

IN THE WAITANGI TRIBUNAL

WAI 2364
WAI 2366
WAI 2372

IN THE MATTER of The Treaty of Waitangi Act 1975

AND

IN THE MATTER of an Urgent Inquiry into the Te Aupōuri Deed of Settlement by **VENERABLE TIMOTI FLAVELL** on behalf of himself and Te Runanga-a-Iwi O Ngāti Kahu ("Ngāti Kahu")

AND

IN THE MATTER of an Urgent Inquiry into the Te Rarawa Deed of Settlement by **VENERABLE TIMOTI FLAVELL** on behalf of himself and Te Runanga-a-Iwi O Ngāti Kahu ("Ngāti Kahu")

AND

IN THE MATTER of an Urgent Inquiry into the Ngāi Takoto Deed of Settlement by **VENERABLE TIMOTI FLAVELL** on behalf of himself and Te Runanga-a-Iwi O Ngāti Kahu ("Ngāti Kahu")

**BRIEF OF EVIDENCE OF YVONNE PURIRI
DATED THIS 2nd DAY OF JULY 2012**

EXHIBIT NOTE

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

[Signature]
A Solicitor of the High Court of New Zealand

WACKROW WILLIAMS & DAVIES LIMITED

Barristers & Solicitors
Level 14, 48 Emily Place
PO Box 461
Shortland Street
Auckland 1140
DX CP20503
Te Kani Williams/Dominic Wilson/Bernadette Arapere
Ph. (09) 379 5026, Fax (09) 377 6553
tekani@wwandd.co.nz/

Vicki Nicole Morrison-Shaw
Solicitor
Auckland

MAY IT PLEASE THE TRIBUNAL:

Introduction

1. My name is Yvonne Puriri. I was born on 7th February 1947 at Kaitāia hospital.
2. My mother was Eva Housham and her mother was Kataraina Matenga of Kareponia who married Ante Erstich. I am their granddaughter. My father was Nobbie Housham.
3. I am providing this Brief of Evidence in support of the Ngāti Kahu application for an urgent inquiry into the Ngāi Takoto, Te Rarawa and Te Aupouri Deeds of Settlement. This evidence relates to our whānau lands at Rangīāniwaniwa, Kaitaia Airport and Waihangagange ("the land"). As I understand it the Crown intends to return some of those lands to Ngāi Takoto. That is why I am providing this Brief of Evidence – because my whānau are the ones that the land was taken from.
4. My evidence is given on behalf of my whānau and is a collation of kōrero that came about as a result of a wānanga between myself, my Aunty Kataraina Evans and Uncle George Erstich. My Aunty Kataraina Evans is 81 years old and Uncle George Erstich is aged 84 years old. They are my mother Eva's sister and brother.

Te Rangīāniwaniwa, Kaitāia Airport and Waihangehange

5. My first memories of my whānau are around the time that only three of my grandmother's siblings were still alive – Hori or George, Kahurangi and Kawana. The rest had passed and were all gone and most had been unmarried and left no issue. The only ones who had had children were my grandmother Kataraina, as well as her brothers Hori and Kawana, and her sister Kahurangi. It is through my grandmother Kataraina Matenga that we are connected to and are entitled to the land¹.
6. I have had a connection with the land all my life. My siblings and I lived with our parents in Awanui until after the Korean War. My

¹ In this brief, where I refer to the "land" I am talking about the Matenga Whānau land generally at Te Rangīāniwaniwa, the Kaitaia Airport and Waihangehange

grandmother Kataraina had died by then so we spent a lot of time (at least 16 years) up at the Quarry Rd homestead where our grandfather Ante Erstich still lived. We all called it "The House" and still do till this day. We had our grandfather for many years and our fond memories of him are vivid because we were in our teens by the time he died.

The history and connection of our whānau to the land

7. Apart from my own knowledge, what I learned about the land and our history was from my mother, our uncle George Matenga (our grandmother's brother) and my grandfather Ante Erstich. They instilled in us the fact that we are Patu Kōraha of Ngāti Kahu and our marae is Kareponia.
8. Our Uncle George Matenga told us all about the land from Kareponia, up to the church, through Mangatakuere. He passed on to us who the families were who were there, where people were born, and where they lived. He could recall all the information like that all the way up the valley to where the aerodrome is now. He said the people mainly lived round Kareponia and Mahimaru and it was all Matenga land as well. Hoani Matenga and his uncle lived there. He said that up where the aerodrome is now, no-one lived there because it was pretty barren and rugged.
9. My mum always said the land up at Te Rangiāniwaniwa wasn't good for gardening because it was all clay pan and sandstone. We did however have gardens there. Up until the 1960s our gardens were planted across acres of land - they were huge. I recall that when we were there the Pivacs were also living up there [**Refer to "A" on Annexure 1**], however I am not sure how they came to be there and how long they had been there. They left a number of years ago.
10. I know that Hori Matenga still owns land along the Kareponia straight and at the top of the hill near the cemetery. The descendants of Herepete Matenga have managed to hold on to their land down there.
11. My mum always talked about an area that was set aside for a school, but it was never built and is not on any map, so it must have just been spoken about.

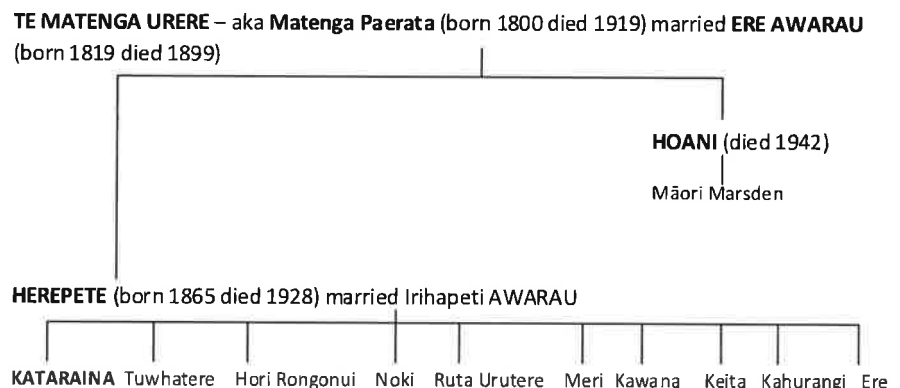
12. When my mum talked about the land up at Te Rangiāniwaniwa being taken she wasn't angry. That wasn't their thinking at the time in the early 1940s. A war was going on at that time. The government needed the land to build for the war effort. Lands were taken under the Public Works Act and our people had no opportunity or chance to object to the land being taken.
13. According to George Matenga and my mother, there were no other families at Te Rangiāniwaniwa except for a period of about 6 years when the gum diggers arrived to dig gum. Other than this our whānau lived more or less in total isolation as the only whānau on the land. They said that there was only a bullock track from Mangatakuere up the valley through to Ōturu. There was no Quarry Road there for years.
14. My mum can't remember anyone else living there, but she said that an old kuia came to live there for a very short time – she was a Walker. My mother noted that the kuia was old when she arrived on the land and she had gone before the War started.
15. Neither my mum nor her uncle George Matenga spoke of any other groups, iwi or hapū on the land. They always said it was Matenga land and we didn't question that because someone older must have told them that. To them, and to us, they know of no others who were on the land. The ownership of that land wasn't something that has just been recognised or raised recently. It is something that is confirmed in the living memory of people today and something that extends to time before this. Back then, right through to now, the land has always been Patu Kōraha.
16. Regarding the gum that was found at Te Rangiāniwaniwa during the war, according to my mum and her uncle George Matenga, it was apparently a special kind of gum and it was their mother, Kataraina, who rallied around the various other people to come and get the gum. They told us all the names of the families that came, but I can only remember the Karaka family.

History of the land: Kōrero from wānanga

17. I have held wānanga with my Aunty Kataraina (more commonly known as Katie) Evans and my Uncle George Erstich. The wānanga confirmed and re-enforced our knowledge and histories of the land going back some time. As I said earlier, Uncle George is 84 years of age and Aunty Katie is 81 and both have spent the majority of their lives living and working on the land.

Kataraina Evans

18. My Aunty Katie was born on the 1st of January 1931 at Waihangehange in a paddock along the maunga which goes up Waihangehange below the farm. She is a sister to my mother Eva.
19. Aunty Katie's father was Tony Ante Erstich, a Dalmatian from Croatia, and her mother was Kataraina Matenga from Kareponia. Kataraina Matenga's father was Herepete Matenga from Kareponia, and her mother was Irihapeti Awarau from Waimanoni. Kataraina's siblings were, Tuwhatere (m), Hori Rongonui (m), Noki (f), Ruta Urutere (f), Meri (f), Kawana (m), Keita (f), Kahurangi (f) and Ere (f).
20. Aunty Katie has detailed her whakapapa as follows:



21. Aunty Katie's eldest brother was Walter Erstich. Then in order from Walter there is my mum Eva (who married my father Nobby Housham), Ivan, George, Tony, and then Aunty Katie. The siblings also had a step-brother, Paora, who was a Karena.

22. Aunty Katie told me that her oldest sister (my mum), Eva, was born at Te Rangiāniwaniwa. There is a road going down from the college there now, and Aunty Katie remembers that her mum and dad had a place in that area where her dad worked on the land.
23. Aunty Katie recalls Ante and Kataraina moving around the land a lot and Ante building shacks wherever they went. When Ante had finished breaking in one part of the land, he would move the family to the next part and build another shack. The family had a couple of mud floor shacks with old sacks for doors. Aunty Katie can recall running in and out under the sacks. She also recalls that her father (Ante) said the building of a number of shacks made better sense than walking miles just to get to where he was working. Our shacks were dotted all over the land.
24. My mother Eva was born in Te Rangiāniwaniwa and Aunty Katie was born at Waihangehange below the house where the Pivacs lived for a while. This shows the way in Ante and Kataraina were moving their family through the land as it was worked. [Refer to "A" on Annexure 1]. Aunty Katie recalls that the family had a little two bed room tin shack at Waihangehange before they moved to the house at the top of the hill where Uncle George lives now.
25. It is Aunty Katie's firm recollection that all of that land was Matenga land - from Mahimaru bridge right up the valley to Te Rangiāniwaniwa. In her living memory and from her understanding, before she was born, it included the land where the airport/aerodrome and the College are now and where the quarry is now - that is all still Waihangehange [Refer to "B" on Annexure 1]. Then it went down the hill towards Ōturu. There's a valley right through there and on the eastern side it goes down into Kareponia, then up to the next Matenga block. Aunty Katie has never known any different. She knows that the Matenga land was extensive and encompassed many acres, but would not know exactly how many and wouldn't like to guess.
26. Aunty Katie knows that Ante and Kataraina were on this land when she was born and she was told that they had been there before my mother Eva was born in 1925. Ante had told Aunty Katie of how he

had worked to break in the farm on the land and before he went there, there was no-one else living there.

27. Aunty Katie stated in her kōrero that our family were the only family on the land during her childhood. As far as she knows there was no-one else there apart from Poro Paerata (also known as Poro Matenga). He is the only other person outside of her immediate family who she can remember. She recalls that Poro Paerata had one hand and lived up Gudonovich Road. The land where Peter Matthews lives now is all Matenga land according to her. Other than that, Aunty Katie recalls that there was only the odd squatter who would come and go. One of those squatter families was the Carppes.
28. Aunty Katie recalls that the only other people they saw on the land came during the gum digging times and they camped all around the family's place. According to Aunty Katie these people came at the invitation of her father Ante. The names of the families who came to dig up the gum that she can remember are: Fisher, Mete, Kaaka, Subritzky, Harrison, Shepherds from Kēnana, Marsden, Karaka, Meno and Mary, and Ru Manawa. They camped around Ante and Kataraina's place but they did not move around as much as Ante used to move around.
29. Aunty Katie was clear in her kōrero to me that the land from Kareponia and Mahimaru right up to Te Rangiāniwaniwa and Waihangehange has always been Matenga land and, as far as she knows it was always Matenga land. When her mother Kataraina's brother George was still alive, that is what he always said. He lived up at Kareponia on the hill past where Peter Matthews place is now, on the right hand side. To the best of her knowledge that was all Matenga land as well.
30. Aunty Katie recalls Ante, Kataraina and their family roaming all the lands she has described. She recalls the land being covered in ti-tree and gorse and no-one ever told them not to go anywhere. She recalls one occasion where her two oldest brothers (Walter and Ivan) found some caves and brought something out of them home. Kataraina

growled them and told them to take them back. Later her brother Ivan told her they were guns.

31. Aunty Katie has a vivid recollection of a number of freshwater springs on the land. According to her the water was always running and her mother Kataraina used to have kanga kopuwae every year. Aunty Katie's recalls that *"It was lovely. Mahinga kai tino nui, kumara, everything. Beautiful. I have fond memories of gardening from our gardens on the land"*.
32. Our family still affiliate to Kareponia marae. Aunty Katie recalls that the marae was originally on the other side of where Bonzo Matthews land is now [Refer to "C" ON Annexure 1] on land that actually belonged to the Karaka family. Aunty Katie stated that it was the Karaka family who gave the land for Kareponia marae, and that became the marae for Patu Kōraha hapū of Ngāti Kahu.
33. Aunty Katie tells me that Mahimaru marae was there before Kareponia on land that was owned by Hoani Matenga, the father of Māori Marsden. Hoani was a brother to her grandfather Herepete. Hoani owned land down that valley along the Awanui river, and they were milking there. She recalls staying there as a child. She also has vivid memories of "Granny Hoani" living in an old tin house with a mud floor, the same as them, until she got a new house.
34. During our wānanga, Aunty Katie was clear to point out that we are all Patu Kōraha – *"Pūheke te maunga, Paerata te tūpuna, Patu Kōraha is our hapū, and Ngāti Kahu is our iwi. Some of our ancestors took the name Matenga, but really our name is Paerata. We are all Patu Kōraha of Ngāti Kahu"*. As far as she knows we are not connected to any other hapū or iwi, unless you count our connection up at Te Kao. But to her that is a totally different matter. Aunty Katie's closing words were *"We are Ngāti Kahu and that is our iwi"*.

George Erstich

35. My Uncle George was born in 1928 in a shack just below where he now lives at Te Rangiāniwaniwa [Refer to "A" on Annexure 1]. Uncle George lived at Te Rangiāniwaniwa until he was 17 years old,

then went on serve in the forces for ten years. I understand from Uncle George that in 1954 he came back to the land because his father (Ante) wanted him to take over the farm. Uncle George took over the farm in 1954 and has been there ever since. Uncle George's father actually wanted him to come home in 1951. However, Uncle George recalls that they had to wait until 1954 when his term of service in the Air Force expired. His father asked the government to release him early, but his request was declined. [Refer to Annexure 2]

36. As I understand from Uncle George, he has always taken care of the land including the old Māori cemetery at Mangatakuere. It is getting neglected now, but up until the last couple of years he has always fenced it and kept it clear of gorse. It is located about two miles from his home. As a family, we know the great significance the land has for Ngāti Kahu.
37. To the best of Uncle George's knowledge, the farm is part of the land block that belonged to the Matenga family. His knowledge of the block is that it stretched from Mahimaru marae right up to Oinu road, on up through the valley, and from there it included an area that stretched right across to Kaingaroa Road. He roughly estimates that it covered between 800 to 1000 acres. He is clear that it included the land where the airport is now.
38. Throughout his life he has walked and worked practically every inch of the Matenga block. He notes that on the side of the hills there are freshwater springs all along it and in his opinion, the land "*is a strange type of land*"; his reason for this being that the freshwater is almost to the top of the hill. Uncle George recalls that the whole area used to have gardens - about 50 acres of gardens belonging to the family. He recalls that he was told by his mother – Kataraina - that the gardens had been there from the early 1920s - before he was born. He also remembers seeing and working in them from the 1930s onwards until about 1945.
39. Uncle George recounts "*Our family roamed all over the block and my older brothers talked about finding caves, but I never saw them*

myself. Within our family's land, there's only one area at Mangatakuere that I've never been in, so maybe they are there. We were told not to go there and I listened".

Matenga land taken for the Kaitāia Airport

40. My mother described the land that was taken from her family by the government during the war and it covered where the airport, school and quarry now are. That was the land she described as having been taken.
41. She also described the original Matenga block as starting from the Mahimaru Bridge on up to the church at Kareponia Hill then right up through the valley through Mangatakuere and on to Te Rangiāniwaniwa.
42. I note that the people all married each other and that there are whakapapa connections between the Popata, Nopera, Karaka and other families. I am not saying that my mother said they are not also owners. I am saying that my mother said the Matenga family owned the land at Te Rangiāniwaniwa and that they were Patu Kōraha of Ngāti Kahu. This is something that was always made clear to me and is supported by the recollection of my whānau who have, in living memory and before, been on this land.
43. My Uncle George states that as long as he has known (84 years) and before, there was no-one living on the land where the airport is now except for the Erstich family (Ante, Kataraina and family). According to him, this was because the majority of the land was just sandstone, and it was hard to work it. The only people who have been here, and who have worked it were his father (Ante) and his family. For Uncle George, in addition to working the land, Ante also started milking about 1939 when he built the original shed on the place, and our family has been milking on it ever since.
44. 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. He recalls that the foreman in charge of building the Kaitāia airport just came along and told his

father (Ante) that the family shed had to be shifted [Refer to "D" on Annexure 1]. Uncle George is clear that the family was given no option and his father, wanting to stay on our family land had no choice but to show them the best place to shift it. After Ante did this, George recalls that they pulled the shed down from where it was and bulldozed a track into where it was to go, and they had the shed built in three weeks. Aunty Katie's recollection is the same as that of Uncle George, where she notes that around the time of the war, "*The Crown just used the Public Works Act to take all the land it wanted*". She also recalls her father having no choice in the moving of the family's shed and that it was moved to about half a mile away from where it is now [Refer to "E" Annexure 1].

45. Uncle George noted further that halfway through building the airport, the foreman went to his father (Ante) and said they might have to shift the family house too because they had to extend the runway another 500 metres and the family house was right in the flight path. They asked him where he wanted to shift it and knowing he had no choice he said about another 200 metres north to be clear of the runway. But a month later they found the war in the Pacific was moving away so it wasn't necessary to extend the runway and we didn't have to shift our house. This was about 1943.
46. Aunty Katie recalls that her dad (Ante) was not happy about losing the land but he felt he had no option. He didn't get angry or fight against it. He wasn't like that. He accepted things and trusted people and he thought the land would come back eventually. For Aunty Katie, it needs to be remembered that her father was a "Dallie". He was all about hard work, honesty and not complaining about things – "*just get down and do things*". He was working that land and it was hard times in those days. Aunty Katie states that her father had contributed already to the war effort through his sons joining the forces. The land was our land and her father was given no option when it was taken. Like Uncle George, Aunty Katie notes that to this day none of the land taken has been given back.
47. Uncle George recalls that in 1949, his father got paid some money by the government for the land they took off the family as well as for

some damage that had been caused to our land by Lands and Survey. It was for 239 pounds and 16 shillings. 189 pounds and 16 shilling of it was paid by the Department of Works. 50 pounds was paid by the Lands and Survey. [Refer to Annexure 3]. Uncle George also recalls that his mother also said that other families lost lands through rates, and others sold land. For example Hoani Matenga sold his land and so did Lucy. But the descendants of Herepete Matenga hung on to what they had except for this piece that was taken at Te Rangiāniwaniwa by the government.

48. To Uncle George's knowledge the Matenga family have never received any land back. However he notes that his father was permitted to use some of it by the Lands and Survey Department. [Refer to Annexure 4].
49. In 2000 when the Ngāti Kahu Yellow Book was put together we noted the legal descriptions of our land at Te Rangiāniwaniwa and Mangatakuere were included as land Ngāti Kahu sought to have returned to us as Patu Koraha by the Crown.² Out of that land there were 8 allotments under the Awanui parish and my uncle George Erstich still has control over three of those allotments.

What needs to be done from here?

50. To the best of Uncle George's knowledge, the Matenga family have not received any land back. He recalls that about 15 years ago there was surplus land which the family had owned before and the Far North District Council gave the family the right to lease it. They wrote to him and said, "*Put a price per acre on it to lease*". Uncle George's response was that it was our land originally so why should we pay to lease it back. The Council went away and 3 days later Uncle George received a letter saying that he could lease it for nothing as long as he fenced it. According to Uncle George "*So that's what I did and I've been using it ever since*".

² Te Rūnanga a Iwi o Ngāti Kahu, "Finalising the Settlement Package for the Ngati Kahu land claims within the Muriwhenua Land Claims: Information Package 5, September 2000" (the "Yellow Book"), pp 32-33 and 58.

51. Historically the Matenga family have never demanded the land back. But if it is going to be returned, it should be returned to the ones who it was taken off and who are still there, just across the road from it – our Matenga family.
52. My mother always said she hoped her brother George would get something for it. My Aunty Katie shares the same opinion. For her that land where the aerodrome is now, is and has always been Matenga land. It belongs to us. For her, she knows that her brother George still lives on it and he's worked on it for years. As far as she is concerned it should come back to him.
53. For my Uncle George, he notes that today there is an airport (Kaitaia Airport), a college and a quarry that form the part of the Matenga land that was taken. To the best of his knowledge, the Matenga family have not benefited from any of that. He notes that there is nothing he can do about that, but if there was an opportunity for the land to be returned, he is clear that it should be returned to the Matenga family. He is happy for the airport to stay, as it is an asset to the whole area. Uncle George is unequivocal that he does not want to see the land returned to anyone else.

Yvonne Puriri

Date: 2 July 2012

ANNEXURE 1



MAP 1

ANNEXURE 2

P. A. NICHOLLS

— Solicitor —

TELEPHONE . 499
P.O. BOX . 111

Melba Street,

KAITAIA, N.Z.

12th November, 1951.

Mr. A. Erstich,
WAIHOPO.

Dear Sir:-

I enclose herewith copy of the reply from
the Minister of Defence forwarded to me by Mr. S.W.
Smith.

Yours faithfully,


Enc.
CAN:IS

OFFICE OF THE MINISTER OF DEFENCE

WELLINGTON C.1.

Dear Mr. Smith,

With reference to your representations concerning the release of 72841 AC1 Erstich, G., from the R.N.Z.A.F., I have to advise that this airman is at present serving on an engagement of five years which is not due to expire until the 2nd February, 1954.

AC1 Erstich is a trained armament mechanic, having completed a twelve months' trade training course in May, 1950. At the present time the Air Force, which is trying to build up its trained strength, is seriously short in many trades and is unable to permit personnel to be released before the expiration of their engagements, save in exceptional circumstances.

It is regretted, therefore, that Mr. Erstich's son cannot be released from his engagement at the present time.

Your communication from Mr. G.A. Nicholls which you forwarded to me is returned herewith.

Yours faithfully,

"T.L. Macdonald"

S.W.Smith, Esq., M.P.,
Parliamentary Under-Secretary,
House of Representatives,
WELLINGTON, C.1.

Enclosure.

Wai 2364, #A8(c)
Wai 2366, #A8(c)
Wai 2372, #A8(c)

ANNEXURE 3

OFFICIAL

[Lands F.-2.]



In your reply please

Series E.R.

Sub. No.

103

quote these numbers.



TELEGRAPHIC ADDRESS:
"NOR LANDS."

Department of Lands and Survey
District Office,

NORTH AUCKLAND,
G.P.O. Box 2206, AUCKLAND. C.1

6th May, 1949.

Mr. A. Erstich,
P. O. Box 8,
AWANUI.

Dear Sir,

Referring to your letter of the 17th February last in which you asked this Office to forward to you the sum of £239.16.0, being compensation payable by the Public Works Department on account of action taken in regard to your property during the formation period of the Awanui Aerodrome, at the time of receiving your letter the sum of £189.16.0 was being held by the Public Works Department and it was only recently that they have advised this Office that they have been in touch with you regarding this payment and have asked this Office whether the money is to be paid here or direct to yourself.

This Office has now advised the Public Works Department to pay the sum of £189.16.0 direct to you and I am arranging for a cheque for £50, being the compensation in respect to the damage by reason of silting of your drains, to be forwarded to you direct under separate cover by this Office.

The two sums mentioned make up the total of £239.16.0 which I presume is the amount of compensation referred to in your letter under reply.

Yours faithfully,

G. B. Seck
Commissioner of Crown Lands.

RECEIVED

Waitangi Tribunal

02 Jul 2012

Ministry of Justice
WELLINGTON

y.-39.]

NEW ZEALAND

NEW ZEALAND

Abstract received in Wellington

THE NEW ZEALAND GOVERNMENT,

TREASURY VOUCHER NO.

78614

Department of Works

Departmental No. 10323

Name of Claimant, Address of Claimant, or Name and Address of Agent

A. EASTICH, P.O. BOX 8, AWANUI.

Address of the Claimant must be conspicuously and legibly written on both original and duplicate, as the cheque for payment will be sent by post to the address given.

Note: If the goods are direct from the manufacturer, the invoice number and date must be stated here.

Table with columns: No. of Authority, Date of Service or Supply, Particulars, Invoice No., Amount (pounds, shillings, pence). Row 1: 10323, 1934, Particulars about land acquisition in Awanui, Amount 189 16 0.

Total one hundred and eighty-nine pounds and sixteen pence

Table with columns: Audit, Initials, Amount (189 16 0)

Signature of Claimant

Directions to charge

10323 (30/10)

I certify that, to the best of my knowledge and belief, the foregoing account is true and correct in every particular...

(Approval Stamp)

(Signature of Officer authorized to certify)



[P.W.—150c.

In replying

P.W.	50
30	3/0(L)

please quote these numbers.

PUBLIC WORKS DEPARTMENT,

AUCKLAND, C. I. N.Z. 24th February, 1949.

AWANUI AERODROME.

Dear Sir,

I have to acknowledge receipt of your letter of the 17th February, and in reply would advise that the sum of £189.16.0 referred to in earlier correspondence between yourself and this Department will be paid to you by the Department. The sum of £50 is to be paid to you by the Lands Department. It will therefore be necessary, before this Department can arrange payment of the £189.16.0 for you to obtain and forward to this Office the mortgagee's statements as requested or arrange for such statements to be submitted by the mortgagees. Such statements are required to provide a sufficient discharge for the purposes of the Public Works Act, 1928.

Will you please confirm that there are no other mortgages apart from Mortgage No. 228437 to His Majesty the King.

Yours faithfully,

R.H. Pakwood.
District Engineer.

Mr. A. Erstich,
P.O. Box 8,
AWANUI.

ANNEXURE 4

Wai 2364, #A8(d)
Wai 2366, #A8(d)
Wai 2372, #A8(d)

OFFICIAL

L.F. 2A

TELEGRAPHIC ADDRESS:
"LANDS"



In your reply

M/442

please quote

*Department of Lands and Survey,
District Office, P.O. Box 2206,
AUCKLAND. C.I.*

26th October, 1954.

Mr A. Erstich,
AWANUI.

Dear Sir,

SECS. 21, 74, 75 BLOCK II RANGAUNU S.D.
150a. 3r. 14p.

Enclosed is a completed copy of the licence to occupy
the above area.

Yours faithfully,

Basil King
Commissioner of Crown Lands.

Encl.

RECEIVED
Waitangi Tribunal
02 Jul 2012
Ministry of Justice WELLINGTON

DEPARTMENT OF LANDS AND SURVEY

LICENCE TO OCCUPY

WHEREAS the Commissioner of Crown Lands acting on behalf of Her Majesty the Queen (hereinafter referred to as the "Licensor") has under the provisions of **Section 68 Land Act 1948**

authorized a licence to be issued to **Ante ERSTICH**

(hereinafter referred to as the "Licensee") over all that area containing **150 acres**

3 roads 14 perches

more or less and being

Sections 21, 74 and 75 Block 11 Rangunu B.D.

in the Land District of **North Auckland**

NOW THEREFORE the Licensor doth hereby licence and authorize the Licensee to occupy the land described herein for a term of **5 years**

commencing on the first day of **July** 19**54** together with the period between the date of this Licence and the aforesaid first day of **July** 19**54**.

SUBJECT TO the payment of a **yearly** rental of **£5.0.0** payable in advance on the **1st day of July** in each and every year,

AND SUBJECT ALSO to the following conditions, viz :

- (1) That the Licensee will at all times pay punctually the rent as hereinbefore provided.
- (2) That the Licensee will not assign, sublet, mortgage, charge, grant any lien, or otherwise dispose or part with the possession of the whole or any part of the said land without the prior consent in writing of the Licensor.
- (3) That the Licensee will use and manage the said land in a good and husbandlike manner and not impoverish or waste the soil thereof.
- (4) That the Licensee will keep the said land free from gorse, broom, noxious weeds, rabbits, and other vermin.
- (5) That the Licensee will not break up or crop any part of the said land, nor cut down any trees or bush, without the prior consent of the Licensor.
- (6) That the Licensee will not erect any buildings on the said land without the prior consent of the Licensor.
- (7) That the Licensee will pay all rates and other charges which may be lawfully imposed on him as occupier of the said land.
- (8) That the Licensee will keep all buildings, fences, gates, drains, and other improvements now or hereafter upon the said land in good order condition and repair.

L. & S.—B. 17]

(2) Upon the expiration or sooner determination of this Licence either as to the whole or any part of the said land the Licensee shall not be entitled to compensation for any improvements effected by him but he may within such time as the Licensor shall determine remove all buildings, enclosures, fencing, or other improvements effected or purchased by him and should this Licence be determined as to part of the said land then the Licensor shall make such adjustment to the rent payable hereunder as he shall in his discretion deem fit and proper.

AND it is hereby declared that this Licence is intended to take effect as a Licence only under section 68 Land Act 1948 and the provisions of that Act applicable to such licences shall apply to these presents.

Dated the 17th day of June 19 54

Signed by the ^{and} Commissioner of Crown Lands for the Land District of North Auckland in the presence of:

C. K. Deville
Commissioner of Crown Lands.

Witness: Koraha he

Occupation: Block Lands & Survey Dept

Address: Box 2206, Onehunga

Ante Ostich

Signed by the abovenamed Licensee in the presence of:

Licensee.

Witness: P. M. Galante

Occupation: Retired

Address: Manurewa

TE RŪNANGA Ā IWI
O NGĀTI KAHU

ADDENDUM REPORT

FOR

An application for binding recommendations pursuant to section 8A and 8HB of the
Treaty of Waitangi Act 1975

RECEIVED Waitangi Tribunal
29 Aug 2012
Ministry of Justice WELLINGTON

PETER MCBURNEY

AUCKLAND
AUGUST 2012

A REPORT COMMISSIONED BY

TE RŪNANGA Ā IWI O NGĀTI KAHU

EXHIBIT NOTE

This is the annexure marked *G* referred to in the
affidavit of *Margaret Shirley Muter*
Affirmed /
~~sworn~~ at Auckland this *21st* day of *September* 20 *16*
before me:


A Solicitor of the High Court of New Zealand

Vicki Nicole Morrison-Shaw
Solicitor
Auckland

2 Kaitāia Airport

2.1 Land takings and the construction of the aerodrome

27. Kaitāia Airport is located on the western side of the Ngāti Kahu rohe, within the current remedies area. This chapter briefly reviews the circumstances by which the land occupied by the Airport was alienated from Māori ownership; it then examines the circumstances by which the land was taken for an airport/aerodrome.
28. The land occupied by Kaitāia Airport was originally part of the Ōhinu block, ostensibly ‘purchased’ by the Crown in 1859. According to the Tribunal, the Crown’s acquisition of Ōhinu was finalised, along with those affecting the Ahipara block on the coast and the Kaiawe block south of Kaitāia, immediately following Commissioner Bell’s awards, suggesting they may have been arranged during his inquiries.¹⁷ 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 £100.¹⁸ The area was not recorded in the deed; boundaries were given in relation to those of earlier awards. Upon later survey the block was found to contain 2,703 acres. District Commissioner Kemp signed for the Crown, while “Hoepa Poutama, Rapata, Popata and Hare Matenga” were the Māori signatories.
29. Neighbouring land to the south of the Ōhinu block occupied by the Ōturu Māori Development Scheme was affected during the construction phase of the aerodrome, resulting in permanent alterations being made to the landscape. These are discussed further, below.
30. In 1942, the Public Works Department (PWD) investigated the possibility of taking land for a military aerodrome at Awanui near Kaitāia (the site currently occupied by Kaitāia Airport).¹⁹ Since the mid-1930s, settler groups and town boards in the north

¹⁷ Waitangi Tribunal, *Muriwhemua Land Report*, 1997, p. 262. At page 264, the Tribunal states: “The extent to which Maori saw these transactions as sales to the same extent as the Government did ... remains doubtful, for again there was not the reality of a sale on the ground.” Following the Tribunal, Ngāti Kahu do not accept the Crown’s view of these transactions as sales, referring to them instead as Crown seizures of Ngāti Kahu land.

¹⁸ “Deed Receipts No. 2, Ohinu Block, Mangonui District,” Turton, H. H., *Maori Deeds*, p. 715.

¹⁹ Notes re Crown lessees on Parish of Awanui subdivisions, May 1942. BBAD 1054 2382a 50/30/3/0, ANZ-A.

had been lobbying the Government to build aerodromes in their districts. The Kerikeri Aerodrome was constructed and ready for operations by 1939, with land at Ngāpuhi south of Kaikohe also earmarked for an aerodrome. With the advent of the war, the Kerikeri and Kaikohe Aerodrome sites were appropriated by the Defence Department, along with other sites in the north, including Kaitāia/Awanui.

31. By the 1940s, much of the land around Awanui was in Crown ownership and leased to Pākehā farmers, while some sections on the northern side of the land in question were privately owned. The affected farmers, whether leaseholders or owners, sought compensation for the land they stood to lose and were not shy about holding out for the best deal they could get. In September 1943, the District Engineer at the Public Works Department reported on efforts to obtain an agreement with E. R. Matthews over an old disused quarry located on his land for use in the construction of the aerodrome. The Department offered Matthews £75 for access to the quarry, but this was rejected. Matthews was told the Public Works Department could invoke its compulsory powers, which evidently settled the matter. The Crown leaseholders also pressed the Department for rent reductions on account of the takings.²⁰
32. The aerodrome construction also affected part of the Ōturu Development Scheme.²¹ In December 1943, the under-secretary to the Native Department wrote to the engineer-in-chief of the Public Works Department regarding 15 acres of the development scheme that was required during the construction phase of the aerodrome as a site for a camp for construction workers. The affected land was described as “Sect. S. E. 3. Block II Takahue S.D. of the Oturu Development Scheme Block”. The camp site is illustrated in maps 7 & 8 of the map book accompanying this report.
33. No formal notice was given before the Public Works Department entered and occupied the development scheme land, erecting camp huts, constructing access roads, and installing a large water supply. Without notice, it was not possible for Māori rights-holders to give their informed consent. Furthermore, a large quantity of soil, initially estimated at 12,500 cubic yards (later described as 20,000 cubic yards), was removed from Ōturu 2A block for use on the aerodrome site. No permission was obtained for

²⁰ Comm. Crown Lands to Land Purchase Officer, PWD, 10 September 1943. BBAD 1054 2382a 50/30/3/0, ANZ-A.

²¹ In some reports and plans, the Development Scheme is referred to as the ‘Mangonui Development Scheme’. However, the name used most frequently in the file correspondence is ‘Ōturu Development Scheme’.

this taking. The Native Department considered that compensation should be sought from the PWD.²²

34. In January 1944, the question of damage to the Development Scheme lands and appropriate compensation was referred to the district engineer, who furnished a report to the permanent head of the PWD in April of that year. He said that plant engineer Jackson had been advised to consult with local supervisors of the Native Department, but no record of any such consultation could be found. The district engineer stated that as the land was urgently needed for defence purposes, 'Notice' was not required. In terms of the soil taking from Ōturu No. 2A, this had been arranged between overseer Brown of the PWD under Jackson's direction and local supervisors of the Native Department. It was:

...agreed between the officers that on completion of the borrow the area affected would be smoothed over and grassed. Up till the middle of last October it was anticipated that more spoil would be required, but as this is not now necessary the smoothing over and grassing will be carried out as an early Autumn job. Before entry the area worked over to gain clay spoil was almost entirely covered with heavy manuka, there being some small patches of scrub and rough grass.²³

35. The district engineer informed Wellington that, although no formal notice was served on the Native Department, and while the matter should be referred to the land purchase officer, "there can be no question of paying royalty on the spoil, but only compensation for the damage to the land. As far as can be ascertained, once the area has been grassed, there can be no damage to the land."²⁴
36. The new road formations were legalised by 1948, by which time the name Awanui had been dispensed with and the aerodrome was now referred to as 'Kaitāia Aerodrome'. The following year, it emerged that the Māori Affairs Department was still pursuing compensation from the Ministry of Works (MOW) for damage to the Development Scheme.²⁵ Once again, negotiations took place between MOW and Māori Affairs

²² Memoranda (2 on same page) Registrar to U-S and U-S to Engineer in Chief, both dated December 1943. BBAD 1054 2382a 50/30/3/0, ANZ-A.

²³ Dist. Engineer to Permanent Head PWD, 5 April 1944. BBAD 1054 2382a 50/30/3/0, ANZ-A.

²⁴ Dist. Engineer to Permanent Head PWD, 5 April 1944. BBAD 1054 2382a 50/30/3/0, ANZ-A.

²⁵ After the war, the Native Department became the Maori Affairs Department, while the Public Works Department became the Ministry of Works.

officials – representatives of the Māori landowners were not involved in any part of the process.

37. An assistant engineer from the Ministry of Works acknowledged that prior to entry, three of the 15 acres occupied by the camp had been in good grass, but this had now reverted to “tee tree, gorse and ake ake”. The engineer estimated that this could be made good at an estimated cost of £90. The concrete reservoir was also still in situ, and removal and restoration of the ground would cost a further £60, making a total of £150 worth of compensation. Compensation for use of the ground was not allowed for, because “the major part of the area was previously of little farming value.”²⁶
38. Regarding the part of the Ōturu 2A block from which 20,000 cubic yards of soil was removed, the assistant engineer had this to say:

[I]t is not considered that any damage was done to the area, the spoil being taken from two large knolls, which were covered in tee tree and scrub, and were left flat areas, which have since been smo[o]thed over and grassed.

In this connection the Supervisor [of the Development Scheme] agrees that the areas are actually more useful in their present state than as before and considers that no material loss has been suffered. Therefore compensating should not be necessary but a length of internal roading suffered by the carting of the spoil and while repairs were effected during operations, the road was apparently left in a bad state of repair. It would be reasonable to allow £50 for repairs by way of reshaping and strengthening metal surface.

In conclusion, no restoration has yet been undertaken and while the land could be valued at no more than £2 per acre, unimproved value, restoration for persuing [*sic*] the development scheme appears necessary.²⁷

39. The damage to the road raised the question of which body had responsibility for its maintenance; part of it was commonly used as a through road, but it had never been legalised. After an exchange of correspondence, the Mangōnui County Council agreed to maintain the road, provided it was legalised and brought up to a reasonable standard. The Ministry of Works balked at paying a total of £200 to repair the development scheme, when, it argued, the land itself was not worth that amount. It was agreed with the scheme supervisor that the improvement and legalisation of the road,

²⁶ Assistant Engineer to Resident Engineer, MOW, 2 August 1949. BBAD 1054 2382a 50/30/3/0, ANZ-A.

²⁷ Assistant Engineer to Resident Engineer, MOW, 2 August 1949. BBAD 1054 2382a 50/30/3/0, ANZ-A.

at a cost of some £70 would be deemed adequate compensation for any inconvenience suffered by the development scheme on account of the damage caused by the construction camp.²⁸

40. After the war, the Ōturu Development Scheme was split into four separate farms, which were allocated to Māori returned servicemen, apart from a strip of 210 acres at the northern end that remained undeveloped. In 1959 part of the undeveloped land was sold to a local Pākehā farmer, and between 1961 and 1966 the remainder of the undeveloped land as well as two of the farms were also sold. The scheme itself was wound up in 1962 with debts of around £4,500, which were written off by the Māori Affairs Department.²⁹

2.2 The legal status of the Kaitāia Airport land

41. The taking of land under the Public Works Act for Kaitāia Aerodrome was formalised by proclamations published in the *New Zealand Gazette* in 1952.³⁰ 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. In September 1962, the Commissioner of Works wrote to his regional counterpart in Auckland requesting that steps be taken to change the official title from ‘defence’ to ‘aerodrome’ purposes.³¹
42. There were no objections to the change in status from defence to aerodrome, and it only remained for the documentation relating to the original takings to be put in order and the question of whether compensation had been paid to all parties to be finalised for the change to be confirmed.³² In terms of the latter, it transpired that the Lands and Survey Department, which had been administering the Crown leases to Pākehā farmers, had paid out various sums in compensation to these farmers for the land lost

²⁸ Various correspondence, July 1950. BBAD 1054 2382a 50/30/3/0, ANZ-A.

²⁹ Dame Evelyn Stokes, “The Muriwhenua Land Claims Post 1865” Wai 45 and others, Waitangi Tribunal, 2002, p. 231.

³⁰ *New Zealand Gazette*, 1952, pp. 1406, 1438, 1599 & 1600.

³¹ Commissioner of Works to Dist. Commissioner of Works, MOW, 4 September 1962. BBAD 1054 1839d 50/30/3/0, pt.1, ANZ-A.

³² Dist. Commissioner of Works to Commissioner of Works, MOW, 15 October 1962. BBAD 1054 1839d 50/30/3/0, pt.1, ANZ-A.

from their leaseholds on account of the aerodrome takings. Total compensation amounted to a little more than £1,200. Various compensation files criss-crossed between departments, but by August 1963, the process of changing the status of the Kaitāia Airport lands had not advanced, with the Commissioner of Works reporting that the matter was still under action by the Air Department, but no finality had yet been reached.³³

43. Kaitāia Aerodrome was finally gazetted as an aerodrome in 1970,³⁴ although the various land takings were never amalgamated into a single title. Part of the airport has the title, NA70C/868, but title details for the remainder are described as ‘not available’.

2.3 Ngāti Kahu mana whenua at Ōturu-Awanui

44. The Kaitāia Airport is located firmly within the rohe of Ngāti Kahu. The signatories to the Ōhinu deed included tūpuna identifiable as belonging to Ngāti Kahu. In terms of the 1946 Ngāti Kahu Tribal District, the airport lies within the Ōturu Tribal Committee Area, which was later merged with Awanui. Kareponia just to the north is associated with the Ngāti Kahu hapū of Te Paatu and Patu Kōraha.³⁵

³³ Commissioner of Works to Dist. Commissioner of Works, MOW, 30 August 1963. BBAD 1054 1839d 50/30/3/0, pt.1, ANZ-A. The file ends at that point.

³⁴ *New Zealand Gazette*, 1970, p. 2370.

³⁵ Brief of Evidence of Lloyd Pōpata, 29 June 2012, p. 16.