Custom Law and the Advent of New Pākehā Settlers

Tuku Whenua – Allocation of Resource Use Rights

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Introduction

Towards the end of the eighteenth century, Pākehā travellers, whalers, sealers and traders began to visit Aotearoa's shores. Initially, Pākehā were interested in establishing commercial relations with Māori in order to progress the hunting of whales, especially once inshore whaling became commercially viable. Trading ventures soon followed, and, with substantial amounts of energy and capital being expended, Pākehā soon began to pursue the acquisition of Māori land. New settlers seeking permanence in Aotearoa, as well as missionaries, also sought land, as indeed did some Pākehā interested only in land speculation, causing Governor George Gipps of Australia to issue a proclamation on 29 January 1840 seeking to put a stop to such activity.[1]

The wholesale acquisition of land by Pākehā soon became an issue of some concern to Māori, especially iwi and hapu in the Taitokerau area where, prior to 1840, the Pākehā population was largely centred. According to Jack Lee, prior to 1830, some twelve 'purchases' were claimed by settlers as having been transacted in the Bay of Islands, Te Puna, Keri Keri, Paihia, Kororareka, Hokianga and Whangaporoa. After 1830, he writes, an 'accelerating avalanche of transactions' followed with missionaries contributing at least 200,000 acres to those transactions. Settlers also actively pursued sales; one example, writes Lee, was 'nine parties of Pākehā' who also claimed to have made 'purchases' of 56,654,000 acres after 1830, but, as was noted in the House of Commons in London in 1845, this figure was '654,000 more than the two islands contained,' attesting to its absurdity and fraudulence. This was especially so given the fact that 'Māori land title was not clearly understood' by Pākehā.[2]

The fact that Māori custom law was 'scantily understood', writes E.T. Durie, created severe distortions in Pākehā perceptions of the cultural dynamics and integrity of Māori society, including a failure to appreciate the critical elements of customary land ownership, possession,

management and guardianship that had served Māori for countless generations, prior to the advent of Pākehā.[3] The distress for Māori that arose from this Pākehā incomprehension and unwillingness to adapt to the Māori customary world, which affected iwi throughout Aotearoa, can be clearly demonstrated when examining the early troubled history my own iwi, Ngāti Kahu ki Te Hiku o Te Hika, during the time of these early land acquisitions.

Ngāti Kahu ki Te Hiku o Te Hika

When Ngāti Kahu appeared before the Waitangi Tribunal as part of the Muriwhenua Land Claims of Te Hiku o Te Ika (the Far North) between 1990 and 1994, we did so, in part, to correct the Pākehā historical record which said that our ancestors had willingly sold almost all our lands knowing that in doing so they were alienating it in accordance with English custom and law. However, the kōrero or oral traditions handed down from the times of the early traders and missionaries simply did not support such an interpretation of how my ancestors saw and treated their Pākehā guests. They had done what we do today – exercised manaakitanga, and in doing so, sought to incorporate those they chose to have living amongst them into their hapū structures.

That such hospitality and generosity should result in almost all of them being forced off their lands, driven out of their territories and relegated to a state of marginalisation, poverty, deprivation and on-going protest was never envisaged, and certainly not intended by my ancestors. They considered that what they did was primarily for the benefit of the hapū and would bring increased wealth and prosperity.

When the Waitangi Tribunal upheld our claims, it was the first time that any part of the Crown had recognised and confirmed our understanding as correct and the Pākehā interpretation, which has always been supported by the Crown, as wrong. This chapter describes how the early immigrants from England to Te Hiku o Te Ika were, at least initially, incorporated into our hapū structures. The focus is on the allocation of use rights to resources associated with our lands under the custom of tuku whenua. Difficulties experienced with this which impact on the hapū and iwi of Te Hiku o te Ika to this day will be outlined. The chapter concludes by briefly outlining the controversy amongst some academics that arose as a result of the evidence on tuku whenua given by hapū and iwi experts in the Muriwhenua land claims hearings.

The Context of Tuku Whenua

When Pākehā first arrived Aotearoa was clearly and firmly under the control of the hapū throughout the country. It could hardly have been any other way, given that hapū had been here for many, many generations and hence, many hundreds of years. The nature of the power and control exercised by hapū was clear and well understood. It was and remains based on underpinning values and principles that include mana, tapu, tikanga, whanaungatanga, manaakitanga, rangatira and rangatiratanga, kaitiaki and kaitiakitanga[4] with the tikanga or custom law of each hapū determining the correct way to carry out something in accordance with these values and principles. The successful exercise of hapū power and control in accordance with tikanga relied heavily on hakapapa[5] and knowledge derived from and relating to ancestral sources.[6]

In Te Taitokerau the arrival of Pākehā brought with it difficulties for hapū in that Pākehā were at times slow to understand tikanga and sufficiently disruptive of it for rangatira to seek solutions for their lawlessness. The matter of Pākehā lawlessness exercised rangatira for quite some time. Taitokerau traditions record rangatira visiting England in order to find ways of dealing with the problem.[7] This led to the signing of He Whakaputanga i te Rangatiratanga o nga Hapu o Nu Tireni in 1835 and Te Tiriti o Waitangi in 1840.[8]

The primary aim of He Whakaputanga was to declare that the mana, including the sovereignty of the country, resided with each the rangatira of the hapū for their respective territories.[9] Te Tiriti o Waitangi's main purpose was to confirm He Whakaputanga, and to record that the Queen of England would take control of her hitherto lawless subjects. He Whakaputanga and as a result Te Tiriti o Waitangi made it clear that not only was the mana of the rangatira recognised but that the exercise of that mana through tino rangatiratanga would be respected and upheld by the British Crown. The hapū would also enjoy all the privileges of British citizens.[10]

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.[11]

In preparing Waitangi Tribunal claims against the Crown for Ngāti Kahu and for the wider Muriwhenua area, extensive research was carried out to determine not only the exact nature of those allocations, but also how Pākehā settlers and the Crown had come to grossly misinterpret those transactions into believing that such had extinguished tangata whenua rights to their own lands.

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 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'.[12]

The Waitangi Tribunal found that even though the Crown established Commissions to enquire into these transactions, the Commissions made no real inquiry into the nature of the transactions. Commissions wrongly and illogically assumed that they were English custom land sales when

neither English custom nor law existed in this country when the transactions took place.[13] By erroneously accepting and upholding Pākehā claims, the Crown subsequently claimed that tangata whenua had willingly and knowingly extinguished all their rights, not only to the resources attached to their ancestral lands, but also to the lands themselves. In the face of the evidence produced during the Muriwhenua land hearings, the Waitangi Tribunal found that Ngāti Kahu had not willingly assented to the disposing of all their rights, and in terms of tikanga and, more specifically, the Māori language through which all these transactions were conducted, such disposals were impossible. There were no words in Māori for land sale and no notion existed in Māori thinking for such a concept.[14]

The Practice of Tuku Whenua

When hapū in the northern parts of Aotearoa allowed Pākehā to settle amongst them in their territories in the early nineteenth century it is clear they did so in order to benefit their communities. That meant providing hospitality, support and protection for their guests so that they in turn could reciprocate with knowledge, goods and skills that would further enhance the quality of life enjoyed by the hapū. While some Pākehā did reciprocate – and the descendants of many of the early traders (but notably not the missionaries) remain in those hapū to this day – most did not, resorting to various forms of chicanery, including promoting their own 'rangatira' in order to exploit the ancient tikanga of tuku whenua for their own personal advantage.[15]

Representatives of the British Crown picked up and carried on the chicanery. As soon as the rangatira of the hapū passed responsibility for their lawless Pākehā over to the British Crown, the Pākehā wrongly and falsely claimed English custom ownership not only to lands whose resources the hapū had allowed them to use temporarily but also to very large tracts within the rest of that hapū's territories. Furthermore they denied that they had on-going obligations to the hapū and went as far as eventually pushing them off their own lands.

Rather than prevent this lawless behaviour as guaranteed in Te Tiriti o Waitangi, the Crown compounded it. Fuelled and driven by the insatiable greed of incoming Pākehā settlers for Māori land, and initially at least, under the guise of entering into further tuku whenua arrangements, the Crown embarked on a programme of seizing as much Māori land as it could. The Crown

started out making promises of benefits but these never materialised. Eventually, as they wrested control of more and more land off the hapū, they were employing whatever trickery, chicanery, manipulation, bullying and terrorising tactics that were needed to achieve the ends they sought.[16]

The inevitable result was that the hapū and iwi of Te Hiku o Te Ika were driven into a state which the Waitangi Tribunal described as 'physical deprivation, poverty, social dislocation as families dismembered in search of work elsewhere and loss of status during the long years of petition and protest.'[17] How did our ancestors come to misread their Pākehā guests so badly?

The Nature of Tuku Whenua

The oral traditions of Te Hiku o Te Ika record what happened in respect of these early, pre-Tiriti land transactions. Our ancestors had observed Pākehā for some time and had come to the view that Māori would benefit from the knowledge, goods and skills which Pākehā could offer, and that these would further enhance the quality of life they already enjoyed. They were particularly interested in the reading and writing skills promoted by members of the Church Missionary Society. They were always interested in trading goods and services and engaged readily with Pākehā who visited their territories. As such, use rights to resources associated with hapū lands were willingly given over under the custom of tuku whenua.

The Pākehā were our ancestor's guests and the land resources were made available for their use, and in particular, for the use of the missionaries. However tuku whenua took place on the clear understanding that such a transaction was carried out primarily to benefit the hapū and to bind the Pākehā and his descendants into the hapū structures. There was also a clear expectation that when those Pākehā and their descendants no longer needed to use the resources associated with the land, control would return to the hapū. There was nothing in the discussions leading to the transactions which gave those Pākehā guests the right to alienate permanently, or sell, their host's land. The resources were given for the use of a particular Pākehā and his descendants and the mana whenua, the paramount authority, power and control over the land, remained with the hapū.[18]

It is important to note that in respect of tuku whenua there is a clear distinction between allocating the resources associated with land, and allocating the land itself. A tuku whenua

allocated the former, not the latter – it made no sense within tikanga to allocate anything other than the land's associated resources. The land was permanent and always remained and mana whenua, the paramount power and authority over the lands, remained with the hapū. Durie makes the following useful observations, that

- land interests were proprietal, and referenced to specific resources or in the political sense, to territory;
- proprietal and inheritable use rights pertained to specific resources which included in ngakinga or mara (cultivations), pua manu (birding areas), ara kiore (rat runs), pa tuna (eel weirs) and tauranga ika (fishing gounds). Those who first cleared the land or established themselves held use rights for themselves and their descendants. Individuals and groups both had use rights in any resource area, resources being worked either individually or collectively according to what was required;
- there existed a complex web of overlapping rights to the resources of the local forests, rivers, lakes, swamps, ocean fishing grounds, lagoons and cultivations, distributed amongst individuals and groups; and
- proprietal interests thus pertained to resources, not land blocks and individuals owned usufructs, not territory.[19]

In order to incorporate the benefits Pākehā could bring into the community, Pākehā needed the support and protection of rangatira. Those rangatira thus sought to bring individual Pākehā and their families into the hapū's structure, presenting opportunities to fully participate in everyday tribal life and, in doing so, ensuring their on-going protection and participation within the community.

Ngāti Kahu entered into negotiations with their Pākehā guests and decided to apply the custom of tuku whenua to those they chose to have living in their midst. Under this custom, rangatira who held mana whenua for the hapū allocated resources associated with lands, within his/her own hapū's rohe for a particular individual and his family, in order for them to live on the lands and use the resources. Provided there was no offence committed which violated the terms agreed to in discussions, the family to whom the land resources had been allocated remained

undisturbed on the land, under the mana of the allocating rangatira, often for several generations. In this manner, outsiders were incorporated into the hapū and iwi structure as guests, not only as individuals for their life-time, but also for their descendants for as long as they chose to stay on the allocated land. Should the outsider choose to move off the land, then rights to re-allocate the land's resources reverted to the hapū. At no stage in this process was the mana whenua of the allocating rangatira threatened.[20]

Only those with mana whenua had authority to tuku whenua. There were essentially two types of tuku whenua. The first can be referred to as tuku i runga i te tika where rights were allocated in accordance with the criteria usually described as take tupuna (ancestral rights), including noho tika (occupancy of the land) and ahi kā ('burning fires' which implies long continued occupation). The second type can be referred to as tuku i runga i te aroha, whereby rights could be allocated to those without ancestral rights (such as those married into the hapū). This second type was the only one that could be applied to Pākehā immigrants and guests.[21]

Problems with Tuku Whenua to Pākehā

There were, however, some rangatira who, at the urging of Pākehā, strayed well beyond their own hapū rohe and allocated hapū land resources they had no authority over. This was a serious breach of tikanga and would result in the rangatira being stripped of his or her mana. The role of leaders or rangatira was, and remains, to ensure the well-being of the hapū and iwi. Leadership was passed from one generation to the next with the mana of a rangatira determined not only by genealogical seniority but also by his or her personal qualities and abilities to maintain the support and confidence of his or her people. Should a rangatira lose the confidence of his people, then his mana would suffer and the people would look elsewhere for leadership. Without the support of his people, which included seeking their advice and agreement on matters, the person would have no status within the hapū and iwi. These same criteria still apply today.[22]

A well known pepeha from Te Hiku o Te Ika is 'Tirohia tō mata ki te moana he ika e ranga ana. Tirohia tō mata ki uta, he tira tangata he haerere ana. Mā wai e raranga kia kotahi ai?' which translates 'Look to the sea where fish shoal, swimming as one body. Look to where a group of

people wander about. Who will bind them in unity?' The essential words here are ranga 'shoal', raranga 'weave, plait' and tira 'group'. A rangatira then, holds the people together so that they move as one.[23]

In Te Hiku o Te Ika significant problems arose for hapū during the early period of Pākehā settlement when rangatira overstepped their authority and transacted land resources without the permission of the hapū who were mana whenua. The Waitangi Tribunal noted in 1997 that 'the role of rangatira was often inflated by Europeans, who justified dealing with 'chiefs' by ascribing them autocratic powers' and this applied in particular to Te Rarawa's Nōpera Panakareao who allocated use rights to some missionaries for resources in extensive areas of Te Pātū and Ngāti Kurī lands.[24]

The missionaries' gratitude to Panakareao was evidenced by the inflated status they accorded him in their writings.[25] Ngāpuhi's Pororua Wharekauri also transacted large areas of Te Pātū, Ngāti Ruaiti and Matarahurahu lands in Ngāti Kahu's territory without authority. The oral traditions of those hapū record Panakareao and Pororua coming into their territories around present day Kaitāia, Mangataiore (Victoria Valley), Mangōnui and Taipā, and claiming use rights to resources on those lands for Pākehā without those hapū's permission.[26]

Panakareao also went into Ngāti Kurī territory to do the same.[27] While several who appeared before the Tribunal supported his actions, Panakareao remains a controversial figure in Te Hiku o Te Ika. The descendants of those whose land resources he allocated for Pākehā continue to condemn him and are still seeking to rectify his wrong-doings today by insisting that the Crown relinquish all its claims to those lands and return control of them to Ngāti Kahu.[28] His actions continue to be the source of discord amongst the hapū and iwi of Te Hiku o Te Ika. Yet Panakareao was clear that he only ever intended to allocate use rights to the resources associated with those lands. It was never his intention to convey more than that and he became embittered when he

realised that Pākehā were claiming far greater rights to those lands than he had ever intended them to have.

The Tuku Whenua Controversy among Academics

Although Crown representatives who appeared before the Waitangi Tribunal denied the existence of the custom of tuku whenua described above, and indeed, attempted to redefine it, there is evidence other than that already mentioned in relation to the deeds, that Pākehā understood the custom well. The Waitangi Tribunal has described how the hapū and iwi continued to control the area and treat it as their own after tuku whenua had been completed and Pākehā had settled on the land.

In the case of Kaitāia, for example, the hapū were still living on the lands allocated to the missionaries twenty five years after the tuku whenua, and a short distance away at Tangonge, land resources were allocated to Pākehā in 1835, confirmed by the Crown in 1844 but Te Pātū remained there. Te Pātū were still there more than a century later in the 1960s when the Crown decided to evict them. Te Pātū never accepted that the Crown had any right to do so. A long quote from a British parliamentary select committee report demonstrated that the missionaries openly acknowledged that they remained on the lands on the sufferance and under the authority of the rangatira. The Tribunal went on to describe tuku whenua as much more like a lease than a sale.[29]

Anthropological and historical literature pre-dating the Waitangi Tribunal's work in the Muriwhenua claims also contained references to and descriptions of tuku whenua.[30] Yet the evidence presented during the hearings into the Muriwhenua land claims between 1990 and 1994 was the catalyst for a very intense debate amongst Pākehā historians. Some went as far as arguing that the oral evidence given in the Muriwhenua hearings had been fabricated[31] and that it was their opinion that Māori had in effect conducted English custom land sales.[32]

It became obvious in the hearings that key historians seemed unable to comprehend that the hapū and iwi of Te Hiku o Te Ika had never accepted the delusion of English superiority. The assumption of some historians that the ancestors of those attending the hearings had abandoned the culture of their ancestors, in the face of the superior English culture, and hence conducted English custom land sales both prior to and after signing Te Tiriti prompted expressions of open

derision and disgust from usually restrained and polite kuia and kaumātua. What was clear was that some historians had not understood what was happening, because they did not speak Māori nor understood the dynamics of the marae.[33]

But in the final analysis, these historians avoided obvious, basic facts surrounding these early transactions. Firstly, Aotearoa was a Māori country, the language was Māori and the law was Māori.[34] Secondly, there were very few Pākehā and as such a tiny minority of the population had no choice but to abide by the laws of their hosts. Thirdly, discussions surrounding tuku whenua were all conducted in the Māori language which, as noted earlier, had no word for sale and no notion at all of English custom land sale.[35]

Other historians argued that the historical evidence did support the oral traditions of Te Hiku o Te Ika.[36] Susan Healy's 2009 bibliographic essay '*Tuku Whenua* as Customary Land Allocation: Contemporary Fabrication or Historical Fact?' reviewed the extent of the evidence in nineteenth century writings of tuku whenua and noted that long before the controversy of the 1990s, Norman Smith was drawing from these sources and showing that before and after 1840 the practice of tuku was well established and that this was recognised as such by the Crown. Healy noted that this debate belonged 'to the academic community and not the Māori world.' In the customary Māori world, the explanations of tuku whenua were consistent. As well as evidence given by kaumātua 'elders' in the Muriwhenua land hearings, she wrote, very similar understandings of tuku whenua have been conveyed by other tribal experts all across Aotearoa.[37]

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[1] Jack Lee, *The Old Land Claims in New Zealand,* Northland Historical Publications Society, Kerikeri, 1993, p.3.

[2] Lee, *Old Land Claims,* pp.7-8.

[3] E.T. Durie, 'Custom Law', unpublished paper, 1994, pp. 93-94.

[4] Matiu, M. and Mutu, M., *Te Whānau Moana: Ngā kaupapa me ngā tikanga: Customs and Protocols,* Reed, Auckland, 2003, p.155-170.

[5] Ngāti Kahu (and Far North) dialect for whakapapa elsewhere.

[6] E.T. Durie, 'Custom Law', pp. 5, 7-8.

[7] M. Mutu, 'The Humpty Dumpty Principle at Work: The Role of Mistranslation in the British Settlement of Aotearoa. He Whakaputanga o te Rangatiratanga o Nu Tireni and The Declaration of Independence' in Sabine Fenton (ed) *For Better or for Worse: Translation as a Tool for Change in*

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[8] 'The Declaration of Independence of the United Tribes of New Zealand' and the 'Treaty of Waitangi'; see Basil Keane, 'Kotahitanga' in Malcolm Mulholland and Veronica Tawhai (eds), *Weeping Waters. The Treaty of Waitangi and Constitutional Change*, Huia Publishers, Wellington, 2010, pp. 175-185.

[9] M. Mutu, 'Humpty Dumpty Principle', p. 13; M. Mutu, *Weeping Waters*, pp. 18-9.

[10] M. Mutu, *Weeping Waters*, p. 28.

[11] M. Mutu, 'Cultural Misunderstanding or Deliberate Mistranslation?' in *Te Reo*, (Journal of the Linguistics Society of New Zealand), 1992, pp. 64-67.

[12] M. Mutu, 'Cultural Misunderstanding', pp. 90, 91-96.

[13] Waitangi Tribunal, *Muriwhenua Land Report*, Government Print Publications, 1997, p.173.

[14] M. Mutu, 'Cultural Misunderstanding', p. 58; Waitangi Tribunal, *Muriwhenua Land Report*, p. 3.

[15] Waitangi Tribunal, *Muriwhenua Land Report*, p. 29.

[16] M. Mutu, L. Pōpata, Te K. Williams, B. Matiu, A. Herbert-Graves, Te I. Kingi-Waiaua and B. Arapere, *Te Hakapūmautanga o te Mana o Ngāti Kahu – Ngāti Kahu Deed of Partial Settlement*, Te Rūnanga-ā-Iwi o Ngāti Kahu, Kaitāia, 2011, Ch.28.

[17] Waitangi Tribunal, *Muriwhenua Land Report*, p. 404.

[18] M. Mutu, 'Cultural Misunderstanding', p. 60.

[19] E.T. Durie, 'Custom Law', pp.67-68.

[20] M. Mutu, 'Cultural Misunderstanding', p. 61.

[21] Matiu Cully, personal communication 1989; Pā Hēnare Tate, personal communication 1990.

[22] Matiu McCully, kaumātua rangatira of Ngāti Kahu and Te Rarawa, personal communication 1989.

[23] M. Mutu, 'Cultural Misunderstanding', p. 60.

[24] Waitangi Tribunal, *Muriwhenua Land Report*, p. 29.

[25] Waitangi Tribunal, *Muriwhenua Land Report*, p. 38.

[26] M. Mutu et al, *Te Hakapūmautanga o te Mana o Ngāti Kahu*, pp.112-3, 152, 236.

[27] M. Mutu et al, *Te Hakapūmautanga o te Mana o Ngāti Kahu*, pp. 36-38, 99.

[28] M. Mutu et al, *Te Hakapūmautanga o te Mana o Ngāti Kahu*, pp. 212, 216, 236. The Waitangi Tribunal Report (pp. 36-40) was more complementary of Panakareao but acknowledged (p.40) that in the end 'his mana began to slip'.

[29] Waitangi Tribunal, *Muriwhenua Land Report*, pp. 66-67, 73, 173.

[30] F. Acheson, 'The Ancient Maori System of Land Tenures (Some Aspects of)', Thesis Written for the Jacob Joseph Scholarship, Victoria College University, Wellington. 1913; R. Firth, *Economics of the New Zealand Maori*. Second edition, Government Printer, Wellington, 1959 (1929); N. Smith, *Maori Land Law, A.H.* & A.W. Reed, Wellington, 1960.

[31] S. Healy, '*Tuku Whenua* as Customary Land Allocation: Contemporary Fabrication or Historical Fact?' in *JPS*, 2009, 118: 2,. pp. 111-134 (esp. p. 116).

[32] W. Oliver, 'Is bias one-sided?' *New Zealand Books*, 1997, June, pp. 17-19; L. Head, 'Maori Understanding of the Land Transactions in the Mangonui-Muritoki Area During 1861-1865', Doc #F21, Muriwhenua Land Claims, Wai 45, Waitangi Tribunal, Wellington, 1991; M. Belgrave, *Historical Frictions: Maori Claims and Reinvented Histories*, Auckland University Press, Auckland, 2005.

[33] The author attended the hearings where such historical evidence was given and witnessed head claimants leave the hearing in disgust and heard the derisive running commentary of several kuia throughout the presentation of their evidence.

[34] M. Mutu, 'Cultural Misunderstanding', p. 71.

[35] M. Mutu, 'Cultural Misunderstanding', p. 58; Waitangi Tribunal, *Muriwhenua Land Report*, pp. 3, 4, 11.

[36] A. Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c. 1769 to c. 1945*, Victoria University Press, Wellington, 1998; M. Alemann, 'Early Land Transactions in the Ngatiwhatua Tribal Area', MA Thesis in Maori Studies, University of Auckland, Auckland, 1991.

[37] S. Healy, '*Tuku Whenua*', p. 112, 118; See also in particular the Waitangi Tribunal's 2008 report on Te Tau Ihu o Te Waka a Māui (the Northern South Island) claims.

Office of Hon David Parker
Minister of Energy
Minister Responsible for Climate Change Issues
Minister for Land Information

30 AUG 2007

Hone Harawira
Maori Party MP for Te Tai Tokerau
10 Bank Street
Kaitaia

Dear Hone Harawira

Thank you for your letter of August 2007 regarding Kaitaia Airport.

The airport land is currently Crown land administered by Land Information New Zealand. The land has been leased to the Far North District Council (the Council) from 28 April 1995 for 21 years through to 27 April 2016 for a nominal rental of $1.00 per annum. The lease currently provides for the Crown to give the Council twelve months notice to terminate the lease in the event of the land being required for the settlement of any Maori land claim.

On 8 July 1991 Cabinet had agreed to transfer the aerodrome to the Council, however this decision was rescinded by Cabinet on 18 July 1994 in favour of the current lease pending the resolution of the Muriwhenua claim.

Early in 2007 the Council formally requested a long term extension of the current lease to enable it to substantiate a business case to upgrade the airport infrastructure.

I have referred your letter to the Minister in Charge of Treaty of Waitangi Negotiations to reply to you regarding any Treaty claims for the land.

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

EXHIBIT NOTE

This is the annexure marked H referred to in the affidavit of Margaret Shirley Mutu
Affirmed /
~~sworn~~ at Auckland this 1st day of September 2016
before me:

A Solicitor of the High Court of New Zealand

Vicki Nicole Morrison-Shaw
Solicitor
Auckland

Yours sincerely

Hon David Parker
Minister for Land Information

Cc Minister in Charge of Treaty of Waitangi Negotiations

Parliament Buildings, Wellington, New Zealand. Telephone: 64 4 470 6559 Facsimile: 64 4 472 3617
Email: dparker@ministers.govt.nz, Website: www.beehive.govt.nz

3540-000

CABINET

18/7/94

CAB (94) M 26/4 C(iii)

Minister of Transport

Copies to:

Prime Minister
Minister of Finance
Minister of State Services
Chair, ECR
Minister of Commerce
Chair, TOW
Minister of Justice
Minister of Local Government
Minister of Survey and Land Information
Minister of Maori Affairs
Secretary, CIE
Secretary, TOW

KAITAIA AERODROME DEVOLUTION

Reference: CAB (94) 606; ECR (94) 154; ECR (94) M 24/4

At the meeting on 18 July 1994, following reference from the Cabinet Committee on Enterprise, Industry and Environment and the Cabinet Committee on Expenditure Control and Revenue, Cabinet:

a noted that at its meeting on 8 July 1991 it had:

"e agreed to the disposal of Kaitaia Aerodrome;

f agreed to the transfer of Kaitaia Aerodrome to the Far North District Council, minus any surplus land."

[CAB (91) M 27/5 refers].

b rescinded the decision set out in paragraph (a) above;

c i agreed that the devolution of Kaitaia aerodrome be achieved by means of a lease agreement under S.45 of the Public Works Act 1981 pending resolution of the Muriwhenua claim;

ii noted that any land not required by the Northern Airports Corporation Ltd will be disposed of in accordance with the Public Works Act 1981 and the specific Muriwhenua protection mechanism agreed by Cabinet [TOW (92) M 24/2 refers];

iii agreed, that should Kaitaia aerodrome not be required for settlement of the Muriwhenua claim, the land be vested in the Far North District Council less any surplus land (if any);

d agreed that the Kaitaia aerodrome assets be transferred from the Ministry of Transport to the portion of the Crown's balance sheet managed by the Department of Survey and Land Information via a reduction of $126,600 (at 30 June 1994) in the Ministry of Transport's fixed assets with a corresponding reduction in taxpayers' funds;

e noted that the Department of Survey and Land Information has agreed to meet the additional costs of administering the lease from within existing appropriations;

f agreed to a reduction:

i in the appropriation of $38,958 (GST exclusive); and

ii a reduction of $12,533 Revenue Crown and $26,425 third party revenue;

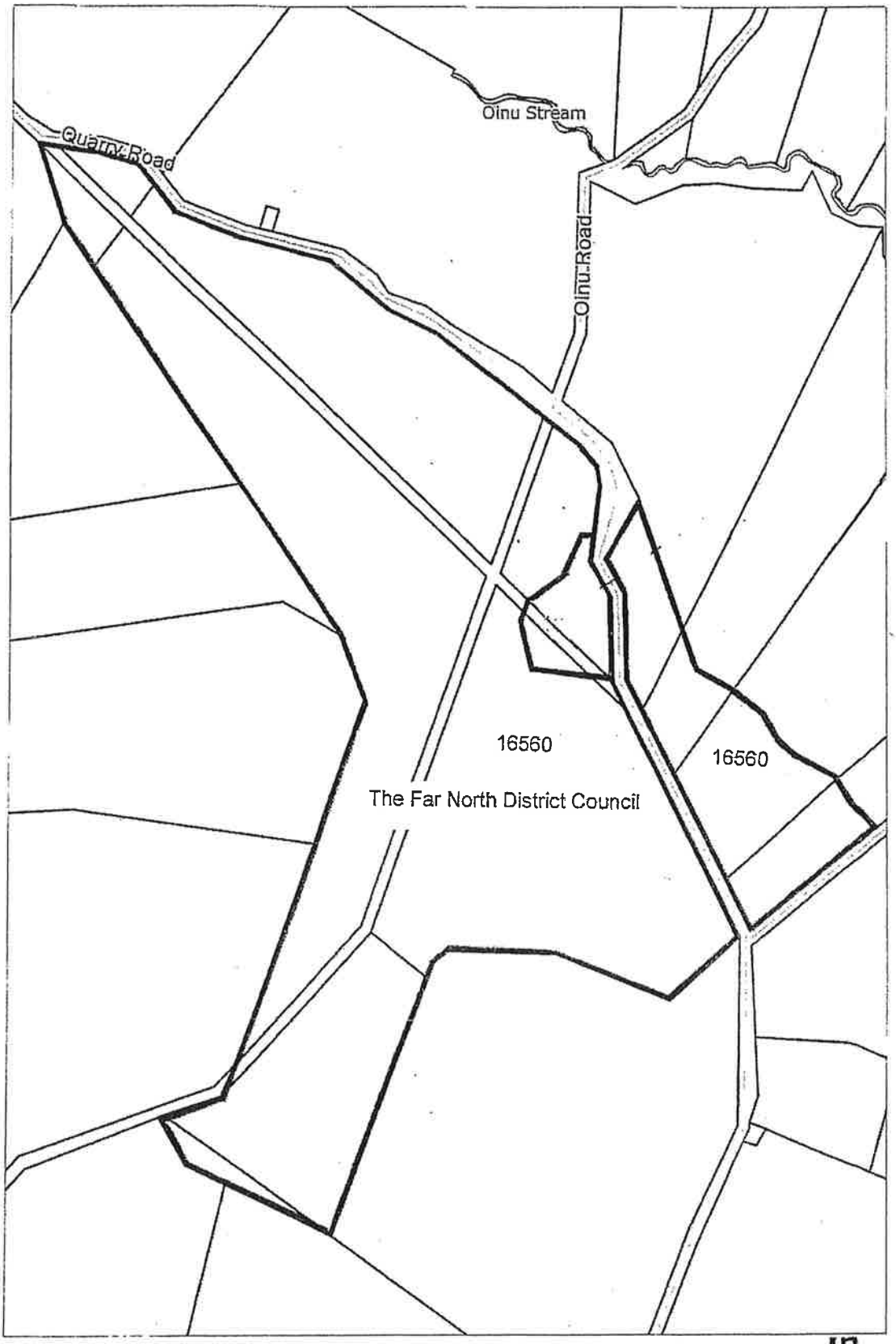
for the output class : Airport Operation and Administration in Vote : Transport in 1994/95 with those amounts to be pro-rated to take account of the transfer taking effect after 30 June 1994;

g agreed that the adjustments referred to in paragraphs (d) and (h) above be included in the 1994/95 Supplementary Estimates; and

h noted that the decisions referred to in paragraphs (d) to (h) above are in accordance with the 1994/95 Supplementary Estimates criteria.

Secretary of the Cabinet

Airport Lease Area



Scale: 1:10000

500 metres

A521077 PARTICULARS ENTERED IN THE REGIS R-BOOK
VOL. FOLIO Proc. 13633. 13615

THE 17th DAY OF December 1970
AT 2.20 O'CLOCK.

Assistant Land Regis
with AUCKLAND

DISTRICT LAND REGISTRAR NORTH AUCKLAND, N.Z.

B.380438.1 ONCT) Cancelled as to part (area
12.2.1985) and new title issued: hereon
) 58B/58

5-2-05
4-1-325
17-2-05

A.L.R.

B.967538.1) Cancelled as to part in terms
O.N.C.T.) of Lot 1 Plan 121731 and a
15.3.1989) C.T. issued:
70C/867

A.L.R.

B.967538.2 Transfer of Lot 2 Plan 121731 to Malcolm Gerald Matthews of Kaitaia farmer - 15.3.1989 at 9.00 o'c
Amalgamated C.T. 70C/868 issued

A.L.R.

Recd on R 1108 & D.P. 21370
DW.

LAND & DEEDS	
Nature:	CT NW
Firm:	M.O.W
17 DEC 1970	
Time:	2.20
Fee: $	—
Abstract No.	16196

Extract from *N.Z. Gazette*, 3 Dec. 1970, No .78, page 2370

Land Held for Defence Purposes Set Apart for an Aerodrome in Blocks I and II, Takahue Survey District, Mangonui County

PURSUANT to section 25 of the Public Works Act 1928, the Minister of Works hereby declares the land described in the Schedule hereto to be set apart for an aerodrome from and after the 7th day of December 1970.

SCHEDULE

NORTH AUCKLAND LAND DISTRICT

ALL those pieces of land situated in the North Auckland R.D., described as follows:

Situated in Blocks I and II, Takahue Survey District:

Proc. 13633

A. R. P.	Being
14 0 31	Part Allotment 10, Awanui Parish; coloured blue on plan.

R. 1107, 1108

Situated in Block II, Takahue Survey District:

A. R. P.	Being
Proc. 13615 — 2 0 33	Part Allotment 13, Awanui Parish; coloured yellow, edged yellow on plan.
34 3 5	Part Allotment 9, Awanui Parish; coloured blue, edged blue on plan.
Proc. 13633 — 123 3 24	Part Allotment 6, Awanui Parish; coloured sepia on plan.
X 11 1 7	Parts Allotment 1, Awanui Parish; coloured sepia, edged sepia on plan. ←
X 5 2 20.5	
Proc. 13615 — X 4 1 32.5	Part Allotment N.W. 2, Awanui Parish; coloured sepia, edged sepia on plan. ←
X 17 2 5	Part Allotments S.W. 2 and N.E. 3, Awanui Parish; coloured blue on plan. ←
Proc. 13633 — 58 3 33	Part Allotment 4, Awanui Parish; coloured yellow on plan.
24 1 22	Part Allotment 5, Awanui Parish; coloured yellow on plan.
2 0 39.9	Part Allotment 7, Awanui Parish; coloured sepia on plan.

DP 21370

DP 21370

As the same are more particularly delineated on the plan marked P.W.D. 137936 (S.O. 37057) deposited in the office of the Minister of Works at Wellington, and thereon coloured as above-mentioned.

Dated at Wellington this 19th day of November 1970.

PERCY B. ALLEN, Minister of Works.

(P.W. 23/670/1; Ak. D.O. 50/30/3/0)

A. R. SHEARER, Government Printer, Wellington, New Zealand.

For copy of S.O. plan 37057 see Proc. 13615

14-0-31
123-3-24
58-3-33
24-1-22
2-0-39.9
233-2-29.9

2-0-33
34-3-5
11-1-7
5-2-20.5
4-1-32.5
17-2-5
75-3-23

542631

37

PARTICULARS ENTERED IN THE REGISTER-BOOK
VOL. FOLIO GN 13647
THE 1ST DAY OF April
AT 9.00 O'CLOCK.

DISTRICT LAND REGISTRAR NORTH AUCKLAND N.Z.

Assistant Land Registrar.
N AUCKLAND

PARTICULARS ENTERED IN THE REGISTER-BOOK.
VOL. FOLIO

THE DAY OF
AT O'CLOCK.

LAND REGISTRAR.

Fcd on R1108 & Proc 13615
D.O.

1f

R: G.N.
Firm: M.O.W.
1 APR 1971
Time 9.00
Fee: $
Abstr: 9

A542631.

Extract from *N.Z. Gazette*, 26 Nov. 1970, No. 75, page 2189

Land Held for Defence Purposes Set Apart for an Aerodrome in Block II, Takahue Survey District, Mangonui County

PURSUANT to section 25 of the Public Works Act 1928, the Minister of Works hereby declares the land described in the Schedule hereto to be set apart for an aerodrome from and after the 30th day of November 1970.

SCHEDULE

NORTH AUCKLAND LAND DISTRICT

Proc. 13647

ALL that piece of closed road containing 12 acres 3 roods 30 perches situated in Block II, Takahue Survey District, North Auckland R.D., and adjoining or passing through Allotments 1, 4, 5, 6, 9, 10, and 13, Awanui Parish; as the same is more particularly delineated on the plan marked P.W.D. 137936 (S.O. 37057) deposited in the office of the Minister of Works at Wellington, and thereon coloured green.

R 1108

All Proclamation No. 13647, North Auckland Land Registry.

Dated at Wellington this 19th day of November 1970.

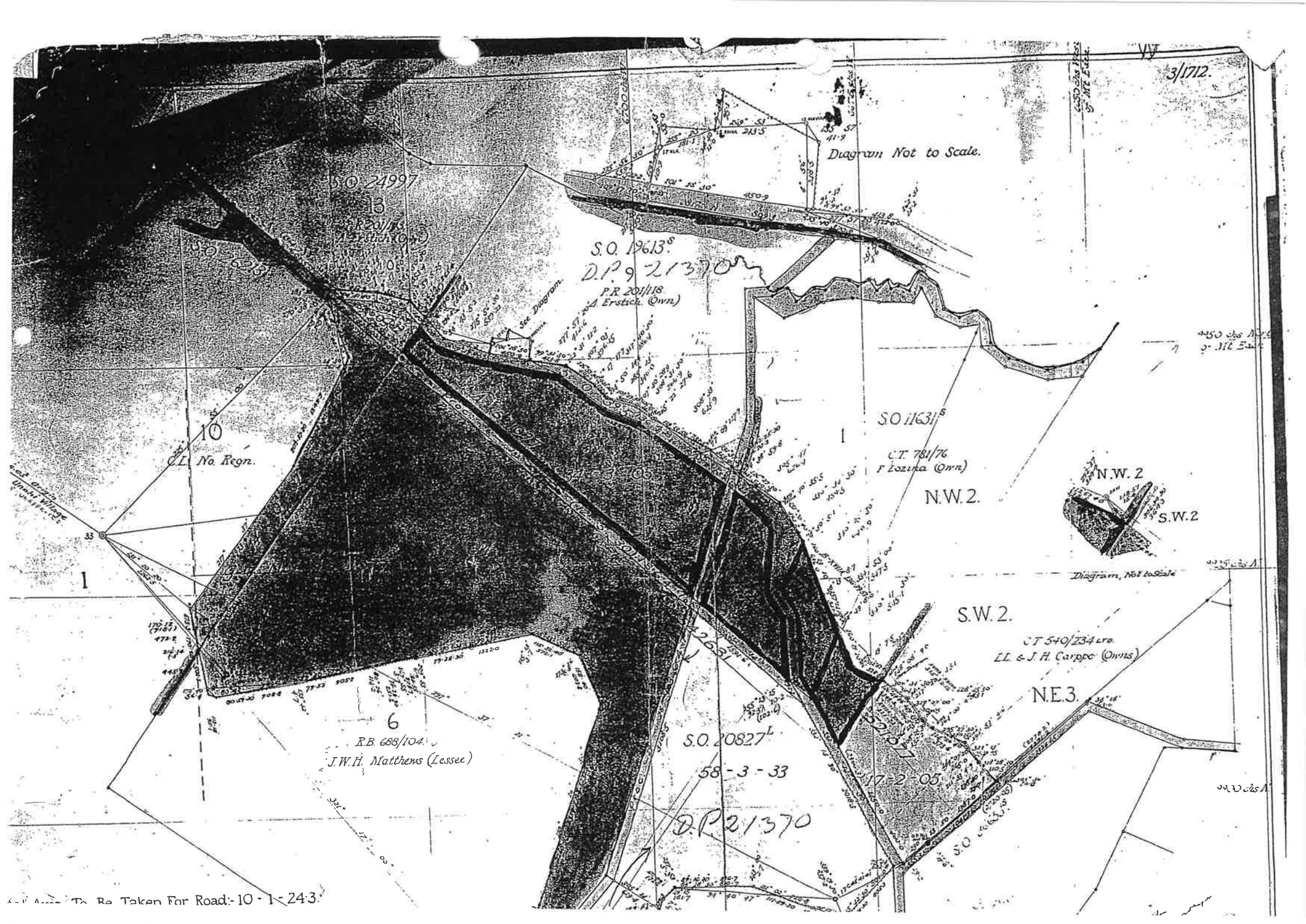
PERCY B. ALLEN, Minister of Works.

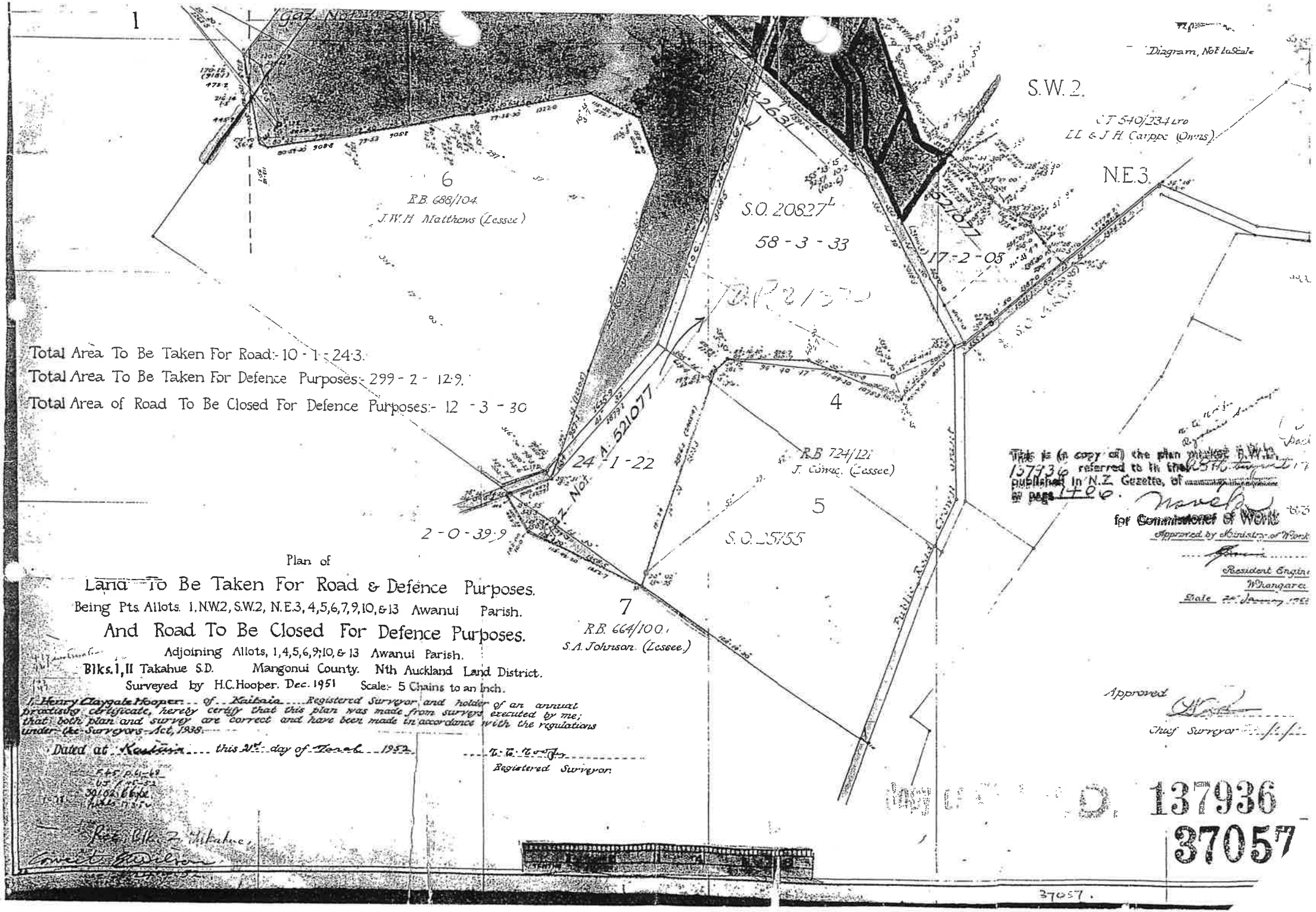
(P.W. 23/670/0; Ak. D.O. 50/3/3/0)

30

A. R. SHEARER, Government Printer, Wellington, New Zealand.

For copy of P. W. D. 137936 see Proc. 13615


3/1712.
Diagram Not to Scale.
S.O. 24997
13
R 20/13
Erstick Road
S.O. 19613
D.P. 21370
P.R. 201/18
A. Erstick (Own)
See Diagram
10
C.L. No. Regn.
S.O. 11631
C.T. 781/76
F. Lozina (Own)
N.W. 2.
S.W. 2.
Diagram, Not to Scale
S.W. 2.
C.T. 540/234 Lro.
L.L. & J.H. Carpto (Owns)
N.E. 3.
6
R.B. 688/104
J.W.H. Matthews (Lessee)
S.O. 20827
58 - 3 - 33
D.P. 21370
7 - 2 - 05
To Be Taken For Road:- 10 - 1 - 24.3.


Gaz. Notice 2210
Diagram, Not to Scale
S.W. 2.
CT 540/234 Lro
EL & J.H. Carppe (Owns)
N.E. 3.
6
R.B. 688/104
J.W.H. Matthews (Lessee)
S.O. 20827
58 - 3 - 33
17 - 2 - 05
4
R.B. 724/121
J. Coiner. (Lessee)
5
S.O. 25755
7
R.B. 664/100
S.A. Johnson. (Lessee.)
24 - 1 - 22
2 - 0 - 39·9
Total Area To Be Taken For Road:- 10 - 1 - 24·3.
Total Area To Be Taken For Defence Purposes:- 299 - 2 - 12·9.
Total Area of Road To Be Closed For Defence Purposes:- 12 - 3 - 30
Plan of
Land To Be Taken For Road & Defence Purposes.
Being Pts Allots. 1, N.W.2, S.W.2, N.E.3, 4, 5, 6, 7, 9, 10, & 13 Awanui Parish.
And Road To Be Closed For Defence Purposes.
Adjoining Allots, 1, 4, 5, 6, 9, 10, & 13 Awanui Parish.
Blks. I, II Takahue S.D. Mangonui County. Nth Auckland Land District.
Surveyed by H.C. Hooper. Dec. 1951 Scale:- 5 Chains to an Inch.
I, Henry Claygate Hooper of Kaitaia Registered Surveyor and holder of an annual practising certificate, hereby certify that this plan was made from surveys executed by me; that both plan and survey are correct and have been made in accordance with the regulations under the Surveyors Act, 1938.
Dated at Kaitaia this 21st day of March 1952.
H. C. Hooper
Registered Surveyor.
This is (a copy of) the plan marked S.O. 20827 referred to in the Gazette of 17 published in N.Z. Gazette, of 1952 at page 406.
for Commissioner of Works
Approved by Minister of Works
Resident Engineer
Whangarei
Date 22nd January 1953
Approved
Chief Surveyor
137936
37057
37057.

4: DEFERRED SELECTION PROPERTIES

Name/ Address	Legal Description	Valuation process	Land holding agency	Leaseback?
	0.1073 hectares, approximately, being Closed Road SO 52852. All Gazette notice 579123.1. Subject to survey. 0.0483 hectares, approximately, being Stopped Road SO 45142. All Gazette notice D472616.1. Subject to survey. **Joint DSP with Te Rarawa and a Ngāti Kahu governance entity under a deed of settlement.**			
42 Church Road, Kaitaia	0.1702 hectares, more or less, being Lots 2 and 3 DP 55296. All Computer Freehold Register NA112A/730. **Joint DSP with Te Rarawa and a Ngāti Kahu governance entity under a deed of settlement.**	Separate	OTS	No
Kaitaia Courthouse	0.3792 hectares, more or less, being Lot 1 DP 177374. All Computer Freehold Register NA109B/539. **Joint DSP with Te Rarawa and a Ngāti Kahu governance entity under a deed of settlement.**	Separate	Ministry of Justice	Yes
Kaitaia Aerodrome refer to clause 9.16	*Note this legal description excludes the Kura site.* 78.44 hectares, approximately, being Part Allotments 1, 4, 5, 6, 7, 9, 10 and 13 Awanui Parish. Part Gazette Notice A521077. Subject to survey. 4.84 hectares, approximately, being Part Closed Road adjoining Part Allotments 1, 4, 5, 6, 8, 9, 10 and 13 Awanui Parish. Part Gazette Notice A542631. Subject to survey. **Joint DSP with a Ngāti Kahu governance entity under a deed of settlement.**	Separate	LINZ ID 16560	No

EXHIBIT NOTE

This is the annexure marked I referred to in the affidavit of Margaret Shirley Mutu Affirmed / [redacted] at Auckland this 1st day of September 2016 before me:

A Solicitor of the High Court of New Zealand

Vicki Nicole Morrison-Shaw
Solicitor
Auckland

4: DEFERRED SELECTION PROPERTIES

Name/ Address	Legal Description	Valuation process	Land holding agency	Leaseback?
Te Kura Kaupapa Maori o Te Rangi Aniwaniwa refer to clause 9.16	2.1950 hectares, approximately, being Part Allotments 1 and 4 Awanui Parish. Part Gazette Notice A521077. Subject to survey. 0.40 hectares, approximately, being Part Closed Road adjoining Part Allotments 1 and 4 Awanui Parish. Balance Gazette Notice A542631. Subject to survey. **Joint DSP with a Ngāti Kahu governance entity under a deed of settlement.**	Separate	LINZ ID 16630	No

TABLE 2 - DSP SCHOOL HOUSE SITE

Name / Address	Description All North Auckland Land District	Valuation process
Kaitaia College School House site	0.1300 hectares, approximately, being Part Allotment 71 Parish of Ahipara. Part Computer Freehold Register NA962/30, as shown bordered white on the Kaitaia College School House site diagram in the attachments. (Related school: the property described as Kaitaia College above)	Separate

entities in undivided shares as tenants in common on the settlement date in the shares specified and in accordance with the provisions of each joint licensor governance entity's deed of settlement.

9.16 If, no later than 20 working days after the date of signing the third deed of settlement to settle the historical claims of one of the joint licensor governance entities, in the Crown's reasonable opinion it is not going to be possible for all the joint licensor governance entities to achieve simultaneous settlement dates under their respective settlement legislation, then:

9.16.1 no later than 20 working days after the date the Crown issues its reasonable opinion under clause 9.16, the parties will agree how the Peninsula Block will be held (and any documentation required);

9.16.2 the parties will enter into a deed of amendment, if necessary, and

9.16.3 the settlement legislation will give effect to the agreement as provided in clause 9.16.1 and any deed of amendment.

9.17 The parties agree that prior work on the alternative arrangements referred to in clause 9.16.1 will be undertaken so that agreement can be reached no later than the timeframes set out in clause 9.16.

DEFERRED SELECTION PROPERTIES

9.18 Te Rūnanga o NgāiTakoto trustees may, at any time during the deferred selection period, purchase the properties listed in table 1 of part 4 of the property redress schedule on the terms and conditions in parts 5 and 6 of the property redress schedule.

9.19 Each of the deferred selection properties with a "Yes" in the 'leaseback' column in table 1 in part 4 of the property redress schedule is to be leased back to the Crown immediately after its purchase by Te Rūnanga o NgāiTakoto trustees. As the leases will each be a registrable ground lease of the properties, Te Rūnanga o NgāiTakoto trustees will be purchasing only the bare land, the ownership of the improvements remaining unaffected by the purchase.

9.20 The inclusion of the Kaitaia Aerodrome and Te Kura Kaupapa Māori o Te Rangi Aniwaniwa sites as deferred selection properties is 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.

9.21 Clause 9.22 applies in respect of a DSP School House site if, before the settlement date, the board of trustees of the related school (the **board of trustees**) relinquishes the beneficial interest it has in the DSP School House site.

9.22 If this clause applies to a DSP School House site:

9.22.1 the Crown must, within 10 business days of this clause applying, give notice to Te Rūnanga o NgāiTakoto trustees that the beneficial interest in the DSP School House site has been relinquished by the board of trustees;

9.22.2 the deferred selection property that is the related school will include the DSP School House site; and

EXHIBIT NOTE

This is the annexure marked J referred to in the affidavit of Margaret Shirley Martin Affirmed / ~~Sworn~~ at Auckland this 1st day of September 2016 before me:

A Solicitor of the High Court of New Zealand

Vicki Nicole Morrison-Shaw
Solicitor
Auckland