unable to prevent Ngaiterangi victory at the battle of Poporohuamea which event cemented Ngaiterangi's noho (occupation) in Maketu. However skirmishes between Ngaiterangi and Te Arawa and their respective allies, continued right until the Battle of Te Tumu (1835) and even in minor battles after this date.

The above introduction recognises that there are many Te Arawa and other Iwi who can claim ancestral connections to Maketu and that the Ngai te Rangihouhiri noho was the start of another chapter in Te Arawa history in Maketu.

This new chapter in Maketu's history would determine the present day mana whenua arrangements in Maketu. Though it started with the Ngaiterangi occupation, it was the expulsion of Ngaiterangi concurrent with the growing colonial presence post 1840 which was to forever determine the mana whenua arrangement in Maketu. The combined Te Arawa iwi army, once they had united and successfully defeated Ngaiterangi at Te Tumu, then competed or fought against each other again to lay claim to the land in and around Maketu via the Native Land Court.

The Paengaroa block claims sum up the post-Ngaiterangi history of Maketu starting with the Battle of Te Tumu which was pivotal in the re-establishment of mana whenua by Te Arawa in Maketu. The Paengaroa decisions became the platform for determining the many Te Arawa competing claims in and around Maketu and along the coast. The decision was appealed three times

At the second appeal in 1878¹⁴, Heale summed up:

"...so that in investigating the titles to lands around and at some distance from Maketu, it is commonly necessary to look closely into the ancestral title; but this is generally for the purpose of adjusting disputes between closely-allied hapus, and nothing is more clear than that such rights derive their value wholly from the conquest, and from the resuscitation of them by the tacit consent of the conquerors. But it is utterly incredible that the whole of the allied tribes conquering the invaders of this great territory, after a long series of warfare, with immense losses of leading chiefs killed, and so recovering the lands connected with all their earliest traditions, should then give up the whole fruits of their conquest to a small tribe which had never assisted them, except at the very last, and for no other reason than that ten generations before, their ancestors had been left in sole occupation of it. The conquerors cannot be shown to have ever thought of such a romantic generosity.

After the fight, the Ngatirangiwewehi and Ngatirangiteaorere made a claim to the land by setting up "rahui" on the right bank of the Kaituna river, which seem to have been maintained for about two years, and then to have been thrown down by the Ngatitunohopu. The other tribes, ...they do not seem to have thought of venturing to live permanently on any of the Maketu lands in defiance of the still formidable "mana" of Ngaiterangi and Waikato, until the Ngatipikiao made up a party from all the tribes they could induce to accompany them, and took the bold and decisive step of occupying Maketu in force.

At the 3rd and final appeal by Te Arawa and some other claimants, Judge Puckey¹⁵ made the observation:

...There are three principal links in the chain of events, which brought about the re-conquest [Of Maketu and coast]. a. The coming of Tapsell, and the introduction of firearms; which appears to have been principally effected by Ngati Whakaue. b. The capture of Te Tumu, in which all the Arawa (except the Ngati Pikiao)¹⁶ aided by their allies, took part. c. The re-occupation of Maketu by Ngati Pikiao and other hapus. Now, without the musket and ammunition the storm of Te Tumu would not have been effected; without the capture of Te Tumu the re-occupation of Maketu would have been impossible; and without the re-occupation of Maketu which has been maintained to the present time, the Tumu victory would have been a barren one and the blood of all the chiefs who fell there would have been spilled in vain.

¹⁴ Native Land Court. (1879) Important Judgments: Delivered in the Compensation Court and Native Land Court. 1866–1879. Auckland. Part of: New Zealand Texts Collection

¹⁵ New Zealand Herald, Volume XXII, Issue 7423, 3 September 1885, Page 6 IMPORTANT NATIVE LAND JUDGMENT

¹⁶ Ngati Pikiao hapu had taken part in the battle of Te Tumu viz Ngati Tarawhai, Tamakari, Takinga, Hinerangi. Its curious as to why Pikiao were both identified by hapu and Iwi. Taranui, the leading Pikiao chief, had been at the battle of Te Tumu.

There is no doubt but that the re-occupation of the commanding position of Maketu completed the re-conquest. The Court, after considering carefully all the evidence submitted to it in the present case, and that imported (from other previous cases), confirms the division of Paengaroa made by Judge Heale and awards Paengaroa South to the Ngati Pikiao, making no distinction between them and the Ngati Te Takinga, Ngati Hinerangi, and the descendants of Wharekaikino. As to Paengaroa North, the Court awards that to the whole of the Arawa in the manner following 1. One fourth to Ngatiwhakaue and Ngatitunohopu, along with the balance remaining out of the last fourth after providing for the specific awards enumerated thereunder, 2. One fourth to Ngatipikiao and to such persons of Ngati Whakahemo as are members of Ngatipikiao, including the few persons of the Ngati Pukenga who live at or near Maketu,...., three hundred and twenty acres for Tapuika, and six hundred and forty acres for Tuhourangi, we award the residue (along with the portion first abovenamed), to the Ngati Whakaue and Ngati Tunohopu

The following dates of memorable events in connection with the history of the Paengaroa Block, and the wars waged for the possession of the district, have been fixed with tolerable accuracy:- Storm of Mokoia by Hongi Hika, 16th April, 1822; Tapsell landed at Maketu. 3rd January, 1831; murder of Te Hunga by Haerehuka and the Tuhourangi, 25th December, 1835; Maketu taken by the Walkato and deaths of Te Ngahuru and Te Haupapa; March, 1835 storm of Te Tumu and defeat of Ngaiterangi by the Arawa; 9th May, 1836; defeat of the Arawa at the battle of Mataipuku 28th May, 1836; re-occupation of Maketu by Ngatipikiao, so about the close of 1838.

3.2 WAITAHA, NGATI MAKINO, NGATI PIKIAO, TUNOHOPU

Waitaha are an ancient tribe who descend from Hei and his son Waitaha who arrived on the waka Te Arawa. According to Waitaha tradition, ka huri mai a Te Arawa i te Rae o Papamoa, Hei stood and claimed the land for his son Waitaha, te takapū o tāku tama, Waitahanui a Hei. In time, some of the sons of Waitaha settled along the coast extending from Katikati to Ōtamarākau and the island of Tuhua. Waitaha had close whakapapa links with other iwi of Tauranga, Waikato, Ngāi Tahu, Ngāti Porou, Kahungunu and Te Arawa. By the 1840s, Waitaha primarily occupied the land between Tauranga harbour in the west, and the Waiari River in the east, as well as staying inland. Waitaha also stayed for periods of time with their Te Arawa kin.

Waitaha never agreed to cede their mana to the Crown. Most Waitaha rangatira did not sign the Treaty of Waitangi. Waitaha were one of the only Te Arawa tribes who suffered raupatu land confiscation.

Ngati Makino descend from Hei and so are very closely connected to Waitaha through whakapapa. Along with Waitaha, Ngati Makino were the other Arawa tribe to suffer the loss of their lands through raupatu confiscation. Ngati Makino are indigenous to the area between the Bay of Plenty coast and the Rotorua lakes. Ngati Makino were earlier known as Waitaha, after

their ancestor Waitaha-a-Hei. Ngati Makino are also closely connected with Ngati Pikiao through marriage.

Ngati Pikiao descend from Tamatekapua and are generally associated with Lake Rotoiti and the southern Rotorua lakes areas. They are closely related to Ngati Makino and thus Waitaha also. Their coastal presence, as Ngati Pikiao, rather than as part of other affiliations, is associated more with the re-occupation of Maketu, after the battle of Te Tumu in 1837. In the Maketu Minute Book No 1, Pokiha¹⁷ recounts the re-occupation story. The initiator had been Te Puehu of Ngati Pikiao and Ngati Makino proper. Puehu had sometime in 1837 led a deputation which had canvassed all the Rotorua settlements¹⁸ on the matter of Te Arawa re-occupying Maketu. The response from Ngati Whakaue had been “Te whakahihi a Ngati Pikiao” and “Go as food for Waharoa and Ngaiterangi”¹⁹. Tuhourangi’s had been “E kore te patiki e hoki ki tana puehu”. Nonetheless, Pokiha says that 20 Tuhourangi, 30 Ngati Tarawhai, 30 Ngati Pukenga and 300 Ngati Pikiao were involved in the re-occupation.

The re-occupation involved some strategic planning and is a story worth repeating. The mixed group assembled at Rotorua and brought with them all the materials needed to erect a pa. They dragged two war canoes into which materials were placed as they were gathered, using the Pongakawa river as the access route. During the night they moved the building materials from Waihi to Maketu and overnight built Maketu Pa. This was so as to maintain secrecy from Ngaiterangi Iwi. By the next morning all the palisading had been built. They over time built their houses within this pa and the famous 8 gateways. From the pa they moved out across the deserted countryside and appropriated lands for agriculture and flax gathering. Neich²⁰ says that Ngati Pikiao subdivided all the lands around Maketu sharing them with the rest of Te Arawa and carved totara posts were set up to show the land claims.

In 1978, members of Ngati Pikiao filed a claim (WAI 4) with the Waitangi Tribunal asking that the proposal to build the pipeline be stopped because it transferred the pollution process into their territory and was objectionable on medical, social, cultural, and spiritual grounds.

Ngati Pikiao’s strongest protest was made on spiritual and cultural grounds. They held that to mix water that has been contaminated by human waste with water used for gathering food was deeply objectionable. Māori custom requires water used for the preparation of food to be kept strictly separate from water used for other purposes.

It was accepted that the Kaituna River and the Maketu Estuary have long been an important source of food for Ngati Pikiao and that the name itself 'Kaituna' tells you of its importance. 'Kai' means food and 'tuna' means eel. At the time, Ngati Pikiao contended that if the pipeline was built, the kaumatua of the tribe would have had no choice but to declare the river tapu, and therefore out of bounds.

The tapu will also apply to any vegetation that has contact with the water, either through splashing or through flooding. A tapu will create a great economic loss for

¹⁷ Native Land Court (1878). Maketu Minute Book 1. Wellington: NZ Government. P193

¹⁸ Bay of Plenty Times (1977, March 7). Maketu. Tauranga page 3

¹⁹ Don Stafford (1967). Te Arawa. Wellington: A.H. & A.W. Reed. p258

²⁰ Roger Neich (2001). Carved Histories. Auckland: Auckland University Press. p16

Ngati Pikiao, because they will not be able to fish in the river or even collect plants from the riverbanks for making medicines and for weaving and dyeing.

Burial caves lining the river will also not be able to be reached. Ngati Pikiao will suffer a loss of tribal mana²¹.

The Tribunal decision was made in favor of Ngati Pikiao acknowledging Ngati Pikiao as the 'owners' of the river. Demonstrating their connection to, and mana and kaitiakitanga over the river as such, forever cemented Ngati Pikiao's mana over the Kaituna.

Ngati Tunohopu descend from Tamatekapua as well. The more commonly accepted belief is that Ngati Tunohopu are a hapu of Ngati Whakaue but in more recent times, this relationship has been challenged. It was Ngati Whakaue (viz Ngati Tunohopu) who continuously fought against Ngaiterangi when that tribe occupied Maketu. However these battles were largely conducted by Ngati Whakaue (viz Tunohopu) travelling from Rotorua.

This changed on the arrival in Maketu of Tapsell the pakeha trader. After his Ngapuhi wife died, Te Arawa presented the puhu, Hineiturama to him to ensure his allegiance to Te Arawa in Maketu. Ngati Whakaue hapu then located to Maketu where chiefs were subsequently killed by Waharoa and Ngaiterangi when Tapsell was burned out and had to relocate to save his life and his family. Notwithstanding, Ngati Whakaue were prominent in the attack on Te Tumu pa (and in turn attacked in Rotorua by Waharoa) which was the turning point in the re-occupation of Maketu by Te Arawa.

Pokiha did not mention any inclusion of Ngati Whakaue at the re-occupation. However Stafford makes reference to 30 Ngati Whakaue joining up with Pikiao ope at the Waihi estuary, but only staying 2 weeks as they continued on their journey North to Ngapuhi. The Maketu Minute Book 4 also refers to Tohi (presumed to have been Tohi Te Ururangi) being with Ngati Pikiao for the re-occupation but "appears to have had no following" (page241). Because Tohi had a strong Pikiao whakapapa, he may have given his support.

However, he is recorded as being present for the 1839 fight by Ngaiterangi and Waikato against the Maketu Pa, Wilson saying:

This time, however, they [Waikato] were beaten, and pursued by Nga-ti-whakaue, headed by Tohi-te-uru-rangi, as far as the Tumu. The Wai-kato found Maketu much more strongly fortified than it had been on their visit three years before²²

We have already referred to Ngati Whakaue's continuous attempts to wrest Maketu away from Ngaiterangi, starting with the Poporohuamea battle. Also with the location of Tapsell to Maketu and the Ngati Whakaue presentation of the puhu, Hineiturama, and subsequent relocations of some Whakaue whanau to Maketu, Whakaue were consistently seeking a Maketu noho. The Native Land Court made a division of Paengaroa lands to Whakaue amounting to 1179 acres and to "Tunohopu including individuals of Ngati Pukenga now living at Maketu, who are not entitled

²¹ <http://www.justice.govt.nz/tribunals/waitangi-tribunal/resources/teaching-aids/resource-kits/the-waitangi-tribunal-and-the-kaituna-river-claim>

²² White, John (1888). *The Ancient History of the Maori, His Mythology and Traditions: Tainui*. Vol.V. Wellington: George Didsbury, Government Printer.p248

however as Ngati Pukenga of 1179 acres²³. The land allocation was based on the “toa” or battle of Te Tumu being the decisive battle which had overthrown Ngaiterangi’s mana whenua. Ngati Tunohopu have been recognised by the Crown in their own right and are presently progressing the settlement of their claim.

3.2 COLONIAL HISTORY and LAND CHANGES

Unfortunately for Maketu and a lot of other areas in Aotearoa, the circumstances which precipitated the desecration of Ongatoro were pre-ordained with the arrival of Captain Cook. He took pains to note the country’s resources. Banks, his natural scientist observed New Zealand as

*..abounding with ‘Swamps which might doubtless Easily be Drained’.*²⁴

From that first English encounter with a New Zealand floodplain and the recognition of the country’s fertility and suitability for agriculture, swamps represented an obstruction to pastoral prosperity.

In the WAI 262 claim, Park²⁵ researched the Crown’s practices and policies associated with the demise of wetlands and coastal ecosystems. He admits though that he has not been able to ascertain the impediments to “kaitiakitanga by ahi kaa”²⁶ during the desecration of these systems by local jurisdictions. The writer includes Councils, national and local lobbying agencies in this latter category. However, as Park has thoroughly researched and proven, there was a European worldview in New Zealand which dominated (and still does) how the landscape is viewed. This view transferred into policies and actions by authorities.

It started with the wresting of land from tangata whenua. Research of the history as noted in the Native Land Court decisions in the mana whenua section, does not provide the complete picture. At every sitting of the Court there were also lawyers, speculators and Government purchase agents watching to see who were given title by the Court. Their intention was to start pressure to sell land or in some cases the deal had already been negotiated prior to the decision as there is proof that they made deals before titles were confirmed. The old newspapers files record many of these carpet-baggers and the reports are obviously newsworthy items for the press of the day in that land is being opened up to settlers. In the Maketu area, from Otamarakau to Te Puke, government Crown agents, Davis and Mitchell were especially active. Suffice to say that Maori land was sold and made available to colonial settlers. The NZ Herald and the Bay of Plenty Times reported:

²³ Native Land Court (1880). Maketu Minute Book4. Wellington: NZ Government.page242

²⁴ Cited in Park (2001)

²⁵ Park, Geoff, (2001) Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983 Waitangi Tribunal Wellington (WAI 262)

²⁶ This is the writers interpretation of Park (2001) on this point.

THE NATIVE LANDS COURT AT MAKETU. ²⁷ [FROM A CORRESPONDENT]

Maketu, Thursday. The Native Lands Court left Maketu this morning after a brief sitting, which, however, has had great results, which must effect speedy improvements in this district. Nearly 60,000 acres of land have been awarded to the Crown, and this, it is expected, will be devoted to the Tauranga-Rotorua Railway. Seventy thousand acres at Paeroa also have been finally disposed of; more than half being purchased by private persons, who intend commencing pastoral and agricultural operations thereon at an early date.

The beautiful estate at Rangiora, near Te Puke settlement, has also been dealt with, the Crown getting over 2000 acres, Messrs. Vercoe over 6000 acres, and the remainder, about 3000 acres, being retained by the native owners for their own use. The Puke native reserves, a long-pending and difficult problem, has also been solved and set at rest. The Paengaroa, or Maketu Plains, remain alone now to be finally passed the Court, and then this promising district, which has been for over fifteen years the scene of so much native troubles, difficulties, and delays, will have been fairly launched, and have an opportunity of proving itself to be one of the most favoured spots in the North Island for general settlement.

*Great credit is due to Messrs Fonton, H. Mitchell, and O. O. Davis, for the manner in which the matter was brought before the Court.*²⁸

Tangata whenua analysis of colonisation which brought about the demise of the estuary is that it involved an Anglo-European culture based on class and money wealth, which views land as a resource that the individual can and should use to improve his particular situation. The Western economic system re-inforces and validates a Pakeha world-view that includes treating land as a commodity and evaluating it only in terms of its cash profit potential. There was a universal view that land not developed was sinful in a progressive society and people who owned that land were lazy. Getting to grips with this way of thinking or world-view, is quintessential to understanding why the Maori environment suffered, including Ongatoro, and thus all biodiversity in New Zealand.

It was only apparently during the civil rights era of the 60s and 70s that a consciousness of human rights and the environment began to emerge in Pakeha New Zealand which then started pulling back the rampant environmental abuse of over a 100 years. The Treaty of Waitangi Act of 1975 for example. However, as successive and existing Governments and Councils actions show, the colonial world-view still dominates and economic concerns and land use that risk Papatuanuku and our water-ways is still the dominant and politically powerful Pakeha New Zealand world-view. Maketu Maori were virtually voiceless in Maketu post World War 2. Though they contributed men and boys to the Crown during the New Zealand wars and to both World Wars: the ahi kaa were invisible. It was this dominant and unsustainable world-view that is responsible for the impoverishment of Maketu ahi kaa, environmentally, economically, socially and culturally.

²⁷ THE NATIVE LANDS COURT AT MAKETU NZ Herald Volume XX, Issue 6748, 4 July, 1883, Page 5

²⁸ MAKETU Bay of Plenty Times, 26 June 1883, Page 2 [By Electric Telegraph]

Bodley²⁹ asserts that societies organized around capitalist means of consumption outgrow their own local resources, requiring expansion, and therefore forms of domination. Industrialisation and the unsustainable use of resources forced European powers to seek resources in other countries.

*"In case after case, government programs seemingly intended for the progress of indigenous peoples directly or indirectly forced culture change, and these programs in turn were linked invariably to the extraction of indigenous peoples' resources to benefit the national economy"*³⁰

He claims that the discourse of progress is intimately linked to acculturation and exploitation "... displacing and destroying peoples, ways of living, ways of knowing, ways of relating"³¹. His observances are confirmed in the Maketu situation.

*The drainage operations carried out under Government control have resulted in bringing previously useless swamp land to profit, ... there are many areas untouched which it will pay to take in hand. One cannot be too enthusiastic in the matter of land-reclamation, ... watching seemingly irreclaimable areas coming into profit is very heartening. There are many purely swamp areas throughout the Dominion, ... which must... be re-claimed. Then comes the large tracts of marsh lands on the foreshores of the coast... the periodically flooded bottom lands in the flood-plane slopes of rivers.*³²

Farmers, with government subsidies, went on to drain and fill more than 90 percent of New Zealand's wetlands between 1840 and 1940. The amount of wetland filling varies from one part of New Zealand to another. Southland still has 37% of its original wetland area. South Canterbury retains 25%, Waikato 15% and the Bay of Plenty less than 1%.

The RAMSAR Convention was one of the early international environmental treaties. Set up in 1971 to protect wetlands. New Zealand belongs to the convention. Unfortunately, the loss of wetlands has become so extensive the problem is no longer how to prevent further loss, but how to restore and rebuild wetlands³³.

In respect of the dominant political discourse and colonial world-view, despite the civil rights movement of the 1960's and 70's worldwide, the Ramsar convention of 1971, and the pleas from tangata whenua since 1957 to restore the Kaituna flow through Ongatoro, we draw your attention to the proof of the dominant unsustainable economic discourse. In **1979**, the Government and its agencies and Federated Farmers, this time joined by the alleged tourism traders, were still committing taxpayers funding to drainage schemes and ignoring both the environmental consequences and the legitimate tangata whenua concerns. The NZ Herald reported "

²⁹ Bodley, John H. (1990) Victims of Progress. Mayfield Publishing Co. 3rd Ed.

³⁰ Bodley, John H. 2008 Victims of Progress, 5th edition. New York: Altamira Press.p18

³¹ Bodley, John H. 2008 Victims of Progress, 5th edition. New York: Altamira Press.p76

³² 1921 Land Drainage Report to Parliament

³³ <http://seakeepers-nz.com/RIVERS/wetlandf.html>

The Bay of Plenty catchment Commission yesterday gave approval for soil and water conservation works to begin following the approval by the government of the \$18.3 million Kaituna Catchment control scheme. The moment was described by the chairman of the commission as "almost historic." In 1976, the government offered to pay \$7.9 million of the total cost of \$9.9 million. But once again this was not acceptable to the local bodies. The plan was to basically clean up the pollution problems of Lake Rotorua and Rotoiti and eliminate flooding and erosion on urban and rural lands in the region. At the time it was regarded as of national and international importance because 90 percent of overseas tourists were visiting the lakes. Without the scheme, further deterioration, caused by urban sewage and nutrient runoff from farmland, would be inevitable. The building of an effluent pipeline from the Rotorua sewage treatment plant to the Kaituna river was recommended³⁴.

This demonstrates the persistence of the colonial world-view towards land and unsustainable economics and the attitudes towards tangata whenua. The ahi kaa and others were continually being fobbed off at the time, with the excuse that the estuary could not be restored because there was no economic justification to commit funds. In 2014 we are all now paying towards the millions, over 100 million, to restore the Lakes from the problems of unsustainable use brought about by failure to bring the farming lobby to its senses.

In 2008, the "Nga tangata ahi kaa roa submission" to the Board of Inquiry on the NZ Coastal Policy Statement, said: "...Feel that what has been left out is the due recognition of the important ecological relationships between land and sea. E.g. importance of wetlands to marine life. The Bay of Plenty has only 1% of its original wetlands. Something like 80%-90% of the ocean food chain is connected to wetlands."

3.4 EARLY COLONIAL DESCRIPTIONS of the ESTUARY and MAKETU ENVIRONMENT:

These recorded observations give a glimpse of what Ongatoro had once been. At low tide, 3-4 feet deep at the bar. At high tide, another report gives depths of 15-20 feet in the estuary.

"Before reaching Maketu, the Waihi river runs in many branches through an extensive flat. ..The large Pa at Maketu is on the S.E. side of the Kaituna river, just within the bar, which at low water has three feet in it. Within, the river expands considerably, and is navigable for boats eight miles"³⁵.

Leaving Tauranga there is a straight line of sandy beach between South Head and Maketu of about 16 miles, terminating in a spit which forms the North Head of Maketu Harbour. The entrance to Maketu river is about sixty yards in width at full tide, but owing to the bar and the sunken rocks inside, only a very limited channel is open for navigation even at flood tides.

³⁴ The NZ Herald 6/7/1979 Kaituna Scheme on Its Way At Last

³⁵ From Orete, Westward, Round the Bay of Plenty part of an official survey of the coast conducted by Captain of the Pandora, Captain and Surveyor. Nelson Examiner and New Zealand Chronicle, Volum X111, Issue 641, 17 June 1854, Page 3

Vessels of the highest draught, sailed by men well acquainted with the coast, can venture on the passage with safety....The land between Tauranga and Maketu, lying between the wooded range and the sea line, is undulating, but towards Maketu, it becomes marshy, from the accumulated drainage of the high land at the back, the outlets for which are Maketu and Waihi rivers.³⁶

On arriving within 3 miles of Maketu, the track runs along the back of the River Kaituna, which flows parallel with the beach, having a sandhill 20 feet in height and about 40 yards in width between the sea and the river. At low water there is only 4 feet on the bar but at high water small vessels can readily enter the river – the water is perfectly fresh as far as the bar.³⁷

This is one of the descriptions from the ahi kaa which was published in 1987:

*The Kaituna river ran as much as it did today (before its artificial present time outlet) hardly deviating from its course, which was closer to the Cliffside and swinging around to a north-eastern direction, as it met the ocean over a boulder strewn bed. As the Kaituna cut through the semi-thermal swamps and shallow lagoon, its languid green brown waters succoured a bounteous supply of water-fowl and tuna (eel). The lagoon with its beach and berm were the habitation of shoals of herring, mullet and flounder, which darkened the water that flowed over dense beds of delicious bi-valves and univalves. The sacred beds of Ngatoroirangi, they were known by...*³⁸

3.5 HISTORY of DRAINAGE in the MAKETU AREA:

The Te Puke Land Drainage district was formed as far back as 1895 in an effort to co-ordinate and extend drainage works for some 4500 hectares of land west and north of the Kaituna river. In 1906 the Tumu-Kaituna land drainage district of 3400 ha was formed to drain all the land to the east of the river. These two drainage districts together with an area of higher land around Te Puke, came under the administration of the Kaituna River Board in 1921. The board's chief concern was the maintenance of the Kaituna River channel. Floods occurred in 1907, 1951 and another after the diversion in 1962. Various reports were developed over this period to deal with the flooding. The Murray report in 1951 suggested a direct diversion cut from the bend below the rail bridge to the outlet at Maketu. H.A. Acheson modified the Murray report in 1953 which included the diversion at Te Tumu.

In 1958, the Tauranga County Council took responsibility for administration of the Kaituna River District. The County engineer prepared another report in 1962 proposing straightening the river channel, stopbanks and flood gates and pumping stations. In 1963, the Bay of Plenty Catchment Commission accepted responsibility for flood control in the district.

Further reports followed building upon previous reports. Mr Revingtons was in 1970 and in 1976 Murray-North partners. By 1983, Mr Revington the CEO of the Catchment Commission was

³⁶ In Friends and Foes at Maketu Daily Southern Cross, Volume XX, Issue 2141, 31 May 1864, Page 7

³⁷ Williams, Arthur P: Material on a trip to Lake Taupo. Notes from his journal. December 1866 Turnbull Library – MS Papers 3677 pp1-2 Cited on Page 3 MIC Folder

³⁸ Tapsell, Mark. (1987) Alien Bonds: A Roman A Clef. Rotorua, New Zealand. Published by the author.p12

agreeing with Mr Barry Wilkinson of Maketu in the Te Puke Times 14.12.83 that he didn't think the controversial decision at the time was the right one. But rerouting was now a question of who pays for it.³⁹

The Bay of Plenty Catchment Commission's engineer, Mr. E.D. Revington said in Whakatane yesterday he doubted that there would be any economic justification for re-channelling the Kaituna River back into the Maketu Estuary in an attempt to combat serious silting there. He was commenting on recent suggestions by Maketu residents that the estuary could be saved from total destruction by silting⁴⁰.



Picture by James Richardson 1849

³⁹ Te Puke Times 14.12.83 MIC Folder

⁴⁰ DIVERSION TOO COSTLY; ESTUARY SILTING DISCUSSED BOPT(?) (date not noted on the newspaper clipping, in the MIC folder page 15

PART 2

RESTORING the ESTUARY, RESTORING MAURI, RESTORING CULTURE

We note that the Maori comprehension of taonga such as rivers, waterways, lakes, lagoons, harbours, bays, and oceans has been covered in detail in a number of Tribunal reports. It is clear that such resources are often highly significant to Maori wellbeing and ways of life. The relationship exists beyond mere ownership, use, or exclusive possession; it concerns personal and tribal identity, Maori authority and control, and the right to continuous access, subject to Maori cultural preferences.⁴¹

I am angry about the river and Ongatoro... I will never understand how people can think they can act like gods and do things with our environment which nature has taken millions of years to perfect. How can a dollar ever be worth more than the awe of a living thing? The river had a mauri; I don't know that it has anymore. It's dying, and bureaucracy still protects the "New Zealand farmer, the pioneer". What a lot of... Maori never got anything but heartache from that section of New Zealand society. All of our Maori resources went to subsidise that creature. And there is a lingering historical pakeha memory of this mythical being that was the "backbone of New Zealand". Christ we are all paying for it, while a few get rich and establish dynasties. We are still paying for the great damage to the environment, but do that section take any responsibility? What's the catch cry, don't replace one wrong with another. Yes the messages are getting more sophisticated but the underlying message is till the same; Maori accept your place as a second-class citizen, colonialism still rules.⁴²

In this the second section, we set out the cultural connections to the estuary.

4.0 INTRODUCTION – OUR APPROACH:

The Environment Court's decision in *Winstone Aggregates Limited v Franklin District Council* (A80/2002) sets out the parameters for assessing Maori values:

*The first is to determine, as best as we are able in the English language, the **meaning** of the **concept**. The second is to assess the **evidence** to determine whether it probatively establishes **its existence and relevance** in the context of the facts of a particular case. If so, the third is to determine how it is to be **recognised and provided for**.*

⁴¹ Waitangi Tribunal (2002). Ahu Moana WAI 953 The Aquaculture and Marine Farming Report. Wellington: Ministry of Justice.p57

⁴² WAI 676 Evidence Ahi Kaa evidence

This section: “Part 2, Restoring the Estuary, Restoring Mauri, Restoring Culture,” is consistent with this direction. We attempt to convince authorities of the “values” which the ahi kaa of Ngati Makino, Ngati Pikiao, Ngati Tunohopu and Waitaha hold which revolve around Ongatoro.

As per Section 1, we are mindful that our audience includes our own people.

In giving context to the relationship that ahi kaa have with Ongatoro, we feel it is pertinent to explain the nature of the subsistence economy. We also have incorporated a section on traditional knowledge for the same reason. These two over-arching paradigms are critical to understanding impacts on the culture of the ahi kaa of Maketu, how an impact on one value had flow-on effects to others and how difficult it is to try and isolate one value from others. We also give some attention to the Mason Durie, Maori Health model, “Whare Tapa Wha” now widely used in health programming for Maori, as support to our reference to Maori well-being, the environment and cultural values.

Throughout this section we quote extensively from the ahi kaa. In the main these quotes come from documents which have already been through a public scrutiny process as was referred to in Section 1. This not only under-pins the legitimacy of the evidence, it provides a voice in this whole sorry saga to people who have been marginalized by the coloniser, by the more politically powerful (including other Maori and Maori organisations) and by national and local authorities. At other times, we have used definitions from authoritative sources aka, the NZ Law Commission⁴³, Wai 262 and other Reports^{44 45}, the MFE Making good decisions Maori supplement⁴⁶, and He Hinatore ki te Ao Maori⁴⁷

We have deliberately omitted any details on ahi kaa sacred knowledge as it would not be appropriate to make it publicly available. However we have quoted from a published document on some⁴⁸ of the whakapapa which links people to the environment. This information would traditionally constitute ‘sacred knowledge’, a subset of “traditional knowledge.” Nevertheless, as it is published information, through a thesis, we have included it for the insight it provides of an aspect of traditional knowledge, whakapapa and Matauranga Maori. We have edited where it does not concur with our Te Arawa ki tai ahi kaa Matauranga.

⁴³ NZ Law Commission (2001). Maori Custom and Values in New Zealand Law. Wellington: NZ Law Commission.

⁴⁴ Ahumoana, The Aquaculture and Marine Farming Report WAI 953 2002

⁴⁵ OCEANS POLICY SECRETARIAT (2003). Maori and Oceans Policy: Working Paper Three. Wellington: Ministry for the Environment.

⁴⁶ Good Decisions Workbook ME 679 Maori values supplement (2010) Atkins Holm Joseph Majurey Limited for the Ministry for the Environment

⁴⁷ He Hinatore ki Te Ao Maori: A Glimpse into the Maori World (2001) Ministry of Justice Wellington New Zealand.

⁴⁸ Readers need to be aware that this whakapapa is only a small portion of the connections of people to atua and the environment around the awa and moana.

5.0 The SUBSISTENCE ECONOMY

The subsistence economy was based on community (the hapu) and natural resource use. Cultural values were integrated across the social, economic, and environmental domains, reinforcing and sustaining each other. One definition of subsistence that encapsulates much of pre-1958 mana whenua life is:

...subsistence is defined as the cultural values that socially integrate the economic relations of a non-market economy. In this interpretation, subsistence refers not just to social values and channels of distribution but also relationships of production between humans and the environment, along with their respective ideological underpinnings.

The Estuary was central to the Maketu ahi kaa existence and identity. The economy of Maketu up till the 1958 diversion had been largely a subsistence one, as was the case with most indigenous societies. By subsistence, we do not mean that it was one of poverty and bare survival. Though not wealthy in material terms, the ahi kaa say without exception that they felt they were well off and the community was more caring.

Caring, sharing, manaaki quotes

The things we needed money for were petrol, flour, sugar, tea, baking powder, butter, church. We would buy flour by the 50 lb bag. We made our own bread. In a wood stove. We did not go to town. We had a good life when Mum was alive.⁴⁹

When someone set the hīnaki, the tuna would be shared out. One person would set the hīnaki – but the tuna was shared out to everybody.⁵⁰

Also at the right time of year and right tide fishing for kahawai at the mouth of the Kaituna was an early morning sight. My own husbands record was 54 one morning, most given away before coming home for breakfast...⁵¹

People seemed to care more in those days. We seemed to be safer because there was someone who cared (Interview 2001)⁵²

Sharing food and resources was a manifestation of 'caring' that was demonstrated in the Maketu subsistence economy. Most of the resource was communally owned, was freely accessible for gathering and re-distributing (sharing) as were the tools for gathering it.

⁴⁹ WAI 646 ONGATORO Evidence in support of Wai 646, concerning the diversion of the Kaituna River from Ongatoro (Maketu Estuary).

⁵⁰ Part 2: Before the Diversion (reconstruction history) notes for WAI 676

⁵¹ Meg Tapsell Fishing As I Remember It In The Late 1930's and Early 1940's.

⁵² WAI 646 ONGATORO Evidence in support of Wai 646, concerning the diversion of the Kaituna River from Ongatoro (Maketu Estuary).

*Our stand was just at the corner of the drain. I suppose where that fulla has got his airstrip now. And over here was where the kuia and koroua had a stand opposite. Then around the corner was Toby Kameta. There were no chiefs having the best place and ordering someone out of their place. Not like now. I mean our koroua was the chief, but he would not think of trying to take over someone else's stand. It was a gentleman's agreement, the stands. We respected each other's possie. Everyone had their own place.*⁵³

*The same is for whitebait. The families all had their traditional places at the river and at the bar. The nets were left there. Any whanau could use another whanau's gear and site if no one was there. But as soon as the rightful whanau came, there was no argument you just left it to the whanau whose spot it was. The arrangement was one of mutual respect*⁵⁴.

*You respected each others stand. You would leave your net on your stand and come back the next day it was still there*⁵⁵.

The resource was managed according to traditional values associated with tangata whenua and ahi kaa culture.

As the Kaituna cut through the semi-thermal swamps and shallow lagoon, its languid green brown waters succoured a bounteous supply of water-fowl and tuna (eel). The lagoon with its beach and berm were the habitation of shoals of herring, mullet and flounder, which darkened the water that flowed over dense beds of delicious bi-valves and univalves.

*The sacred beds of Ngatoroirangi, they were known by, for it was he, in the interests of ecology perhaps, who had placed a restriction on the amount of shellfish allowed for consumption in a given period*⁵⁶.

*We only took enough for a feed – even though we could have deep freezeed them.*⁵⁷

*We did not go to places we were told to stay away from. The old people used to say "Mehemea ka haere koe ki kora, ka mau koe i tē taipo". [If you go there a ghost will get you.] We just did not go if that was said. Even the watermelon patch. That would be it. We wouldn't dare. [The taipo is a ghost associated with coastal places]*⁵⁸

⁵³ MC WAI 676 evidence

⁵⁴ AFFIDAVIT OF RAEWYN BENNETT Dated: T 1999 Woodward Law Offices, 4 Floor, Druids Chambers, 1 Woodward Street, Wellington

⁵⁵ Part 2: Before the Diversion (reconstruction history) notes for WAI 676

⁵⁶ Tapsell, Mark. (1987) *Alien Bonds: A Roman A Clef*. Rotorua, New Zealand. Published by the author. p12

⁵⁷ The third generation. Interviews for the WAI 676 claim.

⁵⁸ The first generation. Interviews ditto

When they cut the [beach road] road out, they found some skulls there and they had to do the “thing.” It was serious stuff in those days [rahui and whakanoa], I remember the koroua going down to Tē Teko to pick up the tohunga. Which was unusual because he knew enough about those things himself, however he would get the tohunga.⁵⁹

The respect for Ngatoroirangi was a compelling reason for ensuring the Ongatoro beach was cleaned up to highest standards during the recent Rena Oil disaster, so as to recognise his mana and have his approval.

I hope that they [ancestors] would think we did the best we could under the circumstances. I know I kept them to the front of my mind. Ngatoroirangi, my koro and kuia, Auntie Pia. They were there inspiring and strengthening our resolve. I hope our actions honoured them⁶⁰.

These five quotes show that: Firstly, the traditional ancient lore of Ngatoroirangi gave a basis for preventing over-harvesting, the second quote shows that people obeyed and practised self-imposed limits on kaimoana quantities taken, the third shows that there were traditional ways that children learned among other things which involves a ghost of the coast, to stay away from places which were out of bounds, that the higher sacred rituals were also important and practised and lastly that ancestral beliefs are still practised today. Taken all together they demonstrate kaitiakitanga.

Subsistence activities included harvesting “wild” foods, e.g. a wide variety of fish and shell-fish, whitebait, eels, water-cress as well as cultivation of crops, kumara and potatoes mainly. Fruit trees and other crops which were introduced by the missionaries had been willingly included. Other local “wild” resources used included flax and supple-jack, flax for a myriad of uses and supple jack for making harvesting equipment e.g. white bait nets, crayfish pots. Most fish species and kaimoana harvested outside the estuary could also be caught inside the estuary. Pig and deer hunting in nearby Ngati Pikiao and Ngati Makino forests added to the new subsistence resources available

I have friend who have been out of work for a while – in coming to the beach you will never starve – beach supplements household cupboard – it always has been kind – hate to lose that – ability to go to the beach and get a feed, Maketu and Papamoa was bad, kids helped clean up here and there⁶¹

The subsistence economy of the ahi kaa had started changing since colonialism, but at a pace that was culturally non-threatening in that the ahi kaa group was self-determining the “labour for cash” in the mix: the scraping of flax for example in the 1830’s by various hapu was to enable purchase of guns. In the period 1840-1860’s various hapu also worked in gumfields outside Te Arawa’s rohe and invested in schooners for taking part in trading opportunities.

⁵⁹ The first generation. Interviews ditto

⁶⁰ See Kua Mamae interviews

⁶¹ See Kua Mamae interviews

The ahi kaa also took on soldiering for the Crown, followed by road-making work, and some later laboured clearing forests for new settlers. Excess of fish catches (what was left after all village whanau had been supplied) were sold to traders or in the immediate pre-1958 period, weekend tourists.

These cash activities were of a temporary nature. Immediately prior to the diversion, in 1958, the estuary and coast was fundamental to this subsistent economy which in turn was integrated with the social and cultural fabric of Maketu tangata whenua. As quoted earlier, it was “a good life”.

The point is that an effect on any of the resources in this subsistence economy involves values which are integrated with the rest of the culture. These values cannot be isolated and ring-fenced or “commodified”. The effect of the diversion was not then to merely force ahi kaa into a capitalist economy and dependency, without having a say on the matter, but with it went the resources and values which sustained a subsistent economy and a healthy, functioning resilient Maori community. For Maori men especially was the psychological well-being of being able to provide food they had caught for whanau and manuhiri was severely constrained. Womens roles as nurturers and carriers of specialist knowledge pertaining to kaimoana was obstructed and knowledge progression mostly lost. Traditonal knowledge was not able to be passed on to the next generation.

There was a general despondency over the loss of bio-diversity and the mauri of the estuary which grew to anger by the time of the first consent application for re-diversion in 1990.

Tino pouri – sad because of its decline – the mauri - the things that fed us are. I feel sad. It is a gift that has slowly been taken away from us. There is still hope for the future. To rectify it. The matter by Maori fix it up. Maori have to drive the fixing up. I feel we understand the problem – we see it every day – we watch it. I think it can be done. I’m sure a couple of years and we can fix it ourselves – if its done properly. This is a very sensitive issue. The kai now wants help, whats entering it, its shrivelling up inside. Its really looking sick. It must be unhealthy but we have eaten it all our lives and Maori will go on eating it even if it is no good for our health even polluted down we came and eat it.

A person used to get rongo from the kai, from the fish oil, its good for your hinengaro – helps with mental stress. If its was a healthy river there would be less dacking out there they would be out there.⁶²

⁶² Interviews, 2nd generation, 2001

6.0 1924 AHI KAA “STATEMENT of VALUES”

We referred to this letter in Part One as having been discovered in the National Archives and used as evidence in the Ngai Makino Waitangi claim. The letter is hand-written in Maori. Through personal knowledge and in comparing names with the 1919 census names where Maori self-identified their Iwi, we have been able to identify most of the signatories' Iwi. There are a mix of Iwi. Ngati Pikiao as expected has the most numbers. There are also Ngati Makino, Ngati Tunohopu and Waitaha iwi⁶³ represented. They represent the ahi kaa of Maketu whanau. The script of the original Te Reo Maori version follows:

Maketu

24, Maehe 1924

To Hon. A. T. Ngata,

E pa tena koe.

He whakaatu kia koe I te hui a Te Poari o te Moana o Tauranga (Tauranga Harbour Board).

I whakaotia ai e ratau he motini, “Kia riro ki raro I to ratau mana nga taha tika o te moana o Maketu tae atu ki Waihi.

Ko matau ko nga Maori o tenei takiwa kaore I te whakaae ki tenei take a ratau I raro ano I nga huarahi e whai ake nei:-

- 1. Ko enei taha-taha ara takutai o te moana he wahi rongo nui no matau no te Arawa, a, he unga mai hoki no te matau tupuna waka (Te Arawa)*
- 2. Ko nga taha o taua takutai o Maketu ki Waihi he mea nunui anake no matau no nga Maori ara`*
 - a. He urupa no matau tupuna iho, tae mai ki naia nei*
 - b. Ko etahi wahi o taua takutai, he mahinga oranga mo matau mo nga Maori, ara, he paru mahinga ika, mahinga pipi, mahinga kutai,(kuku) paua, kina, a, he paru mahinga tuna hoki.*
 - c. A, ko etahi wahi atahua kua meinga hei wahi takorotanga mo nga ahua iwi e tai mai ki konei I nga wa o te Raumati⁶⁴*
 - d. Ko nga kohatu me nga onepu o etahi takiwa o taua tahataha e tikina mai ana e nga hoa Pakeha noho tata mo a ratau mahi ririki kaore e whakararururua e matau, no te mea he hoa pai tonu no matau o matau hoa Pakeha noho takatapu o te wa mai ano I o matau matua e ora ana.*
 - e. I runga I tenei tikanga nui ka eke mai nei ki te rohe o to matau takutai me nga parutu o te akau, ka mohio ake matau tera e pa he raruraru nui ki waenganui I a matau me te hunga na ratau tenei take, mehemea tupono riro nga whakahaere ki raro I te hiahia o Te Tauranga Harbour Board.*

⁶³ PC with Maru Tapsell

⁶⁴ See translation at appendix

No reira matau te hung aka haina nei I o matau ingoa ki raro iho nei, ka tono kaha atu kia koutou ko ou hoa honore, kia puta to koutout aroha, kaha hoki ki te whakakore atu I tenei take a o matau hoa o Tauranga.

Heoi ano na o hoa.

[66 signatures follow]

Translation⁶⁵ of letter from Maketu tangata whenua ahi kaa roa to Apirana Ngata:⁶⁶

Maketu

24 March 1924.

To the Honourable A.T. Ngata

This is to inform you of the proceedings of the meeting of the Tauranga Harbour Board. They ruled that they be granted authority over the coast from Maketu to Waihi.

We, the Maori of the area do not concede to that matter for the following reasons:

- 1. This stretch of the coast is a significant area to us of Te Arawa as well as being the landing place of our ancestral waka (Te Arawa).*
- 2. The coastline from Maketu to Waihi is important exclusively to Maori, that is*
 - a. It is the burial ground from the time of our tupuna and has remained so up to the present*
 - b. Certain places on the coast were places that provided sustenance for us Maori, those being the mudflat fishery, pipi beds, mussel rocks, paua, kina and eel fishery as well.*
 - c. Certain areas, noted for their beauty, cater for Iwi social activities, during the warmer months.*
 - d. The rocks/reefs and beaches of particular areas of the coast are used by our Pakeha neighbours for recreational purposes which we do not interfere with, because they are good friends of ours since the days of our parents.*
 - e. Based on this major ruling that applies to the beaches and cliffs of our area, we are concerned about the potential for conflict to arise amongst us and those to whom this ruling applies to should the authority be granted to the Tauranga Harbour Board.*

⁶⁵ Translation by Heeni Hope, Maketu May 2008.

⁶⁶ Letter from National Archives of New Zealand, Wellington.

We whose names are signed below, appeal to you and your honourable friends too, for your compassion and support to undo the undertakings of our Tauranga friends.

That is the case from your friends:

[66 signatures follow.]

6.1 IMPACT ASSESSMENT FRAMEWORK:

The 1924 letter appropriately provides the framework for this impact assessment because it is the Ahi Kaa who are articulating their relationship to their environment, providing a tuapapa⁶⁷ for assessing the values which may be impacted by the proposed re-diversion. The English translation is presented and we have extracted from the various statements that comprise the letter, the values.

7.0 VALUES EXTRACTED:

No	Statement	Values
1.	"This stretch of the coast is a significant area to us of Te Arawa as well as being the landing place of our ancestral waka (Te Arawa).	Ancestral links, identity, rangatiratanga, wairuatanga, pakiwaitara, kaitiakitanga, whakapapa, mana, mauri
2	"The coastline from Maketu to Waihi is important exclusively to Maori, "	Special significance to Maori, kaitiakitanga, identity, wairuatanga, rangatiratanga, identity, mauri
2a	" It is the burial ground from the time of our tupuna and has remained so up to the present":	wahi tapu, history, identity, ancestral links, kaitiakitanga, wairuatanga, mana
2b	"Certain places on the coast were places that provided sustenance for us Maori, those being the mudflat fishery, pipi beds, mussel rocks, paua, kina and eel fishery as well"	Economic/subsistence, indigenous knowledge, manaaki, mana, rangatiratanga, arts and crafts, biodiversity, whakapapa, kaitiakitanga, manaaki, mana, mauri, taha tinana
2c	"Certain areas, noted for their beauty, cater for Iwi social activities, during the warmer months"	landscape amenity, social and physical activities, whanaungatanga, traditional kai gathering areas, manaaki, indigenous knowledge, mana, identity, traditional sports, arts and crafts, weaving, swimming, diving, rowing, mauri, taha tinana
2d	"The rocks/reefs and beaches of	Manaaki, acceptance of different values not

⁶⁷ Foundation

	particular areas of the coast are used by our Pakeha neighbours for recreational purposes which we do not interfere with, because they are good friends of ours since the days of our parents”.	conflicting, rangatiratanga, indigenous knowledge, whakapapa, history, pakiwaitara, manaaki
2e	“Based on this major ruling that applies to the beaches and cliffs of our area, we are concerned about the potential for conflict to arise amongst us and those to whom this ruling applies to should the authority be granted to the Tauranga Harbour Board”.	Rangatiratanga, kaitiakitanga, historical connections, indigenous knowledge

Remembering that the context is Ongatoro, we will focus the analysis on 1 and 2 b values. Note that 2b along with 2c covers values which depended on Ongatoro and which have not been sustained, or sustained to a limited extent. Though the play or recreation activities in 2c are easy enough to work out, Matauranga, cultural identity and kaitiakitanga through children engaging in these activities in Ongatoro have been interrupted and are not obvious values associated with 2c. Ongatoro was and remains the dominant Maketu playground, providing for children’s activities which developed their kaitiakitanga as well as providing the environment where they enjoyed all their physical activities. The siltation has restricted what activities are possible.

It is considered that there are a number of central values that underpin the totality of tikanga Māori. They include: whanaungatanga; mana; tapu; utu; and kaitiakitanga. These values in no way form a definitive list. Each tribal grouping will have its own variation of each of these values. Some will also have slightly different ideas as to which values inform tikanga Māori.⁶⁸

We set out the values which experience tells us are harder for non-Maori to understand. We define them and then provide quotes as examples. Where there are substantial over-laps, we have not pursued explaining them as often the context has done that.

1. Wairuatanga, rangatiratanga, identity, pakiwaitara, kaitiakitanga, whakapapa, whanaungatanga, mana, mauri

2b Economic/subsistence, manaaki, taha tinana, indigenous knowledge,

⁶⁸ Maori Customs and Values in New Zealand Law (2001) Study Paper 9. NZ Law Commission. Wellington p28-29

7.1 WAIRUATANGA:

In Section One we inferred that the estuary despoliation had been the main reason for the Deprivation 9 health index of Maketu. The respected academic and psychologist Mason Durie, in 1984, presented a model for explaining Maori well-being factors. The model, “Whare tapa wha”, [The four walls of the house] says that good health for Maori recognises that there are four connected aspects to Maori well-being: taha wairua (spirituality), taha tinana (human body – physical aspects), taha hinengaro (intellect, mind, emotions) and taha whanau (human relationships.) The model stresses the connectedness of all four⁶⁹ though wairuatanga has been presented as being the most important.

Wairuatanga is identified as a value of the estuary, and staying with the whare tapa wha model, the following has been put forward as an explanation:

Taha wairua is generally felt by Maori to be the most essential requirement for health. It implies a capacity to have faith and to be able to understand the links between the human situation and the environment. Without a spiritual awareness and a mauri (spirit or vitality, sometimes called the life-force) an individual cannot be healthy and is more prone to illness or misfortune. A spiritual dimension encompasses religious beliefs and practices but is not synonymous with regular churchgoing...Belief in God is one reflection of wairua, but it is also evident in relationships with the natural environment. Land, lakes, mountains, reefs have a spiritual significance quite apart from economic or agricultural considerations, and all are regularly commemorated in song, tribal history and formal oratory. A lack of access to tribal lands or territories is regarded by tribal elders as a sure sign of poor health since the natural environment is considered integral to identity and fundamental to a sense of well-being.

Durie quoting “The Geneva and Survival Declaration of Health of Indigenous Peoples” says that the determinants of health are identified: loss of identity, environmental degradation, community development, culturally appropriate care and “war, conflicts and vigilantism”.⁷⁰

I always dreamed about our ancestors coming in the waka and landing in Maketu. I used to see it quite clearly⁷¹

One of my ambitions is to go so far out to sea that I can't see the land and then see what Okurei looks from way way out – how our ancestors would have seen it.

⁶⁹ Durie, Mason (2004) An Indigenous Model of Health Promotion: 18th World Conference on Health Promotion and Health Education: Melbourne

⁷⁰ Durie, Mason (2004) An Indigenous Model of Health Promotion: 18th World Conference on Health Promotion and Health Education: Melbourne page 5

⁷¹ Interviews, 2nd generation, 2001

*With the river restored and then being able to see from way out at sea, I will die happy. I will have done the best that I can for my children and other generations*⁷²

There is plenty of evidence that wairuatanga has been affected by the degradation of the estuary and that it was a value that was held by the ahi kaa and attached to the mauri of Ongatoro.

7.2 RANGATIRATANGA:

- tino rangitiratanga – the exclusive control of tribal taonga (all those things important, both tangible and intangible) for the benefit of the tribe, including those living and those yet to be born⁷³

The 1924 letter is about Rangatiratanga. That is, the ahi kaa are the “owners of the estuary” and are providing proof. The Te Arawa waka anchored here, our identity as a nation starts here and also as a community and as ahi kaa. It is of special significance because of all these reasons, plus in defence of our rangatiratanga our ancestors fought many battles. The last major being the battle of Te Tumu which was referred to in Section One

The ahi kaa in the last statement are saying that should the mana of Ongatoro go to Tauranga, there will be trouble, “potential for conflict”.

More recent research has shown that these values are still held:

*Maori should .. look at the TOW ..we should take our mana back the way the Treaty is the document which says that following that... its all there. We don't have it follow the kupapa Maori way. The Treaty confirmed our tino rangatiratanga. Confirmed by our own tupuna at Kohimarama in 1860. To follow it will benefit us ...*⁷⁴

*You know that they sent Maori who weren't Te Arawa to check our beaches? Do you think that was tikanga? The people who were appointed by others. Both other Maori and Pakeha thought that they could rule us. It was a challenge to our mana. Our rangatiratanga*⁷⁵

7.3 WHAKAPAPA:

(Genealogy) transcends the Maori world and evidences the relatedness (the whanaungatanga) of all things. For Maori, whakapapa demonstrates the linkages between the transcendental realm of Te Kore, Te Po (the world of the night) where atua and ancestors dwell and the material-physical world of Te Ao Marama (the world of light or the natural world) knowing place and history and whakapapa enables kaitiakitanga as does wairuatanga.⁷⁶

⁷² Interviews, 2nd generation, 2001

⁷³ OCEANS POLICY SECRETARIAT (2003). Maori and Oceans Policy: Working Paper Three. Wellington: Ministry for the Environment. Para 11-12, pages 3 & 4

⁷⁴ Wai 676 , 2nd generation interviews

⁷⁵ Kua mamae interviews

⁷⁶ OCEANS POLICY SECRETARIAT (2003). Maori and Oceans Policy: Working Paper Three. Wellington: Ministry for the Environment. Para 11-12, pages 3 & 4

Whakapapa is tied to history, place, whanaungatanga (extended family relationships) ancestors, land and rangatiratanga. Rangatiratanga is tied to kaitiakitanga which is tied to wairuatanga. These connections were learned through everyday inter-action with whanau, marae and Ongatoro. We provide more explanations in the indigenous knowledge section.

7.4 WHANAUNGATANGA:

Denotes the view that, in the Maori world, relationships are everything. From the Maori perspective, humans are not considered superior, but an equal part of life in the natural world.⁷⁷ Whanaungatanga is related to whakapapa and identity. This is explained further in the indigenous knowledge section. It is also tied to kaitiakitanga, as kaitiaki inherit responsibilities and are obliged to maintain the resources on behalf of others⁷⁸.

*The loss of our taonga has affected our relationship with our cousins in Rotorua. By our kaitiakitanga, that was our job, to awhi it and nurture it (the kai, the river, the privileges that have been taken from us, that was over to our governorship, have been lost – due to the pakehas – they push their takes (issues) first before us the farmers bulldozing their – before us – loss of mana – those government departments – they, the people, have been pushed aside. They forget that it benefits their people too, the loss of taonga is a loss to them as well and they don't realise it. They come first, Maori come last.*⁷⁹

7.5 IDENTITY:

Kaumātua kuia Pia Kerr told the tribunal it had a cheek to ask for a water right.

*"I was born in Maketu, I breathe the water of the Kaituna, I eat the food in the Kaituna and you came along and you took the river away. You took our food basket which was an asset to New Zealand, it was one of the taonga (treasures) ..it is a cheek that we should ask for a water right when they took our river away without asking us – the people of Maketu."*⁸⁰

Our kuia, is referring to identity, which aspects tie her to the estuary. Every Te Arawa child will be told that Maketu is the landing place of the waka Te Arawa. We were told what taka the waka was tethered to, about Ngatoroirangi, about special ceremonies, urupa, whakapapa. There are other connections to the place which re-inforce that history and whakapapa including urupa, mauri, Polynesian connections and world-views, or myths. These connections generate kaitiakitanga as you need the every day interaction with your environment to become an effective kaitiaki, hence the ahi kaa status having pre-eminence in a multi-tribal situation.

⁷⁷ OCEANS POLICY SECRETARIAT (2003). Maori and Oceans Policy: Working Paper Three. Wellington: Ministry for the Environment. Para 11-12, pages 3 & 4

⁷⁸ OCEANS POLICY SECRETARIAT (2003). Maori and Oceans Policy: Working Paper Three. Wellington: Ministry for the Environment. Para 11-12, pages 3 & 4

⁷⁹ WAI 676 interviews

⁸⁰ Te Puke Times Vol 9 No 28 31 July 1991 Front page. Estuary revival will preserve Maketu mauri.

Cultural Identity is, according to Durie, a critical pre-requisite for good health outcomes,

Deculturation has been associated with poor health whereas acculturation has been linked to good health. A health promotional goal must therefore be to promote security of identity. In turn that goal requires ready entry into the indigenous world – a world that encompasses tribal estates, language and culture, family, indigenous networks, and a unique heritage⁸¹

Knowing your whakapapa and ancestral links are critical to the well-being of Maori and their identity.

7.6 PAKIWAITARA

There are a myriad of stories (pakiwaitara) associated with each generation since the beginning of Te Arawa in Maketu which have been preserved and added to over the years. These form part of our indigenous knowledge and also become part of the bonding between whanau and generations. Indigenous knowledge is oral in nature and the various knowledges were often transmitted by story-telling.

The koroua's favourite story was about the little rock. That was Raumati's wife and baby. They turned into the little rock because of Raumati. Taka parore. Then he would talk about how Hatu Patu caught Raumati. That was his favourite, Hatu Patu. I listened hard to his stories because I wanted to impress him.⁸²

The boys would line up between the rocks trying to estimate how many people could fit on the Tē Arawa waka. That would have made a good maths lesson.⁸³

I also grew up with the Maui stories. I knew that scientifically speaking Maui could not have fished up the land, but I still believed in him. When I found out as an adult that he had also fished up other Polynesian Islands, then I had some doubts. The stories were so vivid.⁸⁴

Mum is a real sea person... She would try to tell us stories about Ongatoro. Some we took notice of, some we did not. It was the timing. The one she keeps telling is the one where her mother gave her a hiding in front of her friends for going to the beach when she wasn't supposed to. She kept saying Mum don't hit me in front of them, she still says how cruel that was⁸⁵

⁸¹ Durie, Mason (2004) An Indigenous Model of Health Promotion: 18th World Conference on Health Promotion and Health Education: Melbourne page 5

⁸² WAI 676 Evidence Ahi Kaa evidence

⁸³ WAI 676 Evidence Ahi Kaa evidence Appendix A

⁸⁴ Affidavit

⁸⁵ Interviews 2001 Second generation

7.7 KAITIAKITANGA:

– the obligation of whanau, hapu and iwi to protect the physical and spiritual well-being of taonga (things of value) within their mana (control)⁸⁶ The Wai 953 report acknowledged the codes that kaitiakitanga embraces e.g.

From the world view of Maori it is difficult to divorce kaitiakitanga from mana, which provides the authority for the exercise of the stewardship obligation; or tapu, which the special or sacred character of all things and hence the need to protect the spiritual well-being of those resources subject to tribal mana; or mauri, which recognises that all things have a life force and personality of their own. It is from the ethic of kaitiakitanga that the traditional mechanism of rahui comes⁸⁷.

The report says that anyone with “mana must exercise it in accordance with the values of kaitiakitanga- to act unselfishly, with the right mind and heart and with proper procedure”.

The Maori values supplement⁸⁸ appropriately classes kaitiakitanga as an intergenerational responsibility “inherited at birth”:

The purpose of kaitiakitanga is not only about protecting the life supporting capacity of resources, but of fulfilling spiritual and inherited responsibilities to the environment, of maintaining mana over those resources and of ensuring the welfare of the people those resources support.⁸⁹

Kaitiakitanga is a term coined in relatively recent times to give explicit expression to an idea which was implicit in Maori thinking but which Maori had hitherto taken for granted. It denotes the obligation of stewardship and protection. These days it is most often applied to the obligation of whanau, hapu and iwi to protect the spiritual wellbeing of the natural resources within their mana.

It is difficult to divorce kaitiakitanga either from mana, which provides the authority for the exercise of the stewardship or protection obligation; or tapu, which acknowledges the special or sacred character of all things and hence the need to protect the spiritual wellbeing of those resources subject to tribal mana ; or mauri, which recognises that all living things have a life-force and personality of their own. It is from the ethic of kaitiakitanga that the traditional institution of rahui comes⁹⁰.

One of the ahi kaa kaitiaki gave this as the reason for cleaning the oil off the Te Arawa beach:

... I was unwilling to let others take charge of our beaches because I did not trust them to clean them up as we wanted. We ahi kaa took charge and the result was

⁸⁶ OCEANS POLICY SECRETARIAT (2003). Maori and Oceans Policy: Working Paper Three. Wellington: Ministry for the Environment. Para 11-12, pages 3 & 4

⁸⁷ Waitangi Tribunal (2002). Ahu Moana WAI 953 The Aquaculture and Marine Farming Report. Page 58

⁸⁸ Ministry for the Environment (2010) Maori values supplement: A supplement for the Making Good Decisions Workbook MFE 679 , Wellington

⁸⁹ (Miller, 2005, p 6): cited Page 270 Ministry for the Environment (2010) Maori values supplement: A supplement for the Making Good Decisions Workbook MFE 679, Wellington.

⁹⁰ Maori Customs and Values in New Zealand Law (2001) Study Paper 9. NZ Law Commission. Wellington p40

a well-run operation and we did not use any harsh chemicals or scrapers. I think we did OK. I saw all the old ahi kaa families attend, day after day. That is kaitiakitanga⁹¹.

The Rena interviews detailed active kaitiakitanga im Maketu.⁹²

Last month quite a few times just for an exploration to see where it is, how it is. From Newdicks walking back this way.

A few friends say mussels not in usual places, used to be closer to shore – don't seem to be there.

Left side – Waihi side, rocks have some. On this side rocks don't. Out today, there are none. I saw three guys – rape and pillage kai. I go all the time – something I won't give up

7.8 MANA:

When derived through sheer personality, leadership qualities or achievements it is referred to as mana tangata. In reference to the marine environment, it denotes the authority for the exercise of the stewardship obligation as deriving from atua, ancestors and confirmed by the Treaty of Waitangi.

In the context of the ahi kaa being kaitiaki of the moana of Maketu, the mana attached to that position has been eroded due to the despoliation of the estuary. Whilst Te Arawa ki uta, do not blame the Maketu ahi kaa, the inability to get some resolution is not helping the despondency of the ahi kaa.

7.9 MANAAKITANGA

- An obligation to provide guests with care and kindness in the knowledge that some day that care and kindness will be reciprocated.

When the lake relations came over they would get fish given naturally. But it was our only means of income by then and they respected that. Koro would prepare the sharks for them. It would be cut into strips, salted and dried. Pawhara. It would be for the lakes people. If koro was going over to Rotorua he would take fish over for his relations. During the war they would gather kai moana and dry it and send it overseas to the Te Arawa soldiers.

No we never thought bad about people from Rotorua coming over to get kai. We did not think, hey this is ours. I was too young to think that way⁹³

⁹¹ Kua mamae interviews

⁹² Kua mamae interviews 2012

⁹³ MC Interview 2001

I think our problem is that we as a people are people focussed, we do try to accommodate everybody, make sure everybody's needs are met, and when we come across another human we think that's how they think too, so we trust them to act in the best interests of everyone. However that's not how it is. The farmers think of themselves and money, how much that bit of land will bring in with so much fertiliser on it, or what it will be worth when the mauri is gone, as a quarter acre development and the city's boundaries are over the fence. Then the river is wanted as a dumping place for wastewater, stormwater. etc. The rhetoric then becomes jobs for the people. Jobs, we know, don't even last one generation. Then what?

7.10 MAURI

– the life force and unique personality of all things animate or inanimate. It is a divine force that in the creation process entered into the realm of atua giving them a life force. In Te Ao Turoa (the natural world), mauri binds all things to their spiritual source in atua. A key consideration of resource management practices (tikanga) is the maintenance and protection of mauri. Makareti refers to mauri as being the “tapu life-principle”:

...not only human beings, but everything, such as trees and all plants in the forest, fish, birds, animals, mountains, and rivers, had a mauri or life-principle. With human beings it was likened to a soul. The Maori believed that nothing in this earth existed without its mauri, and that if this were violated in any way, its physical foundation was open to peril or exposed to great risk.⁹⁴

The estuary does not mean much to me, I have to say. I know the history but look at it. Its pourī.⁹⁵

The cultural and conservation values of the estuary will be restored and, equally important to the physical rehabilitation is the restoration of the mauri of the waters and the mana of Te Arawa through re-establishment of the traditional connection between the river and the estuary.⁹⁶

7.11 TAHA TINANA

We have said that the estuary was the centre of ahi kaa's existence in Maketu. It was the playground for children. Durie's Te Whare Tapa Wha posits taha tinana as a cornerstone of Maori health. Silting of the estuary and the reduced flow, has removed most of those activities and constrained the potential to try new activities.

I remember as an older kid, pinching boats and going for a little row. And then putting the boat back again. It was allowed, as long as you put it back intact. We

⁹⁴ Makareti page 118-119

⁹⁵ Second generation

⁹⁶ Te Puke Times 24/10/90

*did not pinch cars, we pinched boats! If the owner was ranting and raving on the beach we would row further down, land it there and take off.*⁹⁷

*You just learnt to swim. It was automatic, nobody taught you. You learned to swim at the rocks [in Ongatoro] when you grow you go to the next one. You would start with the small rock. You would swim out and then back. Then when you got better and bigger you would try the bigger rock. Further out. Same thing, swim out and then back. Then when you got braver you would swim to the third rock. That was further out. You would use the current. Swim back when the current was right, so you might start at one place and with swimming and the current you would end up where you wanted. You had to work it out right otherwise you could end up at sea – be carried out. There's no chance of that now. As kids, that's how we learnt to swim. We did not have anyone teach us, you just did it. I don't know where that rock is now.*⁹⁸

How did you learn to row? It just was automatic eh? I wasn't taught anyway. It was just something you did. No-one taught you. It just came to you. You just sort of got in the boat with your oars and away you went.

*My kids I try to tell them how to work the river – where to put their net, what shellfish is to eat. Before they used to be all good to eat. You did not need to look at them. Where to set your net so you don't get sea lettuce and rubbish in it. They only swim over by the diving board Too much sea lice up here now down this end. Only by the diving board*⁹⁹

8.0 INDIGENOUS KNOWLEDGE:

According to Maori, from Ranginui and Papatuanuku came Wainui. Wainui is the Spiritual Guardian of all the waters in this world, whether it is sea, fresh or lagoon waters, that is Wainui. My ancestors say in the time when mountains would roam, the waters could converse.

In this last values section, we look at what has probably been the biggest impact and one that will struggle to revive, that is the indigenous knowledge of the ahi kaa.

Matauranga Maori is a way of describing the world which acknowledges the links between natural things, a phenomena commonly referred to as "holistic". The lands, wetlands and estuaries were always seen as being connected to the sea. The most obvious verification of this world-view is reflected in the whakapapa of the Maori creation. Tanemahuta, god of forests and mankind is the brother of Tangaroa, god of the sea and all resources within. Hinemoana, atua of the sea, and in some places the wife of Tangaroa, gave birth to shellfish in general and is the main kaitiaki of sea-shore resources.

⁹⁷ Part 2: Before the Diversion (reconstruction history) notes for WAI 676

⁹⁸ Part 2: Before the Diversion (reconstruction history) notes for WAI 676

⁹⁹ Interviews WAI 676 second generation 2001

Hinemoana's descendant Hunga-terewai produced various univalves, some whelks and limpets, and oysters, while Te Arawaru and Kaumaihi were the progenitors of the pipi (cockle) family.

This world-view requires us to treat the resources with respect, as we all descend from the gods, people and flora and fauna. It includes being able to pass on this traditional knowledge and whakapapa to future generations. If there are no whelks, what happens to the whakapapa? How do we teach our children about respect, to manaaki visitors, the elderly? Have we been remiss in our kaitiakitanga? If there are no whelks, and other species left, can we call ourselves kaitiaki? What is left of our identity if we are no longer kaitiaki?

The connection in whakapapa between rocks, gravel, sand, seaweed and mussels comes through a story of fostering and care. Hine-moana produced seaweed in all its forms (Wharerimu). She then took Wharerimu and placed this family with Rakahore and Tuamatua (personifications of rock and stones). She did this so that her offspring, the mussel family, might have shelter and protection amongst both the seaweed and the rocks. The mussels were also said to be placed there to be companions for Hine- tū-ā-kiri (gravel) and Hine-one (sand).

This provides information on the mussel habitat, the coastal gravel and sand being important and related in the coastal environment. We also learn about nurturing and shelter and how important one thing is to another, that is the interconnectedness of the environment or "ecological" services.

On the social side, the ability to pass on these stories strengthens bonds within families, between grandparents and mokopuna. Without them we lose our identity as Maori.

Whakapapa also reminds us of our own human connections to other species. ... humans are neither the pinnacle of creation nor the ultimate in evolutionary success; we are not here to dominate over nature (Durie 2004). Rather we are one of many entities, animate and inanimate, that are interconnected. We do not have a right to take more than we need, to kill without giving thanks to the atua whose offspring we are harvesting¹⁰⁰

8.1 Ko NGATOROIRANGI te TOHUNGA, Ko ONGATORO te MOANA, ko MAKETU te WA-KAINGA. *Traditional [Indigenous] Knowledge*

The UN Declaration of Indigenous Peoples Rights took nearly 25 years to develop, though for Maori seeking justice from an International body started with Ratana's visit to the League of Nations, the fore-runner of the United Nations in Geneva in 1925. The Declaration is a statement of values that indigenous peoples seek protection for their survival as distinct peoples. Maori, therefore, are not alone in their desire to restore and protect their environment. In the context of Ongatoro's potential restoration, we refer to articles 25 and 31 of the declaration which cover traditional knowledge:

¹⁰⁰ Maori values supplement MFE p271

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 31

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

There is not an “official” international definition of “traditional knowledge” and one may ask why there should be? The University of the Arctic¹⁰¹, in answer to this very question states:

Quite simply, it is important to define traditional knowledge in order to distinguish it from other kinds of knowledge. Traditional knowledge reflects belief systems and ways of life that are distinct from modern, industrial belief systems and ways of life. Defining traditional knowledge becomes particularly important when the people with whom it originates are trying to preserve and renew their cultural identity.

This statement aligns with Mason Durie’s explanation of distinctiveness of Indigenous Peoples, confirm attachment to place:

Although there is no simple definition of indigenous peoples’ two important characteristics are an ancient relationship with some geographical place and an ethnic distinctiveness from others now living alongside them.

¹⁰¹ <http://www.uarctic.org/singleNewsArticle.aspx?m=505&amid=3174>

The University of the Arctic (UArctic) is a cooperative network of northern universities, colleges and other organizations dedicated to education, research and the promotion of indigenous and local capacities and sustainable development in the circumpolar North. With over 130 member institutions and organizations spanning 24 time zones in the eight Arctic countries and beyond, UArctic is the North’s only truly circumpolar higher education institution and one of the world’s largest education and research networks. BCS 332: Contemporary Issues II Module 4 Indigenous Knowledge

The World Intellectual Property Organisation¹⁰² struggling with how to protect the intellectual property of Indigenous Peoples adds that

Traditional knowledge is not so-called because of its antiquity. It is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

Some key characteristics of indigenous traditional knowledge¹⁰³ include: transmission between generations and thus oral in nature; combines secular and sacred; it is local; it is about cultural identity; it arises from an “immense knowledge of their environments, based on centuries of living close to nature”, it is dynamic and based on observation, innovation, adaptation and experimentation.

Indigenous women have a special place in the protection of traditional knowledge. They not only hold a different knowledge through the different roles between men and women, but are more likely to be the main transmitters of knowledge.

8.2 INDIGENOUS KNOWLEDGE GLIMPSES of AHI KAA in MAKETU.

It shows you how full the estuary was, at spring tide our stand was useless – it was covered. The Estuary was much deeper than it is now and it always had water in it. It was never dry like it is now. Dad had a launch after his outboard. It used to be moored on the lagoon side of the sand spit. There were about three or four launches later on that used to moor there¹⁰⁴.

Winiata Rau used to whitebait at the entrance – the kahawai would run and then the whitebait would start.¹⁰⁵

... until the pipi disappeared. And who got the blame for that, but old Polly Kameta. They reckoned “you went there with your mate again eh Polly?” Way goes the pipi.¹⁰⁶

¹⁰² http://www.wipo.int/pressroom/en/briefs/tk_ip.html

ce Organisation adds some basic insights:

It is practical common sense based on teachings and experiences passed on from generation to generation. It is knowing the country. It covers knowledge of the environment - snow, ice, weather, resources - and the relationships between things. It is holistic. It cannot be compartmentalized and cannot be separated from the people who hold it. It is rooted in the spiritual health, culture, and language of the people. It is a way of life.

Traditional knowledge is an authority system. It sets out the rules governing the use of resources - respect an obligation to share. It is dynamic, cumulative, and stable. It is truth. It is using the heart and the head together. It comes from the spirit in order to survive. It gives credibility to the people
<http://www.nativescience.org/>

¹⁰⁴ MC Interview 2001

¹⁰⁵ MC Interview 2001

Another fortnight you go there when the moon is shining, say the moon is shining and the beach is just white with pipis.¹⁰⁷

In between the cut and the island we laid hinaki. We would boil them, fry them, pawhara them. Hang it to attract maggots¹⁰⁸

There is still no enough water to flush it out. Its not in the right place. To push the sediment out. It is till building up. Where Fords cut is, not enough. Its not at the right place either, where Fords cut is, its not enough it should be further back, just before where it opens up now up there. It used to hit Papahikahawai right on the nose and then split part round on past the left side and the other into the channel by the old ladys area. The bank was really high at one time, a natural stop bank, it helped buffer the wind. It was calm. the kai had a good place to grow. We used to catch snapper, kahawai with Boys father by where the Nicholas's are.¹⁰⁹

A person used to get rongo from the kai, from the fish oil, its good for your hinengaro – helps with mental stress. If its was a healthy river there would be less dacking out there they would be out there.¹¹⁰

He was a carver, taught by his Ngati Tarawhai grandfather. He was brought up by his grandparents. He practised tikanga tuturu all the time. It was never an afterthought. The carving protocols affected the fishing protocol. He had a huge shed at Maketu, his boat shed. This is where he carved also. Carving and fishing are connected. The skill of carving was learnt from Tangaroas children. Both skills were tapu¹¹¹

Uncle Robert used to go out fishing with koro. He was the only surviving male in the family. The weather would be gauged first. He would look at the sea, the clouds and Mauao (Mt Maunganui) to work out the weather. If the weather was right, out fishing they went. That is, it was more or less a daily occurrence.¹¹²

I would leave to go out just as the sun came up, when the whitebait starts moving, whitebait moves when the sun starts coming up - early – I would go till about 4 pm in the afternoon. Depending on the tides, (MC 12.03.03)

You would go along and then catch a flounder, you would see two eyes looking at you and you'd put your foot down on it and say "got you".

¹⁰⁶ Interviews WAI 676 second generation 2001

¹⁰⁷ Interviews WAI 676 second generation 2001ews WAI 676 second generation 2001

¹⁰⁸ Interviews WAI 676 second generation 2001

¹⁰⁹ Interviews WAI 676 second generation 2001

¹¹⁰ Interviews WAI 676 second generation 2001

¹¹¹

¹¹²

The thing I remember about that harbour, there was this special place, and all sick fish that had been bitten they all go to this one place you know. Aye. They called it "the hospital". Where the old man had his launch. It was around that area. And all these fish, that sharks bite them or whatever, they all go there and people never touched them you know. Everybody called it "the hospital". Nobody till ...what's name, that fisherman in Tē Puke, Watkins, bloody Watkins went in there with his bloody set net and caught the poor things. And actually that was quite unique that, I reckon eh? in the one place and nobody touches them, nobody will try to thing, everybody knew it was there, the locals eh?

In fact when I come back and I run into this Jonah Moses, and that's the first thing he said to me "Aw do you remember that hospital you know where all the ... I said yes. It's a bloody pity alright. All varieties, you know, get attacked, there must have been something there why they went there. But nobody, none of the locals would ever try and catch them. Not till the old pakeha come along with his bloody set net.

Walk up and down the river. There was a lot of greenery around then, flax and willows and grasses, strolling around. Play with the eels. They were only babies. You would see an eel hole and put your foot over it and they would pop out another hole.

Dad and all them used to catch kingfish inside there by the little rock and the big rock. We used to get kutai off the big rock and nia nia. He used to come in on his clinker gutted his fish by the big rock and he would always have a line, and he would catch kingfish. Big kingfish, they would tow the boat around. They used to come in there. I can remember Dad and Tumbo and I think old Taa. And that was inside the bar. It wasn't outside.

Dad was a carver. He never mixed his koha money with money made from whitebait. The carving money was kept separate. When he was dying he gave it to me and said don't buy food with it. He said use it to pay for his funeral expenses.

The hot summer had attracted a number of sharks into the lagoon and estuary, and it was Uncle Taa's determination to land one in close to the shoreline. For nearly a week, day and night, he laid bait until finally one morning the shark took the inducement.¹¹³

¹¹³ Tapsell, M p 118

9.0 RESTORING the ESTUARY, RESTORING MAURI, RESTORING CULTURE

No	Values	Assessing Impacts from a re-diversion 20% quantum of water
1.	Ancestral links, identity, rangatiratanga, wairuatanga, pakiwaitara, kaitiakitanga, whakapapa, mana, mauri	All values could to some extent be positively impacted, probably only marginally, though some may not agree that there will be any positive effects due to failed previous attempts to restore the estuary. However with only a 20% water quantity re-diversion, the mauri will remain fragile.
2	Special significance to Maori, kaitiakitanga, identity, wairuatanga, rangatiratanga, identity, mauri	Same as above, mauri will remain fragile. Wairuatanga will also remain fragile for similar reasons.
2a	wahi tapu, history, identity, ancestral links, kaitiakitanga, wairuatanga, mana	Mana will not shift much, but other values may show positive changes.
2b	Economic/subsistence, indigenous knowledge, manaaki, mana, rangatiratanga, arts and crafts, biodiversity, whakapapa, kaitiakitanga, manaaki, mana, mauri, taha tinana	These values will rely on increase in species abundance population and size distribution to show a positive impact. Because we are not absolutely certain of what the short, mid and long term results could look like, and whether the 20% re-diversion will enable the maintenance, survival and growth and enhancement of the remaining kai moana species, it is considered too hard to precisely evaluate for impacts. What we are able to clearly and confidently conclude is that Makino, Pikiao, Waitaha and Tunohopu ahi kaa involvement must be empowered in any restoration work so that we can resurrect our indigenous knowledge.
2c	landscape amenity, social and physical activities, whanaungatanga, traditional kai gathering areas, manaaki, indigenous knowledge, mana, identity, traditional sports, arts and crafts, weaving, swimming, diving, rowing, mauri, taha tinana	Most of these values will be improved. More water will enable more passive recreation pursuits and maybe waka ama can resume from the estuary.
2d	Manaaki, acceptance of different values not conflicting, rangatiratanga, indigenous knowledge, whakapapa, history, pakiwaitara, manaaki	As above at 1 and 2a and 2 b.
2e	Rangatiratanga, kaitiakitanga, historical connections, indigenous knowledge	As above.

10. CONCLUSION:

We have demonstrated how Maketu earned its high decile negative score for health through the cultural impact assessment. The technological disaster, which is the Kaituna diversion, has eroded cultural values to the extent that for some it is hard to see how they will ever recover their cultural well-being. This erosion of cultural values has impacted on health and wellbeing of Makino, Pikiao, Waitaha and Tunohopu ahi kaa.

It would be an absolute travesty of justice, should the remaining biodiversity in the kaimoana species be lost through not trying to save them. Kai moana were under the kaitiakitanga of the women mostly, so Maori women's knowledge and well-being has been particularly affected.

Ngati Makino, Ngati Pikiao, Waitaha and Ngati Tunohopu maintain that the full return of the river is the only way that the injustices of the past can be repaired to the fullest extent possible.

Te Awhe marae is being restored as this report is being prepared and maybe the cultural values that tie people to the taiao o Ngatoro, will also be restored.

In respect of our Indigenous knowledge, this has been the biggest loser; in fact the loss and gap that is left, will never be recovered.

11. RECOMMENDATIONS

This report attempts to identify the actual, potential and cumulative effects, both positive and adverse, on Ngati Makino, Ngati Pikiao, Waitaha and Tunohopu. The adverse historical cumulative effects have been so significant that it is unclear whether they can ever be remedied. Notwithstanding the historical nature of some of the effects presented in this report, and given the nature and extent of those impacts, it would be well received at this time, if any measures that work towards repairing those effects are taken.

The re-diversion project is an innovative, unique and complex project and against that backdrop it was quite difficult to evaluate any positive impacts the project may have. There were no comparable projects to use as a benchmark. With that in mind, whilst the effects that may be deemed by some to be more relevant to the re-diversion proposal before us, the historical context should not be forgotten but be a lesson to all, especially the authorities, to ensure that history is not repeated. There are lessons to be had, measures to be identified and actions to be taken to avoid a repeat of this.

The following recommendations have been made:

1. BOPRC shall ensure that every effort is made to empower Ngati Makino, Ngati Pikiao, Waitaha and Ngati Tunohopu ahikaa kaitiaki involvement in any restorative measures for Ngatoro;

2. In collaboration with Ngati Makino, Ngati Pikiāo, Waitaha and Ngati Tunohopu ahikaa kaitiaki, prepare a cultural effects monitoring, mitigation and restoration plan for Ongatoro;
3. In collaboration with Ngati Makino, Ngati Pikiāo, Waitaha and Ngati Tunohopu ahikaa, actively work towards full return of the river through Ongatoro;
4. We recommend as a mitigation plan, or condition, that tangata ahi kaa roa be given every opportunity to engage with the parties in any research and monitoring activities arising from the re-diversion.
5. Appointment of an appropriate cultural monitor or an appropriate cultural monitoring regime for onsite monitoring during the earthworks component of the project. Ngati Pikiāo, Ngati Makino, Wataha & Tunohopu have submitted as Appendix "A" the protocol document the four iwi wish to see used for this particular project. The appointment of a suitable cultural monitor or a cultural monitoring program must be approved by the Ngati Pikiāo, Ngati Makino, Wataha & Tunohopu representatives identified in the Protocol document.

Mauri ora. Paimarire.
Mauri Tau Solutions Ltd // Hinemoana Associates



APPENDIX A – AREA(S) OF INTEREST



Ngati Makino Area of Interest



Waitaha Area of Interest

APPENDIX A – AREA(S) OF INTEREST



Ngati Pikiao Area of Interest