

## CHAPTER 1

# THE INQUIRY

This chapter concerns the claim, the process, and the parties, as relevant to the inquiry. It considers especially the history of protest and litigation behind the claim, the outstanding cultural concerns, and the issue of representation.

Chapter outline

### 1.1 THE CLAIM

The nub of the Whanganui River claim is that the people of Atihaunui-a-Paparangi possessed and controlled the Whanganui River and its tributaries. The claimants also argue that the river was never freely and knowingly surrendered by them but that, contrary to the Treaty of Waitangi, and to their prejudice, Crown acts, policies, practices, and omissions combined over the years to relieve them of it (see app 1). The essential question then is whether Maori interests in the river were extinguished, and if so, whether that was done in accordance with the principles of the Treaty. From here, we refer to ‘the Whanganui River’ as including both the river proper and its tributaries.

Claim that the river was not surrendered

The outcome that the claimants seek, in broad terms, is the restoration of their mana in the river. From a Maori view, the question of mana has been central to Maori and Pakeha relations since colonisation began.

That Maori authority be restored

### 1.2 THE CLAIMANTS

The claim was brought for ‘Te Iwi o Whanganui’ by the late Hikaia Amohia, a respected kaumatua of several of the Whanganui River hapu, and nine others, who are, or were at the time, members of the Whanganui River Maori Trust Board. The board is a statutory body established under the Whanganui River Trust Board Act 1988. Under section 6 of that Act, it is empowered to negotiate for the settlement of:

People and trust board

all outstanding claims relating to the customary rights and usages of te iwi o Whanganui, or any particular hapu, whanau, or group, in respect of the Whanganui River, including the bed of the river, its minerals, its water and its fish.

The board is also constituted as a Maori trust board under the Maori Trust Boards Act 1955, with provisions for local representation and accountability.

The nine board members represent the people of the river's upper, middle, and lower reaches, a geographical division that encapsulates the customary association of the three parts with certain ancestors: Hinengakau for the upper, Tama Upoko for the middle, and Tupoho for the lower.<sup>1</sup> However, the traditional allusion was to stress unity, not severance, for the point is that the three ancestors were siblings.

In any event, Amohia and the nine board members brought the claim for and on behalf of Te Atihaunui-a-Paparangi, the parent name for the river hapu, which describes the people of the several hapu as a collectivity.<sup>2</sup> They did so also on behalf of the board, as a body representative of those who traditionally lined the river. Whether the board is in fact representative of all affected is considered at section 1.5.

### 1.3 THE CONTEXT

To be appreciated, the claim must be seen in context.

#### 1.3.1 A people's claim

The claim is brought not for individuals but for the whole of the traditional river people. It gives vent to the people's anxiety that their culture, history, and traditions, and their customary association with the river, should be known and understood. However, the essential contention is that the people's status in matters concerning use of the river should be acknowledged for the future. It is a question of recognition and mana. The claim thus touches upon the relationship between Maori and Pakeha generally and how the mana of each should be respected.

#### 1.3.2 Comparative unity

Support for the  
claim

While both Maori and Pakeha perspectives of the river are relevant, we were reminded from the outset that, if the claim was to be fully understood, it had especially to be seen in light of the culture and experience of the people bringing it. From our first entry into Putiki Marae, it was obvious that the claimants' world had a dynamic of its own. The staffing of the paepae in itself pointed to the support of people from many river places, and whaikorero confirmed that this was so. Others in attendance from different descent groups with customary associations were further evidence that prior discussions had been held and that the claim had wide

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1. While the river people may be seen in the three geographic divisions of upper, middle, and lower reaches, the divisions should not be overly emphasised, for there has been considerable movement of people between the three, and Maori claim interests or connections in all of them.
  2. Under the Whanganui River Trust Board Act 1988, the board's beneficiaries are the descendants of the hapu of Tama Upoko, Hinengakau, and Tupoho. This is reiterated in the statement of claim (see app 1). It is a cause of concern to one group that claimed to be unconnected with those ancestors. This is discussed at section 1.5.

Maori acquiescence. These pointers have weight in Maori society, and were keenly observed by the Tribunal's Maori members. The relative absence of inter-tribal antagonism was to become a feature of the subsequent hearings.

### 1.3.3 Living evidence

So, too, from the first of the formal submissions, we sensed that the accounts would be no ordinary evidence of a historical kind. We were dealing not with a dry record of past habitations but with evidence that is lived. Witnesses spoke of former habitations as their homes, as though they were occupied now, because past settlement patterns still influence how people relate to each other. In that context, the Tribunal was introduced to more than 100 pa sites, and learnt of the formerly dense populations along the river's length. No matter where people live today, the old sites are still their 'homes', and the river that once sustained them physically still provides for spiritual needs. The claim, in short, was a living claim, despite the references to the past, for the people then are the same people today.

A history that is lived

### 1.3.4 Cultural dimension

The claim must also be seen in its own cultural milieu. Again, while both Pakeha and Maori views are relevant, the former so pervades, and has so dominated the examination of the claim in the past, that there is a need to state a Maori view on social structure and rivers at the beginning. This is done, in chapter 2.

Importance of cultural milieu

### 1.3.5 The antiquity of the claim

Most especially, however, the claim is old. It is not some new concoction; it began in petitions last century and has been ongoing, for over 100 years, with long judicial proceedings involved. The point was emphasised in claimant counsel's extraordinary opening:

Record of protest

In this claim it is impossible to escape the weight of history and the presence of those who refused to give up the struggle: Hikaia Amohia, who brought this claim; Titi Tihu, who was petitioner in 1927 and plaintiff in the great litigation which went twice to the Court of Appeal; Hekenui Whakarake, who gave the evidence of loss to the Native Land Court and the Royal Commission.<sup>3</sup>

The Tribunal, in an interim report to the Minister, had already expressed this view: 'Rarely has a Maori river claim been so persistently maintained as that of the Whanganui people.'<sup>4</sup>

Though the history is covered in detail in the report, a summary provides an essential background to the circumstances in which the claim was brought. The

3. Document A77, p 2

4. Paper 2.10, p 1

assumption that Maori still had control of the river after British sovereignty was proclaimed is evident before 1860, when Maori required a toll of Europeans travelling upstream. The same assumption is apparent in Maori letters from 1876 protesting against European encroachments.

The claim of ownership by protest and formal objections, however, begins in parliamentary petitions from 1873.<sup>5</sup> It is clear that Maori did not consider that, by land alienation or other means, their right over the river had been extinguished. By the 1890s, direct action accompanied formal protests with the obstruction of channel clearance work. In the early twentieth century, the claim was mixed with objections over compulsory land acquisitions. By 1927, it also covered the use of the river by a steamer company, the taking of gravel, the release of trout, and the destruction of fishing weirs.

#### Record of litigation

Litigation over the riverbed title began in 1938, the Native Land Court, and then the Native Appellate Court ruling in Maori favour, but in 1949, the Crown succeeded in an appeal to the Supreme Court. It was held that Parliament had vested the bed in the Crown through the Coal-mines Act Amendment Act 1903. This, in turn, was upset in the 1950 royal commission findings of a Supreme Court judge. The commission endorsed the Native Land Court opinions, finding that, but for the 1903 legislation, the tribe would be the customary owner of the bed. Maori, it was added, were owed compensation for substantial gravel extractions.

#### Maori Appellate Court – the river was owned like the land

By enacting special legislation, the Crown put the matter to the Court of Appeal, which, in 1954, while declining any of the relief that the Crown had sought, referred certain questions to a newly constituted Maori Appellate Court. The court's answers implied that, although Maori owned the river at 1840, they owned it in the same way as the land. This answer, and a presumption of English law that the owners of land abutting on a river own the riverbed to the river's centre line, led the Court of Appeal in 1962 to find that the customary river interests were extinguished by the Native Land Court when it investigated the titles to the adjoining land. This was even though ownership of the river had not been adverted to in the Native Land Court. The bed thus passed to the Crown when it acquired the Maori land.

#### Post-litigation petitions

After 24 years, the litigation had ended, but this was not the end of the matter for the person who had brought the claim in 1938. Titi Tihu was joined by his nephew, Hikaia Amohia, who was the principal claimant in this claim, and many others. Without resiling from their contention that Maori interests in the river had not been freely alienated, they continued to negotiate for compensation for the extraction of gravel in accordance with the royal commission's recommendations. In 1979, they petitioned Parliament once more, and were involved in select committee hearings as late as 1980. The end result, in 1988, was a statute to establish the Whanganui River Maori Trust Board, with authority to negotiate on gravel and river matters, and an 'interim' payment to the board of \$140,500 for negotiating costs and establishment expenses.

5. In 1873, Te Keepa Rangihiwini (Major Kemp) of the Whanganui River petitioned the Government against the Timber Floating Bill of that year: LE1/1873/10, NA Wellington.

By then, Titi Tihu had been involved in judicial or parliamentary proceedings on the river for 50 years. In 1988, when he was about 100 years old, he passed away.<sup>6</sup> It is now 48 years since the royal commission recommended that compensation for gravel extractions be paid but a settlement has yet to be made.

While persistence in proceedings is not evidence that the proceedings were always right, it indicates how the claimants sincerely believe in the justice of their case and it shows how the claim is nothing new. The frustration arising from years of legal and political debate, with little progress evident, was apparent in informal comments at Tieke made by certain of those who had earlier effected an occupation. It was evident that they held honest opinions on the rightness of their cause, and genuinely considered that, in past proceedings, the Maori view of the matter had not been properly understood. They felt that their forebears had done all that they could and that no other option was left open to them to reclaim what they saw as their rightful inheritance. They were not a group making trouble for the sake of it, and they gave evidence of their hospitality to all river users who visited them.

An honest belief in the justice of the case

In view of the statements at Tieke and elsewhere during the hearings, and in view of the importance of land and river tenures in the preceding litigation, the Tribunal was concerned to inquire into the traditional perspectives on river rights and land tenure.

### 1.3.6 The currency of the claim

No sooner was the Whanganui River Maori Trust Board established than it too was embroiled in lengthy and costly litigation in endeavours to maintain the Maori interest in the river. This was in the face of what Maori saw as yet further encroachments upon their traditional and unextinguished right of control. Indeed, this claim to the Waitangi Tribunal came as a last recourse, though witnesses expressed the tiredness with which they brought their concerns to yet another forum, and the frustration they felt knowing they had still to face further projected planning inquiries on the river's management. As the board's chairman said:

More recent litigation

what I firstly want to do is to say to the Tribunal that . . . our people are tired, they're fed up, they feel embarrassed to come along continually and to say who they are, what is theirs. And you would have seen [on the site visit] some . . . [of] our people living along the river . . . getting their spiritual, their physical and their material sustenance from the river. And you see where they're located and then having to

6. As was the case with many Maori of his generation, Titi Tihu's date of birth is uncertain. An article in the *New Zealand Herald* on 1 January 1981 suggests that he would have been 106 at the time of his death: MA7/6/188, NA Wellington, Whanganui River Petitions, 1973–84 (Wai 167 ROD, doc B26, p 584). According to an article in *Tu Tangata*, he was 105 when he died, the evidence there being based on records of the Sisters of Convent School at Ranana, while the transcript of evidence before the royal commission of 1950 would mean, if correct, that he was aged about 92: *Tu Tangata*, no 8, October–November 1982, p 15 (doc A27(f), p 219). A succession order cited by David Young states that in 1912 Titi Tihu was 19 years old, while Rohu Te Kani of Pakipaki Marae was certain that he was more than 100 years old when he died: David Young, *Woven By Water: Histories from the Whanganui River*, Wellington, Huia Publishers, 1998, p 269, fn 5.

come and spend over a hundred years trying to say ‘This is us, this is what we’re trying to hold onto, this is what we have for our future generations’.<sup>7</sup>

In 1958, even before the Court of Appeal had made its ruling on ownership, the Government had authorised the diversion of water from the Whanganui, Whakapapa, and several other rivers for the Tongariro power scheme by the New Zealand Electricity Department. In the mid-1980s, the department was corporatised. The new State-owned enterprise, the Electricity Corporation of New Zealand (ECNZ), had to apply for resource consents for continued water abstractions. Following hearings before a tribunal for the Central Districts Catchment Board in 1988, a substantial increase was proposed to the minimum flow level. ECNZ appealed to the Planning Tribunal in 1989 and the hearings continued for 94 sitting days, spread over seven months. They involved up to 14 lawyers and 104 witnesses. Other parties have estimated ECNZ’s costs to be between \$7 million and \$15 million, and it was on account of the projected expense, and the possibility of an award of costs, that the Royal Forest and Bird Protection Society of New Zealand withdrew, at least officially, as a party.<sup>8</sup> This left, in opposition, the Department of Conservation, the Whanganui River Flows Coalition, and the Whanganui River Maori Trust Board. From the Planning Tribunal, the matter proceeded to the High Court in 1992. The board was thus involved in the ‘minimum flows’ litigation for about four years.

#### Need to settle status

Further proceedings were pending as a consequence of the 1993 application by the Royal Forest and Bird Protection Society for a water conservation order for the Whanganui River and its tributaries. The Manawatu–Wanganui Regional Council’s process for the formation of a regional plan for lake beds was likely to involve the trust board in further legal action, as could the Crown’s proposals for a generic policy on Maori claims to natural resources. Claimants pointed out that the formation of a generic policy had been used by the Crown as a way to defer negotiations between the Crown and the river claimants.

The board is of the view that, unless the Maori right in the river is settled, properly acknowledged, and provided for, the people will be always on the back foot, responding, without sufficient resources, to complex planning proposals by which others assume control. They seek more than the right to be heard and the resources necessary for a fair hearing. They challenge the power of others to make decisions and say that the power should be vested in them.

## 1.4 THE PROCESS

### 1.4.1 Legal representation

Counsel appearing were Sian Elias, John Dawson, and Kathy Ertel for the claimants; Ellen France and Camilla Owen for the Crown; Ann Callaghan for the

7. Transcription of oral submission by Archie Taiaroa, 19 April 1994

8. *Forest and Bird*, November 1990, p 41

Electricity Corporation of New Zealand; Phillip Milne for the Manawatu–Wanganui Regional Council; and Carrie Wainwright for the Wanganui District Council. (See appendix II for the record of inquiry.)

#### 1.4.2 Bicultural procedures

For all to be heard in comfort, alternative procedures were adopted. Maori were heard on marae, where practicable, along marae kawa lines but allowing for cross-examination.<sup>9</sup> Pakeha were heard under Western protocols in halls, where preferred, though some were comfortable with a marae setting. The presentation of legal argument followed court practices.

A bicultural approach was urged for both process and submissions. Claimants contended that New Zealand history has been largely a European discourse based on documentary records, where European opinion prevails, while in Maori history, based on Maori knowledge, there are two different narratives – a Maori narrative, which focuses on the relationship of people to each other and to the environment.<sup>10</sup> Others added that Western techniques had devalued the spiritual and cultural importance of the river to Maori, Maori evidence being seen out of context in a European setting. We consider that these views have force.

Need for bicultural perceptions

We are aware that traditional views that knowledge is tapu and should be selectively transmitted mean that many Maori do not wish to be seen as making a general broadcast of it, whether or not it is already in the public domain. Nor do many wish to be cited or have their evidence used by others without their knowing. The issue is one not of confidentiality but of respect for traditions.

Protection of evidence

In response to requests, we directed that use of the Maori evidence be restricted to purposes associated with the inquiry and any legal review, save for media reports on the proceedings at the time. It is now available to members of the public wishing to critique the inquiry, provided that any publication does not cite the evidence in detail unless it is given in this report. We thought this necessary for people to speak freely and for a full inquiry to be made.

Maori were also heard on location, during site visits. This was important, and not only because the environs may corroborate or contextualise testimony. The hills, rich in history, the pa sites, and the remains of former habitations are also important cues when recounting oral tradition.

Site visits

#### 1.4.3 Other iwi

As previously mentioned, persons from other tribal groups attended to give the claimants support or to maintain a watching brief, though not necessarily to make submissions. Tumu Te Heuheu of Tuwharetoa (Taupo) attended. Sir Robert Mahuta of Tainui (Waikato); George Hawkins and Maraea Aranui of Ngati

9. For the authority to adopt marae kawa, refer to clause 5(9) of the schedule to the Treaty of Waitangi Act 1975.

10. Document A51, pp 4–5, 10

Pahauwera (Hawke's Bay); Maanu Paul, Hohepa Waiti, and James Doherty of Ngati Manawa (Bay of Plenty); Potanga Neilson of Nga Rauru (Taranaki); and Ruth Harris and Tom Tuhiwai of Rangitane (Manawatu) made submissions.

#### 1.4.4 General public

Submissions were also received from public and private bodies of the general population. These included the Wanganui District Council (and the mayor, Charles Poynter), the Manawatu–Wanganui Regional Council, the Federated Mountain Clubs of New Zealand, the Whanganui River Users Group, the Royal Forest and Bird Protection Society of New Zealand, and the Electricity Corporation of New Zealand.

#### 1.4.5 Grant of urgency

The proceedings commenced in Wellington on 2 November 1993 with an application for an urgent hearing. That hearing was necessary to achieve priority in the queue of waiting claims, and in this case the application was granted in an interim report of 19 November. The ground was that, if their rights in the river were not first determined, the river people could be prejudiced in the hearing of an application for a water conservation order by the Royal Forest and Bird Protection Society. The Tribunal recommended that the Crown take no steps to appoint a special tribunal to consider the application before the Waitangi Tribunal had reported. It was a factor, too, that the claimants would limit the inquiry to river matters and defer their land claims to later, despite practical difficulties in severing the two. The decision on urgency is reproduced at appendix IV.

#### 1.4.6 Itinerary and site visits

Occupation and  
hearing delays

A small delay was occasioned by the need for some preliminary research and by an occupation of certain river land at Tieke administered by the Department of Conservation. Because the occupation appeared to have been effected by members of the tribal group represented by the claimants, the Tribunal did not wish to proceed, lest its inquiry should compromise the prosecution of actions that might be unlawful.<sup>11</sup> The research was done, however, and eventually the department granted a licence to the occupiers.

Range of persons  
heard

Following public and individual notices, hearings commenced at Putiki–Wharanui Marae in Wanganui in the week from 14 to 18 March 1994. Since it cannot be assumed that all of a large and dispersed tribal group are agreed on a claim, and particular interests and differences must be noted, the Tribunal cooperated with claimant counsel's suggestion to hear first the concerns and opinions of the people. The Tribunal was thus to be addressed by many, ranging

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11. An occupation of Pakaitore (Moutoa Gardens) occurred after the hearings had closed.



from tribal leaders and tohunga to kitchen hands, from urbanites to remote rural dwellers, from academics to bush scholars, and from Arama Gardiner, a young boy from the Kura Kaupapa Maori, to 95-year-old Te Paea Arapata.

To hear all who might wish to be heard, and to provide some orientation, the Tribunal, at the claimants' initiative, travelled from Putiki–Wharanui Marae north by road some 18 kilometres to Kaiwhaiki. From there, we travelled to the river settlements of Pungarehu, Parikino, Kakata (Atene), Otukopiri (Koroniti), Matahiwi, Ranana (at Ruaka and Te Pou-o-Rongo Marae), Patiarero (Jerusalem), and Pipiriki. This last settlement is 90 kilometres upriver at the end of the Whanganui River Road. From Pipiriki, the Tribunal travelled some 20 kilometres by river to Tieke, which lacks road access, travelling past the renowned drop scene composed by near-vertical cliffs, and the canyons in dense bush at the confluence with the Manganui-a-te-Ao River. At Tieke, we were addressed by current occupants and descendants of that district, who now live at Raetihi.

Marae visits

The inland marae of Otoko, 44 kilometres north of Wanganui on the main highway to Raetihi, was then visited. The Tribunal also sat at two places in Taumarunui: Ngapuwaiwaha Marae and the Taumarunui Memorial Hall, the site of the former Morero Marae and Hauaroa meeting house. Time prevented a proposed sitting at the historically renowned Tawata, the river settlement some 50 kilometres downstream of Taumarunui, but speakers from there attended other sessions.

Professional witnesses were heard mainly at Putiki–Wharanui Marae and submissions from the general community at a venue in Wanganui City. Following final legal argument, the claimants conducted a ceremonial closing of the claim at Wharaurua Marae in Taumarunui, with some Tribunal members present.

Professional and  
general public  
evidence

The hearings were conducted during the weeks commencing 14 March, 18 April, 21 June, and 25 July 1994, with each hearing first being publicly notified.

Hearing time

#### 1.4.7 The report

Though affected by rules of natural justice, the Tribunal is not a court bound by pleadings or constrained by the arguments and evidence proffered. It must inquire and report on all matters thought necessary for a final Government decision.

In the result, this report does not necessarily follow the framework adopted by the claimants or the Crown, and though an attempt is made to cover the issues counsel raised, to avoid undue prolixity or confusion in reporting, counsel's arguments may be omitted or reduced. It does not, however, follow that they have not received full attention.

### 1.5 HAPU AND IWI

Since claims must be brought by Maori rather than a board – but may be brought by Maori on behalf of a group – the claimants brought the claim for the people as a

Why a single claim  
was presented

whole and under the umbrella of the Whanganui River Maori Trust Board. This was appropriate in our view. While the river hapu have distinct interests at various places in the river's natural resources, they also have a common interest in the entire river, and customary responsibilities to all the hapu and river people. In this case, the issues mainly revolve around matters of common concern.

None the less, it was arranged that particular hapu interests or viewpoints should still be separately ventilated, and accordingly, the Tribunal travelled to marae in different parts of the district that all might be heard and, where appropriate, that any local concerns might be brought into account. It was then apparent that a greater prejudice to most people was likely to occur if a holistic view was not maintained, or if the claim was splintered to discrete hapu.

We are further satisfied that, for the purposes of the claim, the people as a whole are now best represented through the board. The board was established by section 4(1) of the Whanganui River Trust Board Act 1988 and is authorised by section 6 to negotiate with the Government on matters affecting the whole of the river people. It must account for its activities. It is also the board that is best resourced to handle a claim affecting large numbers over a wide area and involving complex issues.

**Support for a united  
claim through the  
board**

When we travelled to different parts of the country, all but a few from one hapu supported this. Setting aside historic hapu rivalries, and following instead equally historic moments of concerted action, compelling calls for unity were made.

**Maintenance of the  
common interest**

Further, we consider the prosecution of a united claim is consistent with local history and with the custom, as it was, and as it has developed in more recent years. The relevant custom is more particularly considered in chapter 2. By way of summary, we consider that the possession and authority of the river accrued to the individual hapu for most purposes, and to the people as a whole for others. The maintenance of a common interest has been notable where this has been necessary to protect the people's interest in the river, or to deal with matters affecting the people as a whole.

**Tamahaki objection**

There was one objection to the presentation of the claim through the board. A representative for the Tamahaki people of the middle-river section drew attention to the fact that, by section 4(2) of the Whanganui River Trust Board Act 1988, the beneficiaries of the board are 'the descendants of the hapu of Tama Upoko, Hinengakau, and Tupoho'. It was contended that the Tamahaki members descend from Tamahaki and not from any of those three, thereby implying that Tamahaki were an unrelated group that should be dealt with separately. In addition, it was claimed, they were excluded from representation on the board.

**Board's constitution**

In terms of section 5, board members are elected according to beneficiary rolls, and regulations may provide for the representation of specific sections or divisions of the beneficiaries. We were informed that representation was provided for according to the three ancestral divisions, or, in effect, according to the upper-, middle-, and lower-river sections. No other grounds were given for severing Tamahaki from the general claim, though they were given their own hearing to raise such matters as they chose.

We note at this point that the definition of beneficiaries does not affect the statutory authority of the board, in section 6 of the Act, to represent all the river people in negotiations with the Government. Section 6 provides that:

Board to negotiate  
for all

**6. Board to negotiate outstanding claims**—In addition to the functions conferred on the Board by section 24 of the Maori Trust Boards Act 1955, the Board shall from time to time negotiate with the Government, or any other body or authority concerned, for the settlement of all outstanding claims relating to the customary rights and usages of *te iwi o Whanganui, or any particular hapu, whanau, or group*, in respect of the Whanganui River, including the bed of the river, its minerals, its water, and its fish. [Emphasis added.]

In any event, the claim that Tamahaki members have no descent from any of the three named ancestors appears to us to be exaggerated, and that they should stand in isolation from other groups is inconsistent with the history and traditions as outlined in the next chapter. It is unusual, in Maori tradition, for a group to claim exclusivity or that it cannot trace a connection to a local ancestral icon. It is the very purpose of the whakapapa that dominates Maori thinking to draw connections between people and unite. It is thus the Maori way for people to seek out and acknowledge genealogical descent ties. The lack of such a link is also rare, given the breadth of Maori whakapapa tables.

Hapu as related

The Tribunal is regularly reminded of the connections between hapu in submissions on claims from Muriwhenua in the far north to the South Island. Speaking to a claim in Hawke's Bay, Professor James Ritchie approached the matter from the standpoint of the rangatira:

A chief, or rangatira, exercises the authority which derives from mana. A rangatira has personal mana but also carries the mana of the hapuu . . . Mana is an extremely central and culturally complex concept.

Mana derives, in the first place, from whakapapa, notably through firstborn lineages but also incorporating affinal or marriage linkages through both male and female lines of descent. A person or a group may speak of their major lineage as their whakapapa, but since this relates to that of all other kinsfolk, lineages ramify into extended networks. Raymond Firth coined the term ramage as a descriptive for these networks which uniquely, amongst world tribal systems, link in inclusive ways, almost as though the village kainga of related families is a model for the whole universe of human relations.

These can (and do) connect the person or hapu with every other in the iwi (descent group from a common ancestor, such as Kahungunu), waka (a group of iwi who have a common origin explanation such as the arrival in Aotearoa of their canoe), and with every other waka. People and groups can also whakapapa to pre-waka ancestors (the original people) who shade off into non-human personalities or personifications of entities such as the rainbow, mythic spirits, a major mountain or river. Through whakapapa the links reach back to Io, the primal God and those who descend from Io, such as the major 'departmental Gods', of which Tangaroa, God of the oceanic waters is most relevant here.<sup>12</sup>

12. Brief of evidence of James Ritchie (Wai 55 ROD, doc E2), p 2

Professor Ritchie went on to explain how the several hapu of the district were related and how it is by these networks that collective mana, or mana tangata as he put it, was considerable. This thinking appears to be universal amongst Maori, and applied to Atihaunui no less.

Anihira Henare was one of those who claimed affiliation with all the Atihaunui hapu. In genealogical evidence, she showed how a number of the hapu were connected and how Tamahaki fitted in.<sup>13</sup> No evidence was tendered that any member of Tamahaki had been excluded from the board's beneficial rolls or was incapable of applying.

We also consider the Tamahaki contention confused the purpose for which the three ancestors were put up, as symbolic of a relationship rather than as the founding ancestral figures for the Atihaunui people. For reasons given later in this report, the names are synonymous with unity and the inclusion of all. We recognise that, amongst Maori, some well-known groups have survived amidst a more numerous people with their separate history, traditions, and identity intact. In this case, however, such a history and tradition is not known or acknowledged by the other hapu. Nor did the Tamahaki representatives establish it themselves, or avail themselves of the opportunity to do so while others were present who might challenge their contentions.

**Tamahaki  
contention as new**

The Tamahaki claim appeared also to be a new development. The traditional, ancestral references set out above have been maintained by the Maori involved in the long river litigation from 1938 to 1962, and again in the promotion and drafting of the Whanganui River Trust Board Act 1988. No one pointed to, and we could not find, any record that the Tamahaki concern had been stated before.

**Tamahaki  
submissions**

In any event, in the way that the issue was developed before us, the question was not whether the three traditional ancestors could represent all the hapu but whether the claim was brought for all the hapu. The two Tamahaki kaumatua who made submissions were in accord with this position, as put by one of them:

the concern of my people was simply that Tamahaki be included alongside the other three tupuna, or recognised, which would then bind our iwi as one, when we could then support, and we fully support, . . . [the] claims that are before you.<sup>14</sup>

Claimant counsel then gave an assurance that the claim was for all the people and Tamahaki would not be excluded from any relief that might be given. The kaumatua appeared to be satisfied. We understood claimant counsel to add that the statement of claim would be amended if need be to make that position clear, but the assurance having been given, we did not think an amendment to the claim was required.

We also understood that, if need be, the chairman of the board would seek legislation to amend the definition of beneficiaries and the system of

13. Simon T Morvin, *Taku Whare E: My Home My Heart*, Wanganui, Wanganui Regional Community College, 1986 (doc A56), p 9

14. Transcript of oral evidence of Larry Ponga, 21 June 1994

representation. It did not wish to exclude anyone. However, this was not considered necessary, and Tamahaki representatives did not urge this course.

Subsequent to the hearings, the Tamahaki representatives again sought to stand independently of the other hapu and the people as a whole, filing, one year after the hearings had closed, a separate river claim.<sup>15</sup> Nevertheless, we consider that Tamahaki had sufficient opportunity to present their concerns at the time, and a reconvening of the hearings would have caused hardship to the many who had assembled from dispersed places so that such issues could be debated amongst them all.

While Maori custom generally favours hapu autonomy, it also recognises that, on occasion, the hapu must operate collectively. We consider that this is one such occasion and that this is the generally held view. There are times when hapu should be dealt with separately, and the board may find that any settlement benefits should be allocated between them. However, on the evidence, it is not practicable, reasonable, or fair to the majority's point of view that the Government should treat separately for the resolution of this claim, or that one group that has not established a unique status outside of the general genealogical ties should weaken a united position by standing apart.

**Acknowledging  
both hapu  
autonomy and hapu  
unity**

We add, as an aside, that the position may be otherwise in the later hearing of land claims. The issues are different there, and for that purpose the roles of the hapu and the iwi may need to be reviewed. We mention this, for in making submissions, Tamahaki representatives spoke mainly of the early alienation of land, and it appeared that this could be their primary concern.

In all, we consider that, for the purposes of dealing with the outside world, be it other Maori or the Government, on matters affecting the hapu and the river as a whole, representation today is best effected through one body. The Whanganui River Maori Trust Board serves that purpose in our view, and should continue to do so for as long as the board remains accountable to the hapu, respecting their traditional autonomy and recognising their interest in any outcome. A unity is required for dealing with the outside world, and at this time that can best be achieved and executed through the board.

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15. Wai 555 is the Taumatamahoe block claim, lodged by Mark Cribb and another on 29 September 1995.



Map 1: The Whanganui River catchment area