maintenance of culture, assertion of identity, and resistance to amalgamation.[23]

61. Many hui of various kinds are held on our marae throughout Ngāti Kahu, often to discuss a particular issue relating to the community. Consensus in such hui is very important, and for that reason they almost invariably run for at least several hours to allow all possible aspects of the take to be thoroughly aired. If consensus is not reached the hui will either continue until it has been reached, even if it takes several days, or, if the divisions are too great, the hui will be adjourned and reconvened at a later time when everyone has had more time to reflect on the matter.

62. Time is not an influencing factor when important decisions are to be made. This is a trait of tikanga Māori which has often frustrated and annoyed Pākehā and particularly Crown servants affected by the process. This was clearly demonstrated during 2010 and 2011 when we were writing our Deed of Partial Settlement and the Crown became increasingly intolerant of the fact that getting our deed right, was far more important to Ngāti Kahu than how long it took to do that. The affidavits of the Crown are replete with their complaints about Ngāti Kahu refusing to comply with the Crown's timetabling requirements. Yet the philosophy of Ngāti Kahu kaumātua and kuia is that they would far rather take their time and reach a well-considered decision than rush it through and end up having to fix up a mess afterwards.

63. Quite specifically in respect of these claims, our kaumātua rangatira, McCully Matiu, warned us not long before he passed away to never rush the settlement of our claims, but rather to take whatever time was required to get it right. It therefore saddened us to see our whanaunga from Te Rarawa, Ngāi Takoto and Te Aupōuri mimic the Crown's wilful ignorance of tikanga Māori and attempt to pressure us to meet the Crown servants' timetabling and work plan requirements ahead of meeting the needs of Ngāti Kahu. For while the four iwi, initially at least, had no problem with us drawing up our own Deed of Settlement, Crown servants were desperate to stop us doing so and set in place work plan requirements which precluded any iwi drawing up their own deed.

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23 Joseph 1999: 31, quoted in Law Commission 2001: 47.

AHI KĀ

64. The principle of ahi kā (burning fire) or ahi kā roa (long burning fire) is that of mana whenua retaining close and on-going links to their lands, either by occupying or living on them or by visiting them regularly. Professor Hirini Moko Mead, in his book *Tikanga Māori – Living by Māori Values* explains ahi kā as follows:[24]

> The principle of ahi-kā (burning fire), [is] of keeping one's claims warm by being seen (the principle of kanohi kitea, a face seen) and by maintaining contact with the extended family and the hapū.

65. The place of residence of a member of a Māori community does not determine the role they play in that community. Those who stay on the ancestral lands are often referred to as ahi kā (literally, burning fire) and their job is to 'keep the home fires burning'. However, it is not at all unusual for the leaders of a Māori community to have their main residence elsewhere and, these days, particularly in Auckland. It is also not unusual for an individual to have leadership roles in more than one community. That does not diminish their various roles, it simply makes their responsibilities of having to return home for all important meetings and occasions more expensive and time-consuming.

WHANAUNGATANGA

66. One of the most fundamental values that holds any Māori community together is whanaungatanga, or the manner in which everyone is related genealogically. One Ngāti Kahu example is found at chapter 4 of the book *Te Whānau Moana* which sets out the hakapapa of Te Whānau Moana in considerable detail, although the manner in which that knowledge is interpreted is as important as the hakapapa themselves.

67. Knowledge of how one is related to everyone else within a particular community and to neighbouring hapū and iwi is fundamental to the understanding of an individual's identity within Māori Society. It also determines how an individual relates to and behaves towards other

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24 H M Mead, above, note 13, p 41.

individuals of that community. [25] This behaviour is largely determined by the traditional roles of tuakana/teina (older/younger sibling within an extended family), mātua and whaea (parents, aunts and uncles, or all those one generation above), and tamariki/mokopuna (those in the generations below). Mātua and whaea have authority over all generations below them and exercise a supervisory and mentoring role in training the following generations to replace them. Within a single generation, tuakana (older siblings, or those descended from older siblings) have authority over teina (younger siblings or those described from younger siblings). Attempts to overturn these lines of authority are rarely tolerated, unless the ability, skill and personal attributes of a teina (mana tangata) earn sufficient respect over a long period of time to warrant such a departure from the norm. On the other hand a tuakana who does not have the inherited qualities and skills of leadership will be set aside by the people in favour of one who does.

68. In traditional Māori society the role women played was highly valued and largely complementary to that of men, especially their role as the first voice to be heard on the marae. It should never be forgotten that Kahutianui was the eponymous ancestress of Ngāti Kahu. Mana wahine (the power and authority of women) has, however, been distorted by the perceptions of outside observers during the period of contact with Europeans to diminish the importance of women. Such misconceptions were strongly promulgated by missionaries and various churches where the subservient role of women was often institutionalised. Yet Ngāti Kahu women are no different from other Māori women who have always been and are still active leaders in all aspects of Māori endeavour.[26] As such, Ngāti Kahu women continue to take strong leadership roles as well as complementing the ceremonial roles taken by men. Attempts to denigrate women in leadership roles, as happened during negotiations leading to the 2010 Te Hiku AIP, have brought strong and pointed criticism from both kuia and kaumātua who continue to uphold the traditional values. It was

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25 In particular, and a distinct contrast to European/American social standards, the economic standing of an individual has little influence on interrelationships within a Maori community, unless a member is economically well off and does not distribute that wealth generously among his or her relations. Such behaviour often draws criticism and can lead to alienation and isolation of that individual from the rest of her/her community.

26 Mikaere 2000, in Law Commission 2001: 35.

they who ordered the Ngāti Kahu Treaty claims negotiators out of Te Hiku Forum in order to stop the persistent and gratuitous abuse.

69. Regardless of these hierarchies of authority, the complexities of which are difficult to explain to outsiders but which are generally well understood within the community itself, all members of a Māori community have a role assigned to them, particularly in matters relating to the marae and communal gatherings. Individuals are ideally encouraged to take roles they are particularly well suited for and most comfortable carrying out.

70. In terms of authority and standing, a very clear distinction exists between those whose genealogy connects them to the area and those who are not so related. Thus, for example, unless an in-law has the necessary genealogical links to a particular community and its lands, they can never hold any authority in respect of either the lands or the community, and they often do. However, in matters of the ultimate authority to speak for and represent the community, any attempts to do so by an 'outsider' will bring very swift and strong reactions to stop it.

71. Methods of determining who 'belongs' and who does not are known not only by the 'home people' of an area, but also by the close relations of 'outsiders' living in their midst. Where those relations of the outsiders are Māori, it is not unusual for those people to warn their close relation off when they observe them attempting to interfere in a community to which they have no genealogical link, regardless of how long they may have lived in that community. It is rare today in Māori society for an individual with no legitimate connection to a community to claim to speak for it. Remnants of such behaviour stem from governmental bureaucrats and quislings who did develop a very divisive and provocative habit of claiming to hold authority where they did not in fact hold any. This irksome habit was particularly prominent in the nineteenth century and continued until the 1970s and 1980s with vast amounts of Ngāti Kahu land and resources being signed away without the proper authority of the hapū as a result. In particular Panakareao's role in wrongfully allocating huge tracts of Ngāti Kahu land to Pākehā missionaries remains a source of continuing bitterness for Ngāti Kahu to this day. The major national and localised land protests in the 1970s,

1980s and 1990s and the claims to the Waitangi Tribunal effectively put an end to such behaviour as hapū and iwi reasserted their mana over their own affairs.

72. These traditional features of social organisation are still very closely observed in Ngāti Kahu today. The intra-communal relationships are complex yet generally well understood by the members, particularly those in leadership roles. Significantly, strong connections exist between particular hapū of Ngāti Kahu and closely related Ngāti Kahu ki Whangaroa, Ngāi Takoto, Te Rarawa, Te Aupōuri, Ngāti Kurī, Ngāpuhi and Ngāti Whātua. For example, there are particularly strong connections between the hapū of Karikari and those of Karepōnia, Pēria and Ahipara and with those members of the hapū who reside in the Northern Wairoa (near Dargaville). It is therefore rather painful for these hapū to see that they, and all other Ngāti Kahu hapū who have very close ties to Te Rarawa hapū, have been excluded from the listings of close whanaunga provided for each Te Rarawa hapū in the Crown's Deed of Settlement for Te Rarawa.

73. More than eighty per cent of Ngāti Kahu live either in Auckland or in Australia and travel home for communal events frequently and at great personal cost.

74. There are also many Māori who do not hakapapa (have genealogical links) to the area but live in or are connected to the area in various ways. In general, they have a good understanding of the social organisation that exists and they respect it. The same applies to the very few non-Māori, and particularly the Dalmatian families, who have been in the area for more than three or four generations. The rest of the non-Māori population residing in Ngāti Kahu's territories, however, are almost all very recent immigrants to the area – manuhiri (visitors) in Ngāti Kahu terms – having arrived less than a generation ago.

75. In my experience and observations, this part of the tauiwi (non-Māori) community has little or no understanding of the social organisation of the mana whenua amongst whom they live, and takes little or no part in our activities, particularly those which take place on the marae. As a result there appears to be a widely held and completely erroneous

misconception amongst the non-Māori population of the area (which is fostered by both central and local government) that Ngāti Kahu, as mana whenua, are assimilated into and totally subsumed within the non-Māori community. Nothing can be further from the truth.

76. Each hapū of Ngāti Kahu remains mana whenua and as such holds the ultimate and paramount authority or sovereignty over all our territories. Non-Ngāti Kahu living in our territories are our manuhiri, although their persistent ignorance and racist behaviour has severely curtailed our ability to manaaki (extend hospitality to) them as our manuhiri as our tikanga provides.

77. It is part of the responsibilities and the relationship that the hapū of Ngāti Kahu have with our whenua tupuna (ancestral lands) as the mana whenua that we must protect it and all the natural resources of the area from all forms of desecration and despoliation. The four terms kaitiaki, kaitiakitanga, rangatira and rangatiratanga encapsulate crucial aspects of that relationship but are also very closely related in meaning themselves.

KAITIAKI and KAITIAKITANGA

78. The word kaitiaki is derived from tiaki, which Williams (1997) translates insufficiently as 'guard, keep, watch for, wait for'. The prefix *kai-* denotes the doer of the action and, according to Williams, should be translated as 'guardian, keeper, someone who watches for or waits for'. Kaitiakitanga is the noun derived from kaitiaki and therefore should be translated as 'guardianship' or something similar. [27]

79. The interpretation of kaitiakitanga provided in the Resource Management Act 1991 (section 2) is:

> Kaitiakitanga means the exercise of guardianship; and in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.

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27 As is sometimes the case with bilingual dictionaries, grammatical variations to a word are not listed as individual entries in Williams' dictionary. Thus dictionary users must look up the base word 'taiki', the prefix 'kai-', and the suffix '-tanga' in order to work out what the full meaning of kaitiakitanga might be.

80. By 1997 the inadequacy of this definition had been acknowledged and the interpretation was amended to:

> Kaitiakitanga means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship.

81. The understanding of kaitiakitanga held by the hapū of Ngāti Kahu and most other tribes involves far more than just this interpretation or the dictionary translation. Both the Rev. Māori Marsden and Ngāti Te Ata's Nganeko Minhinnick spoke and wrote extensively on this issue. They, along with submissions by tangata whenua of various areas of the country made to the board of inquiry into the New Zealand Coastal Policy Statement in 1994-94 made references to and explained this concept in a manner consistent with the following explanation provided largely by McCully Matiu.

82. Kaitiakitanga is the role played by kaitiaki. Traditionally, kaitiaki are the many spiritual assistants of the gods, including the spirits of deceased ancestors, who were the spiritual minders of the elements of the natural world. All the elements of the natural world, the sky father and mother earth and their offspring, the seas, sky, forests and birds, food crops, winds, rain and storms, volcanic activity, as well as man and wars, are descended from a common ancestor, the supreme god Io. These elements, which are the world's natural resources, are often referred to as taonga, that is, items which are greatly treasured and respected. In Māori cultural terms, all the natural, physical elements of the world are related to one another, and each is controlled and directed by the numerous spiritual assistants of the gods.

83. These spiritual assistants often manifest themselves in physical forms such as fish, animals, trees or reptiles. For Te Whānau Moana hapū at Karikari, these come in the form of a mako (shark) and a tail-less stingray. For Te Whānau Moana at Waiari, the kaitiaki is another stingray. Each kaitiaki is imbued with mana. Man being descended from the gods is likewise imbued with mana although that mana can be removed if it is violated or abused. There are many forms and aspects of mana, of which one is the power to sustain life.

84. Maoridom is very careful to preserve the many forms of mana it holds, and in particular is very careful to ensure that the mana of kaitiaki is preserved. In this respect Māori become one and the same as kaitiaki (who are, after all, their relations), becoming the minders of their relations, that is, the other physical elements of the world.

85. As minders, kaitiaki must ensure that the mauri or life force of their taonga is healthy and strong. This includes te hau o te kāinga, the very life essence or 'winds' of home, which carry and waft the life essences emanating from both the land and the sea. Tangata whenua are warned of the onset of the depletion in the mauri of their ancestral lands when the characteristics of the hau kāinga start to change as they do with any major development. This is particularly important for Te Whānau Moana, whose name means literally The People of the Sea. Their hau kāinga is heavily laden with the characteristics of the sea. Over recent years the character of that hau has started to change with the advent of intense European-style development. Te Whānau Moana must try to restore the hau kāinga that has been unnecessarily interfered with and prevent it from being further altered.[28] A taonga whose life force becomes severely depleted, as is the case, for example, with the Manukau Harbour or Te Oneroa-ā-Tōhē, presents a major task for the kaitiaki.[29]

86. In order to uphold their mana, the tāngata whenua as kaitiaki must do all in their power to restore the mauri of the taonga to its original strength.

87. In specific terms, each whānau or hapū is kaitiaki for the area over which they hold mana whenua, that is, their ancestral lands and seas. Should they fail to carry out their kaitiakitanga duties adequately, not only will mana be removed, but harm will come to the members of the whānau and hapū.

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28 I am grateful to Rev. Timoti Flavell and Manuka Henare for their discussions with me on hau and te hau o te kāinga (Rev. Timoti Flavell, personal communication 21 April 2001; Manuka Henare, personal communication 20 November 2001).

29 Kaumātua (and McCully Matiu in particular) take a keen interest in difficulties being experienced by other iwi as they carry out their kaitiaki role. So they will often raise examples such as this in discussion their own kaitiaki responsibilities.

88. Thus a whānau or a hapū who still hold mana in a particular area take their kaitiaki responsibilities very seriously. The penalties for not doing so can be particularly harsh. Apart from depriving the whānau or hapū of the life-sustaining capacities of the land and sea, failure to carry out kaitiakitanga roles adequately also frequently involves the untimely death of members of whānau or hapū, a punishment Ngāti Kahu has had to weather on more than one occasion in the recent past.

89. Nganeko Minhinnick of Ngāti Te Ata has written extensively on kaitiakitanga and is careful to point out that only Māori can be tangata whenua, that is, those who hold or are mana whenua for a particular area. Hence only Māori can carry out the role of kaitiakitanga. That is not to say that Pākehā do not have guardianship responsibilities in respect of the country's natural resources, for they certainly do.

90. However, relegating mana whenua to advisors appointed by the Minister of Conservation over whenua tupuna (ancestral lands) currently administered by the Department of Conservation for example, does not allow kaitiakitanga to be exercised by mana whenua. Without absolute and paramount authority for those lands, kaitiaki are severely constrained in their ability to carry out their responsibilities. It is mana whenua who must be the decision-makers, not the Director-General of Conservation (which in practice is the DoC workers in the Kaitāia office) or the Minister of Conservation (who in practice follows the instructions of those workers).

91. My experience as a member of the New Zealand Conservation Authority between 1993 and 1996 left me in no doubt that Conservation Boards are powerless advisory bodies as is the Authority itself. Having a flash name like 'Te Hiku o te Ika Conservation Board' does not give anyone any authority. Nor does having input into those boards. These Deeds of Settlement have made it abundantly clear that all decision-making remains in the Department of Conservation.[30] All the verbiage which talks of improved relationships and surrounds those key clauses

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30 See relevant sections of my 2012 paper 'Ceding mana, rangatiratanga and sovereignty to the Crown: The Deeds of Settlement of the Crown for Te Aupōuri, Te Rarawa and Ngāi Takoto' published in the *Northland Age* in seven parts in March 2012 attached here as **"E"**.

is merely aspirational. In all my extensive dealings with the department from various Ministers to workers in the Kātaia office, it is very clear that the culture of the department is such that Māori wishing to exercise mana whenua are excluded from any real decision-making roles and that S4 of the Act (which requires the department to give effect to the principles of the Treaty of Waitangi) is an impediment to maintaining White hegemony and is therefore best avoided or ignored.

RANGATIRA and RANGATIRATANGA

92. Williams' dictionary gives four meanings and the following translations for rangatira:

1. Chief (male or female)
2. Master or mistress
3. Person of good breeding
4. Well born, noble.

None of these conveys the full meaning of the word rangatira. The word 'chief' is often used in translation but this word denigrates the notion of rangatira.

93. A rangatira in Ngāti Kahu is a person of mana that derives not only from genealogical seniority but also from his or her own personal qualities and the ability to maintain the support and confidence of her or her people. Should a rangatira lose the confidence of his or her people, then his or her mana will suffer and the people will look elsewhere for leadership. In practice today, there will usually be one overall or tino rangatira who is able to draw in and utilise the skills of other rangatira within the tribe. It is high order leadership, the ability to keep the people together that is an essential quality in a rangatira.

94. The exercise of such leadership in order to maintain and enhance the mana of the people is rangatiratanga. Tino rangatiratanga is the exercise of paramount and spiritually sanctioned power and authority. It includes aspects of the English notions of ownership, status, influence, dignity, respect and sovereignty and has strong spiritual connotations.[31]

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31 Matiu & Mutu, 2003, pp. 156-158.

95. The word rangatira was once analysed by a Ngāti Kahu kaumātua as follows: ranga is a shoal of fish; raranga is to weave or plait; tira is a group of people. A rangatira then is someone who holds a group of people together so that they move as one, like a shoal. [32]

96. Rangatiratanga is the noun derived from rangatira and is often translated literally as 'chieftainship'. This is not a good translation of rangatiratanga. Professor Sir Hugh Kawharu was aware of the problem and provided a footnote in his 1989 article: "'Chieftainship': this concept has to be understood in the context of Māori social and political organization as at 1840."[33] He then adds "The accepted approximation today is 'trusteeship'", a comment which needs to read and understood in conjunction with his explanation of rangatiratanga earlier in the volume which I refer to above.[34] In *Te Whānau Moana,* Matiu and Mutu translate rangatiratanga as paramount authority.[35]

97. The Waitangi Tribunal is the *Ngawha Geothermal Resource Report* (Waitangi Tribunal 1993) considers rangatiratanga to include the concept of kaitiakitanga. The tribunal has discussed the concept of rangatiratanga at great length in many of its reports, it being a key term in the Treaty of Waitangi. Quoting the New Zealand Maori Council, the report states:

> In essence it is the working out of a moral contract between a leader, his people and his god. It is a dynamic not static concept, emphasising the reciprocity between the human, material and non-material worlds. In pragmatic terms, it means the wise administration of all the assets possessed by a group for that group's benefit: in a word, trusteeship. And it was this trusteeship that was to be given protection [in the Treaty], as trusteeship in whatever form the Maori deemed relevant. [36]

98. Then from the *Muriwhenua Fishing Report* (Waitangi Tribunal 1998: 184):

> Te tino rangatiratanga o ratou taonga' tells of the exclusive control of tribal taonga for the benefit of the tribe including those living and those yet to be born. There are three main elements embodied in the guarantee of rangatiratanga. The first is that

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32 See Mutu 1992(a): 60, footnote 5.
33 Kawharu, 1989, p. 319.
34 Kawharu, 1989, p. xix.
35 Matiu and Mutu, 2003, p. 221-223.
36 New Zealand Maori Council 1983: 5, quoted in *Ngawha Geothermal Resource Report* (Waitangi Tribunal 1993): 18.

> authority or control is crucial because without it the tribal base is threatened socially, culturally, economically and spiritually. The second is that the exercise of authority must recognise the spiritual source of taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. Thirdly, the exercise of authority was not only over property, but of persons within the kinship group and their access to tribal resources.

99. In the *Mohaka River Report* (Waitangi Tribunal 1992: 18) Ngāti Pāhauwera (represented by Cordry Huata) is quoted as saying:

> Rangatiratanga denotes mana, wehi and ihi. The right to have interests and to make decisions, in terms of the river, someone must have it. Ngāti Pāhauwera (the iwi) have it over the Mōhaka. Pāhauwera have the right to decide what is right for them and the river. Rangatiratanga is a birthright.

KAITIAKI, KAITIAKITANGA, RANGATIRA and RANGATIRATANGA IN ACTION

100. Until relatively recently some parts of Ngāti Kahu's rohe (territory) had been mercifully free of any major building developments. Pākehā housing developments did not start encroaching on the Karikari peninsula, for example, until the 1960s and even then, very few Pākehā were living there permanently. The peace was shattered in the 1980s, however, when a developer tried to build a huge tourist complex at Pārakerake. Te Whānau Moana (and Te Rorohuri) hapū, as mana whenua, fought long and hard to protect the area and eventually the developer gave up. Subsequently smaller developments in the two camping grounds at Karikari and Waikura which desecrated wāhi tapu and polluted the waterways required Te Whānau Moana to intervene again.

101. By the 1990's, however, developers were evading the protection available to the mana whenua hapū, Te Whānau Moana and Te Rorohuri, under the Resource Management Act.

102. One caused major damage to Tokerau beach, killing and disfiguring the shellfish resources and discolouring the beach with illegal run-off. Objections by Te Whānau Moana, lodged with local authorities brought slow reaction and no effective remedy.

103. Matarahurahu, mana whenua of the Mangōnui harbour, fought for years to stop further development on the harbour which was depleting the mauri of the harbour and severely depleting the kaimoana.

104. Ngāti Tara, mana whenua at Parapara and Aurere, have fought for years to stop the discharge of heavy metals, including arsenic, into their streams and river which severely pollute their kaimoana at Aurere.

105. They and other mana whenua hapū at Taipā, including Matakairiri and Te Paatu, have also fought for years to stop the sewerage scheme imposed upon them at Taipā discharging raw sewage into their river and polluting and severely depleting the kokota (a shell fish, pipi) beds at Ikateretere (Taipā estuary). They have also fought against the run-off from farms in the area exacerbating this problem.

106. Then in 2000 another development in Pārakerake caused major damage to wāhi tapu and the sand dunes on Karikari beach.[37] Te Whānau Moana once again had to go into battle to protect the area. An out of court settlement was eventually entered into between Te Whānau Moana, the developer and the Far North District Council, which ensured that no development would take place on the beach, the sand dunes, in the swamp at Waimangō, or on any wāhi tapu, including Te Ana o Taite and Waihangehange stream. Furthermore, strict protocols were put in place to deal with any kōiwi or archaeological sites located on the property. Regular meetings between the developer and Te Whānau Moana were also to be scheduled.

107. However, the racist attitudes of both the developer and the Far North District council meant the agreement, like Te Tiriti, was treated as if it was just 'something to amuse the natives'. Both ignored and later denied its existence, violating it at whim and causing extreme distress for mana whenua as their wāhi tapu were increasingly desecrated and disaster was visited on mana whenua as a result.

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37 All sand dunes around the Karikari peninsula have been used in pre-European times as burial grounds and hence they are all wahi tapu. In recent years, heavy rains and rising seas have uncovered extensive ancient burials. Te Whanau Moana and Te Rorohuri have well established protocols for dealing with such finds.

108. Te Whānau Moana sought the support of the other hapū of Ngāti Kahu and together they took the matter through the courts, desperate to have the Crown, through its legal system, keep its lawless Pākehā under control. The High Court finally backed Ngāti Kahu in 2011 but both the developer and the Far North District Council appealed the decision which was overturned in the Court of Appeal. Ngāti Kahu appealed that decision to the Supreme Court and was preparing for the hearing when we discovered that the land in question had been sold to a Chinese company.

109. We immediately invited the company to meet with us. When we explained that they had a resource consent to build on wāhi tapu that is a burial cave they were horrified, stating "We do not have to be told not to build on burial grounds. We know it invites disaster." We reached an out of court settlement with the company that not only cancelled the resource consents, it also placed an encumbrance on the title preventing any development on the land for the next 999 years. We now have a very good and on-going relationship with that company.

110. On Te Oneroa-ā-Tōhē, Te Paatu were among the hapū who hold mana whenua on the beach that fought furiously to stop the desecration of our toheroa beds and to protect the beach. Te Paatu rangatira, Wiremu Te Karaka, in his role as mana whenua, publicly called for the closure of the toheroa factory near Lake Ngātu. The decision of the Māori Land Court in the 1950s that Te Oneroa-ā-Tōhē belongs to Māori should have ensured that mana whenua could exercise their authority to stop the desecration. However the Crown used its extensive resources against the mana whenua to prevent its false and scurrilous claim to ownership of the beach being thrown out by the Court. By the time the Court of Appeal upheld the Court's decision in 2003, it was too late. However, I need to note that the decision of the Māori Land Court was not entirely correct. It was incorrect to recognise only Te Rarawa and Te Aupōuri in respect of Te Oneroa-ā-Tōhē. Ngāti Kahu are mana whenua there and the Court erred in not recognising that.

111. One of the main reasons our mātua tupuna (elders) sought formal Pākehā recognition of our mana whenua on Te Oneroa-ā-Tōhē was the damage wrought by Pākehā abusing and misusing our highly prized

toheroa on Te Oneroa-ā-Tōhē in their mindless pursuit of monetary gain. That lawless behaviour, which persisted until our taonga was virtually wiped out, resulted Rev. Māori Marsden including the following in his evidence to this Tribunal in 1991:

> In the 30's a Toheroa canning factory was established at Kauri Flat, some ten miles from Kaitāia. I remember at a special meeting of Ngāi Takoto [who are also Te Paatu] where elders expressed misgivings about the Mauri of the Toheroa being made 'noa' and being depleted in the near future because they were being commercialised, a grave 'hara' or sin against the Atua for a freely bestowed gift. They predicted that in less than 20 years the toheroa would disappear because the Mauri would remove itself, and the removal of Mauri or life-force, would spell doom to the toheroa. For them, it was not so much the use or even the over-use of the resource but rather the abuse and misuse of the mauri and its tapu. It would create an imbalance in the fragile network of the eco-systems of the Oneroa-a-Toohe and even the abundance of schnapper and other seafoods would be seriously depleted. Their misgivings proved well-founded and their prophecy was literally fulfilled.[38]

112. It is therefore distressing for Ngāti Kahu to see the Deeds of Settlement of Te Aupōuri, Te Rarawa and Ngāi Takoto ceding their mana whenua, their absolute and paramount authority and control over Te Oneroa-ā-Tōhē to the Northland Regional Council and the Far North District Council as they agree to become members of an advisory sub-committee of those two councils. I have attached to this brief **marked "E"** my assessment of how this is reflected in the various Deeds of Settlement. In my opinion, Mana whenua make the decisions. They should not accept the subservient role of advisors to foreigners about what those decisions should be. Whilst they may do so for their own iwi, if the hapū of their iwi who are mana whenua on Te Oneroa-ā-Tōhē unwisely agree, they cannot do so for Ngāti Kahu.

SUMMARY OF NGATI KAHU VIEW

113. In summary then we can say that Ngāti Kahu's world view and values are firmly rooted in the spiritual aspects of this world, where humans

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38 Wai 45 Doc #A7, p 9.

and all other creations, both physical and spiritual, are imbued with a life force (mauri), mana and tapu by the gods. From the spiritual world proceeds the material physical world of Te Ao Mārama (The World of Light) and the spiritual (the higher order) interpenetrates Te Ao Mārama (Marsden 1992: 134). In the physical world the genealogical relationships between people are of highest importance.

114. Basic concepts of mana, tapu, whenua/taonga tuku iho, tikanga Māori, ahi kā, whanaungatanga, rangatiratanga, kaitiaki and kaitiakitanga must be clearly understood as underlying all Māori thinking and determining tikanga Māori particularly in respect of our whenua. It must also be appreciated that behind these concepts the hapū of Ngāti Kahu have a wealth of traditions that explain and give substance to the concepts. These traditions invariably hark back to the role played by the atua (gods) in the creation and ongoing maintenance of the world in both its physical and spiritual form.

AIRPORT LAND AND RANGIĀNIWANIWA

115. The background of dissent in relation to the lands comprising the Kaitāia Airport, the school at Rangiāniwaniwa is fraught and complex. Ngāti Kahu initially sought the return of the Airport lands by way of direct negotiations with the Crown and when that was unsuccessful, by way of the recommendatory process provided for by the Waitangi Tribunal. That process is currently the subject of a Court of Appeal hearing that Ngāti Kahu and the Crown are presently awaiting.

116. However, perhaps the clearest iteration of how our lands came to be wrongfully taken by the Crown is outlined in the brief of evidence produced by Yvonne Puriri, dated 12 July 2012 that she produced to contest the Deeds of Settlement that the Crown entered into with Te Rarawa, Ngāi Takoto and Te Aupōuri. I attach and mark **"F"** a copy of her brief of evidence.

117. In her brief, which specifically addresses the lands at Rangiāniwaniwa, the Kaitāia Airport and Waihangehange ("the land)[39] Yvonne identifies the history and connection of the Mātenga whanau of Patukōraha and

39 Brief of Evidence of Yvonne Puriri, 12 July 2012, para 3.

Ngāti Kahu to the land[40], how the land was taken from the Mātenga whanau[41] and the method by which the land was said to have been acquired by the Crown.[42]

118. Interestingly, Yvonne refers to the kōrero of her Uncle George regarding the taking and says;

"According to Uncle George, when the War came, the government could come and just take whatever land was required for military defences. So they came and took it. "[43]

This position was also supported by her Auntie Katy who stated

"*The Crown just used the Public Works Act to take all the land it wanted*"[44]

119. Obviously at some point the proposed use of the land changed as it is now being used for a school and a Commercial airfield. I understand that at no time were the Mātenga whanau offered the land back under the Public Works Act provisions but it is certainly their view that it should be returned to them[45].

120. In my view confirmation of the Mātenga whānau entitlement to the Airport lands can be shown by the Crown's willingness to engage in a Licence to Occupy with the whānau at no rental.[46]

REPORT PROVIDED BY MR PETER MCBURNEY

121. However, when direct negotiations with the Crown were unsuccessful, Ngāti Kahu made an application to the Waitangi Tribunal seeking binding recommendations pursuant to sections 8 A and 8HB of the Treaty of Waitangi Act 1975. In order to support that application, a well-known and respected historian, Mr Peter McBurney was commissioned by Ngāti Kahu to provide an assessment of the Ngāti Kahu claims within Te Hiku o te Ika, an overview of the Muriwhenua Report and in doing

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40 ibid paras 7-39.
41 ibid paras 40-49.
42 ibid para 44.
43 ibid.
44 ibid.
45 ibid paras 51-53.
46 ibid para 50.

so he provided specific research in relation to the Kaitaia Airport lands, a copy of the relevant pages of which I attach and mark **"G".**[47]

122. At page 18, paragraph 44 of his report, Mr McBurney stipulates that "*The Kaitaia airport is located firmly within the rohe of Ngāti Kahu. The signatories to the Ohinu deed include tupuna identifiable as belonging to Ngāti Kahu. In terms of the 1946 Ngati Kahu Tribal District,* which I have described earlier in this Affidavit[48], *the airport lies within the Oturu Tribal Committee Area, which was later merged with Awanui. Kareponia marae, just to the north is associated with the Ngāti Kahu hapu of Te Paatu and Patu Koraha.*

123. Mr McBurney then identifies the following;

The land occupied by Kaitaia Airport was originally part of the Ohinu block ostensibly "purchased" by the Crown in 1859. [49]

124. In relation to the issue of purchasing, I presented a paper to the Muriwhenua Tribunal on the issue of *tuku whenua* and the allocation of resource use rights. I attach and mark **"GG"** a copy of my paper on *tuku whenua.*

125. Key passages about the concept of *tuku whenua* are as follows:

"As part of the exercise of their mana, hapū, through their rangatira, allocated resources attached to their lands to incoming Pākehā in order to facilitate and support their settlement. The kaupapa and tikanga under which the allocations were made were exactly the same as had been done for many, many generations. They were widely known and understood not only in this country but also throughout the Pacific."

"The answer in brief was that for many years before the signing of Te Tiriti and for several decades following, tangata whenua were transacting tuku whenua in terms of their own tikanga. That tikanga, it was found, was well understood by the Pākehā involved. Evidence of this was discovered in the deeds which accompanied some of the

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47 Te Runanga a iwi o Ngāti Kahu, Addendum Report, Peter McBurney, August 2012.
48 At paragraphs 15-19.
49 ibid pg 13.

transactions and were written in Māori. My Ngāti Kahu kaumātua were clear that the Māori language documents accurately conveyed the nature of the transactions, as their ancestors had understood them, even though they had all been written by Pākehā. The documents described the transactions clearly as tuku whenua.

However, once the Pākehā involved in tuku whenua became subject to the governance of the British Crown, they falsely claimed that these transactions were English custom land sales rather than tuku whenua. Their claims succeeded because the Crown only ever considered the purported translations of the original Māori language documents. When shown these documents, my kaumātua were adamant that these were not the transactions that their ancestors had conducted. A careful and detailed analysis of the translations found that in almost all cases tuku whenua had been wrongly translated as 'land sale'."

126. Importantly, Muriwhenua Tribunal in its 1997 Report at Chapter 11.3.5 stated:

The Government transactions from 1850 to 1865 were considered in Chapters 6, 7 and 8 and also at section 9.6. In summary (and I highlight here only a few of the relevant findings);

-On the evidence, no transaction can be shown to have been an absolute sale (see sec 6.2). There was no contractual mutuality or common design, but a fundamental ideological divide.

-Conversely, the Government did not prove the transactions as sales at the time (or subsequently).

-The forgoing-the fact that the transactions were not sales and no proper protective arrangements were put in place-need not have mattered so much in achieving the original goals of Maori and the Crown in the completion of the Treaty, had fair shares in the land been maintained.[50]

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50 Muriwhenua Land Report 1997, Chapter 11.3.5, pages 399,400

Clearly in the Tribunals view the Crown had not acted in a manner which provided the Crown with good right or title. That is also our view and as such our mana has been maintained.

127. Mc Burney goes on to say that;

As with many early Crown transactions, no records relating to the negotiations have survived (if any were made). The deed is simply a receipt for the sum of £33, which, when added to an earlier payment together totalled £100. The area was not recorded in the deed; boundaries were given in relation to those of earlier awards.[51]

128. Mr McBurney also notes that by 1939/1940, and with the advent of war, "*the Kerikeri and Kaikohe Aerodrome sites were appropriated by the Defence Department, along with other sites in the north, including Kaitaia/Awanui.*"[52].

129. He then notes that the aerodrome construction also affected part of the Oturu Development Scheme, and that *No formal notice was given before the Public Works Department entered and occupied the development scheme land, erecting huts, constructing roads, and installing a large water supply. Without notice, it was not possible for Maori rights-holders to give their informed consent.*[53]

130. He then points out the Public Works Department considered that no notice was required compensation could be paid for damage done to the land.[54] However when negotiations commenced for that to occur, none of the Maori landowners were involved in that process[55]

131. Ultimately, Mr McBurney established that no compensation was to be paid for use of the ground as according to the Ministry of Works, the major part of the area was previously of little farming value[56]. The Ministry of Works baulked at paying £200 to repair the development scheme and determined a payment of £70 to be adequate

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51 ibid.
52 ibid.
53 ibid pg 14.
54 ibid para 35.
55 ibid pgs 15,16.
56 ibid pg 16.

compensation for any inconvenience.[57] So it seems clear therefore that any payments received and referred to in Yvonne Puriri's brief were not paid in compensation for the loss of land or for the actual taking pursuant to the Public Works Act.

132. Mr McBurney then discusses the legal status of the Kaitaia Airport Land and identifies;

"The taking of the land under the Public Works Act for Kaitaia Aerodrome was formalised by proclamations published in the New Zealand Gazette in 1952. The proclamations stated the land was taken for defence purposes, but by the early 1960s this was no longer the case, as it was used solely as a civil aviation aerodrome."[58]

133. He then points out that in 1962, the Commissioner of Works sought a change to the official title from defence to aerodrome[59] and in order for that to occur, the question of whether compensation had been paid to all parties needed to be finalised for the change to be confirmed.[60] He then notes that the Pākehā farmers who had lost leased lands on account of the aerodrome were paid compensation[61], but there is no suggestion that any Māori were paid compensation.

134. He then points out that the Kaitāia Aerodrome was not gazetted as such until 1970, but that the various land takings were not amalgamated into a single title. He points out that part of the airport has, but he says, title details for the remainder are "not available"[62]

135. This issue should not be understated. When we were undertaking negotiations for the return of the airport lands to Ngāti Kahu, we asked our local MP at the time, Hone Harawira to make enquiries about the land with the Minister for Land Information, the Hon David Parker.

136. Mr Harawira received a letter from the Minister dated 30 August 2007, in which he states (amongst other things);

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57 ibid pg 16,17.
58 Ibid pag 17.
59 ibid pg 17.
60 ibid.
61 ibid.
62 ibid pg 18.

"There is no certificate of tile for this land, but the relevant proclamations and plans of the area are attached".

I attach and mark **"H"** a copy of the said letter and attachments.

137. I note that the proclamation attached to the letter, describes that the land was set apart as an aerodrome pursuant to section 25 of the Public Works Act 1928. I do not profess to be any expert in the Pākehā law nor do I wish to be, that is a matter for others, but I do note that section 22 of that Act provides the procedure for land to be taken. In that section it requires the Crown to do many things such as provide a survey plan of the proposed land to be taken, notice to be gazetted and twice publicly notified with a general description of the lands required to be taken, and calls for objections to be made in writing to the taking of such lands. It also provides that a copy of the notice is to be served on the owners. Based on what Yvonne Puriri and Mr McBurney have set out earlier, none of this occurred.

138. I also note that section 25 appears to dispense with formal requirements regarding Crown land. However, the issue is that the land was not Crown land at that time.

139. Finally, section 46, requires that where any land is taken or acquired under this 1928 Act, the Minister shall offer compensation. Again that did not occur.

140. It was for these very reasons that we have maintained that in accordance with our tikanga, our customary title, our mana whenua to our land has never been extinguished or relinquished by our whānau, hapū and marae. The land, by right, is ours.

TE HIKU O TE IKA NEGOTIATIONS WITH THE CROWN

141. I have alluded earlier to negotiations occurring between the 5 iwi of Te Hiku o te Ika and the Crown in order to settle their Te Tiriti claims. In the course of those negotiations and in approximately 2011, the Crown ceased negotiations with Ngāti Kahu and continued with the other four iwi.

142. That said, the five iwi had reached an Agreement in Principle with the Crown in which provision was made for Ngāti Kahu to receive the Kaitāia Airport lands along with Ngāi Takoto. The fact that Ngāi Takoto were receiving any interest in the Kaitāia Airport lands was a particularly sore point for our whānau and hapū of Ngāti Kahu and therefore that, amongst other matters was one of the reasons why negoitations came to an end with the Crown.

143. Ultimately the Crown and Ngāi Takoto completed a Deed of Settlement in October 2012. In that agreement, the Kaitāia Airport lands are referred to under a section entitled **DEFERRED SELECTION PROERTIES**. This section provides Ngāi Takoto with the ability to purchase certain properties within a certain time frame. Those properties are listed in a schedule annexed to the deed of settlement. I attach and mark **"I"** a copy of the Deferred Selection Properties.

144. On the page numbered 18, you will see that there is a reference to the Kaitāia Aerodrome and that it is a Joint DSP (Deferred Selection Property) with Ngāti Kahu.

145. On the page numbered 19, you will also see that there is a reference to Te Kura Kaupapa Māori o Te Rangi Āniwaniwa and again that it is a Joint DSP (Deferred Selection Property) with Ngāti Kahu.

146. This clearly in my view records that both Ngāi Takoto and the Crown acknowledge our customary interests and mana whenua in the land, otherwise why would they bother to leave scope for Ngāti Kahu to obtain the lands.

147. I also note that Clause 9.20 of the Deed of Settlement (and not Clause 9.16) refers to the *"inclusion of the Kaitaia Aerodrome and Te Kura Kaupapa Māori o Te Rangi Aniwaniwa sites as deferred selection properties, on the basis that any transfer of these sites to Te Rūnanga o NgāiTakoto trustees and a Ngāti Kahu governance entity under a deed of settlement is subject to the continued use of those sites for the operation of the aerodrome and kura kaupapa Māori."* I attach and mark **"J"** a copy of the relevant page from the Ngāi Takoto deed of settlement outlining clause 9.20.

148. Again the point here is that the Crown have recognised our rights and interests in these lands which are only subject to completion and formal recognition by way of settlement or Tribunal recommendations.

149. In order to implement this deed of settlement the Crown have passed the Ngāi Takoto Claims Settlement Act 2015. Once again I point out that I am no legal expert. However, I do note that Part 3 of the Act, section 134, refers to the deferred selection properties and identifies those properties outlined in the schedule I have attached to this Affidavit and marked **"I"**.

150. It also refers at section 135 to that section giving effect to part 9 of the deed of settlement and authorising the transfer of commercial redress and deferred selection properties.

151. Finally section 139 provides that where it is intended to transfer shared deferred selection properties that the Registrar General must create a title for each undivided share of the fee simple estate. That has not yet occurred.

CONCLUSION

152. Therefore the point of setting all of this out is to show the following;

a). The Kaitāia airport and Te Kura Kaupapa Māori o Te Rangi Āniwaniwa lands are Mātenga lands. They are Te Paatu and Patukōraha lands. It is the customary land of Ngāti Kahu.

b). Our rangatiratanga and our mana whenua remains undisturbed in respect of the Kaitāia airport and Te Kura Kaupapa Māori o Te Rangi Āniwaniwa lands.

c). In accordance with our tikanga we are entitled to be on our lands and we are entitled to exercise our kaitiakitanga, our mana, our rangatiratanga in respect of these lands.

d). The Crown did not obtain an appropriate right, interest or title in the lands.

e). The Crown has no Torrens title to the land and as such cannot exercise control or dominion over these lands.

f). The existence of proclamations does not assist the Crown's assertion of right and title to the lands.

g). The purported taking and setting aside of the land as a public work is severely flawed, illegal and without right.

h). Both the Crown and Ngāi Takoto recognise our rights and interests in the land. That is enshrined in the Deed of settlement and in the Ngāi Takoto Claims Settlement Act 2015.

153. Therefore, our people were and are entitled to be on the lands. They were exercising their rangatiratanga, their mana in respect of the land which has not diminished by virtue of any action undertaken by the Crown.

154. Given that the Crown has not been able to assert or show that it has good right and title to the land, the Crown (or its subsidiaries) do not have the power or ability to trespass out people off their own land.

Affirmed

Sworn at Auckland this)
1st day of September 2016)
by the said Margaret Shirley)
Mutu before me)

A Solicitor of the High Court of New Zealand.

Vicki Nicole Morrison-Shaw
Solicitor
Auckland