

Te Paparahi o Te Raki

(Wai 1040)

Regional Inquiry

Tribunal Statement of Issues for Stage 2

RECEIVED Waitangi Tribunal
<i>5 Dec 2012</i>
Ministry of Justice WELLINGTON

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Te Paparahi o Te Raki regional inquiry

Tribunal statement of issues for stage 2: Introduction

This statement of issues summarises matters that appear to be in contention between claimants and the Crown in stage 2 of the Te Paparahi o Te Raki regional inquiry. It is based on the draft 'Combined Generic and Local Statement of Issues' filed by the claimant Counsel Coordinating Committee (CCC) on 3 September 2012 (#3.1.798, 798(a)) and the Crown's response to the CCC draft filed on 17 September 2012 (#3.1.812, 812(a)).

This is a relatively high-level statement of issues. At a local level, the detail underpinning these issues is set out in the statements of local issues, filed between March and April 2012 for each of the sub-regions, and some individual claimants and hapū (#3.1.733-738(a), 741-742, 745-746(a), 759, 761, 764-764(a)).

Stage 1 of this inquiry involved the discussion of Te Whakaminenga, He Whakaputanga, the Declaration, Te Tiriti o Waitangi/the Treaty of Waitangi. Those matters fundamentally underpin the subsequent interaction between the Crown and Te Raki Māori. The Claimants have emphasised that He Whakaputanga and Te Whakaminenga are essential context to Te Raki Māori understandings of Te Tiriti and the rights, privileges and obligations of both the Crown and Māori under Te Tiriti. The Tribunal is yet to report on the matters investigated in stage 1 of this inquiry.¹

The distinction between Te Tiriti o Waitangi and the Treaty of Waitangi has been raised as a particular issue by claimants. This position has not been accepted by the Crown. For this reason, the term 'Te Tiriti and/or The Treaty' is used generically to refer to either or both of the two documents as is relevant. The Crown recognises that the iwi and hapū of Te Paparahi o Te Raki 'have well founded grievances. Each will have its own legitimate historical Treaty grievances that reflect their particular engagement with the Crown.'²

This statement is to provide the main evidential framework to guide Stage 2 hearings. It may be added to following the receipt of any new evidence and identification of any new 'live' issues.³ This includes any further specification of local issues based on new evidence.

Each of the 14 generic issue categories begins with a brief introduction to what each section covers. This is followed by a summary of any relevant Crown Tiriti/Treaty breach concessions or position statement. The overarching, or high-level, issues within each category are then described followed by detailed questions arising from them. The two specific-issue categories covering particular issues from the Whangarei and Mahurangi sub regions largely follow the appendix provided in the CCC's draft issues statement (#3.1.798(a)).

This statement uses the term 'Te Raki Māori' to include all whānau, hapū and iwi within our inquiry region. No distinction is made between the many different kin groups within the Te Paparahi o Te Raki region.

¹ The issues statement in the memorandum-direction of 29 May 2009 (#2.5.23) was the focus for evidence and submissions in the stage 1 hearings, and will be covered by the stage 1 report.

² #1.3.2, H M Carrad/A K Irwin, 'Crown Statement of Position and Concessions (CSOPAC)', 6 July 2012, p 1

³ #2.5.132, p 5. Also see 'Draft Statement of Issues for Stage 2 generic hearings', 23 July 2012, #1.4.1.

1. Tino Rangatiratanga, kāwanatanga and autonomy: political engagement between Māori and the Crown

Introduction

The changing relationship between Te Raki Māori and the Crown, following the signing of Te Tiriti and/or the Treaty in 1840, reflects contrasting expectations of what Te Tiriti and/or the Treaty required of both parties.

By the mid-1840s peoples of the region became caught up in the Northern War. From the post-war years and into the twentieth century, the Crown and Te Raki Māori have undertaken new political initiatives.

Relevant Crown position

The Crown has not made any specific concessions on this issue.

Issues for inquiry

To what extent did the Crown recognise and provide for the exercise of tino rangatiratanga through institutions and entities, practices and policies, established or supported by Crown or Māori within the inquiry region? How did the practical application of kāwanatanga in the Te Raki inquiry region impact upon tino rangatiratanga? What was the reaction of Te Raki Māori?

In particular:

- a. As a result of any pre-Tiriti relationship with rangatira and hapū, did the Crown owe any duty to any rangatira and/or hapū? If so, what was the nature and extent of that duty?
- b. How did Te Raki Māori and the Crown express their understandings, obligations and expectations concerning Te Tiriti and/or the Treaty from 1840 onwards, and to what extent was there a meeting of minds on the meanings and responsibilities encapsulated within Te Tiriti and/or the Treaty after 1840?
- c. What were the expectations of Te Raki Māori concerning political engagement with the Crown? To what extent were any such expectations satisfied?
- d. To what extent, if any, did the Crown create and/or impose situations and entities of kāwanatanga or introduce policies and practices as an exercise of kāwanatanga and how did this impact on the ability of Te Raki Māori to exercise their tino rangatiratanga?
- e. In what ways has the Crown asserted their kāwanatanga over Te Raki Māori and what was the response of Te Raki Māori to this?
- f. What was the nature of any forms of autonomy sought by Te Raki Māori, such as within rūnanga or movements such as Kotahitanga?
- g. How did the Crown engage with any such proposals or entities? By what other means did Te Raki Māori attempt to engage politically with the Crown? How effective were these?

- h. What was the nature and extent of any opposition by Te Raki Māori towards Crown political initiatives or institutions? How did the Crown respond, if at all, to such opposition?
- i. To what extent have legislative and/or constitutional changes from 1840 onwards helped or hindered efforts by Te Raki Māori to exercise tino rangatiratanga when engaging with the Crown at a political level? To what extent, if at all, did the Crown consult Te Raki Māori on such changes before they were implemented?
- j. How have Te Raki Māori interests been provided for in parliament over time? Were and are these adequate?
- k. To what extent, if any, did the imposition of expropriatory mechanisms such as the public works regime and taxation, impact on the ability for Te Raki Māori to exercise their tino rangatiratanga?
- l. How, and to what extent, if any, did the implementation and development of the processes and systems for investigating and validating claims to land, and the tenurial reform that they heralded, impact on the exercise of traditional leadership and community decision making by Te Raki whānau and hapū?
- m. How have Māori interests been provided for alongside or within kāwanatanga structures over time? Were and are these adequate?
- n. To what extent has the Crown recognised and provided for the rangatiratanga of Te Raki Māori in relation to consultation, interaction and dealings with government bodies and agencies? Have Te Raki Māori sought to interact with government bodies and agencies and, if so, how has the Crown responded to this?
- o. What was the effect of Crown policies on the authority of Māori women?
- p. How, if at all, did political engagement with, or acts and omissions of, the Crown impact upon Te Raki Māori, their traditional connections to their whenua, tikanga, wairuatanga, and whakapapa?
- q. What, if any, changes emerged in the relationship between Te Raki Māori and the Crown after the signing of Te Tiriti and/or the Treaty? To what extent were land transactions a product of this developing relationship?
- r. What does the history of Te Raki Māori service for the Crown in foreign wars since 1840 say about Māori understandings of the relationship established by Te Tiriti and/or the Treaty? What does the Crown treatment, including re-settlement and rehabilitation, of Te Raki Māori who served in foreign wars since 1840 say about the Crown's understandings of the relationship established by Te Tiriti and/or the Treaty?
- s. In what ways did Christianity and religious institutions influence Te Raki Māori political expectations, whether as a mediating factor between Crown and Māori or as a formative influence on Crown-Māori political engagement?

- t. To what degree has the Crown had regard for Te Raki Māori tikanga within or alongside the legal system and common law? To what extent did it have a duty to do so?
- u. To what extent, if any, did the common law impact negatively on Te Raki Māori? Did the Crown have a responsibility to protect Te Raki Māori from any negative impacts of the common law, or to remedy the effect of any such impacts?
- v. To what extent did the operation of the legal system and common law affect the ability of Te Raki Māori to exercise rangatiratanga, kaitiakitanga and tikanga over their lands and resources?
- w. To what extent does the Crown have to ensure that the legal system, including the operation of common law, over Te Raki Māori land and resources is compliant with Te Tiriti and/or the Treaty and does not undermine tikanga?
- x. How did the Crown respond to the political initiatives made by Te Raki Māori?
- y. What major political initiatives did the Crown take to establish positive relations with Te Raki Māori whānau, hapū and iwi leaders, and with what outcome? Did the Crown seek to undermine the traditional leadership structures of Te Raki Māori, and, if so, to what extent and with what outcome?

2. Old land claims, scrip and surplus lands

Introduction

The subject of old land claims looms large in Te Raki. Prior to the ratification of Te Tiriti o Waitangi, a number of land transactions were entered into between Māori and Pākehā. As part of the discussions surrounding the ratification of Te Tiriti o Waitangi, the Crown undertook a responsibility to investigate these pre-Treaty transactions to determine their validity.

These old land claims were first investigated in the early 1840s by a Land Claims Commission appointed by the Crown. A second Land Claims Commission was subsequently created from 1856-1863 in an effort to resolve the many claims that remained unsettled. In between these two key commissions came the appointment of Commissioner Henry Matson in 1847-1848, who investigated a different class of claims; pre-emption waiver claims. These various commissions resulted in categories of land known as 'surplus land' and 'scrip land'.

Relevant Crown concessions

Pre-Treaty transactions

- 2.3 The Crown concedes that it took Māori "surplus lands" in the Bay of Islands, Hokianga, Whangarei, Mahurangi, and Gulf Islands districts that were claimed by settlers as a result of pre-Treaty transactions, rather than returning these lands to Māori, and this has long been a source of grievance in the region. The Crown concedes that its policy of taking surplus land from pre-Treaty purchases breached the Treaty of Waitangi and its principles when it failed to require proper surveys and to require an assessment of the adequacy of lands that Māori held. This resulted in some hapū losing vital kainga and cultivation areas. The Crown also concedes that this failure was compounded by flaws in the way the Crown implemented the policy, including failing to investigate transactions for which 'scrip' was given, and in some cases taking decades to settle title or assert its own claim to these lands, in further breach of Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles.

Pre-emption waiver transactions, 1843-1844

- 2.4 The Crown concedes that it took Te Raki Māori "surplus lands" in the Bay of Islands, Hokianga, and Mahurangi and Gulf Islands districts that were claimed by settlers as a result of pre-emption waiver transactions, rather than returning these lands to Māori, and this has long been a source of grievance in the region. The Crown concedes that its policy of taking surplus land from pre-emption waiver purchases breached Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles when it failed to ensure any assessment of whether affected Māori retained adequate lands for their needs. The Crown also concedes that this failure was compounded by flaws in the way the Crown implemented the policy, including failing to investigate transactions for which 'scrip' was given, and in some cases taking decades to settle title or assert its own claim to these lands, and in further breach of Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles.⁴

Issues for inquiry

Did the land claims inquiry process and titling system adequately recognise customary interests? What was the impact of the Crown grants, surplus land and native reserves arising for Te Raki Māori? What was the role of this process, if any, in facilitating the alienation of the Māori land?

To what extent, if any, did the Crown intend to and/or actually derive benefit from the old land claims process?

⁴ #1.3.2, CSOPAC, pp 1-2

To what extent did the old land claims processes and systems impact upon Te Raki whānau and hapū, on their traditional connections to their whenua, their tikanga, wairua, whakapapa, and on their ways of life in general?

In particular:

- a. Were land claim inquiries cognisant of customary understandings of pre-Treaty transactions?
- b. Were the pre-Treaty deeds negotiated in te reo Māori? Were these deeds capable of being commonly understood by both parties?
- c. Did the land claims commissions assume that Māori consented to an absolute extinguishment of customary rights in pre-Treaty transactions?
- d. Did the commissions inquire adequately into the nature of pre-Treaty transactions, including their impact on groups with overlapping interests in the land transacted?
- e. Did the commissions inquire adequately into the precise geographic extent of the pre-Treaty transactions, and did Māori consent to the original surveys thereof?
- f. How did the Land Claims Commissions operate?

In particular:

- i. Were the commissioners able to ensure the fairness of the purchase price, and to verify that the claimant(s) delivered this to all Māori entitled to receive it?
 - ii. Did the commissioners give adequate public notice of their proceedings to ensure that all Māori entitled could participate?
 - iii. Did the commissioners disallow or uphold claims on the basis of the Māori evidence given at public hearings?
 - iv. Did the commissioners ensure that representatives of all groups with an interest in the land under investigation gave evidence?
 - v. Were commissioners' recommendations regarding grants and reserves, and their treatment of Māori evidence, consistent?
 - vi. Did the commissioners honour trust deeds entered into, and did they reserve sufficient land for Māori?
- g. How did the commissioners respond to Māori protests expressed over the outcomes of their inquiry process and titling decisions? How did they respond to Māori protests over the Crown's acquisition of scrip and surplus land?
 - h. What was the legal basis of the Crown's policy towards exchanging claims, particularly in the Hokianga sub-region, for scrip? How much land did the Crown acquire throughout Te Raki from such scrip exchanges?

- i. What was the legal basis of the Crown's claim to surplus land? How much land did the Crown acquire throughout Te Raki as surplus land?
- j. Was the lapse of time taken between the original transactions, the eventual grants, and the acquisition of scrip and surplus land, prejudicial to Te Raki Māori?
- k. What was the effect of the post-1873 Native Land Court and parliamentary inquiries into the outcomes of earlier Land Claims Commission inquiries?
- l. How adequate was the 1947 Myers Commission investigation into the Crown's acquisition of surplus land?

3. The Northern War, 1844–1846

Introduction

Overt military conflict erupted in the Bay of Islands within five years of the signing of Te Tiriti. Echoes of the Northern War carry with them a set of unresolved issues about original causes and consequences for both the Crown, and Te Raki Māori.

Relevant Crown concessions

Northern War, 1844-1846

- 2.5 The Crown concedes that making a cession of land a condition for peace in July 1845 breached Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles. As a result the war continued to the prejudice of those affected by it.

Treaty breach relating to Pomare

- 2.6 The Crown concedes that the effective confiscation of Pomare's land interests at Wahāpu in 1845 breached Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles.⁵

Issues for inquiry

To what extent was the Crown responsible for the Northern War? How did this war affect Māori, including their relationships with the Crown?

In particular:

- a. What was the nature of the conflict that emerged between Te Raki Māori and the Crown in the early 1840s? What were the Crown's kāwanatanga policies towards Te Raki Māori and to what extent did these lead to the outbreak of war?
- b. What was the nature and extent of division between Te Raki Māori during the Northern War? What were the main causes of this division, and what impact did it have upon Te Raki Māori after the war?
- c. How and why did Te Raki Māori participate in the Northern War?
- d. Was the Crown, or should it have been, aware of the rising tension between it and Māori before the start of the war? What was the cause of this tension?
- e. What was the Crown's response to this rising tension?
- f. What did the felling of the flagstaff at Kororareka convey to the Crown? What was the consequence of this felling?
- g. In assessing Crown and Te Raki Māori involvement in the war, what weighting should be given to factors such as northern economic decline, the change of the colonial capital, Crown attempts to impose its authority over land and people, and divided Māori responses to the exercise of Crown authority in the Te Raki inquiry region?
- h. How did the Crown treat the various whānau and hapū who participated in the war and those who stood aside? Why did the Crown brand some Māori as 'rebels'?

⁵ #1.3.2, CSOPAC, pp 2–3

What was the effect and impact of this designation? Was the Crown use of this term appropriate and fair?

- i. What was the impact of the war on the relationships between Te Raki Māori and Pākehā both during and after the war?
- j. What duties did the Crown have to ensure the peaceful resolution of issues between itself and Māori and between Māori themselves? How was peace ultimately achieved?
- k. What was the nature of negotiations for peace? What were the roles of those who participated in the negotiations, and what were their expectations? What promises, if any, were made by the Crown?
- l. What was the immediate impact on Te Raki Māori of Crown actions during the war? Was the nature and extent of the Crown's use of force against Te Raki Māori appropriate or legitimate in all circumstances?
- m. What were the social, cultural, economic and political consequences of the war for Te Raki Māori?

4. Crown pre-emption and acquisition of Māori land, 1840–1865

Introduction

Available evidence indicates that by 1865 the Crown had purchased approximately 40 percent of Māori land within the Te Raki region. This included much of the most productive land stretching along the eastern seaboard, the area with the best maritime access.

Relevant Crown concessions

Omaha and Mahurangi purchase

2.7 Where groups are found to have rights in the area and were prejudiced by the transaction the Crown would concede the following:

2.7.1 The Crown concedes that in purchasing the extensive area called “Mahurangi and Omaha” in 1841 it breached Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles by failing to conduct any investigation of customary rights when it purchased these lands. The Crown acquired these lands without the knowledge and consent of all Māori owners and failed to provide adequate compensation and reserves for the future use of and benefit of all Māori owners when it later learned of their interests in the purchase area.

Failure to identify owners

2.8 The Crown concedes that where it failed to carry out an adequate inquiry into the nature and extent of customary rights in lands it purchased in the Te Raki district between 1840 and 1865 it breached the Treaty of Waitangi.

Reserves

2.9 The Crown concedes that where it did not reserve sufficient land for the present and future needs of the iwi and hapū of Te Paparahi o Te Raki when purchasing land from them before 1865, it failed to uphold its duty under Te Tiriti/ the Treaty of Waitangi and its principles to actively protect the interests of the iwi and hapū of Te Paparahi o Te Raki from whom it purchased land.⁶

Landlessness

2.1 The Crown concedes that iwi in the Mahurangi and Gulf Islands region were virtually landless by 1865 and the Crown's failure to ensure they retained sufficient land for their present and future needs was a breach of Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles.⁷

Issues for inquiry

What were Māori expectations of the transactions, in terms of both immediate payment and long term advantages, and on what basis did such expectations arise?

To what extent did the Crown's acquisition of land in this period, and the manner of its acquisition, compromise its protective role? What was done in connection with Crown purchases to protect Te Raki Māori customary rights and their rights and ownership guaranteed in Article Two of Te Tiriti and/or the Treaty?

In particular:

- a. What key political and economic objectives underpinned Crown land purchase policy and activities from 1839?
- b. What efforts were made by the Crown to understand the nature of Māori land ownership prior to entering into transactions for permanent alienation after 1840?

⁶ #1.3.2, CSOPAC, p 3

⁷ #1.3.2, CSOPAC, p 1

What efforts were made by the Crown to explain the concept of complete alienation to Te Raki Māori?

- c. To what extent did the Crown expect Māori to subsidise the development of the colony by giving up their lands to the Crown for far less than the Crown would achieve when it onsold them? To what extent was Crown policy influenced by wasteland principles proclaimed by Earl Grey in 1846?
- d. What were the processes and practices used by the Crown to identify the owners or those holding rights in Te Raki Māori land or other resources? How adequate were these? Did the Crown ensure that all necessary parties were consulted prior to alienation?
- e. Did the Crown identify the correct right-holders? If not, what, if any, were the means that Te Raki Māori could seek remedy for this? What was the impact on Te Raki Māori rights to land?
- f. Was the 1846 Native Land Purchase Ordinance (which prohibited leasing) applied in the north, and was leasing rather than Crown purchasing a preferred Te Raki Māori option?
- g. What promises were made to Māori regarding the collateral benefits of settlement to facilitate Crown purchase objectives, and were these promises honoured? What was the nature of such promises, if any? Did any such promises induce Te Raki Māori to alienate land?
- h. What were Te Raki Māori expectations in terms of immediate payment and how adequate were these payments?
- i. Did the Crown ascertain whether Te Raki Māori retained sufficient land for present and future needs, and were Te Raki Māori left with sufficient land and capital resources? What were the effects on particular Te Raki Māori kin groups?
- j. To what extent was Te Raki Māori land reserved from Crown purchases? Were these made inalienable, and to what extent were they subsequently alienated?
- k. Did the Crown take adequate steps to survey purchases accurately, and were boundaries clearly understood by both parties? What were the costs of surveys? Were they fair, and how did they impact upon Te Raki Māori?
- l. What was the Te Raki Māori understanding of the nature of these Crown purchase transactions? What role, if any, did the Crown play in ensuring Te Raki Māori understood the full implications of these transactions?
- m. To what extent were any protective mechanisms successful?
- n. How much land was alienated in the Te Raki inquiry region through Crown acquisitions before 1865?

- o. How were Te Raki Māori affected by the Crown acquisition of land and/or land alienation in this period?
- p. What was the nature and extent of land gifted by Te Raki Māori to the Crown in this period? Were there any expectations associated with such transactions? If yes, were these expectations met? Did the Crown offer Māori alternatives to the permanent alienation of their lands, such as lease agreements or licenses for land and resources? If not, why not? Were some kin groups affected more by those policies than others?
- q. What was the extent of pre-emption waiver transactions within the Te Raki inquiry region between the period 1844 and 1846?
- r. Why did the Crown waive pre-emption? What was its role in administering and controlling the waiver process, and to what extent, if at all, did it benefit, or intend to benefit from transactions conducted under the waivers?
- s. To what extent were Te Raki Māori able to benefit from the waiver of pre-emption; and/or were Te Raki Māori rendered vulnerable by the process?
- t. What protective measures were put in place at the time that pre-emption was waived by the Crown? Were they effective in protecting Te Raki Māori interests; and if not, why not? To what extent were protective measures enforced?
- u. What was the effect of the waiving of pre-emption on the customary interests in the inquiry region and how did this impact upon whānau and hapū, on their traditional connections to their whenua, tikanga, wairua, whakapapa, and on their ways of life in general?
- v. Was the Crown aware of any detriment that was caused to Te Raki Māori as a result of the waiving of pre-emption; and if so, what if any redress has been provided as a remedy?

5. The Native Land Court, 1865–1900

Introduction

Preliminary research suggests that Te Raki Māori retained about 45 percent of their land at 1865. By 1900 the Native Land Court had determined title to much of the diminishing Māori land holdings. The Native Land Court process facilitated the alienation of many of those holdings.

Relevant Crown concessions

Impact of Native land laws on tribal structures

Individualisation of title undermined tribal structures

2.1.0 The Crown concedes that the operation and impact of the native land laws, in particular the award of land to individuals and enabling individuals to deal with land without reference to iwi or hapū, made those lands more susceptible to partition, fragmentation and alienation. This undermined traditional tribal structures which were based on collective tribal and hapū custodianship of the land. The Crown failed to protect those collective tribal structures which had a prejudicial effect on the iwi and hapū of Te Paparahi o Te Raki and was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Ten-owner rule

2.11 The Crown concedes that the 10-owner rule had the potential to cause prejudice to Māori in circumstances where:

- 2.11.1 some right-holders were omitted from titles and disposed of their interests as a result;
- 2.11.2 the named owners acted individually in a manner contrary to the wishes or intentions of the wider community; and
- 2.11.3 there was a subsequent succession of interests where there was no allowance for wider community interests.

2.12 The Crown concedes that in these circumstances the ten-owner rule did not operate in a manner that reflected the Crown's obligation to actively protect the interests of Māori in land they may otherwise have wished to retain in communal ownership and this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Lack of collective title

2.13 The Crown concedes that its failure to provide a legal means for the collective administration of Māori land until 1894 was a breach of Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles by failing to actively protect Māori interests in land they may otherwise have wished to retain in communal ownership.⁸

Issues for inquiry

Did Native land legislation provide adequate mechanisms for legally recognising and providing for Māori interests in land and resources? What was the purpose of the Native land legislation in establishing the Native Land Court system? Were these purposes consistent with Te Tiriti and/or the Treaty? What was the impact of the system on Te Raki Māori?

In particular:

- a. What were the key political and economic objectives underlying the introduction of the Native Land Court?
- b. Are the Crown's current Treaty breach concessions, regarding individualisation, the ten-owner rule and lack of collective title, sufficient recognition of its violation of a

⁸ #1.3.2, CSOPAC, pp 4–5

range of customary rights, including shared, overlapping and usufructuary rights in Te Raki?

- c. In establishing the Native Land Court and related legislation in the district how well did the Crown:
 - i. Consult with Te Raki Māori?
 - ii. Consider a range of land tenure options for Te Raki Māori?
 - iii. Try to understand and account for customary Te Raki Māori tenure, tikanga, and related processes and practices?
 - iv. Record and fulfill any promises and assurances made to Te Raki Māori?
 - v. Secure agreement, if any, from Te Raki Māori?
- d. What was the nature of, and reasons for, Māori engagement with the Native Land Court process in the Te Raki inquiry region? What was the impact of the Native Land Court on Te Raki Māori who chose not to engage with it? Did Māori have any alternative way of transacting their lands other than by first obtaining a Crown title through the Native Land Court system?
- e. How did the institution of a new Native land tenure system impact on the exercise of traditional leadership, tikanga, and community decision making in respect of land?
- f. To what extent did the Native Land Court and its associated processes promote or resolve internal conflict and war within Te Raki? Was the Crown aware of the conflict and what, if anything, did it do about it?
- g. Was the Native Land Court an appropriate body, with robust processes and mechanisms, to determine the customary 'owners' of Māori land? Did the Native Land Court require certainty as to the identity of the parties transacting land and their authority to do so before determining title? To what extent were Te Raki Māori experts, or mātauranga Māori, relied on in determinations of Māori customary rights?
- h. On the basis of what rules or principles did the Native Land Court in Te Raki determine title, for example, ahi kā or occupation, conquest, whakapapa or ancestral connection, and to what extent did such rules/principles and their application reflect the customary tenure?
- i. How did the Native Land Court system impact on Te Raki Māori whānau and hapū, on their identity, their traditional connections to the whenua, their tikanga, their wairua, their whakapapa, and on their way of life?
- j. Did the Court's development and application of principles of succession reflect the transmission of rights under tikanga? What was the effect of these succession principles on Te Raki Māori landowners?

- k. Did the Crown have a duty to ensure that the rules and procedures affecting prior notification and the conduct of the Native Land Court hearings were fair and reasonable for Te Raki Māori? Was the Crown aware of difficulties that may have arisen, and did it act adequately to address problems such as non-attendance of all right-holders?
- l. What degree of accuracy was required of Native Land Court surveys in the Te Raki inquiry region before determining title? What, if any, was the process for remedying survey errors? Were surveyed boundaries compatible with tikanga relating to interests in land?
- m. What was the impact of participation in the Native Land Court process for Māori, including court fees, survey costs, attendance costs, medical costs, loss of income and roading deductions? Did the impact vary from whānau to whānau? In what ways, if at all, did the Crown seek to mitigate these costs? To what extent were these costs fair and reasonable?
- n. Were protective mechanisms, such as restrictions on alienation, available to Māori landowners? How were these mechanisms used, if at all, and what impact did they have?
- o. Did Te Raki Māori demonstrate any opposition towards the operations of the Native Land Court? If yes, how did the Crown respond, and was this response adequate?
- p. Did the Crown provide recourse to remedies for Te Raki Māori aggrieved by Native land legislation and Native Land Court deliberations and decisions? Were any such mechanisms suitable to Māori needs? Were there situations where the Crown was made aware of Native Land Court decisions that resulted in significant injustice? Did the Crown respond appropriately?
- q. To what extent, if any, were legislative protections, such as restrictions on alienation, available to Te Raki Māori landowners, and what impact did these have? Were these protections sufficient to address perceived problems arising from the impact of the Native land legislation and the operation of both the Native Land legislation and Native Land Court? Were protections associated with the Native Land Court process made sufficiently clear to Te Raki Māori and was there an obligation on the Crown to ensure such protections were effective?
- r. Did the title options available to Te Raki Māori provide sufficiently for effective participation in the developing colonial economy?

6. Māori land alienation, 1865–1900

Introduction

The introduction of the Native Land Court and its associated Native land laws came at a time when tribal structures had been significantly impacted on by colonisation including the ability of Te Raki Māori to control and manage their lands.

What followed was significant alienation of Māori land which involved leasing and purchasing by the Crown and private parties. At various times, land transactions were conducted both prior to and following Native Land Court investigations of title.

The very incomplete evidence available indicates that the Crown and private parties purchased approximately 600,000 acres, or 30 percent, of the Te Raki land area between 1865 and 1910. This is much more than the estimated 32,000 acres purchased by the Crown between 1910 and 1945.⁹

Relevant Crown concessions

Crown purchasing, 1865-1900

- 2.14 The Crown concedes that it did not have a system in place to ensure that it did not purchase land that was needed to ensure the iwi and hapū of Northland could continue to maintain themselves. That was a failure to actively protect Māori and breached Te Tiriti o Waitangi/ the Treaty of Waitangi.¹⁰

Issues for inquiry

What was the nature of the Crown involvement in the alienation of land in the Te Raki inquiry region from 1865–1900 and what, if any, were the adverse effects of this process on Te Raki Māori? By what systems did the Crown regulate private alienation of Māori land and what was the impact on Te Raki Māori?

In particular:

- a. What key political and economic objectives underpinned Crown and private land purchasing policies and activities in the period 1865–1900 and how were these objectives formulated and developed?
- b. What was the nature and extent of Crown and private land purchasing in the Te Raki region during this period? Did the Crown ensure that Māori secured a fair economic return for the alienation of lands during this period, either in respect of its own purchases, or those of others?
- c. Did land purchase officers and government officials, in breach of Te Tiriti and/or the Treaty, use the Native Land Court system and its costs to promote land alienation? If so, to what extent did this occur?
- d. To what extent, if at all, did the Crown encourage a system of advance payments (or tamana) for Māori land before court title investigation hearings, and if so, why? Did

⁹ #A3, T J Hearn, 'Social and Economic Change in Northland c.1900 – c.1945: The Role of the Crown and The Place of Māori', CFRT commission, June 2006, pp 366–367

¹⁰ #1.3.2, CSOPAC, p 5

Māori request such payments and if so, why? How widespread was any such practice and how did it impact on Te Raki Māori?

- e. How were prices for land leases or purchases set, and how were valuations made? When it set prices, to what extent, if any, did the Crown attempt to ensure Te Raki Māori interests were protected and that the prices paid would enable them to participate adequately in the developing economy?
- f. To what extent, if at all, did the Crown attempt to assert monopoly rights in respect of the lease and/or purchase of Te Raki land? How was this done and why? What was the impact on the whānau and hapū of any such attempts?
- g. What was the extent of Crown purchasing during this period? Were promises of collateral benefit for Māori made by the Crown or its agents? If so, what was promised and were these benefits delivered to Māori?
- h. Did Crown purchase agents target individual interest holders in seeking to purchase either partitions or entire Māori land blocks? What prejudice did this cause to Māori, if any?
- i. When the Crown and private agents purchased land after Native Land Court determinations of title, what kinds of protection were available for Māori owners and how effective were these? Were conveyances based on Native Land Court certificates of title, or subsequent Crown grants, or on a combination of both?
- j. What was the extent of private purchases in Te Raki? What tactics did private purchasers employ in Te Raki? Did the Crown have a responsibility to regulate or remedy such practices? If so, to what extent did the Crown fulfill that responsibility?
- k. Were protective mechanisms, such as restrictions on alienation, or the 1870 Lands Frauds Prevention Act trust commissioner, available to Māori landowners? How were these mechanisms used, if at all, and what impact did they have?
- l. To what extent did the Crown ascertain whether Te Raki Māori retained sufficient quantity and quality of land and resources for present and future needs when making its own purchases? To what extent did it ascertain this for private purchases?
- m. To what extent did Māori seek to enter into leases regarding their lands? To what extent, if at all, did the Crown encourage such leasing and protect Māori interests in this? Did leasing meet Te Raki Māori expectations of deriving economic benefit while retaining their lands?
- n. To what extent, if at all, and in what ways was long-term leasing used by the Crown to facilitate freeholding of land?
- o. What was the extent and nature of Crown pre-emption in this period? Was there a viable alternative to the Crown's monopoly purchasing powers? If so, why was it not used? What understandings and expectations did Te Raki Māori have regarding the re-establishment of the Crown's pre-emption?

- p. Why did Te Raki Māori enter into land transactions with the Crown between 1865 and 1900? Why did they enter into land transactions with private purchasers?
- q. What processes were used to ensure that appropriate right-holders agreed to alienation? Were these processes adequate and successful?
- r. Did Te Raki Māori protest the extent of land alienation during this period? If so, did the Crown respond adequately to this protest?
- s. What protections were there for Māori who retained residual lands out of a purchase transaction? What was the nature of the relationship between the Crown and those remaining owners?

7. Twentieth century alienation, retention, titling and administration of Māori land

Introduction

An array of statutory bodies including the Tokerau Māori Land Board, and the Native/Māori Trustee, plus the Native Department and the Native/Māori Land Court, supervised the administration of Te Raki Māori land during the twentieth century. The Crown vested large areas of Māori land in the Land Board, presided over by Native/Māori Land Court judges. The same judges administered consolidation, or 'title improvement' schemes, and the Native Department (renamed Maori Affairs after 1947) supervised numerous Māori land development schemes.

Relevant Crown concessions

Twentieth century land administration

Vested Lands

2.15 The Crown concedes that:

- 2.15.1 the compulsory vesting of land in the Tokerau Māori Land Board between 1907 and 1909 without owner consent breached the Treaty of Waitangi and its principles and effectively alienated Te Paparahi o Te Raki owners from those lands for over 50 years; and
- 2.15.2 when Te Paparahi o Te Raki hapū did regain control of their land it often had large debts and owners were liable for compensation for lessees for improvements.

Te Karae

2.16 The Crown concedes that:

- 2.16.1 it compulsorily vested Te Karae blocks in the Tokerau Māori Land Board in 1907 so they could be leased for development but remain in Māori ownership;
- 2.16.2 it purchased a large proportion of Te Karae to help lessees freehold land they were otherwise prohibited from purchasing directly; and
- 2.16.3 its purchase of a large proportion of Te Karae in these circumstances breached Te Tiriti o Waitangi/ the Treaty of Waitangi and its principles.

Twentieth century Crown purchasing tactics

Misuse of monopoly powers

2.17 In circumstances where proclamations were continually rolled over, the owners had manifested no wish to enter negotiations, and owners lost opportunities as a result, it cannot be said the Crown acted consistently with its duty to purchase reasonably and regulate processes appropriately. The Crown concedes that the unreasonable and unfair use of this power was a breach of Te Tiriti / The Treaty of Waitangi.

Crown's acquisition of uneconomic interests

2.18 The Crown concedes that the Crown promoted legislation that empowered the Māori Trustee between 1953 and 1974 to compulsorily acquire a number of Māori land interests in the Te Paparahi o Te Raki inquiry district which the Crown deemed uneconomic. The Crown concedes that where this occurred it caused Māori to lose their tūrangawaewae, and this form of compulsory acquisition was a breach of Te Tiriti o Waitangi/ the Treaty and its principles.¹¹

Landlessness

2.2 The Crown also concedes that iwi living in the Whangarei and Whangaroa sub regions of the Te Paparahi o Te Raki Tribunal inquiry are now virtually landless and the Crown's failure to ensure that

¹¹ #1.3.2, CSOPAC, pp. 5–6

they retained sufficient land for their present and future needs was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.¹²

Issues for inquiry

What was the impact of twentieth century alienation policies and practices on Te Raki Māori? To what extent did Crown policies, legislation and practices enable Te Raki Māori to retain effective control and manage the lands and resources that they wished to retain?

In particular:

Policy, practice and impact

- a. What was the extent and pattern of Crown and private alienation of Te Raki Māori land over the twentieth century? What factors explain any patterns, including key political and economic objectives?
- b. Did the Crown adequately consult with Te Raki Māori before implementing various land title reforms?
- c. What was the impact of multiple title, share fractionisation and partitioning on Māori land ownership in the Te Raki district? How did the Crown address Māori concerns over fractionation of Māori title and fragmentation of land prior to 1953?
- d. To what extent, if any, did Crown policy and legislation for improving Māori titles between 1900 and 1953 coincide with the ongoing aim of Te Raki Māori to retain, utilise and manage their land?
- e. What impact did the various forms of title reform introduced or continued from 1953, such as amalgamation, aggregation, consolidation, conversion and live buying, have on Te Raki landowners? In particular what impact did the Maori Affairs Act 1953 and the Maori Affairs Amendment Act 1967 have for Te Raki landowners? Did the compulsory measures introduced to assist title reform, such as buying of uneconomic interests, and the 'europeanisation' of Māori land, reflect Māori aspirations for their land and its use?
- f. To what extent, if any, has the legislative framework up until, and including, Te Ture Whenua Māori Act 1993 facilitated Te Raki Māori retention and control of their lands?

Court/agencies

- g. What was the role of the Māori Land Court and agencies set up to administer, manage and develop Maori land from 1900 in particular the Māori Land Councils and Boards, including the Papatupu Block Committees, the Native Trustee and the Native Department? Did the intervention of these agencies assist Te Raki Māori in developing land or obtaining other desired outcomes? How did the Crown respond to concerns about the competency of these agencies?
- h. What role did the Māori Trustee play in the Te Raki inquiry region and how did its operations, policies and practices and statutory rules affect Te Raki Māori?

¹² #1.3.2, CSOPAC, p 1

Vesting

- i. What was the impact of the compulsory vesting of Te Raki Māori lands in the Tokerau Māori Land Board on Te Raki Māori?

Consolidation

- j. What was the nature and extent of title consolidation schemes in the Te Raki inquiry region? What positive or adverse effects did they have on Te Raki Māori and their communities? How much Māori land remains in the control of the Crown or its agencies today?

Land development schemes

- k. Regarding state-assisted land development schemes, what was the degree of consent that owners were able to exercise when the schemes were first instituted, and how were they consulted? What mechanisms, if any, were implemented to protect owners who were minors or who had disabilities?
- l. How effective were these land development schemes in practice for Te Raki Māori? What were their original aims and to what extent were these aims achieved? What was the Crown's response, if any, to lower than expected voluntary participation of Te Raki Māori in these schemes?
- m. To what extent, if any, did the establishment of land development schemes in the Te Raki region enable Māori owners to utilise, manage, retain and benefit from their lands?
- n. What degree of control were Te Raki Māori able to exercise within the management and operation of land development schemes, including decisions on their ending and the resulting division of land? To what degree did the Crown support Te Raki Māori to sustainably manage land development schemes, including providing access to land development finance?
- o. When and why did Crown assistance to Te Raki Māori to develop their lands cease and what was the effect of this cessation?

Trusts and incorporations

- p. To what extent did trusts and incorporations provide a solution to existing title difficulties and facilitate development by Te Raki Māori of their lands?

Responses and effects

- q. What was the Māori response to Crown land administration? What were the general effects of Crown land administration on Te Raki Māori?

8. Public works and other takings

Introduction

Public works and other legislation enabled the Crown to acquire Māori land 'for public purposes' after 1864. Typically, the Crown exercised its compulsory powers to acquire land for roading, railways, conservation and defense purposes.

While the Crown maintains the Treaty compliance of general public works acquisitions, it concedes that it may have breached the Treaty in the local application of these powers.

Relevant Crown position

- 559 Broadly, the Crown says that it does not accept that public works acquisition powers are inherently inconsistent with Te Tiriti/the Treaty. The Crown's position is that the power to acquire land compulsorily in the public interest in order to provide public works is a legitimate function of responsible government.
- 560 The Crown accepts, however, that there may be situations where the Crown, in specific factual situations, has breached the principles of Te Tiriti and/or the Treaty when it has acquired land compulsorily.¹³

Issues for inquiry

What was the impact on Te Raki Māori of Crown policies and practices, legislation and regulations affecting land taken for public purposes? Were alternatives to compulsory takings of Māori land seriously considered and, if so, with what outcomes?

In particular:

Land acquisition, policy, and practice

- a. What was the extent of land taken for public works in the Te Raki region, including for defence purposes, scenery preservation, roads, railways and mineral extraction? What was the value of land taken?
- b. When compulsorily acquiring Māori land for public works, to what extent did the Crown balance the national interest against the obligation to protect Māori land? Was any such balancing exercise consistent with the principles and terms of Te Tiriti and/or The Treaty?
- c. Was there consultation with Te Raki Māori over the nature and effect of compulsory acquisition of land for public works at the time compulsory acquisition was introduced? Was this consultation adequate?

Delegation, objection and alternatives

- d. Was it appropriate for the Crown to delegate to local authorities or other taking agencies, the power to compulsorily acquire Māori land? Did the Crown sufficiently monitor and address any problems that arose from this delegation? Were Te Raki Māori prejudiced by the delegation and its consequences?

¹³ #1.3.2, CSOPAC, p 151

- e. Did legislative provisions and/or the practices of taking agencies afford Te Raki Māori reasonable opportunity to make objections to the acquisition of Māori land and resources for public purposes? Were the same opportunities provided for Te Raki Māori to object to the taking of their lands for public works as were provided for non-Māori land owners?
- f. To what extent did the Crown consider alternatives to compulsory takings of Te Raki Māori land?

Targeting and protection

- g. To what extent, if at all, did the implementation of public works policy and legislation disadvantage Māori land owners in the inquiry district?

In particular:

- i. Did tenure difficulties for Māori arising from the titles available under Native land legislation facilitate the targeting and acquisition of Māori land for public works purposes?
 - ii. Were notice requirements tailored to the realities of multiple ownership of Māori land?
 - iii. What was the impact of the application of the five percent rule without compensation from 1865 to 1927?
 - iv. To what extent, if at all, did the Crown resort to the compulsory acquisition of land owned by Te Raki Māori in preference to taking other land in the region?
- h. Did legislative provisions and/or practices of taking agencies adequately provide for the protection of wāhi tapu and sites of special value to Te Raki Māori?

Compensation

- i. How was compensation assessed and awarded, and did legislative provisions lead to adequate, fair and timely compensation? Did such provisions place Māori at a disadvantage when compared to non-Māori landowners?

Offer back

- j. To what extent could and did Te Raki Māori obtain the return of land taken for public purposes once it was no longer required? Did public works legislation make adequate provision for offering land back to the original owners or successors in title?

Scenic reserves

- k. What obligations did the Crown have towards Te Raki Māori in acquiring land compulsorily for scenic reserves purposes, and to what extent were any obligations fulfilled? Were Te Raki Māori appropriately consulted about compulsory land takings for scenic preservation? By what means was compensation assessed? How adequate was compensation paid in respect of land acquired for scenic reserves, and are there examples where no compensation was paid where it ought to have been paid?

Gifted lands

- l. What was the extent of gifted lands in the Te Raki inquiry region? In particular, who gifted the lands and what was the intent behind the gifts?

- m. How did the Crown treat land that had been gifted for schools, churches and other public facilities? Where land that was gifted for a particular purpose is no longer used for that purpose, what obligations does the Crown have if any towards those Te Raki Māori donors and their successors in respect of that gifted land, and to what extent have any such obligations been fulfilled?

Impact and current situation

- n. When taking Te Raki Māori land for public purposes to what extent did the Crown consider the impact of such takings on the owners affected? Was any consideration given to whether Te Raki Māori would retain sufficient lands for their present and future needs?

- o. What was the impact on Te Raki Māori of land loss due to public works and other takings?

- p. Is the current public works legislation consistent with Crown obligations pursuant to Te Tiriti and/or The Treaty?

9. Local government and rating

Introduction

The Crown's progressive devolution of power to local authorities raises questions of responsibility for its compliance with Te Tiriti and/or The Treaty. The rating of Māori land has always involved both local authorities and the Crown.

Relevant Crown position

Local authorities are not the Crown, nor do they act on behalf of the Crown for the purposes of the Treaty of Waitangi Act 1975.

Under earlier legislation the right to vote in local body elections was linked to payment of rates. The Crown accepts that this is an issue for further inquiry.¹⁴

Issues for inquiry

Did the Crown ensure that local government was empowered to meet the local political, social and economic needs of Māori? Did the Crown seek to ensure that Māori could effectively participate within the local structures? What roles, powers and obligations has the Crown devolved to local authorities over time, and what has been the effect on, and significance for, Te Raki Māori of their devolution?

In particular:

Te Raki Māori exercise of local authority

- a. To what extent did Te Raki Māori seek to exercise the functions of local authority within their own rohe? How has the Crown responded?
- b. What mechanisms were available to Māori for participation and representation within and alongside northern local government institutions, and their processes and practices? How effective were these as a means for engagement?
- c. To what extent was there a Crown duty to ensure provisions were made for Māori representation alongside or within local government?
- d. Did the legislation governing Māori land create title options that restricted the effective participation of Māori in the exercise of local authority in their rohe? How adequate in practice were legislative requirements relating to Māori representation at the local government level as well as local government consultation with Te Raki Māori?

Crown obligation

- e. To what extent does the Crown have a duty to ensure that local government bodies observe and give effect to Te Tiriti and/or The Treaty? To what extent has legislation governing local bodies acknowledged the Crown's obligations under Te Tiriti and/ or The Treaty?

¹⁴ #1.3.2, CSOPAC, pp 162–163

The exercise of local authority

- f. What was the role of local bodies in developing transport, communications and other infrastructure, and to what extent did Te Raki Māori land-owners benefit from the establishment of such infrastructure? How did infrastructure compare between areas in which there were a majority of Te Raki Māori land owners and those in which there were a majority of non-Māori land owners?
- g. Were Te Raki Māori able to benefit from local body administration generally and to what extent? What has been the impact over time of local government legislation, policies and practices on the local decision-making capability of Te Raki Māori?
- h. What was the impact of district planning, zoning, and town planning on Te Raki Māori and their communities? To what extent, if any, were Te Raki Māori able to engage with in district planning, zoning, and town planning? Was this engagement consistent with guarantees within Te Tiriti and/or The Treaty?

Rating

- i. What was the nature of the rating regime imposed on Te Raki Māori? How did it impact on Te Raki Māori and how did they respond to it? What opportunities were Te Raki Māori afforded to engage in decision-making on the rating regime?
- j. What factors explain any variation in the Crown's implementation of rating laws and local authorities' levying of rates on Te Raki Māori land? And, where it occurred, to what extent was any such variation appropriate and justified? In particular, how did the rating of Te Raki Māori land compare to:
 - i. unoccupied Crown land?
 - ii. soldier settlements?
 - iii. accommodations or exemptions for other land owners?
- k. What role did local bodies play in taking Te Raki Māori land in lieu of rates, and what was the legislative regime?
- l. How much land was taken for rates? What was the impact on Te Raki Māori? What was the Te Raki Māori response?

Alternatives and effects

- m. Was the local government regime established by the Crown the only option for effective Māori engagement with the Crown at a local level? To what extent were Māori aspirations for tino rangatiratanga (or their own local self-government) recognised by the Crown and its regimes of local government in the Te Raki inquiry region?

10. Ownership and management of environmental, water and other non-land resources

Introduction

Long before the current Resource Management Act (RMA) passed in 1991, Crown actions towards environmental, water, and other non-land (such as mineral) resources had a major impact on Te Raki Māori. Crown, or local authority, custody or kaitiakitanga of the natural environment remains very much in contention.

Relevant Crown position

The Crown considers the RMA to be consistent with Treaty principles. It requires a balancing of interests which is also provided for in Te Tiriti and/or The Treaty. There are multiple interests in the environment and natural resources of the inquiry district that must be carefully weighed and the RMA regime provides for this. ¹⁵

Issues for inquiry

In what ways have Te Raki Māori exercised tino rangatiratanga, kaitiakitanga, and use and enjoyment of the harbour, water, minerals, timber and other natural resources in their rohe? How have Crown actions and policies impacted on this exercise?

What has been the impact of the Crown's regulation and management of the natural environment, water and resources within the Te Raki inquiry region?

In particular:

Understandings and impact

- a. What has been the Te Raki Māori understanding of their relationship with the natural environment, including water, geothermal and other resources from 1840? How have they implemented this understanding?
- b. What were the understandings and expectations of Te Raki Māori regarding their natural resources when they participated in transactions over land containing or adjoining these resources?
- c. What has been the Crown's understanding of the ownership and use rights pertaining to the natural environment, including water, geothermal and other resources within the Te Raki region? How did the Crown implement this understanding?
- d. Has the Crown recognised and provided for the appropriate level of Te Raki Māori entitlement to use resources within the natural environment? To what extent and in what circumstances, if any, can the traditional interests of Māori to natural resources be recognised as amounting to ownership rights? Have any of these interests been recognised as such? Have Māori willingly conceded any such rights and interests to the Crown?
- e. To the extent that the Crown asserted legislative ownership over natural resources, such as lake and river beds, foreshores and seabeds, and minerals, was the resulting

¹⁵ #1.3.2, CSOPAC, p 169

Crown control over natural resources compatible with Te Raki Māori understandings and expectations around their control of natural resources? What have any such assertions of Crown ownership entailed for Te Raki Māori traditional interests in the natural environment? Has the Crown acted appropriately where it has assumed ownership and management of the natural resources of Te Raki Māori?

- f. In what ways has the Crown's regulation and delegation over the natural environment, including harbours and lakes and waterways, impacted on whānau and hapū and their exercise of tino rangatiratanga, kaitiakitanga and use and enjoyment of their environment?

Consultation and delegation

- g. In establishing or changing environmental planning and decision-making regimes within the Te Raki inquiry region, has the Crown adequately consulted with Māori in the Te Raki inquiry region and adequately recognised kaitiakitanga and provided for their participation in the regimes?
- h. In delegating powers and functions to regional and local authorities, such as catchment boards, river boards and councils, has the Crown adequately required these agencies to take account of Te Raki Māori concerns and provided for their adequate participation in the decision-making processes of these regulatory agencies?

Protection

- i. How did and does the Crown ensure the application of mātauranga Māori to the protection and management of the environment?
- j. How, and to what degree, has the Crown established environmental protection mechanisms to preserve the awa, moana and whenua of Te Raki Māori? How effective were/are these mechanisms?

Degradation and pollution

- k. To what extent has the Crown been responsible for causing and/or facilitating the pollution and degradation of the environment that may have affected Te Raki Māori communities within the Te Raki inquiry region?
- l. Where pollution and degradation have occurred within the Te Raki region, what responsibilities and obligations does the Crown have to rectify this? Did the Crown respond promptly at the point that it became aware of pollution and/or degradation to the environment within the Te Raki region? To what extent have restrictions been placed on Te Raki Māori due to conservation issues that were caused by the Crown's own environmental management?
- m. To what extent are Crown actions and policies, with particular regard to deforestation, the cause of frequent and severe flooding in parts of the Te Raki inquiry district? What steps, if any, has the Crown taken to mitigate or remedy the flooding and the consequences of it?

- n. To what extent have Crown land management practices damaged, depleted and/or polluted wāhi tapu?
- o. To the extent that the Crown is responsible for a degree of environmental damage, what has been the effect of any such damage on Te Raki Māori capability to manage and protect their natural environment and communities effectively?

Exotic and indigenous flora and fauna

- p. What responsibility did the Crown assume for the introduction and management of exotic flora and fauna into the Te Raki inquiry region? How was Crown responsibility exercised in this matter in relation to the known effects on indigenous flora and fauna, and what obligations did the Crown have arising from Te Tiriti and/or The Treaty?
- q. To what extent, if at all, did the Crown act promptly to remedy the detrimental impacts of exotic flora and fauna and how effective were any such actions? Did the Crown adequately provide for Māori participation in the management of exotic flora and fauna (including commercial production forests), and for the continued customary management, access to, and use of indigenous resources by Te Raki Māori?
- r. How, if at all, has the Crown ensured the continuation of Māori tikanga, specifically tino rangatiratanga and kaitiakitanga with respect to indigenous flora and fauna (and its associated mātauranga Māori) located on Department of Conservation estates, National Parks and Crown land in the Te Raki inquiry region? Were these actions adequate?
- s. To what extent, if any, has the Crown ensured the retention of customary fisheries by Te Raki Māori?

Resource management legislation, policy and practice

- t. How have Te Raki Māori sought to be included in resource management, either generally or under the Resource Management Act 1991?
- u. How effective is the Resource Management Act 1991 in practice for protecting Te Raki Māori culture, traditions, ancestral lands, water, sites of significance, wāhi tapu, taonga and the exercise of cultural traditions?
- v. To what extent, if at all, did planning regimes concerning reserves assist in, or inhibit, the retention and use of Te Raki Māori lands (including lakes, waterways and foreshores)? Were Te Raki Māori able to participate adequately, and how have their concerns about reserves been met, in these regimes? What has been the impact of these regimes on Te Raki Māori and on their ways of life? Has the Crown adequately provided for Māori involvement in the regimes regulating the extraction of gravel, sand, minerals and other natural resources in the inquiry district, including payment of royalties for such extraction?
- w. Where reclamation works took place within harbours, what effect did the reclamation have on the people and the environment there?

Environmental management of water and waterways

- x. What is the nature and extent of Crown management and regulation of water and waterways, including swamps and wetlands, in the Te Raki region? Has the Crown adequately consulted Te Raki Māori and provided for participation in the management and regulation of water and waterways, including swamps and wetlands?
- y. By what means, if any, have Te Raki Māori engaged with the Crown or attempted to assert their tino rangatiratanga on the issue of freshwater and geothermal resources? What was the Crown response?
- z. What has been the impact of Crown management and regulation of water and waterways in Te Raki on the ability of Te Raki Māori to have control over, access to, and utilisation of their customary foods of the sea, lakes and rivers?

Resourcing and current status

- aa. Has the Crown ensured that Te Raki Māori have been and are adequately resourced to cope with the demands of dealing with local government and Resource Management Act activities?
- bb. What is the current state of the relationship between the Crown and Māori with respect to the protection and management of the environment and to what extent is it compliant with Te Tiriti and/or The Treaty?

11. Takutai Moana/Foreshore and Seabed

Introduction

The rights and interests of Māori in the takutai moana/foreshore and seabed have been highly contentious issues in the public sphere during the twenty-first century. For Te Raki Māori, Crown regulation and management of the takutai moana/foreshore and seabed, and the impact this has had on their connection to the moana, has been an issue of contention practically since 1840.

Relevant Crown position

The Crown has made no relevant concessions on this issue.

Issues for inquiry

What was the impact of the Crown's regulation and management of the takutai moana/foreshore and seabed within the Te Raki region?

In particular:

- a. What Māori rights and interests in the takutai moana/foreshore and seabed (if any) were guaranteed and protected by Te Tiriti and/or The Treaty?
- b. What Crown legislation and regulation applied in relation to the takutai moana/foreshore and seabed within the Te Raki inquiry region? How did Te Raki Māori respond to, or assert rights in the takutai moana/foreshore and seabed?
- c. To what extent does the Crown have a responsibility to ensure that the legal system and operation of the common law in relation to takutai moana/foreshore and seabed were compliant with Te Tiriti and/or The Treaty, and consistent with tikanga?
- d. To what extent has the Crown taken tikanga and kaitiakitanga into account in legislation and regulation in relation to the takutai moana/foreshore and seabed?
- e. To what extent were Te Raki Māori prejudiced by these Crown legislative or regulatory regimes in the exercise of their tino rangatiratanga, kaitiakitanga or customary rights over or within the takutai moana/foreshore and seabed?

12. Economic development and capability

Introduction

The Crown's role in protecting the economic welfare of Te Raki Māori has never been particularly well defined. It has featured in most public policy discussion regarding the future of a region generally considered to be in dire need of development assistance.

Relevant Crown position

The Crown notes a lack of evidence on the record of inquiry regarding these issues and that the subject requires further investigation. The Crown's says its position is of a preliminary and high-level nature.¹⁶

Issues for inquiry

To what extent has the Crown facilitated the economic development of Māori in the Te Raki inquiry region through legislation, policies and practices? Have these Crown actions assisted Māori to participate effectively in emerging economic opportunities?

In particular:

Economic opportunities and development

- a. What economic opportunities have been available for Māori in the Te Raki inquiry region, for example in the sectors of shipping, farming, forestry, gum digging, horticulture, aquaculture, fishing, tourism, mining, or mineral extraction? How do these compare with opportunities available to non-Māori and Māori elsewhere? What entities evolved to take advantage of the economic opportunities that existed? What has been the Crown's role in the development of these economic opportunities and/or entities for Māori and non-Māori in the Te Raki region?
- b. Have Te Raki Māori sought to participate in, or influence, developing sectors of economic activity? If so, what roles have they played and how have those roles changed over time?
- c. To what extent has the Crown consulted with Māori in relation to economic development in the Te Raki region?
- d. Did Māori benefit from participation in economic development and in what ways? To develop the economic opportunities on offer, what economic capabilities were necessary for effective engagement, and to what extent did Māori possess these capabilities?

Obstacles to development

- e. What obstacles, if any, prevented Te Raki Māori from participating in economic development that non-Māori did not encounter?

¹⁶ #1.3.2, CSOPAC, p 195

- f. Were any of the obstacles faced by Māori to their own economic development the result of Crown policies, actions or omissions? Were steps taken by the Crown to remove or mitigate obstacles to Māori participation or influence?
- g. Did the Crown implement policies aimed at preventing or restricting Te Raki Māori from realising the full potential of their natural resources, or which had that effect? If so, what actions, if any, did it take to remedy the effects of such policies?
- h. What are the primary economic assets remaining in Te Raki Māori control or ownership and to what extent are these assets able to benefit Te Raki Māori? What specific legislative and administrative obstacles, if any, do Te Raki Māori face in the development of their economic assets that are within the reasonable control of the Crown to mitigate?

Government economic assistance

- i. To what extent have Te Raki Māori been able to access land development funding, such as Advances to Settlers assistance, particularly such funding available from the Crown?
- j. Did the Crown provide Te Raki Māori with any special assistance with the aim of enabling them to participate in economic development? If so, what was the outcome of any such assistance?

13. Socio-economic issues

Introduction

This section relates to the effects of a variety of Crown policies including the provision of health, education and community services.

Relevant Crown position

The Crown notes a lack of evidence on the record of inquiry regarding the socio-economic status of Northland Māori. As further evidence becomes available the Crown will develop its response. The Crown acknowledges that there is value in inquiring into the socio-economic changes in Northland.¹⁷

Issues for inquiry

Did the Crown provide adequate and effective social services to Te Raki Māori and what was the impact of the services that were delivered? Did the Crown appropriately recognise Te Raki Māori needs and concerns with regards to socioeconomic conditions and services?

In particular:

General situation, comparison and responsibilities

- a. How might Te Raki Māori social and economic conditions, including health, education, employment and housing, be described generally over time? How do these compare with non-Māori? What were the major factors contributing to those conditions?
- b. How did any social support and economic opportunities afforded to Māori compare with those afforded to other citizens in Northland and nationally?
- c. Did the Crown take adequate steps to inform itself in its social and economic decision-making and policies toward Māori?
- d. To what extent does the Crown have a responsibility to provide social systems and services that are responsive to the needs of Te Raki Māori? How adequately has the Crown discharged any such responsibility, and with what impact?

Social service delivery

- e. In the establishment and management of education and health (including mental health) services, what role, if any, did the Crown enable Māori to play within the institutions and processes it established?
- f. What role did Te Raki Māori expect to play in the organisation and management of social service delivery? To what extent were these expectations satisfied?
- g. Did Te Raki Māori have particular concerns or preferences concerning social service delivery that the Crown failed or was reluctant to recognise? If so, what were these concerns or preferences, and to what extent has the situation changed over time?

¹⁷ #1.3.2, CSOPAC, p 200

The justice system

- h. Have Te Raki Māori had particular concerns or preferences regarding the justice system? To what extent have these been acknowledged and addressed by the Crown?
- i. Given the over-representation of Māori in the criminal justice system, has the Crown engaged with Te Raki Māori appropriately to identify improvements and solutions? What obligations, if any, does the Crown have to enable Te Raki Māori to have a role within the legal and court institutions and processes it established, and how have any such obligations been fulfilled?

Education

- j. To what extent has cultural assimilation been a guiding principle in state-run education? To what extent has cultural assimilation been effected by the delivery of education?
- k. What obligations does the Crown have to be responsive to specific Te Raki Māori educational preferences? In practice, how has the Crown accommodated Te Raki Māori educational preferences, if at all, and with what impact?

Employment

- l. Were employment opportunities and employment benefits for Te Raki Māori reasonable and adequate in the context of their time? How did they compare with opportunities for non-Māori?

Tohunga

- m. What was the nature of the Crown's policies and practices towards Te Raki Māori tohunga and experts in Māori rongoā or medicinal practices? To what extent did the Tohunga Suppression Act 1907 in particular affect Te Raki Māori or tohunga still practising in Māori communities?

Urbanisation

- n. What was the nature and extent of Te Raki Māori urbanisation in the twentieth century? Was this migration encouraged by the Crown; and if so, were there adequate policy and implementation safeguards for both the urban migrants and the people who remained in the district? What support was available to urban migrants? To what extent were Māori communities in the Te Raki region prejudiced through this urban migration including social dislocation and separation?

Impact

- o. To what extent, if any, has Crown policy, action, and/or omission contributed to or facilitated impoverishment within Te Raki Māori communities?
- p. What responsibilities does the Crown have around preserving the traditional and cultural connections of Te Raki Māori who were made wards of the state? To what extent were any such responsibilities carried out? In what ways, if any, were Te Raki Māori wards of the state treated differently to Pākehā wards of the state?

- q. To what extent have Crown social and economic policies led to a breakdown of family and social structures for Te Raki Māori? Where Crown social and economic policies can be shown to have negatively affected Te Raki Māori social cohesion, what obligations does the Crown have to remedy these outcomes and how is fulfillment of its obligations appropriately assessed?

14. Te Reo Māori, Wāhi Tapu, Taonga and Tikanga

Introduction

Particularly important to Te Raki Māori are their kaitiakitanga of tikanga, te reo, wāhi tapu and taonga that they see as essential to their Te Tiriti and/or The Treaty relationship with the Crown.

Relevant Crown position

None stated.

Issues for inquiry

To what extent has the Crown appropriately recognised and engaged with Te Raki Māori on matters related to tikanga, te reo, wāhi tapu and taonga? Has the Crown acted in ways that have inappropriately weakened or undermined Te Raki preferences around tikanga, te reo, wāhi tapu and taonga? What is the appropriate level of Crown engagement and support for tikanga, te reo, wāhi tapu and taonga? By what processes are decisions on these matters best made and by whom?

In particular:

Tikanga

- a. What is the Crown's duty with respect to tikanga Māori under Te Tiriti and/or The Treaty? Has tikanga been given effect or otherwise acknowledged by the Crown in Te Raki?
- b. To what extent did legislation enacted by the Crown interfere with the retention and development of tikanga for Māori?
- c. To what extent has Crown legislation, policy and practice affected the tikanga of traditional Māori leadership structures?
- d. What was the impact of land alienation on the tikanga of Te Raki Māori? Did the Crown consider the effect of the impact of land alienation on the tikanga of Te Raki Māori, and if so what conclusions did it draw?
- e. Is the knowledge of traditional methods of sustainable harvesting and utilisation of flora and fauna a form of tikanga? If so, what duty does the Crown have to ensure that such aspects of the tikanga of Te Raki Māori whānau and hapū are maintained by providing for the continuation of these practices?
- f. What is the effect of regimes that control and manage Te Raki Māori lands, waters and resources on Te Raki Māori tikanga?
- g. How, if at all, has the Crown had regard for Te Raki Māori tikanga relating to health and burial? To what extent has it had a duty to do so?
- h. What does tikanga mean today and what is the Crown's role with respect to it? To what extent have Crown policies, practices, actions and omissions breached ngā tikanga o Te Raki Māori?

Te Reo

- i. What has been Crown policy and practice towards Te Reo Māori including dialects of Te Reo in the Te Raki region over time? What impact has this had on Te Raki Māori? How have Te Raki Māori responded?
- j. How has education legislation, policies and practices affected the retention of Te Reo Māori in Te Raki?
- k. Has the Crown adequately protected Te Reo Māori, including Te Raki dialects of Te Reo Māori in the Te Raki region? What role, if any, has the Crown allowed Māori to play in the management and control of policies and education initiatives to promote Te Reo Māori in Te Raki?
- l. How have Te Raki Māori sought to protect and uphold the use of Te Reo Māori?

Wāhi Tapu

- m. How has the Crown provided for the protection of wāhi tapu within its legislation, policies and practices in the Te Raki region? Has this protection been adequate?
- n. Has Crown policy and practice regarding wāhi tapu been developed or been implemented differently in the Te Raki region than elsewhere in New Zealand? If so, why?
- o. To what extent has the Crown consulted Te Raki Māori on decisions regarding wāhi tapu?
- p. To what extent have Māori concerns about wāhi tapu been taken into account by the Crown, Crown agencies or local authorities?
- q. What impacts have Crown legislation, policies and practices had on the wāhi tapu of Te Raki Māori?

Taonga

- r. What has been Crown policy and practice regarding cultural taonga in the Te Raki region since 1840, particularly with respect to Article Two guarantees?
- s. What opportunity, if any, have Te Raki Māori had to protect, control access to, or be involved in the protection of, their taonga? To what extent have the concerns of Te Raki Māori about taonga been taken into account by the Crown, Crown agencies or local authorities?
- t. How has Crown policy and practice facilitated or otherwise the ability of Te Raki Māori to exercise tino rangatiratanga and kaitiakitanga with respect to their taonga?

15. Specific issues on behalf of the hapū of Whangarei and the Whangarei sub-region

15.1 The Port of Whangarei/Northport

- a. How has the Port of Whangarei/Northport affected the hapū of Whangarei, and to what extent is the Crown responsible for any negative impacts?

In particular, but without limitation:

- i. Did the hapū of Whangarei agree to the future use and development of the Whangarei harbour for commercial purposes?
- ii. Were the hapū of Whangarei provided with adequate access to traditional areas of customary use within the Whangarei Harbour once development had happened?
- iii. What steps were taken to ensure that the environmental quality of the Whangarei Harbour was maintained so that the hapū of Whangarei could exercise their customary uses and practices in that area?
- iv. What was the impact of dredging and siltation on Whangarei Harbour and the hapū of Whangarei's customary use within the Whangarei Harbour?
- v. What was the effect of the Whangarei Harbour Board Acts on the hapū of Whangarei?
- vi. To what extent, if any, did the Crown consider the hapū of Whangarei in relation to the reclamation of land in constructing the Port?

15.2 Marsden Point Refinery

- a. How has the Marsden Point Refinery affected the hapū of Whangarei, and to what extent is the Crown responsible for any negative impacts?

In particular, but without limitation:

- i. Did the hapū of Whangarei agree to the placement and operation of the Marsden Point Refinery?
- ii. Were the hapū of Whangarei provided with adequate access to traditional areas of customary use within the Marsden Point Refinery site once development had happened?
- iii. What steps were taken to ensure that the environmental quality of the Marsden Point Refinery water catchment was maintained so that the hapū of Whangarei could exercise their customary uses and practices in that area?
- iv. What was the impact on the Hapū of Whangarei of the removal of sand from Whangarei beaches and dunes to construct the Marsden Point Refinery?

- v. Did the Crown have an obligation to protect the Hapū of Whangarei from the environmental impact of the Marsden Point Oil Refinery on their lands, estuaries, fisheries and other resources? If so, to what extent did the Crown fulfill its obligation in this respect?

16. Specific issues on behalf of the Mahurangi sub-region

16.1 Hauturu

- a. What was the relationship between various Mahurangi descent groups and Hauturu before the Crown identified the island for acquisition in the 1880s? Did the Crown consider or attempt to understand the importance of Hauturu to Māori owners before it attempted to purchase the island?
- b. What role did the Native Land Court play in the alienation of Hauturu and how did this impact on the Māori owners?
- c. What protest and opposition has there been to the alienation of Hauturu and to what extent has the Crown acknowledged or considered that opposition?

16.2 Hato Petera College – Sale of Crown Grant Lands

- a. How much Crown land was initially granted to Mahurangi Māori for the purposes outlined in the educational ordinance? What was the impact of the sale of Crown Grant Lands on Nga Tauira Tawhito O Hato Petera?
- b. What was the effect of the Vesting and Transfer of Lands Belonging to the Roman Catholic Church in New Zealand Act 1876, the Roman Catholic Bishop of Auckland Empowering Act 1909, the Roman Catholic Bishop of Auckland Empowering Act 1914, the Roman Catholic Bishop of Auckland Empowering Act 1924, and the Roman Catholic Bishop of Auckland Empowering Act 1925 on Crown grant lands and, in particular, the Takapuna Crown Grant? To what extent, if any, did this assist in facilitating the sale of the Crown Grant Lands?
- c. When the Church sold the Crown Grant Land to other parties, did the Nga Tauira Tawhito O Hato Petera School benefit economically from such transactions, or was the money allocated to other schools?
- d. Did the Crown have a duty to ensure that any profits gained by the sale of Crown Grant lands were used to support the School?

Remaining sub-regions

The Counsel Coordinating Committee advises the remaining sub-regions – Whangaroa, Nga Hapū o Te Takutai Moana, Te Waimate-Taiamai/ Kaikohe, Hokianga and Mangakahia – do not have any specific issues over and above those covered at a generic level.¹⁸

¹⁸ #3.1.798(a), 'Claimants' Combined Generic and Local statement of Issues for Stage 2 Generic Hearings', p 47