

APPENDIX A:

Muaūpoko

KAIWHARAWHARA HARBOUR DEVELOPMENT

TO **EXPERT CONSENTING PANEL**

DATE 2022-10-31

SUBJECT AN APPLICATION FOR THE REDEVELOPMENT OF THE INTERISLANDER FACILITIES AT KAIWHARAWHARA, WELLINGTON AND SURROUNDING INFRASTRUCTURE, INCLUDING WORKS ON LAND AND IN THE COASTAL MARINE AREA.

INTRODUCTION

In the limited time available, I have considered information that is available online that discusses Muaūpoko interests from early sources and recent recognition of ongoing customary connections including:

- historical evidence recorded by early European settlers and ethnographers
- the Waitangi Tribunal Te Whanganui-a-Tara report 2003 & associated historical research
- Treaty of Waitangi settlements
- the Marine and Coastal Area application

TE WHANGANUI-A-TARA: SETTLEMENT OF ANCESTRAL LANDS

Here I present a short chronology of events in Te Whanganui-a-Tara over the last 500-700 years and Muaūpoko involvement in them.

For the earliest period, we mostly draw from Elsdon Best's series of articles in the Journal of the Polynesian Society in 1919 under the title "The Land of Tara and They Who Settled It. The Story of the Occupation of Te Whanganui-a-Tara (The Great Harbour of Tara) or Port Nicholson, By the Maori." Best appears to have relied on informants from the lower east coast of the North Island.

This chronology confirms an unbroken ancestral association over the centuries in association (and sometime contest) with other iwi of the region, and from the 1820s, in contest with the iwi heke at the time of the so-called musket wars.

The environs of Te Whanganui-a-Tara, including the site of the development, are ancestral lands of Muaūpoko who lived there for hundreds of years after its naming by Tara around the 14th century.

Kupe is the earliest mentioned visitor, he explored the harbour and named Matiu (Somes) and Mākaro (Ward) Islands after his daughters (or nieces), as well as places outside the harbour including Rimurapa (Sinclair Head), Pari-where (Red Rocks) and Mana Island (Te Mana o Kupe).

Tara was the son of Hotu-waipara, a wife of Whatonga, who sailed the Kurahaupō waka to Aotearoa in search of his grandfather, Toi. The name Tara is said to derive from this incident:⁶

"Shortly before the birth of Tara his mother, while engaged in cleaning fish, was wounded in the hand by a spine of a nohu, the same being a fish resembling the porcupine fish, and having poisonous spines. Hence, when the child was born soon afterwards, he was named Tara (spine) in memory of the incident."

Tara had a half-brother, Tautoki, by another of Whatonga's wives, Reretua. Tautoki had a son, Rangitāne – whom the iwi of Rangitāne take their name. Together, Tara and Tautoki explored the south coast and harbour.

After reporting back to their father Whātonga, a decision was made to settle the harbour. The settlers arrived via a trip along the east coast, arriving in summer

⁶ Best JPS Vol 26 No 4 p152.

(Akaakanui - December) and initially settling on Matiu Island. They built three large houses on Matiu, named Haere-moana, Aotearoa and Te Pu-o-te-tonga.

Whatonga lived there with his children and grandchildren. From that base, he explored the coast westwards to Mana and Kāpiti Islands, along with Tara and Tautoki.

Whatonga gave detailed instructions regarding expanding settlements throughout the Wellington region beyond Matiu Island, including locations and how new pā should be established and constructed by Tara and Tautoki.

A central fortified pā was erected at Motu-kairangi (Miramar Island) and named Te Whetu-kairangi:⁷

"The origin of the name being the fact that they here saw no persons of other tribes, dwelling in a lonely manner. Looking forth at night one saw nought but the stars and moon; in daytime, only the sun, and the clouds drifting across the heavens, with the sea on either side. Hence was that island named Motu-kairangi, the fortress being Whetu-kai-rangi."

Tara is said to have remarked to his wife Umu-roimata:—"What shall be a name for our island on which we are dwelling?" Te Umu-roimata said:—"Is Te Whetu-kairangi such an insignificant name?" "Oh," said Tara, "That name already applies to the pa." Whereupon Hine-kiri called out:—"Let Motu-kairangi be a name for it."⁸

On the western side Motu-kairangi is a swampy lagoon where eels were kept, which had been brought from Te Awa-kairangi, the Heretaunga (Hutt) River.

Two principal houses were built within Te Whetu Kairangi, Raukawakawa for Tautoki and Whare-rangi for Tara.

The harbour was named at this time.⁹

"When the fort was finished, Te Umu-roimata said to Tara:—"You should give your name to the harbour," to which Tara agreed, hence it was named Te Whanganui-a-Tara (the Great Harbour of Tara)."

In the following years three defensive surrounding forts were erected.

- Uruhau was erected at the southern end of Ranga-ahiwi ridge. Principal house Te Maioha.

⁷ Best JPS Vol 26 No 4 p161.

⁸ Best JPS Vol 26 No 4 p165.

⁹ Best JPS Vol 26 No 4 p162.

- Te Aka-tarewa was erected on the south side of Matairangi (Mt Victoria). Principal house Moe-ahuru.
- Te Wai-hirere was erected at Point Jerningham. Principal house Waipuna.

Another defensive fort of Tautoki was constructed at Pencarrow head, called Para-ngarehu.

A refuge area was created called Takapau-rangi at the head of Wainui-o-mata, a lagoon to the eastward of the Great Harbour of Tara, inland of the fort of Para-ngarehu.

There were many cultivation grounds developed over the following generations¹⁰, such as:

- Kirikiri-tatangi (Seatoun Flat) on the eastern side of Te Whetukairangi;
- Marae-nui, likewise on the shores of Te Au-a-Tane (entrance channel);
- Huri-whenua, the place now called Te Aro, which extended as far as the base of Tawatawa to the north west;
- Basin Reserve is the site of the Hauwai cultivation ground;
- The place called Watts Farm, that region right through to the western side of Uruhau (pā on hill east side of Island Bay) was all known as Paekawakawa, and was a kumara cultivation ground belonging to Hine-kiri.

TANIWHA

From these earliest settlers, we have the stories of Ngake and Hataitai and the formation of the harbour. Wellington City Libraries "Te Ara o nga Tupuna. The path of our ancestors" provides a good summary:¹¹

"Legend has it that two taniwha lived in the harbour (which at that time was an enclosed lake). One was a restless, energetic taniwha named Ngake, who longed to escape its confinements and swim to open sea. It sped about in the north east corner of the harbour, using its tail to build up the shallow area (Waiwhetu), and then hurled itself at the rocks encircling the lake, and smashed through to escape to the freedom of Raukawa moana (Cook Strait).

The other taniwha, Whātaimai, decided to make his escape through another exit. Pushing off with its tail, and in doing so forming the Ngauranga gorge, Whātaimai headed off down the other side of the island of Motu Kairanga (Miramar Peninsula) only to get stuck by the receding tide Ngake had let in. Whataimai's body thus forms the isthmus between the former island of Motu Kairanga and the western side of the harbour, where the airport is now situated. It is believed Tangi-te-keo, (Mt Victoria) was named after the soul of Whātaimai, which, after leaving the taniwha's body, flew up to the top of this hill in the shape of a bird and proceeded to tangi (weep and mourn)."

¹⁰ Best JPS Vol 26 No 4 p163.

¹¹<https://www.wcl.govt.nz/maori/wellington/TeAra1.html>

This development proposes to further change the shape of the harbour near the place where Whātaïtai pushed out his tail to escape the harbour.

NGAI TARA, MUAŪPOKO AND RANGITĀNE

Over the following centuries the descendants of Whatonga, Tautoki and Tara grew in number and expanded the lands and resources under their control. These events were slow and numerous, there was no sudden advent of the tribes, rather an evolution over the following two centuries:

- Descendants of Tara occupying Te Whanganui-a-Tara district and lower Wairarapa adopted the tribal name of Ngai-Tara. Motu kairanga can be considered the birthplace or roots of the iwi.
- Some descendants of Tara expanded north through Porirua, Paraparaumu, Ōtaki, Horowhenua, Manawatū coastal area through to Rangitīkei and became Muaūpoko.
- Descendants of Tautoko migrated east through Wairarapa and over time north to Tamaki Nui-a-Rua (Dannevirke area), Wairau and through to Manawatū.

Issues and alliances naturally arose over resources and control thereof at different times throughout the following centuries between the various groupings that developed. Best records tensions.

For example, Best was told by his informant of battles within the harbour for control of different areas between Tara and Muaūpoko.¹²

Nevertheless, each of the recognised iwi today all owe their birthplace to the settlement of Whātaïtai, Tara and Tautoko within Te Whanganui-a-Tara.¹³

"It has been seen that the boundary between the lands of Tautoko and Tara ran up the Hutt River and along the Tararua Ranges. Such a boundary is alluded to in the name of Kāpiti Island- Te Waewae Kāpiti o Tara rāua ko Tautoko where the curious expression signifies the brothers legs (or feet) remain side by side, or joined."

PĀKEHA ARRIVAL AND COLONISATION

Captain Cook's journeys to Aotearoa failed in attempts to enter the Te Whanganui-a-Tara harbour on his first and second voyages.

¹² Best JPS vol 27 No 105 p4.

¹³ Best JPS vol 27 No 105 p6.

The first European ships entered the harbour in the 1820s. The historian Robert McLean provides a reasonable summary of relationships in this period:¹⁴

"Before 1819, Te Whanganui-a-Tara was under customary use of tribes associated with the Kurahaupō Waka; Rangitāne, Mua-Upoko, and Ngāti Apa/Ngāti Rangī. Beginning with Kupe, these tribes generally discovered and named the harbour. The name Te Whanganui-a-Tara comes from Rangitāne sources.

While the Kurahaupō tribes were in occupation of the harbour, other tribes descended from the Takitimu and Horouta waka arrived. The new arrivals- under the identity of Ngāti Kahungunu and Ngāti Ira- intermarried and settled in with the previous occupants. Accounts of battles at Mirimar, Pauatahanui and Waimapihi illustrates the new arrivals did attempt to conquer the Wellington region by force. But evidence suggests this new order was never complete and the Kurahaupō tribes retained a presence in the Wellington area until the 1820s."

McLean then lists a series of military engagements in the 1820s and relies on the Waiorua battle as the definitive engagement through which Ngāti Toa and Taranaki allies gained control of Te Whanganui-a-Tara.

Date	Location	Participants	Outcome
1819	Waimapihi	Pa held by Ngati Ira and Mua-Upoko. Attacked by Ngapuhi, Ngati Whatua and Ngati Toa Rangatira raiding party	Pa taken by the raiding party
1819	Pa- whakataka	Pa held by Ngati Kahukura-awhitia or Ngati Ira. Attacked by Ngapuhi, Ngati Whatua and Ngati Toa Rangatira raiding party	Pa taken by the raiding party
1822	Waimapihi	Pa held by Mua-Upoko Attacked by Ngati Toa Rangatira	Pa taken by Ngati Toa Rangatira
1822	Waimapihi	Pa recently taken by Ngati Toa Rangatira. Attacked by Ngati Kahungunu	Pa taken by Ngati Kahungunu.
1824	Waiorua	Kapiti Island held by Ngati Toa Rangatira and Taranaki allies. Attacked by a confederation of the Kurahaupo tribes and Ngati Kahungunu/Ngati Ira.	Attacking tribes defeated

¹⁴ Robert A McLean *Te Whanganui-a-Tara Foreshores Reclamations Report (November 1997) p75.*

However, I consider that the story was more complex than this. As McLean's own table notes, Ngāti Toa suffered reverses at Waimapihi by Ngāti Kahungunu, and the aftermath of Waiorua was not a clearing away of Rangitāne or Muaūpoko interests on the Kāpiti coast. These are matters that the Tribunal's ongoing hearing in the Porirua Ki Manawatū District is considering.

The NZ Company party that provided the first detailed written account of the harbour in 1826 noted that it was "thinly settled", "with the main settlements (undefended) at Pipitea and Waiwhetu/Petone. No pā sites were mentioned by Shepherd and the tribe in residence was not identified."¹⁵

There were ongoing tensions between groups. In 1835 Ngāti Mutunga left from the Ngauranga area, where they had been encamped, and invited Ngāti Haumia of Taranaki to take up that area.¹⁶

Accordingly, both contemporary and recent commentators all agree that the situation with customary rights in 1840 was extremely fluid.

Charles Heaphy, recalling his time in the harbour in 1839 said:¹⁷

"We struck in from near Lowry Bay [Lower Hutt], and reached the source of the Oronga Stream before night. There was no path whatever. We shot some kakas and snared kokako, but saw no huias. We made a fire as night approached. The natives were awfully afraid of the Wairarapa people, against whom they had lately fought, and while we slept with our feet near the fire, they sat crouched, with our guns in their hands, listening to detect any possibility of approaching footsteps, for they were on the debatable land of the two tribes."

He also commented:

"From this bay the course by boat into the Hutt River, and up the branches into which it divides, was most interesting and picturesque. A pā stood at the mouth of the river on the eastern side, with large war canoes drawn up on the beach, while at the hill-foot were tall stages, from which hung great quantities of fish in the process of sun-drying. Here the natives came out and hailed the boat's crew to land, for ashore it was high festival. Their canoes had come in, the night before, from Island Bay, loaded with 'koura' or cray-fish which were at the moment cooking on the 'hangi' or Maori stone-oven, with pumpkins, cabbage, and potatoes.

The natives were exceedingly apprehensive of an attack on the part of Wairarapa tribe, who, if so disposed, could steal down the wooded hills and appear in the cultivations amongst the scattered working parties. Only two years previously

¹⁵ Robert A McLean p80.

¹⁶ Alan Ward et al CCJWP Historical Report on Wellington Lands pp15-16.

¹⁷ Heaphy, C, "Notes on Port Nicholson and the Natives in 1839", TNZI, 12, 1879: 32-39.

bloody fights had taken place in the Wairarapa Valley, and though peace was ostensibly made with the tribe, reprisals from persons or families that had lost relatives might be dreaded. Thus, the men always had loaded fore-arms by them, and the 'waka taua' or war canoe, was always ready for expedition.

But they occupied rather inconvenient corner of territory. As long as they could maintain peace with the Ngatitōa at Porirua and Kapiti, and the Ngatiraukawa of Otaki, they were tolerably safe; but in the event of serious hostilities in the direction of the West Coast, and such hostilities were threatening, the Wairarapa people, whom they had defeated but not subdued, would operate in their rear, making the position very critical.

It was this feeling of insecurity which caused them to so readily sell land to Colonel Wakefield, and to hail the arrival of Europeans. Having determined on the policy to pursue this matter, Epuni, the Chief, with his immediate people, behaved with great consistency, and never receded from his bargain, or wavered in his friendliness to the settlers. There was a singular mixture of amiability and fierceness about these Port Nicholson natives.

The circumstance of their position required them always to have arms ready beside them and the war canoes on the beach, but to the white people they manifested entire confidence, and exhibited the greatest kindness. Ere the purchase on the land was well completed their relatives were treacherously attacked by the Ngatiraukawa in force at Waikanae, and it required hard fighting, with all the advantages of position, to beat them off. Ere, the excitement of this attack had passed away the Chief of Waiwhetu, Puakawa, was shot in his potato field by a marauding band from Wairarapa."

In research in the early 1990s concerning surplus railway lands, Professor Ward and Dr Robyn Anderson (now a Waitangi Tribunal member), noted:¹⁸

"... it is open to doubt whether, according to custom, the land rights of earlier occupants had been completely extinguished by this stage."

They also wrote that:¹⁹

"Tribal claims were complicated in the south of the North Island because of the bottleneck which the harbour formed on the migration routes of tribes which came initially from the east-coast, and then from the northwest. Tribal relationships in the early 19th century may be seen in the context of the dislocation caused by changes in warfare resulting from the introduction of muskets and the innovative practice of recruiting taua (war parties) from far afield. The search for security resulted in competition for a safe home-base and for resources. The proceeding twenty years of intense tribal conflict and shifting alliances, of which migrations were part cause and part result, confused the same issue of rights of ownership and sale when the New Zealand company arrived. The status quo of 1839-1840 did not represent the situation ten or even five years earlier. The company initially dealt only with sections of Te Ati Awa whom they found resident on the harbour shores. While this iwi had acknowledged territorial claims within the region, they had been fully established in the area for only four years and their occupation was not unchallenged. They were under

¹⁸ Alan Ward et al CCJWP Historical Report on Wellington Lands p92.

¹⁹ Alan Ward et al CCJWP Historical Report on Wellington Lands pp5-6.

some threat from those who had formerly occupied the harbour. Te Ati Awa relationships with Ngāti Toa and Ngāti Raukawa were also strained, despite alliances cemented by marriage and joint participation in migrations and military ventures."

THE 1840 PEACEMAKING

In 1840, after days of discussion between Taranaki iwi and Ngāti Kahungunu leaders at Petone, a tentative peace agreement was reached that Kahungunu would remain east of Tararua ranges, and leave the Taranaki groups unmolested in the harbour area. This agreement was confirmed in subsequent hui after 1840.²⁰

KAIWHARAWHARA REDEVELOPMENT PROJECT

The historical information provided with the application contains no information about the centuries of ancestral connections described above, including in relation to the Kaiwharawhara area of Te Whanganui-a-Tara.

The Archaeological report for the application (Appendix 20) simply notes that:

"The area around Kaiwharawhara Stream was the location of Kaiwharawhara Pā, an unfortified village on either side of the waterway at the mouth of the stream. At the time of the establishment of the City of Wellington in 1840, the surrounding land was also a hub for travellers using the Old Porirua Road."

The references listed in the report do not cite even obvious sources for information about specific localities, such as Leslie Adkins "The Great harbour of Tara. Traditional Maori Place-names and Site of Wellington harbour and Environs" (1959), which itself notes many early written sources and discussions of iwi associated with the harbour and includes an entry for Kaiwharawhara.

Adkins' sources explain that the name refers to the gathering and eating of the small red berries of the wharawhara plant (*Astelia Banksii*).

I understand the name Kaiwharawhara predates the 1820s, meaning that it can be reasonably assumed that the area was used for food gathering and seasonal use for probably hundreds of years by Kurahaupō iwi including Muaūpoko. Earlier groups, descendants of Whatonga, tended to identify seasonal food gathering places in this

²⁰ Alan Ward. *Maori Customary Interests in the Port Nicholson District 1820s to 1840s: An Overview* (October 1998) pp121-123.

linguistic style. The iwi heke groups tended to name the particular physical aspects of locations at which they settled.

James Coutts Crawford, a settler at Petone Beach in 1840, described the stream as it would have been in all of those earlier centuries, and associated with cultivations and kainga:²¹

"Now came the task of transferring families with their goods and chattels from Pitone to Thorndon. There was no road, the sea washed up to the foot of the hills, and the forest overhung the waters of the harbour. Foot passengers could hardly pass along dry except at low water, and there were the Ngahauranga and Kaiwharawhara streams to ford, over which, however, those who wished to keep dry could be carried by Maoris at a charge of sixpence each. These streams were then much larger than they are now; for since the destruction of the forest the rain runs off with great rapidity, and the average volume of the water has shrunk to a fraction of what it was. The valleys of these streams were then also extremely picturesque with their Maori villages and small cultivations cut out of the forest, though as much cannot be said for them now. The chief mode of transit therefore was by boat, generally whale boats, and many a hard pull I had between the two places, for we assisted each other in manning the boats."

The archaeological information and risk assessment provided to inform the process clearly requires revision.

TE WHANGANUI-A-TARA REPORT 2003

Between 1991 and 1999 the Waitangi Tribunal heard thirteen claims covering Wellington Harbour (Te Whanganui-a-Tara) and surrounding districts including Heretaunga and the southwest coast. The claims included claims by Muaūpoko, Taranaki groups, Ngāti Toa and Rangitāne.

In its report, issued in 2003, the Waitangi Tribunal recognised that Muaūpoko have ongoing strong ancestral connections with Te Whanganui-a-Tara.

The Tribunal did not commission any specific research on Muaūpoko claims in the way that might be undertaken in the present day. As we discuss below, its conclusions would likely have been stronger if that research had been available.

Nevertheless, the Tribunal found:²²

"No Treaty breach findings have been made in relation to Rangitāne and Muaūpoko, because we consider that they lost their rights to land within the Port Nicholson block prior to the arrival of the Crown. Nevertheless, we consider that

²¹ Crawford, J. C. *Recollections of Travel in New Zealand and Australia (1880)* p44.
<http://www.enzb.auckland.ac.nz/document/?wid=2367&page=1&action=null>

²² Waitangi Tribunal (2003) p xxvi.

the long history of occupation of Te Whanganui-a-Tara and the surrounding area by these and related peoples should be recognised in a meaningful and public way by the Crown, local bodies, and other iwi."

The Tribunal also said:²³

"We recognise that tangata whenua also has a broader meaning, and that tangata whenua connections remain for all who can claim them through whakapapa and historical association, but tangata whenua rights are based on current ahi ka. Tangata whenua rights imply 'ownership'; tangata whenua connections do not imply ownership. Tangata whenua rights, and any sense of 'ownership' that went with them, were lost if ahi ka was lost by conquest or abandonment. However, tangata whenua historical connections can remain forever."

The Tribunal was relying on research reports which noted that arguments of take tupuna and the mana arising from hundreds of years of occupation provide ongoing ancestral connections.

On take tupuna, the historian Professor Alan Ward noted a suggestion from a Te Atiawa rangatira who gave evidence about the Company purchase that those rights in fact remained with Kurahaupō peoples despite Te Atiawa's recent occupation:²⁴

"One aspect of this is the customary principle of take tupuna – that later occupants could only take mana of the land through first occupants. Thus Mahau (Te Atiawa) said to the Spain Commission, with reference to Port Nicholson, 'This land did not belong to our forefathers. Its of right belongs to the Ngāti Kahungunu, but the people here have taken the land."

And on mana as a source of rights, Ward said²⁵:

"There remains, however, the question of the mana relating to the fact of hundreds of years of occupation, after that occupation had ended – even after many generations had passed, (and notwithstanding the boundary established by the peace-making of 1840). That former occupation by Ngāti Kahungunu is marked by the place names on the land and the stories associated with them, as many speakers of Muaūpoko, Rangitāne and others have pointed out in recent years, in respect of Te Whanganui-a-Tara. It may well be that this confers interests of a non-property kind. As Mr Nicholson says, raupatu does not necessarily involve the entire extinguishment of all that went before".

²³ Waitangi Tribunal (2003) p34.

²⁴ Alan Ward. *Maori Customary Interests in the Port Nicholson District 1820s to 1840s: An Overview* (October 1998) p150.

²⁵ Ditto, p151.

While these research reports are useful in identifying the strong ancestral connection of Muaūpoko to the harbour, they tend to accept, without critical analysis, the idea that Muaūpoko were entirely 'conquered' by Ngāti Toa in the 1820s.²⁶ The AEE repeats this simplistic idea.²⁷

Recent research casts doubt on this and suggests that the idea of a total conquest was a convenient shorthand for later Pākehā commentators to describe complex arrangements between the incoming heke who were seeking allies among Kurahaupō groups including Muaūpoko, Rangitāne and others in the region. This research considers, for example, the previously overlooked evidence that Muaūpoko were trading regularly with Ngāti Toa on Kāpiti island throughout the 1830s and were present on the island in 1839 when the battle of Kuititanga took place between iwi heke groups, and indeed warned Ngāti Toa about it. Ngāti Toa for their part regularly traded guns and powder with Rangitāne and Muaūpoko.²⁸

This much more richly layered history is being considered by the Waitangi Tribunal at present in its Porirua Ki Manawatū district inquiry.

In addition, the 'sale' of the harbour lands (which the Tribunal found 'invalid' – see below) was by groups that had recently taken up customary interests in the area. This means that there was no customary investigation of title for the harbour. From what we know of Native Land Court cases elsewhere, had there been a thorough investigation of customary interests in 1840 of the harbour waters, it would have disclosed that Muaūpoko settlements and links in the harbour were extensive and well documented in oral tradition that was still well known in 1840.²⁹

Contemporary commentators (eg Charles Heaphy) and historians today (eg Dr Robyn Anderson), consider that a factor in making the sale was a desire by the iwi heke groups to strengthen their position against other groups in the region who might continue to dispute it, including the Kurahaupō groups.

Heaphy said:³⁰

²⁶ For example Alan Ward (1998) p160.

²⁷ AEE p36: "Ngāti Mutunga cleared out Ngāti Ira and other Ngāti Kahungunu tribes from Te Whanganui a Tara after the battle of Waiorua in the 1820s. The decisive engagement at Te Whanganui a Tara occurred on Taputeranga Island in 1827."

²⁸ For example, B. Stirling. *Muaūpoko Customary Interests. (2015) Wai 2200. #A182, and evidence of rangatira such as Horomona Toremi in 1869. Rangitikei-Manawatu Native Land Court papers. ACIH 16046 MA13 113/71, ANZ, Wellington.*

²⁹ *Himatangi case, 1868, Otaki Minute Books 1B-F.*

³⁰ Heaphy, C, "Notes on Port Nicholson and the Natives in 1839", TNZI, 12, 1879: 36.

"But they occupied rather an inconvenient corner of territory. As long as they could maintain peace with the Ngati Toa at Porirua and Kāpiti, and the Ngāti Raukawa of Ōtaki, they were tolerably safe; but in the event of serious hostilities in the direction of the West Coast, and such hostilities were threatening, the Wairarapa people, whom they had defeated but not subdued, would operate in their rear, making the position critical."

Professor Ward and Dr Anderson say:³¹

"The desire on the part of certain sections of Te Ati Awa to clearly establish their mana over the area, was an important aspect of the sale of the Port Nicholson block to the New Zealand Company. Ngāti Tawhirakuri chiefs of Te Ati Awa aimed at strengthening their position in relation not only to other iwi in the general region but also among related hapu settled within the harbour itself."

The Waitangi Tribunal found the NZ Company's 1839 deed of purchase "was invalid and conferred no rights under either English or Māori law on the New Zealand Company or on those to whom the company subsequently purported to on-sell part of such land."³²

The Tribunal doubted that the Te Atiawa chiefs at Petone and Ngauranga involved in the transaction:³³

"had ahi ka rights to more than a small part of the land. These rights were confined to the land where they resided, cultivated crops, or used resources including a somewhat indefinite hinterland that extended some distance up the Hutt Valley."

The purported agreement was so patently inadequate that customary interests over the seabed were not affected.³⁴

The New Zealand Company may have also assumed that, as a matter of common law, the harbour was owned by the Crown, and the Crown may also have assumed that ownership. The Court of Appeal in its 2003 decision about foreshore and seabed rights in the Marlborough Sounds (*Ngati Apa and others v Attorney-General* [2003] 3 NZLR 64) determined that such assumptions arising from common law are indeed subject to customary rights. The harbour bed is now subject to overlapping applications under the Takutai Moana Act, including one from Muaūpoko (discussed further below).

³¹ Alan Ward et al CCJWP Historical Report on Wellington Lands p6.

³² Waitangi Tribunal (2003) p69.

³³ Waitangi Tribunal (2003) p66.

³⁴ Waitangi Tribunal. *Te Whanganui a Tara me ona Takiwa* (2003) p69 and discussed further below.

The centuries old ancestral connections of Muaūpoko to the harbour can be compared to those of others. Ngāti Toa, for example, were also not directly involved in the 1839 sale and agreement. In addition, they could not, in 1840, claim any particular knowledge of, or connection with, customary sites in the harbour.

Indeed, in its 2003 report, the Tribunal expressly rejected claims that Ngāti Toa had any customary interests in the foreshore and seabed of Wellington harbour that could have been affected by Crown actions.³⁵

WELLINGTON RAILWAY LANDS TREATY SETTLEMENT

In 1992, when the Crown was disposing of surplus railways lands in the Wellington region from the southern coast to Pukerua Bay in the west and Maymorn in the Upper Hutt Valley in the east, Muaūpoko were identified as a group having interests in those areas alongside Ngāti Toa, Ngāti Rangatahi, Rangitāne, Ngāti Ira and Te Atiawa.³⁶

The research undertaken by Professor Ward and Dr Anderson to support those settlements is quoted above.

PENDING FULL TREATY SETTLEMENT

In 2013 the Muaūpoko Tribal Authority commenced formal Treaty settlement negotiations with the Crown (now paused) over an area of interest which includes Te Whanganui-a-Tara.

The Crown recognised the mandate of the MTA in 2013.³⁷ It signed an agreement relating to common expectations and matters for agreement in December 2013.³⁸

³⁵ Waitangi Tribunal. *Te Whanganui a Tara me ona Takiwa* (2003) P458.

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68452530/Wai145.pdf "Ngati Toa's claim to have 'frequented kainga and sites around the Wellington harbour both before and after 1840' and to have used the marine resources of the harbour cannot be sustained. In his first report to the Tribunal on Ngāti Toa in the Wellington region, historian Richard Boast stated bluntly that there is no documentary evidence of Ngati Toa residences or cultivations around Wellington harbour, 'or of Ngāti Toa using the harbour for fishing or navigation, although this may be qualified by oral evidence'. In a later report, drawing on oral evidence, Boast gave some evidence of a few Ngāti Toa individuals living in Wellington, including, it was said, two of Te Rauparaha's sons, who were there to transmit 'intelligence' to their father. However, Boast still acknowledged that he had found no evidence demonstrating 'a particular Ngāti Toa interest in Wellington harbour or the Wellington South Coast'."

³⁶https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68354911/Reports%20on%20Railway%20Lands.pdf

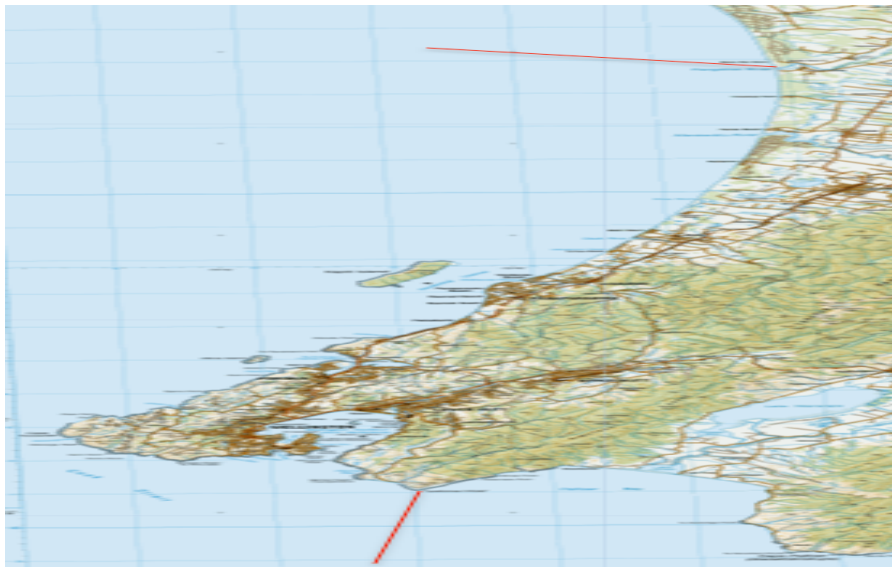
³⁷ <https://www.govt.nz/assets/Documents/OTS/Muaupoko/Muaupoko-Crown-Recognition-of-Mandate-25-Sep-2013.pdf>

³⁸ <https://www.govt.nz/assets/Documents/OTS/Muaupoko/Muaupoko-Crown-Expectations-and-Matters-for-Agreement-14-Dec-2013.pdf>

TAKUTAI MOANA APPLICANT

MTA is an applicant group under the Marine and Coastal Area (Takutai Moana) Act 2011. The application filed in 2017 identified Turakirae (Sinclair Head) east of the harbour entrance as the southern extent, however gave the wrong co-ordinates and line on the map for that point.

The Court and all parties were advised of this in June 2019 and a corrected map filed as below in red:



³⁹ AEE pp41-42 Overview.