

**IN THE DISTRICT COURT
AT KAITAIA**

CRI-2015-029-000767

BETWEEN

NEW ZEALAND POLICE

Informant

AND

**ANTHONY HOUSHAM
BARNEY POPATA
JOSEPH NATHAN
ROBIN POPATA
EVA CROCKENBERG
SELWYN JAMES CLARKE**

Defendants

**AFFIDAVIT OF PROFESSOR MARGARET SHIRLEY MUTU
DATED THIS 1ST DAY OF SEPTEMBER 2016**

WACKROW WILLIAMS & DAVIES LIMITED

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Margaret Shirley Mutu
affirm

I, Margaret Shirley Mutu swear that;

1. I have been asked to give evidence on behalf of those of our people who have been inappropriately trespassed off our lands.
2. I have also been asked to outline for the Court, our connection with the subject lands, our Ngāti Kahu philosophy with regard to our lands and why our people have a right to be on, care for, control and protect these lands.
3. To do that, I introduce myself by way of my iwi and hapū's traditional and usual way of introducing ourselves using our iwi pepeha (tribal identify saying), my hapū's pepeha and my haka (genealogy). The recitations quoted below (and translated into English to aid the Courts understanding) are all well-known and often quoted in the context of our hui (gatherings) and are the most reliable source of the correct identity of a hapū and its iwi.

Ngāti Kahu pepeha

Ko Maungataniwha te maunga	<i>Maungataniwha is the mountain</i>
Ko Tokerau te moana,	<i>Tokerau is the sea</i>
Ko Kahutianui te tupuna	<i>Kahutianui is the ancestress</i>
Ko Te Parata te tangata	<i>Te Parata is the man</i>
Ko Māmaru te waka	<i>Māmaru is the canoe</i>
Ko Ngāti Kahu te iwi	<i>Ngāti Kahu¹ is the tribe</i>

Ko te Whānau Moana, ko Te
Rorohuri, ko Patukoraha, ko Ngāti
Tara, ko Matakairiri, ko Pikaahu, ko
Matarahurahu, ko Ngāti Ruaiti, ko
Ngāi Tohianga, ko Tahaawai, ko Ngāti
Taranga, ko Ngāi Tauurutakaware, ko
Te Whānau Pani, ko Te Paatu ngā
hapū

Te Whānau Moana pepeha

Ko Pūwheke te maunga	<i>Pūwheke is the mountain</i>
Ko Karikari te moana	<i>Karikari is the sea</i>
Ko Māmaru te waka	<i>Māmaru is the canoe</i>
Ko Kahutianui te tupuna	<i>Kahutianui is the ancestor</i>
Ko Te Parata te tangata	<i>Te Parata is the man</i>
Ko Ngāti Kahu te iwi	<i>Ngāti Kahu is the Tribe</i>

¹ Ngāti Kahu takes their name from their ancestress Kahutianui, Ngāti Kahu ki Whangaroa on the other hand takes their name from Kahutianui's mother, Kahukura-ariki.

Ko Haititaimarangai, ko Karikari ngā marae	<i>Haititaimarangai and Karikari are the marae</i>
Ko Te Whānau Moana me Te Rorohuri nga hapū	<i>Te Whānau Moana and Te Rorohuri are the sub-tribes</i>

4. For both my iwi and my hapū I descend via several lines directly from our founding ancestors identified in both my iwi and hapū pepeha, Kahutianui and Te Parata. My heke (descent lines) from those founding ancestors are given below:

A Kahutianui ka moe i a Te Parata, ka puta ko Māmangi	<i>Kahutianui married Te Parata and Māmangi was born</i>
A Māmangi, ka puta ko Tūkanikani	<i>Māmangi had Tūkanikani</i>
A Tūkanikani, ka puta ko Hāpute	<i>Tūkanikani had Hāpute</i>
A Hāpute, ka puta ko Haiti-tai-marangai	<i>Hāpute had Hait-tai-marangai</i>
A Haiti-tai-marangai ka puta ko Tūpōia, ² ko Mokokohi, ko Tahuroa	<i>Haiti-tai-marangai had Tūpōia, Mokokohi, Tahuroa</i>
ko Taramarae, ko Hungahunga Hungahunga, ka puta, ko Hutu	<i>Taramarae and Hungahunga Hungahunga had Hutu</i>
A Hutu, ka puta ko Tokiwhakauka	<i>Hutu had Tokiwhakauka</i>
Ka moe Tokiwhakauka i a Tokaakuku	<i>Tokiwhakauka married Tokaakuku</i>
ka puta ko Mauhara	<i>and Mauhara was born</i>
A Mauhara ka puta ko Te Nganga	<i>Mauhara had Te Nganga</i>
Ka moe Te Nanga i a Te Maro	<i>Te Nganga married Te Maro</i>
ka puta ko Wharewhare	<i>And Te Wharewhare was born</i>
A Wharewhare ka moe i a Te Marino	<i>Wharewhare married Te Marino</i>
Ka puta ko Nēpia Te Morenga	<i>And Nēpia Te Morenga was born</i>
A Nēpia Te Morenga ka moe i a Te Kahuangiangi	<i>Nēpia Te Morenga married Te Kahuangiangi</i>
ka puta ko Te Kirihihi	<i>And Te Kirihihi was born</i>
Te Kirihihi ka moe i a Maki	<i>Te Kirihihi married Maki</i>
ka puta ko Mereana, ko Hāriata, ko Kiritiana, ko Hana	<i>And Mereana, Hariata, Kiritiana and Hana were born</i>
Ko moe a Hana, ka moe i a Karaka Motu- Īhaka	<i>Hana married Karaka Motu-Īhaka</i>
ka puta ko Keene	<i>And Keene was born</i>
Ka moe a Keene i a Te Pora	<i>Keene married Te Pora</i>
ka puta ko Tame	<i>and Tame was born</i>
Ka moe a Tame i a Penelope	<i>Tame married Penelope</i>
ka puta ko te kaikōrero	<i>And the speaker was born</i>
Kua oti te heke nā	<i>That completes that descent line</i>
Ka moe anō a Nganga, ka moe i a Te Oi	<i>Nganga's second marriage was to Te Oi</i>
Ka puta ko Tahuora	<i>Tahuora married Titope</i>
ka moe a Tahuora i a Titope	<i>And Tahuora was born</i>

² Tūpōia is the founding ancestress of Ngāi Takoto. Te Aupōuri are descended from Ngāi Takoto.

Ka puta ko Te Teira	<i>And Te Teira was born</i>
Ka moe a Te Teira i a Haumu	<i>Te Teira married Haumu</i>
Ka puta ko Ihaka	<i>And Ihaka was born</i>
Ka moe a Ihaka i a Rīpeka	<i>Ihaka married Rīpeka</i>
Ka puta ko Karaka Motu- Ihaka	<i>And Karaka Motu- Ihaka was born</i>
Ka moe a Karaka Motu- Ihaka i a Hana	<i>Karaka Motu- Ihaka married Hana</i>
Ka puta ko Keene	<i>And Keene was born</i>
Ka moe a Keene i a Te Pora	<i>Keene married Te Pora</i>
ka puta ko Tame	<i>And Tame was born</i>
Ko moe a Tame i a Penelope	<i>Tame married Penelope</i>
ka puta ko te Kaikōrero	<i>And the speaker was born</i>
Kua oti te heke nā i te taha o Te Paatu.	<i>That completes that descent line on my Te Paatu side.</i>

5. I am also a descendant of Te Rarawa iwi of Ahipara, and of Te Rarawa-Waka-Teretere-i-Ū-mai-ki-Kaipara hapū of the Northern Wairoa. Both of these hapū descend from Tūmoana of Tinana waka.

A Tarutaru ka moe i a Te Ruapounamu
ka puta ko Ngāmotu
Ka moe a Ngāmotu i a Te Paa
ka puta ko Te Marino
Ko moe a Te Marino i a Wharewhare
Ka puta a Nēpia Te Morenga
A Te Morenga ka moe i a Te Kahuangiangi
ka puta ko Te Kirihihi
Te Kirihihi ka moe i a Maki
ka puta ko Mereana, ko Hāriata, ko Kiritiana, ko Hana
Ko moe a Hana, ka moe i a Karaka Motu- Ihaka
ka puta ko Keene
Ka moe a Keene i a Te Pora
ka puta ko Tame
Ka moe a Tame i a Penelope
ka puta ko te kaikōrero
Nā, ka nui tēnā. Kua oti te heke nā.

6. I am also a descendant of the Robertson clan of Scotland.
7. I am a Professor of Māori Studies at the University of Auckland specialising in:
- (a) Māori and Polynesian linguistics, particularly the areas of phonetic description, grammatical description and analysis in Māori and Marquesan, semantic interpretation in Māori and Polynesian comparative linguistics.
 - (b) Translation studies, focussing on translation from Māori into English including analysing and critiquing translations for their accuracy.

- (c) The study and analysis of the 1835 declaration of hapū sovereignty, He Whakaputanga o te Rangatiratanga o Nu Tireni and the 1840 treaty entered into with the British Crown, Te Tiriti o Waitangi, and the implementation of both these international instruments.
 - (d) The prosecution and settlement of Māori claims against the Crown, and particularly those of Te Hiku o te Ika (the Far North), the Muriwhenua claims.
 - (e) Recording and translating Māori oral history and traditions, particularly those of Te Taitokerau (the north).
 - (f) Māori resource management and conservation practices, including Māori worldview in respect of natural resources, and the exercise of rangatiratanga and kaitiakitanga; the relationship of Māori as tangata whenua to their ancestral lands; Māori and the Resource Management Act 1991 (**RMA**) Tino rangatiratanga, mana Māori motuhake and the exercise of Māori sovereignty. Māori customary fisheries and the development of the Māori Customary Fisheries Regulations.
 - (g) Rating of Māori land.
8. I hold a Doctor of Philosophy (PhD) in Māori Studies and Linguistics from the University of Auckland (1990), a Master of Philosophy in Māori Studies from the University of Auckland with first class honours (1983), a Bachelor of Science in pure and applied mathematics from the University of Auckland (1974), a Diploma of Teaching from the Auckland College of Education (1975) and a Certificate in Company Direction from Victoria University of Wellington and the Institute of Directors (1993). I have also received formal training in the whare wānanga (higher learning institutions) of my iwi (see below) during the 1970's and 80's and extended tutelage from kaumātua (learned and respected elders) in the history and tikanga (customs, laws and their practices) of Te Taitokerau (the northern iwi). These kaumātua included McCully Matiu, head claimant for the Ngāti Kahu claims, and

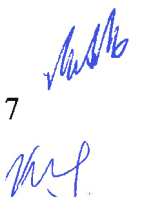


the Rev. Māori Marsden, head claimant for Ngāi Takoto, both of whose works I draw on in my evidence.

9. I have also authored and co-authored many publications, including books, articles, book chapters, conference papers, reviews and technical reports, in which I have addressed the following topics, amongst other things:

- (a) Māori customs and protocol (kaupapa and tikanga);
- (b) He Whakaputanga o te Rangatiratanga o Nu Tirenī 1835, its background and mistranslation as the 1835 Declaration of Independence;
- (c) Te Tiriti o Waitangi, its background and standing as an international treaty between hapū Māori and the British Crown; the illegitimate nature of the English language Treaty of Waitangi;
- (d) Tuku whenua and the British misinterpretation of Māori land transactions;
- (e) The concept and practice of tino rangatiratanga (Māori sovereignty);
- (f) Māori concepts of justice.
- (g) Treaty of Waitangi claims against the British Crown, and especially as these relate to Ngāti Kahu of Te Hiku o te Ika (Far North);
- (h) Māori language and Māori ethnic identity;
- (i) The preservation and enhancement of the Māori language;
- (j) Mistranslation of the Māori language;
- (k) Rating and Valuation of Māori land in Te Taitokerau;
- (l) Māori participation in resource management;
- (m) The use of Māori terms within the RMA;

- (n) Resource management and Māori property rights;
 - (o) The New Zealand Coastal Policy Statement (“**NZCPS**”);
 - (p) Traditional and customary fisheries and customary fisheries regulations;
 - (q) Māori customary fishing rights;
 - (r) The Foreshore and Seabed legislation;
10. A full list of my publications relevant to this brief of evidence is provided as **Attachment “A”** to this evidence.
11. In addition, I have held numerous positions relevant to my expertise having been variously appointed or elected by:
- (a) The University of Auckland;
 - (b) The New Zealand Vice Chancellor’s Committee;
 - (c) The New Zealand Government;
 - (d) The Māori Community of Auckland;
 - (e) My own whānau (extended family) in respect of our whānau’s ancestral marae (traditional meeting place) and lands;
 - (f) my own hapū (group of whānau) in respect of our hapū lands and marae;
 - (g) My own iwi (group of hapū), Ngāti Kahu, of Te Hiku o te Ika (the Far North) in respect of our mana whenua, mana moana, rangatiratanga and mana Māori motuhake (complete and ultimate authority and control of all the lands and seas of our constituent hapū deriving from our ancestors and our independence as a sovereign people – these terms are explained in detail in this brief of evidence);
 - (h) Kaumātua (respected elders) and representatives of the iwi of Te Hiku o te Ika (the Far North);



- (i) Kaumātua and representatives of the iwi of Te Taitokerau (Northland)); and
- (j) Kaumātua and representatives from through the country.

A full listing of the positions I have held and continue to hold is provided as **Attachment "B"**.

12. I have also appeared as a witness before:

(a) The Waitangi Tribunal in the Muriwhenua land claims - several appearances and three technical reports recorded in the record of documents of the Muriwhenua Land Claims Wai 45:

- (i) Mutu, Margaret. 1993. 'Tuku Whenua or Land Sale? The Pre-Treaty Land Transactions in Muriwhenua.' Doc # F12. Wellington, Booker's. 48 pp plus appendices.
- (ii) Mutu, Margaret. 1993. 'Muriwhenua - Crown Alliances'. Wellington, Bookers. Doc # H10. 51pp plus appendices.
- (iii) Mutu, Margaret. 1993. 'Response to L F Head (J7)'. Doc # K3.

and in the foreshore and seabed enquiry Wai1071 on behalf of Ngāti Kahu

(iv) Mutu, Margaret. 2004. Affidavit of M, Mutu (Wai 17, 117, 388). Doc # A30. 62 pp plus appendices.

(v) The Ngāti Kahu Remedies Inquiry

(b) The Northland Regional Council and the then Planning Tribunal hearings into resource consents issued to the Department of Conservation in respect of Maitai Bay Recreation Reserve, Karikari, appointed by Te Whānau Moana hapū and Ngāti Kahu iwi 1991;

(c) The joint Northland Regional Council and Whangarei District Council hearings into the Marsden Point Terminal Proposal (with two technical reports) appointed by Patuharakeke hapū and the Parliamentary Commissioner for the Environment 1995-1997;

- (d) The Environment Court, Auckland, in 2007 in *Nga Uri o Wiremu Moromona Raua Ko Whakarongohau Pita Incorporated v. Kingsford Barker and Associates and the Far North District Council* (with a 32pp affidavit plus appendices).
- (e) The Environment Court in 2010 (and subsequently the High Court in 2011) in *Te Rūnanga-ā-Iwi o Ngāti Kahu versus Carrington Farms Ltd and the Far North District Council* in the Environment Court ENV-2009-AKL-000450 (with a 40pp affidavit plus attachments).
- (f) The Select Committee into the Foreshore and Seabed Bill in 2004 (with a 60 pp statement) and the Marine and Coastal Area Bill in 2011 appointed for both by the Ngāti Kahu iwi.

Background

- 12. I begin by briefly making mention of who Ngāti Kahu is. Ngāti Kahu is one of the five iwi of the Te Hiku o te Ika region in the far north of the North Island. The iwi of Ngāti Kahu consists of 15 kāinga, hapū and marae in the region and at the 2006 census there were in excess of 8,300 Māori who identified themselves as being of Ngāti Kahu descent. More recently, calculations based on haka-papa put the figure closer to 15,000.
- 13. Those kāinga, hapū and marae of Ngāti Kahu are as follows:

Ngāti Kahu Kāinga, Hapū, Marae

Ōturu, Ngai Tohianga, Ōturu
 Karepōnia, Patukōraha, Kareponia
 Lake Ōhia, Ngāti Tara, Werowero
 Whatuwhiwhi, Te Whānau Moana/Te Rorohuri, Haititaimarangai
 Karikari, Te Whānau Moana, Karikari
 Toatoa, Ngāti Whata, Ko Te Āhua
 Parapara, Ngāti Tara, Parapara
 Taipā, Pikaahu/Matakairiri, Karepori
 Kēnana, Matarahurahu, Ranginui
 Waiaua, Ngāti Ruaiti, Waitetoki
 Back River, Whānau Pani/Ngai Tauurutakaware, Aputerewa

Pēria, Te Paatu, Te Kauhanga
Victoria Valley, Ngāti Taranga, Mangataiore
Takahue, Te Tahāwai, Ōkakewai
Pāmapuria, Te Paatu, Te Paatu³

14. The iwi of Ngāti Kahu are, and at all relevant times were, tangata whenua holding mana whenua in respect of the land in our territory "rohe". In Te Ao Māori not only do you gain mana whenua through whakapapa but also through identifying the places within your rohe.
15. However, I note that whilst not precisely aligned with the Ngāti Kahu view of our rohe, the Crown has, through the Governor-General in 1946 recognised the Ngāti Kahu tribal district which is quoted below. In considering this notice it needs to be borne in mind that this description attempts to impose an entirely English cultural interpretation on the description of a rohe and completely eschews a Ngāti Kahu depiction of our own rohe. As such boundaries are determined by survey lines on maps rather than natural geographic features on the ground. It also wrongly assumes that our rohe is entirely exclusive to Ngāti Kahu ignoring the reality that we share territories with our neighbours on all our boundaries. This is particularly pertinent here around Kaitāia and Maungataniwha. The use of Pākehā roads as boundaries, in this case, *"along the middle of the Great North Road and Commerce Street, through the Borough of Kaitaia to the Kaitaia-Awanui Main Highway; thence northerly along the middle of that highway to its junction with Quarry Road"* makes no sense in Māori terms and is clearly a rather clumsy attempt to force Ngāti Kahu's rohe into the procrustean bed of English boundaries and survey maps. Likewise for Maungataniwha where the rather distorted boundary is a result of surveyed blocks on maps rather than the mountain range itself. The quotation is:

"Ngati Kahu Tribal District

Reference NZ Gazette 1946, December 12th

All that portion of the Mangonui County, bounded by a line commencing at the easternmost corner of G. Stephenson's Grant in Block XVI, Hohoura East Survey District; thence easterly generally along the sea-coast to Te Ringa Point in Block I, Mangonui Survey District; thence

³ Ngāti Kahu Deed of Partial Settlement, pg 41.

south-easterly along a right line to the northernmost corner of Allotment 108, Kohumaru Parish, in Block IV, Maungataniwha Survey District, being a point on the boundary of the Mangonui County; thence south-westerly along the said county boundary to a point in the middle of the Awaroa River on the production of the right line between Taumatamahoe Trig. Station and the south-eastern corner of Section 6, Block XIV, Takahue Survey District, being the north-western boundaries of Allotments 108, 105, 104, 99, 98, 97 and 96, the south-western boundaries of Allotments 69 and 71, Maungataniwha East Parish, the western boundary of Allotment 71 aforesaid and its production southwards to the northern boundary of Maungamuka East Block, the northern boundaries of that block, the northern and western boundaries of the Maungamuka West No. 3 Block, the western boundary of the Mangamuka West No. 2 Block, the northern boundary of the State Forest Reserve (New Zealand Gazette of 28th January 1904, at page 310), the northern and western boundaries of Section 36, Block XV, Takahue Survey District, the western boundary of Section 35, Block XV aforesaid, part of the northern boundary of Section 60, and the northern boundaries of Sections 66, 67, and 69, and the western boundaries of Sections 69 and 68, all of Block II Whangape Survey District, the northern boundary of Section I Block X, Whangape Survey District, to and across a public road to the centre of the Awaroa River, down the middle of that river to a point on the production of the right line aforesaid, from Taumatamahoe Trig. Station through the south-eastern corner of Section 6, Block XIV, Takahue Survey District; thence north-westerly to and along the said right line to Taumatamahoe Trig. Station; thence north-easterly along a right line to the junction of Ruaroa Road with the Great North Road near Rangitihī, in Block VI, Takahue Survey District; thence westerly and north-westerly generally along the middle of the Great North Road and Commerce Street, through the Borough of Kaitāia to the Kaitāia-Awanui Main Highway; thence northerly along the middle of that highway to its junction with Quarry Road; thence due west along a right line to the sea-coast; thence north-westerly along the sea-coast to a point on the production of the right line from the easternmost corner of G. Stephenson's Grant to Hukatere, in Block II, Opoe Survey District; thence north-easterly to and along the aforesaid right line, being the southern boundary of Te Aupouri Tribal District, hereinbefore described, to the aforesaid corner of G. Stephenson's Grant, the point of commencement, including all adjacent islands".

16. I have attached a map **marked "C"** that depicts the area outlined by the abovementioned Gazette. It is clear from the map that the Gazetted rohe includes Hukatere, the Peninsula Blocks of Aupouri Forest, Te Oneroa-ā-Tōhē down past Waipapakauri and across to Awanui and down into Kaitāia.
17. The Crown, in the same Gazette, also recognised within the Ngāti Kahu Tribal District, Ngāti Kahu Tribal Committee areas which are as follows:

Waiharera Tribal Committee Area

Paparore Tribal Committee Area
Awanui Tribal Committee Area
Whatuwhiwhi Tribal Committee Area
Parapara Tribal Committee Area
Kareponia Tribal Committee Area
Oturu Tribal Committee Area
Pamapurua Tribal Committee Area
Takahue Tribal Committee Area
Mangataiore (Victoria Valley) Tribal Committee Area
Peria Tribal Committee Area
Toatoa Tribal Committee Area
Taipa Tribal Committee Area
Kenana Tribal Committee Area

all with land areas described and designated to those Committees of Ngāti Kahu. **Attachment "D"** is a copy of the New Zealand Gazette, Wellington, Thursday, December 12, 1946.

18. The customary Māori title to or mana whenua over this land has not been relinquished by the hapū and marae and therefore the iwi of Ngāti Kahu or in any other manner extinguished since that time.
19. The hapū and marae and therefore the iwi of Ngāti Kahu hold mana over these lands, parts of which are now contained within the Deeds of Settlement between the Crown, Te Aupōuri, Te Rarawa and Ngāi Takoto.

Ngāti Kahu concepts relating to land

20. Ngāti Kahu's interests and rights in land are derived from the way Māori treat land and Māori philosophy in respect of land as a whole. That philosophy cannot be articulated properly in English but the closest analogy of Ngāti Kahu's philosophy in respect of land is that Māori exercise complete and total sovereignty over these areas of land.

21. In order to understand the Ngāti Kahu philosophy of land and our exercise of mana over the land you must consider some of the basic underlying values Māori hold dear in order to generate this understanding. However before doing so it is important that I provide the background to why this is important.
22. Firstly it must always be borne in mind that the value system associated with these concepts is a system embedded in Māori culture. As such, these terms can best be understood within that cultural context and the Māori language. Translations into English of Māori terms rarely adequately explain the terms. I simply note here that each and every one of the world's language is the expression of the culture to which that language belongs and no language can describe the concepts of another culture adequately, especially if the two cultures are totally unrelated as Māori and English are. Each of the Māori terms used here has been used because there is no equivalent term in English. Notwithstanding this, the purpose of my evidence is to attempt to provide some understanding of these concepts. While I explain these terms in English, I approach them from a Māori perspective. It is important to bear this in mind.
23. Secondly, in noting that these concepts have their origins in traditional Māori life, it needs to be pointed out that contact with Western culture and the subsequent settlement of New Zealand by the British has not changed either the values which underpin these concepts or the concepts themselves. On-going wānanga conducted throughout Te Taitokerau and particularly in Ngāti Kahu, have ensured this is the case for the iwi of the north. Wānanga were established in the mid-19th century specifically to protect whānau, hapū and iwi from the attempts by British immigrants to assimilate Māori into English culture and to have us abandon our heritage and identity.⁴ Rev. Māori Marsden repeatedly articulated the need for us in Te Hiku o Te Ika to protect ourselves from the racism of the White man when he gave evidence to the Wai 45 Tribunal in 1991. He strongly criticised the Crown's attitudes. Twenty years on that attitude has become even more deeply

⁴ M Marsden "Educating Māori" in Te Ahukuraramū Charles Royal (ed) *The Woven Universe: Selected Writings of the Rev. Māori Marsden* (The estate of Māori Marsden, Masterton, 2003) pp xxx-xxxi.

ingrained and immovable in Crown Officers and drives the Crown's desperate need to extinguish all and every Treaty of Waitangi claim brought against it.

24. For example, on the use of the word 'native' used officially to describe Māori until post World War II, Rev. Māori Marsden said ⁵

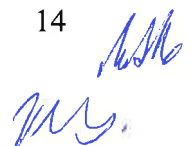
The term 'Native' demonstrated a certain mode of thinking, a certain cast of mind, a negative image, a stereotype which relegated Māori into the second-class status relative to the Pakeha Settlers.

In terms of psychological attitudes, the word 'native' generally used as a term of opprobrium labelled the Maori and fixed him neatly in a particular compartment and framework by which the Pakeha could regulate his actions in relation to the Maori. As a Maori there was an obligation, morally, to treat him as a partner. As a 'native' with connotations of being sub-human there was no real obligation to treat both Maori and Pakeha on an equitable basis. The imposed label had determined [in the eyes of the Pakeha] the Maori's true place in the universe.

That sort of thinking was practised not solely against the Maori but also against other people wherever the shadow of colonisation fell. In its extreme form, this mode of stereotyping and accompanying practices resulted in the imposition of slavery upon the Africans [and the extermination through genocide of many indigenous nations, particularly in the Americas]. It seems that people were classified according to their skin colour a downward gradation from White through yellow, to brown and red with black at the bottom of the scale. Having set the mental standards those with white skin colour could now feel justified in imposing their racist policies and put their consciences to rest. They could sleep peacefully at night. It was just as well that Hitler lost the Second World War else we might have had blond, blue-eyed Aryans ruling the rest of us, an appreciable narrowing of the race-spectrum.

Is this too harsh a judgement? I don't think so, given the reality from which I as a Maori am coming, given the fact that the marginalisation of Maoridom and their deprivation and further relegation to the very bottom of the heap makes a mockery of the so called moral laws religiously proclaimed in the name of Jesus whose mission was to preach the good news to the poor, to give sight to the blind, to make the lame walk, to open prison doors and to set the captives free... It is in light of my concerns for the real sufferings which my people are bound to undergo should such attitudes continue to prevail, that compels me to be so harshly critical.

⁵ Wai45 #C17.



25. And on the evils of capitalism that the Crown seeks to impose upon us the Rev. Marsden argues in his evidence entitled 'Te Mana o Te Hiku o Te Ika'⁶

In Pakeha culture there is a disconnection between the secular and the spiritual. This disconnection is linked with the capitalistic mode of production which expropriates and commodifies the land, its resources and people. Such disconnection produces double standards and situational ethics based on self and in-group interests however/whenever/ and wherever it suits the holder. It has no firm foundation to which it can be secured since it is based upon materialistic considerations and not on the spiritual. In other words it is based on the lower transitory rather than the higher, which is eternal.

No such disconnection between the secular and the sacred could be contemplated by the Maori. He is descended from the gods through the descent lines of culture heroes. All things originated in Io-taketake, the foundation of all things and upon which all things are established. All is one. The Maori is therefore one with all things. He is an integral part of the natural order. He therefore holds a special relationship to Mother Earth; the mother who nurtures all mankind. Since Ranginui is the Sky Father, the father of the lesser gods and especially Tane the progenitor of mankind, what therefore is established on earth by the 'Kupu Mana' is established in the heavens. The link between the secular and spiritual when recognised and adhered to links the Oath, or Work of Power of eternal foundations. Hence, Toi te Kupu [in the proverb Toi te Kupu, Toi te Mana, Toi te Whenua]

Under Pakeha principles, or lack of them, the Treaty was open to abuse and misuse:

Methods of Pacification by military/paramilitary/legislative means could be put into operation now that the Treaty was in place. The wars of the 1860's; various Acts of Parliament; e.g. Maori Representation Act, Education Act, Public Works Act, Uneconomic Holdings Act – these and a host of others had but one end in view, namely to appropriate Maori land and resources, to assimilate the indigenous peoples into the dominant culture and by that process to commit cultural genocide.

There followed deliberate and calculated acts of dispossession/deprivation/imposition/exploitation and blatant oppression under racist policies. All these were done in

⁶ Wai 45 Doc #A7.

contravention of the spirit of the Treaty, and of various Acts still in force (Statute of 1870), which states that 'no alienation of land from Maori is valid which renders that Maori landless.

26. In the following I have set out some of the basic underlying values as conveyed to me by Rev. Māori Marsden ⁷ and by McCully Matiu.⁸ The approach taken is to examine key words from within Ngāti Kahu's dialect which are perceived to identify the cornerstones of these values.⁹ The words chosen are mana, tapu, wāhi tapu, whenua/taonga, tuku iho, tikanga Māori, ahi kā, whanaungatanga, rangatira and rangatiratanga, kaitiaki and kaitiakitanga.¹⁰ To illustrate how deceptive the use of bilingual dictionaries can be if used as sources for understanding these concepts, the discussion of each word begins by quoting the English translations listed for each of these words in H.W. Williams' authoritative *A Dictionary of the Maori Language* before going on to outline the meanings described by Rev. Māori Marsden, McCully Matiu and other eminent Māori scholars.

MANA

27. Williams' *A Dictionary of the Maori Language* lists eight meanings for mana, providing the following possible translations:
- (a) Authority, control
 - (b) Influence, prestige, power
 - (c) Psychic force
 - (d) Effectual, binding, authoritative
 - (e) Having influence or power
 - (f) Vested with authority
 - (g) Be effectual, take effect
 - (h) Be avenged.

⁷ In particular his article "God, Man and Universe: A Māori View" in Te Ahukuraramū Charles Royal (ed) *The Woven Universe: Selected Writings of the Rev. Māori Marsden* (The estate of Māori Marsden, Masterton, 2003).

⁸ As described in his 2003 book *Te Whānau Moana* which I co-authored with him.

⁹ Caution is always advised in attempting to describe the social values of one society using the language of another unrelated society. Suffice to point out that criticism has frequently been levelled by Māori against Pākehā anthropologists, historians and other scholars who have written and published their descriptions of Māori culture without considering the fact that their ignorance of the Māori language has severely hampered their understanding of Māori culture.

¹⁰ Marsden's article includes discussion on a number of other basic concepts and values including ihi, wehi, tohi, whakaha, te tuha, te whakapa, kairarawa, tohunga.

28. These translations, however, do not describe the source of mana nor how mana is upheld and maintained. That, after all, is not the job of a bilingual dictionary. The result is an unfortunate distortion of the real meaning of mana, which is inextricably based in the spiritual realms of the world. The meaning of mana has been even further distorted by being borrowed into New Zealand English (as have all but three of the terms discussed in this evidence). As such it is listed in *The Reed Dictionary of New Zealand English*¹¹ with the meaning 'authority, prestige or influence'. The meaning of the word mana in Māori and the meaning of the word mana in English are very different. The former is embedded in the Māori language and culture. The latter in the English language and culture. For all the terms described in this evidence it is the Māori word and its meaning in that language and culture that is relevant, not the meaning assigned to it in New Zealand English.
29. The Rev. Māori Marsden, in his article, 'God, Man and Universe: A Maori View', defines and discussed among other matters the concepts of mana and tapu. For him,
- Mana in its double aspect of authority and power may be defined as 'lawful permission delegated by the gods to their human agents and accompanied by the endowment of spiritual power to act on their behalf and in accordance with their revealed will'. This delegation of authority is shown in dynamic signs or works of power.
- He goes on to warn that the exercise of this power outside the limits delegated is an abuse of the gift and may result in its withdrawal or misfortune:¹²
30. The concept of mana is the root of authority to act in respect of certain matters and is a fundamentally important concept in Māori culture.

¹¹ H Orsman (ed) *The Reed Dictionary of New Zealand English* (3rd edition, Reed, Auckland, 2001) p 691.

¹² M Marsden "God, Man and Universe: A Māori View" in Te Ahukuraramū Charles Royal (ed) *The Woven Universe: Selected Writings of the Rev. Māori Marsden* (The estate of Māori Marsden, Masterton, 2003) p 4. He further states

There are many different types of mana and many aspects of it as it manifests itself in everyday life. For example, all living things, animals, trees and plants, fish and birds, as well as human beings, are imbued with a mana of their own, a mana implanted by the gods. So also are many inanimate objects such as meeting houses and mountains and mountains which are personified and addressed in Māori as ancestors and relations.

31. The terms mana atua, mana tupuna, mana whenua, mana tangata, mana moana and mana Māori Motuhake are also heard frequently and are being referred to increasingly by the Waitangi Tribunal in its reports. These are different types or aspects of mana and can be described, albeit very briefly, in the following way:

Mana atua is the very sacred power of the gods which is given to those persons who conform to sacred ritual and principles.

Mana tupuna is authority and power handed down through chiefly lineage.

Mana whenua is the mana that the gods planted within Papa-tūā-nuku (Mother Earth) to give her the power to produce the bounties of nature. A person or tribe who 'possesses' land is said to hold or be the mana whenua of the area and hence has the power and authority to produce a livelihood for the whānau and the hapū from this land and its natural resources. One means of ensuring that mana whenua is upheld and enhanced is to return the pito or whenua (afterbirth) of a child to his/her ancestral lands at points specifically designated for the purpose. But the most powerful means, once the spiritual element has departed from a person (i.e. the person has died), is to return the human body to the ūkaipō, the place from which his or her true sustenance and being came, that is, his or her ancestral lands. This is perhaps one of the main reasons why tribes will fight to have a body returned to his or her own ancestral lands for burial. Furthermore, the greater

"Authority and power in this sense must be clearly distinguished since it is clear that to exercise spiritual power outside the limits delegated is to abuse the gift, and results either in its withdrawal or in that power running rampant and causing harm to the agent and others.

A simple analogy will make the distinction [between power and authority] clearer. A person approaches a traffic crossing and the lights turn red. He has power to cross but no permission. The lights turn green but his car stalls at that moment. He has permission to cross, but no power. His car starts and the lights remain green. He has both authority and power to proceed."



the person's mana, the bigger the fight, especially if the person has ancestral rights in more than one tribal area.¹³

Apart from these aspects, every effort is made to protect and uphold mana whenua, not only from loss of 'possession' of the land, but also from despoliation by careless exploitation. Mana whenua is a gift from the gods and always remains with the hapū of an area. The imposition of European title, for example, cannot remove mana whenua from a hapū and the responsibilities of the whānau and hapū to uphold mana whenua and prevent desecration and despoliation of their lands remains.

The Resource Management Act interprets mana whenua as meaning 'customary authority exercised by an iwi or hapū in an identified area'. Like Williams' dictionary, this definition fails to incorporate reference to the spiritual basis of mana which is important to understand the true meaning of this concept.

Mana tangata is the power acquired by an individual according to his or her ability and effort to develop skills and to gain knowledge in particular areas and includes the spiritual aspects of those skills and knowledge as well as the physical aspects.

Mana moana is the equivalent of mana whenua as it applies to the sea and its resources.¹⁴ The two forms of mana overlap considerably since the land is considered to extend well into the sea, while the sea's effects impinge some distance inland.

32. The term mana Māori motuhake is a term that encompasses all of the above elements, but serves to point out that mana is something which applies to the Māori people of Aotearoa and to them only. It also points to the fact that with such mana, Māori people are imbued with the eternal right to live under their own mana and hence determine their own way of life as they themselves see fit to choose.

TAPU

¹³ The continued misunderstanding by the majority of New Zealanders of this very important aspect of Maori society has been a cause of great sadness to Maoridom, especially when open derision of the custom is carried out by an uninformed news media.

¹⁴ In the debate which arose out of the Crown declaring it had extinguished Maori fishing rights by allocating quota and fisheries company shares to Maori, the term 'mana moana' has become much misused and misinterpreted. However, the process of change of meaning of words is very long and slow and in this case is unlikely to be successful because of the depth of meaning of the word 'mana'.

33. The Rev Māori Marsden discusses tapu at some length, not least to dispel some misconceptions about the concept held by early missionaries and anthropologists. He describes it thus:

... [Tapu] has both religious and legal connotations. A person, place or thing is dedicated to a deity and by that act it is set aside or reserved for the sole use of the deity. The person or object is thus removed from the sphere of the profane and put into the sphere of the sacred. It is untouchable, no longer to be put to common use. It is this untouchable quality that is the main element in the concept of tapu. In other words, the object is sacred and any profane use is sacrilege, breaking of the law of tapu.

From the purely legal aspect, it suggests a contractual relationship has been made between the individual and his deity whereby a person dedicates himself or an object to the service of a deity in return for protection against malevolent forces and the power to manipulate his environment to meet needs and demands.

...

So, we may define tapu as the sacred state or condition in which a person, place or thing is set aside by dedication to the gods and thereby removed from profane use. This tapu is secured by the sanction of the gods and reinforced by endowment with mana.

34. Te Rangihīroa (Sir Peter Buck) in his book *The Coming of the Maori* recounts how as a child he was taught the practicalities of tapu. He comments, 'Thus the fear of tapu was inculcated early and remained late' (Buck 1950: 359).
35. It is the laws of tapu which play the most influential role in regulating Māori society. It was for this reason that the tribal experts in the laws of tapu, the tohunga, were outlawed by the colonial government (under the Tohunga Suppression Act of 1907) in a rather vain attempt to gain complete and absolute control for the government over Māori society. The laws of tapu still hold in Maoridom today and their violation continues to bring disaster, pain and injury to the transgressors.

WĀHI TAPU

36. Wāhi tapu, are places which are tapu, places that have been set aside and can no longer be used for common purposes. Their use is restricted and in practical terms they are typically left alone to be used only for the purposes for which they are set aside and by those with the mana to do so.
37. Professor Hirini Moko Mead, in his book *Tikanga Māori – Living by Māori Values* provides a definition and a large number of examples of wāhi tapu as they apply in his tribal area of Ngāti Awa whose territories are located in and around Whakatāne. His understanding of wāhi tapu appears to be very similar to how I understand wāhi tapu in Ngāti Kahu.
38. In his discussion Professor Mead states:¹⁵

Some places and things are special in a cultural, historical and spiritual sense and require a change in behaviour from the observers or participants in a ceremony. The special qualities attached to such places and things (and here I include built things such as canoes and carved houses) impose some restrictions upon how we behave towards them. In some cases the tapu of a place varies in intensity as in the case of a marae. When there is no ceremony on a marae the level of tapu is low and people can be relaxed and are able to move about freely. However when a ceremony begins the level of tapu on the marae increases immediately and restrictions upon human behaviour are imposed. Now there are protocols to observe and a process to follow through to completion.

Some places such as urupā are always tapu but even here some urupā are more tapu than others. The important variable is often the antiquity of the urupā and whose remains are buried there...

39. He goes on to provide examples of wāhi tapu, including:¹⁶

A spring, especially a place where someone important drank, would be regarded as a place of great significance. It would be treated as a wāhi tapu but not necessarily as a place not to be visited by others. Places of great cultural significance are

¹⁵ H M Mead *Tikanga Māori - Living by Māori Values* (Huia, Wellington, 2003) p 65.

¹⁶ *Ibid*, p 68.

regarded as wāhi tapu with differing levels of tapu. The notion of 'great cultural significance' is attached to a wāhi tapu with some history behind it. Associations with important persons, with religious ceremonies, with death, sickness, burial, learning, birth or baptism ceremonies: all may lead to places being classified as wāhi tapu.

40. In my experience there are various circumstances that could give rise to an area being designated wāhi tapu. In practical terms there are also many different types of wāhi tapu and different levels of tapu. The most well-known and the ones that immediately come to mind when wāhi tapu are referred to are places where there are human remains, burial sites and sites where violent or unusual deaths or events have occurred. Special ceremonies are often undertaken to lessen the harm that such sites can inflict – however that does not always stop them being wāhi tapu. Other places or objects are tapu because they are the best or the only place a particular resource is available, such as a special puna (water source), or a special medicine or a plant used for ceremonial purposes, such as the tangihanga (funerary ceremonies). Different types of wāhi tapu are treated differently and the treatment varies from whānau to whānau. Many whānau will not talk about or identify their wāhi tapu to outsiders. But the strong spiritual protection afforded all wāhi tapu is such that desecration of the wāhi tapu will cause strong spiritual disturbances. It is regarded as a transgression of the gods to whom the place is dedicated, and such transgression incurs vengeance. The whānau who are mana whenua and responsible for those wāhi tapu are those who will normally be alerted by the various spiritual signals. These signals manifest themselves in a number of ways including sickness or disasters in the whānau or often, through dreams which can be quite specific or may need interpreting by those in the whānau trained and skilled in this area.
41. There is a range of wāhi tapu that may exist in a particular area. Examples of wāhi tapu in my ancestral lands of Te Hiku o te Ika and the Northern Wairoa include:
- Areas that contain kōiwi or burial grounds;
 - The site of a battle or an area where blood was spilt as a result of fighting;

- The site of an important and special event in the history of the iwi, hapū or whānau;
- The area of an old papakāinga (communal living area);
- A traditional landing area for waka;
- A place where someone died;
- A place where the whānau would rest with their tūpāpaku (deceased person) as they carried them to the marae or to the burial grounds,
- An area where whenua (after birth) was traditionally buried;
- An area where the possessions of those who have passed away are buried;
- An area set aside for particular purposes such as wānanga (traditional training schools);
- An historical pā site;
- A particular and special or rare plant or tree used for special purposes (medicinal, ceremonial);
- A special puna (source of fresh water);
- A portal (see the evidence of Rev. Lloyd Pōpata)

42. These wāhi tapu have been set aside for a particular reason or purpose and have been removed from common use. Most are not harmful but they are treated with respect and care. They are not prohibited from entering, but they are afforded a respect such that people can not undertake activities at these sites which would infringe the tapu.

43. In most cases knowledge of the location of wāhi tapu in a particular area is held by mana whenua, and particularly those who have lived on the specific areas of land over several generations. While the larger well-known wāhi tapu such as extensive dune burials or burial caves will be known throughout the hapū of the area, those that are specific to the whānau of a particular area will not necessarily be known by the rest of the hapū. On the other hand particularly powerful wāhi tapu, such as portals, are rarely known outside those whānau who are the designated kaitiaki for the portal.

44. The reasons why areas have been set aside as wāhi tapu are not always widely known, even within the whānau whose land it is. Children are simply instructed to be careful or not to play in the areas that have been designated wāhi tapu although kaumātua will pass on

the knowledge about the areas to those they consider appropriate to hold such knowledge.

45. It is important to note that wāhi tapu and archaeological sites are not the same thing. Some wāhi tapu contain physical remains which can be excavated using archaeological techniques. However many do not. On the other hand, not all archaeological sites are wāhi tapu.
46. I am aware that Māori are often criticised for pointing out the existence of wāhi tapu. This is especially the case if the wāhi tapu is in a place on which someone wishes to carry out some activity which will violate the tapu of that place.¹⁷ It is sometimes implied that Māori have fabricated the existence of wāhi tapu and are therefore lying about their existence. I note that having considered the meaning of tapu given above, to lie about the existence of a wāhi tapu would amount to a very serious transgression of the laws of tapu.

WHENUA/TAONGA TUKU IHO: Other sites of cultural significance

47. It is also important to note that wāhi tapu are not the only places that are special or culturally significant. Whenua and taonga tuku iho are also very important.
48. Williams' Dictionary lists the following possible translations for whenua:¹⁸

Land, country

Ground

Placenta, afterbirth

Entirely together.

49. Orsman's Dictionary lists whenua as meaning 'a native country, land'.¹⁹ This however does not explain the relationship that Māori have with land and hence what land means to Māori. I will explain this below.

¹⁷ See, for example, numerous references to wāhi tapu and iwi having to defend them on the website of the *New Zealand Herald* at www.nzherald.co.nz.

¹⁸ Williams, above, note 3, p 494.

¹⁹ Orsman, above, note 4, p 1315.

50. Taonga is listed in Williams' Dictionary with a translation equivalent 'property, anything highly prized'.²⁰ Orsman's Dictionary lists it as 'a treasure, especially a cultural one'.²¹ Above this, taonga are those things that are prized in Māori culture. Taonga also have inherently spiritual aspects. I note here that many things considered to be taonga by Māori are not highly prized in Pākehā culture. And similarly, many things highly prized in Pākehā culture are not taonga in Māori culture. For example, while money is very highly prized in Pākehā culture (to the extent that the value of almost everything is compared to the value of money in that culture), it is debatable whether money is considered to be a taonga by Māori. It is certainly not the most prized of taonga, that is, taonga tuku iho. The words 'tuku iho' modify taonga in 'taonga tuku iho' and can be translated as 'handed down, inherited'.
51. For Māori, whenua that has been bestowed on them is a taonga tuku iho. The lands that have come down to each whānau from their ancestors are also their tūrangawaewae, the place they have a right to stand, their home.
52. In order to understand the relationship between Māori and their land, it is necessary to have a very basic understanding of the traditions which established that relationship and, in particular, the creation tradition. An understanding of *mana* and *tapu* as explained above is also necessary to begin to understand those traditions. A very simplified and paraphrased version of the creation tradition as recounted by the Rev. Māori Marsden follows. Māori viewed the whenua as their mother. As such, Māori have a physical relationship as well as an ancestral and spiritual relationship with the whenua.
53. For Māori all their hapū lands are whenua tūpuna, ancestral lands. This is regardless of and not based on legal title. As such they are taonga tuku iho, a treasured inheritance to be cherished, treated with respect and handed on intact to the following generations. English cultural values which reduce land to a tradable commodity whose value is measured in monetary terms are foreign concepts.

²⁰ Williams, above, note 3, p 381.

²¹ Orsman, above, note 4, p 1185.

54. Those who grew up on or regularly visited a particular area will know the places that are special to them on that whenua and moana (lands and seas). These include places where particular resources such as rongoa (medicines) or foods are gathered, such as kai moana (foods gathered from the sea) on Te Oneroa –ā-Tōhē for example, or kai o te ngahere (foods gathered from the bush) on Maungataniwha for example. They will have been taught how and when to access these resources from a very young age and the appropriate preparation and storage of the foods. Specific trees and fishing areas are often placed under protection using the process of rāhui to ensure their ability to keep providing particular resources. The authority to place a rāhui over a resource is called mana rāhui and is held by mana whenua. Different whānau and hapū can be known for the particular food or medicinal resources they have. One of the ways in which a hapū upholds its mana is in the exercise of manaaki manuhiri, respect and caring for your guests by serving them generously with plentiful supplies of the local delicacies for which the hapū is renowned. It may therefore be offensive and a serious affront to the mana of a whānau and hapū to interfere with or deny them access to their customary and traditional food sources or to deny the mana whenua they hold.

TIKANGA MĀORI

55. The laws by which Māori customarily conduct themselves and carry out their responsibilities are called tikanga. The Resource Management Act describes tikanga Māori as 'Maori customary values and practices'. Williams' dictionary gives seven possible meanings for tikanga with the following translations:
- (a) Rule, plan, method
 - (b) Custom, habit
 - (c) Anything normal or usual
 - (d) Reason
 - (e) Meaning, purport
 - (f) Authority, control
 - (g) Correct, right.
56. The word Māori is being used in this term as an adjective describing tikanga.

57. Orsman's Dictionary lists tikanga as 'Maori customs and social conventions'.²² The word Māori is being used in the term 'tikanga Māori' as an adjective describing tikanga.
58. Tikanga Māori, as Ngāti Kahu elders explain the phrase, is the correct way to carry out something in Māori cultural terms. Tikanga Māori is the Māori equivalent of English law. For each whānau and hapū, this is a vast body of knowledge, wisdom and custom. It derives from the very detailed knowledge gained from residing in a particular geographic area for many hundreds of years, of developing relationships with other neighbouring communities as well as those further afield, and learning from practical experience what works and what does not. Not surprisingly, this body of law is very different from English law in how it is established, mainly because it cannot be reduced to writing and thereby set in concrete by legislation.
59. Tikanga Māori is very flexible and each situation requires its own particular form of tikanga. The particular form it takes on any occasion can always be determined by the consensus of the whānau, hapū or iwi concerned if the matter is anything other than very straightforward.
60. As a result, Ngāti Kahu will spend considerable time in hui on marae discussing what an appropriate tikanga for a particular take (issue/situation) should be. The marae remains the centre and focal point of a Māori community and is the one institution that has been left largely untouched by contact with Europeans. In discussing the institution of Māori, R.A. Joseph writing in a Law Commission study paper states:

Despite the corrosive effect of missionaries and official amalgamationist policies, the Marae as an institution has persisted from pre-European Māori society into the modern era. It therefore has no western legal base.... In addition, the Marae provides common ground where the Pākehā can gain some awareness and insights into Māori life and the importance of biculturalism. The Marae is essentially an institution run by Māori for Māori with inclusion granted to other groups on their (Māori) terms. Marae therefore fulfil deeply felt needs for the

²² Orsman, above note 4, p 1212.