

## APPENDIX B: BLOCK HISTORY SUMMARIES

*Owhaoko lands access history*

1. The lands that now form Ngamatea Station (behind which the remainder of Owhaoko C and D partitions lie) were primarily leased through to the 1950s to non-Māori farmers. They have been worked in one holding since about 1931.<sup>112</sup> As set out below, a series of purchases occurred in the early 1950s of the previously leased lands. Purchases of shares in some adjoining Māori lands resulted in arrangements being put in place for them to be farmed as part of Ngamatea Station.
2. Owhaoko had one small subdivision, Owhaoko D5 section 1, purchased in 1901.<sup>113</sup> There is very little presented in the record about this sale from Ani Kiritaako to William Hamilton Turnbull and Oswald Stephen Watkins.<sup>114</sup> This section was critical for access to the remainder of the block. Other lands were leased and farmed. Negotiations towards Crown purchase of unleased lands in the 1910s largely failed due to large differences in views as to the value of those lands.<sup>115</sup> Five large subdivisions were gifted to the Crown from 1917 to 1973 (addressed in separate submissions).<sup>116</sup>
3. Four rounds of partitioning occurred prior to 1913 resulting in over 30 partitions - including intensive partitioning of those parts of the parent block that were acknowledged as being of (at that time and until recently) little economic value.<sup>117</sup> Neither Fisher and Stirling, nor Woodley, explain the reasoning for that partitioning (but suggest the contested title application and associated survey costs and debts as contributing causes).<sup>118</sup>

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<sup>112</sup> LH Roberts, 11 March 1993, 3/3218, Owhaoko D5 section 3 alienation file, Aotea Maori Land Court, Whanganui. Wai 2180, #A037 (a) at 10 (Woodley document bank Vol 1).

<sup>113</sup> Woodley Wai 2180, #A037 at 399. Fisher Stirling Wai 2180, #A6 at 110.

<sup>114</sup> Woodley Wai 2180, #A037 at 399. Fisher Stirling Wai 2180, #A6 at 110.

<sup>115</sup> Wai 2180, #A06 90-96; the exceptions are 1375 acres D6 No 2 in 1913 and 2206 acres C6 between 1914 – 1917.

<sup>116</sup> Fisher Stirling Wai 2180, #A6 at 5 (summary) and 77-134 in detail.

<sup>117</sup> Wai 2180, #A06 at 66-69; Wai 2180, #A037 at 397. Woodley and Fisher/Stirling record slightly different dates for the partitioning rounds (possibly due to the complex litigation history of the block). What is material for the purpose of these submissions is that all four rounds occurred prior to 1913.

<sup>118</sup> Wai 2180, #A06 at 66-69; Wai 2180, #A037 at 397.

4. Legal ability to secure access to the entirety of the block was available when each partitioning process took place (under the 1886 and 1894 Acts).<sup>119</sup> However, Woodley records only two access applications being made.
- 4.1 The first, by Waikari Karaitiana in 1899 sought access to Owhaoko D2 and to his Oruamatua Kaimanawa blocks (2G, 1K, 1L). The court minutes record all three access orders were made,<sup>120</sup> although Woodley was unable to locate the order made for Owhaoko D2 on the block file.<sup>121</sup>
- 4.2 The second, in 1902 to Owhaoko D5 section 1 appears to be related to the 1901 private purchase of that section (it was made on behalf of Ani Kiritaako who is recorded as the seller of the lands).<sup>122</sup> The minute records “all Māori concerned agreed to the road. There were no objections.” The order requires the applicant to bear costs of any survey necessary.<sup>123</sup>
5. It is not clear that the private road ordered over Owhaoko D5 section 1 in 1902 (see paragraph 4.2 above) was ever in fact legally registered on the title. Its existence is not discussed in later access applications – perhaps the owners did not proceed with survey at the time. It is also not clear whether legal rights from this order remain extant that could be given effect to by legal successors today.<sup>124</sup> What is clear is that an internal access road was established on the ground and that access across that section (ceased to be Māori land pre-1913) was critical for access to the remainder of the Owhaoko C and D blocks.
6. Whilst, as above, few applications were made for access when undertaking Owhaoko partitioning, the Native Land Court was advised of the implications of further leasing of Owhaoko lands on access to the balance

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<sup>119</sup> Woodley Wai 2180, #A037 at 397-398 “Therefore when title was investigated and the initial four partitions made in 1888, this legislation could have been utilised from then until 1893. The 1894 Act, containing similar provisions, could also have been utilised when Owhaoko C and D blocks were partitioned in 1894 and when Owhaoko D5, D6, and D7 partitioned in 1899.

<sup>120</sup> Wai 2180, #037(b) Document Bank Vol 2 at 7.

<sup>121</sup> Woodley Wai 2180, #A037 at 398, 477.

<sup>122</sup> Woodley Wai 2180, #A037 at 399 – application made under Native Land Court Act 1894 s 69. Evidence suggests that the block was sold in 1901 and that a year later the sellers requested access to the block.

<sup>123</sup> Wai 2180, #A037(b) Document Bank Vol 2 at 107.

<sup>124</sup> Woodley Wai 2180, #A037 at 400, 402, 404.

of the block by the Valuer General in 1905.<sup>125</sup> In 1907 caution was expressed by the Crown against further partitioning of Owhaoko D5 section 1 due to its importance for access to the balance of the block (leasing was instead recommended):<sup>126</sup>

Owhaoko D5 section 1 was “the key to the whole of Owhaoko” [...] it was “in the interests of the several Native Owners [that] there should be no partition of the block but that the whole should be leased so that no part should be deprived of access or left without a tenant through sub-division.”

7. This knowledge was reiterated by the Crown in relation to development potential of the land it purchased in 1914,<sup>127</sup> and may possibly have been relevant to stopping various proposed further subdivisions and private purchases in 1917 and 1926.<sup>128</sup>
8. In the 1920s the Pakeha owner/lessee<sup>129</sup> of what is now Ngamatea attempted to secure council funding for maintenance of the internal access road. The owner/lessee furthered their request by proposing the Council take the relevant lands (traversing its own land and land leased from Māori) under the Public Works Act ahead of those leases expiring. They stated the access:<sup>130</sup>

would, also, as you will see, give access, which at present does not exist, to the Blocks lying to the north of D5 Number 1 and D5 Number 4. Mr Ruddenklau informs us that the existing roads, which apparently are not roads at all, are in use by the general public, and in particular, they are used by the settlers, for the purpose of access to the Bush lying to the West of D5 number 1, from which they procure the only firewood available in the district. [...]

If the Council is unable to see its way to take the land for the purposes of the roads, then our clients will be under the necessity of closing the access which is now afforded to the settlers in the District through D5 Numbers 2,3 and 1, a step which they would very much regret having to take.

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<sup>125</sup> Valuer General, Valuation Department to Registrar, Native Land Court, Wellington, 28 August 1905, 3/4083, Owhaoko D5 section 4 alienation file, Aotea Maori Land Court, Whanganui. Woodley Document Bank Vol 1 at 39.

<sup>126</sup> Valuer General, Valuation Department to Registrar, Native Land Court, Wellington, 28 August 1905, 3/4083, Owhaoko D5 section 4 alienation file, Aotea Maori Land Court, Whanganui. Woodley Document Bank Vol 1 at 39.

<sup>127</sup> Woodley Wai 2180, #A037 at 401. If Owhaoko D6 section 2 was to be offered for settlement legal access would have to be provided however the nature of the land was considered unsuitable for settlement.

<sup>128</sup> Wai 2180, #A06 96, 98.

<sup>129</sup> In this period some of the land was owned freehold by the Pakeha farmer, some was leased.

<sup>130</sup> Woodley Wai 2180, #A037 at 402.

9. The Council declined these requests on the basis that the road was not a public way but a “private way” “required only by the owners of the Ngamatia [sic] station” who already had road frontage.<sup>131</sup> Access for Māori to their blocks located behind Ngamatea was mentioned in general terms by the applicant but there is no record of the adjoining Māori owners’ views being conveyed to the Council. The Council does not seem to have registered the importance of this opportunity at the time to provide access to the adjoining Māori-owned blocks.
10. The owner/lessee pursued matters further. Their proposal for the Council to take the road as an unformed road (with costs of survey being met by the owner/lessee) so long as no legal difficulties were involved or costs incurred was accepted by the Council. However, the paper trail on record ends at that point.<sup>132</sup> A road was not dedicated then or subsequently. It appears the owner/lessee came to other arrangements to maintain their access (primarily lease renewals but possibly also informal arrangements).
11. In 1953, Mr Roberts (the then lessee) purchased Owhaoko D5 section 2, along with other lands that now form part of Ngamatea Station.<sup>133</sup>
12. Mr Wirihana Terry Apatu (Ngati Hinemanu) and the daughter of Mr Roberts, Margaret, married. During their period as owners of Ngamatea Station, the following purchases of shares in adjoining Māori lands occurred:<sup>134</sup>
- 12.1 in 1972 purchase of shares of 1/3<sup>rd</sup> of Owhaoko D5 section 3 by Mr T Apatu.
- 12.2 in 1969 purchase of half shares in Owhaoko D5 section 4. This block remains Māori land with one owner, K Bates, daughter of the Apatu’s;
- 12.3 between 1969-1976 approximately 11% of Owhaoko D6 section 1 shares were purchased. In 1977 Mrs Steedman (Parehuia

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<sup>131</sup> Woodley Wai 2180, #A037 at 401 - 404. Wai 2180, #A037 (c) Document Bank Vol 3 at p 187.

<sup>132</sup> Wai 2180, #A037 (c) Document Bank Vol 3 at p 198. Proposal put to Council by Ruddenklu lawyers. Council accepts subject to conditions above. Lawyers acknowledge Council letter and say they’ll seek instructions. No further correspondence on the matter is in Woodley document bank.

<sup>133</sup> Wai 2180, #A037 at 404.

<sup>134</sup> Wai 2180, #A037 at 404 – 408.

Whakatihī) objected to further shares being sold to Mr Apatu stating he was “outside the family”. Apatu and Bates whānau now own the majority of the shares in the block.<sup>135</sup>

13. The blocks in the preceding paragraph remain Māori land.<sup>136</sup> The first two are farmed as part of Ngamatea Station. Owhaoko D6 section 1 also remains Māori land although it is not vested in the Trusts that administer other Owhaoko blocks and it is not clear whether it is farmed as part of Ngamatea Station.<sup>137</sup>
14. Woodley does not locate any correspondence, later applications to the Court, or petitions concerning Owhaoko partitioning or access issues between the 1888 partition and the 1977 dealings discussed immediately above.
15. In summary on Owhaoko:
  - 15.1 Extensive partitioning took place between 1893 and 1935 – the reasons for which are not entirely explained by the historical reports on the record of inquiry.<sup>138</sup>
  - 15.2 A key access point, Owhaoko D5 section 1, was made private land in 1901<sup>139</sup> (with the consequence that until 1975, the consent of the owners of that land was required in order to secure access to the remainder of the block).
  - 15.3 Applications could be, and in two cases were, made to the Native Land Court to secure legal access (one of which, the 1902 access order, was made but appears not to have been implemented). There is no record of further applications being made at the time of partitioning or subsequently (other than those described below).

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<sup>135</sup> Woodley reports as more than 65%. Māori Landonline records Katherine Louisa Bates owning 100 of 119 shares.

<sup>136</sup> Wai 2180, #A037 at 404 – 408.

<sup>137</sup> Wai 2180, #A037 at 408.

<sup>138</sup> Wai 2180, #A06 at 68.

<sup>139</sup> Wai 2180, #A06 at 110; Wai 2180, #A037 at 399.

It appears that all parties lost sight of the 1902 access order and an open question remains as to the legal effect of that order today.<sup>140</sup>

- 15.4 An application by the then lessees of what is now Ngamatea Station for a public road was declined in the 1920s (on the basis it was not used by the public).
- 15.5 Securing access was not made a condition of the sales of Māori land that occurred from the 1950s set out above.
- 15.6 Access to Owhaoko D6 section 3 (and the blocks to the north of it) became the subject of extended negotiations and interactions with the Māori Land Court. These matters are addressed in Tranche 2 of the Crown's landlocking submissions.

*Te Koau A access history*

16. Title to Te Koau was investigated in 1891 following the identification of an early survey error. The title determination was appealed in 1906 and titles and partitions were made. Access was not discussed or ordered in any of those pre-1913 processes notwithstanding legal mechanisms being available to secure access.<sup>141</sup>
17. The most direct and practical access to Te Koau A today traverses public conservation land (on the Timahanga Track) and private land (Timahanga Station for 5 kilometres).<sup>142</sup> That route traverses, in part, what was Mangaohane G block (private land since 1893 through retrospectively validated sale to the Studholmes), now part of Timihanga Station.<sup>143</sup>
18. A significant partition was undertaken in March 1921 under the 1913 Act.<sup>144</sup> At that time, the Court only had discretion to determine whether access could be granted where the private owners or lessees of those adjoining

<sup>140</sup> Wai 2180, #A037(c) Document Bank Vol 3 at 180 "Chief Surveyor states that there is no record in his office, or in the Land Transfer Office, of any road having been laid off from the Taihape-Napier Road to the Ngamatia [sic] Station." 19/7/24 Ruddenklau to Rangitikei District Council concerning rates and access.

<sup>141</sup> Native Land Court 1894 s 69.

<sup>142</sup> Wai 2180, #N01; Wai 2180, #A037 at 439.

<sup>143</sup> Wai 2180, #A037 at 439.

<sup>144</sup> Wai 2180, #A037 at 443.

lands consented.<sup>145</sup> However, again, no discussion of access is recorded in the relevant minute.

19. The fact that no access was laid out was brought to the attention of the Court Registrar by the Department of Lands and Survey in June 1921 with the comment “possibly this had been an oversight”.<sup>146</sup> The Registrar indicated that the Court only considered access when applications were made (even though it had discretion to do so in the absence of an application):<sup>147</sup>

[...] there does not appear to be any road access to the block itself, and as no mention of roads was made at the time of the hearing of the application for partition, the question was not considered by the Court.

20. As Mangaohane G had become private land in 1893, the 1921 application required the consent of the adjoining owner (Timihanga Station) to be able to apply for access on the new partition to Te Koau A, or to take action to remedy the failure to secure access upon the earlier partitioning. There is no information on the record whether that consent was sought.
21. In 1972 Mr Karena purchased Pt Te Koau A V IX X (1672 acres)<sup>148</sup> and attempted to lodge an access application to the Māori Land Court early in the 1970s, prior to the 1975 amendment (and advised the Council he would not pay rates until he had access). The application was not accepted by the court Registrar as it was not completed correctly.<sup>149</sup> In the absence of the consent of the Timihanga Station, the application could not have succeeded at that time even if it had been completed correctly.
22. Post-1970 Te Koau A access issues are addressed in Tranche 2 of Crown landlocking submissions as they include actions of the Department of Conservation.

<sup>145</sup> Native Land Amendment Act 1913 s 48. See also Wai 2180, #A037 at 443.

<sup>146</sup> Wai 2180, #A037(c) at 50. Chief Surveyor, Department of Lands and Survey District Office, Napier to Registrar, Native Land Court, Wellington, 24 June 1921 (includes a handwritten note on document dated 19 June 1921) Ikaroa I/316 Te Koau B alienation file, 1919-1929, Takitimu Maori Land Court, Hastings.

<sup>147</sup> Wai 2180, #A037(c) at 51.

<sup>148</sup> Wai 2180, #A037(c) at 215. Letter from JR Roberts to Rangitikei County Council advising them of transfer.

<sup>149</sup> Wai 2180, #A037 at 445.

*Oruamatua Kaimanawa access history*

23. As with the blocks above, the level of partitioning in Oruamatua-Kaimanawa blocks is extensive. The reasons for that level of partitioning have not been explained by technical witnesses beyond pointing to the block being large, and the lands having a “diversity of interests” (reflecting in part their location as “border lands” between various customary groupings).<sup>150</sup>
24. In 1899 Waikari Karaitiana applied for access under the 1894 Act to Owhaoko D2; and to his Oruamatua Kaimanawa blocks (2G, 1K, 1L).<sup>151</sup> Three access orders were made.<sup>152</sup> Mr Karaitiana’s application did not seek access for IU and IV notwithstanding them being in the same ownership at that time.
25. Oruamatua Kaimanawa 1K was subsequently sold to the long term lessee Birch in 1907.<sup>153</sup> Of the 62,170 acres of the parent block that were purchased privately by 1962, approximately 40,000 of those acres were purchased prior to 1913. This included the lands over which the most practical access would be required to traverse. Until 1975 gaining retrospective access over those blocks could not be ordered without the consent of the adjoining owner (and, until 1922 the consent of the lessee would also have been required).<sup>154</sup>
26. In 1961, the then lessee of Oruamatua Kaimanawa IU and IV applied for a road to be retrospectively ordered under section 60 of the 1953 Act. That section 60 application failed as<sup>155</sup> section 60 only permitted correction of technical errors. Although access was ordered (as above) to adjoining blocks (IK) in 1899 there was no record of the court having considered access to IU and IV at that time (at which time IK, IU and IV were in common ownership). The lessee was unable to apply under the landlocking resolution provisions because, at the time of the application (1961), the

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<sup>150</sup> Wai 2180, #A06 at 145, 172 (map); Counsel for the Crown asked Dr Fisher and Mr Stirling in cross examination whether further explanation could be provided, they advised they could not speculate further.

<sup>151</sup> Wai 2180, #A037 at 477.

<sup>152</sup> Wai 2180, #A037 at 398; 477. Woodley states that although order for Owhaoko 2G block file, the minutes of the Court record the order being made.

<sup>153</sup> Wai 2180, #A06 at 160.

<sup>154</sup> Fisher and Stirling Wai 2180, #A06 at 163 (Table 19 1909 – 1920 total modified by analysis of Table 18 purchases pre and post 1913).

<sup>155</sup> Wai 2180, #A037 at 269-270.

consent of the adjoining landowner was still required, but was not forthcoming (access over 1K was being sought, 1K ceased to be Māori land in 1907 ie pre-1913).

27. This contrasts with a successful application under the same provision to retrospectively secure access to Motukawa 2B7B. In that case there was evidence that the 1913 partition order had considered access but had been wrongly executed.<sup>156</sup>
28. At the time of the 1960 application, although access could not be ordered over the adjoining land that had ceased to be Māori land pre-1913, it could have been ordered over the Māori owned blocks the access way would have traversed. Although that would not have provided a complete answer, it would have at least reduced the ongoing dispute to a narrower issue.
29. The bulk of the Oruamatua Kaimanawa parent block was either purchased privately or became incorporated into the Defence Waiouru exercise area. Only four relatively small partitions are today retained by Taihape Māori (1W1, 1V, 1U and 2K).

*Awarua lands access issues/Mangaohane block*

30. Access to Awarua Aorangi and Awarua 1DB2 is restricted. Titles to these blocks were created at times when access could be ordered (without the necessity of consent). However, it does not appear applications for access were made.<sup>157</sup>
31. Whilst foot access to these blocks today can be gained by crossing the Rangitikei River from the end of the Mangahoata Road, that is not considered 'reasonable access' (access is via a flying fox and a steep cliff that would not be capable of more than foot access). This site was visited by the Tribunal in 2019 (the River Lodge).

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<sup>156</sup> Wai 2180, #A037 at 269-270.

<sup>157</sup> Awarua 1DB2 1903; Awarua Aorangi 1912. Wai 2180, #A037 at 285 referencing Young, Subasic and Stirling.

32. The historical and most practical route traverses Mangaohane Station lands that were alienated in the 1890s to the Studholmes and is therefore subject to the pre 1913 consent requirements.<sup>158</sup>
33. As with the Oruamatua Kaimanawa blocks above, the failure to secure access when partitioning was not limited only to early land transactions. A 1928 partition on Awarua was not accompanied by an application for access and no roadway was ordered.<sup>159</sup>

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<sup>158</sup> The contested title determination of Mangaohane is not discussed here (but will be in further submissions). The key point relevant for access to Awarua 1DB2 and Awarua Aorangi is that the most practical access route traverses land that was alienated prior to 1913 and therefore, until 1975, access applications could only proceed if the consent of that landowner (by then Timihanga Station) was secured.

<sup>159</sup> Wai 2180, #A037 at 276 “When Awarua 2C12A2 was partitioned in 1928, no roadway was ordered through the block despite Awarua 2C12A2B having all the road frontage.”