
KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 2200

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

Porirua ki Manawatū district inquiry

BRIEF OF EVIDENCE OF MARY PATRICIA O'KEEFFE

8 July 2019

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CROWN LAW

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Introduction

1. My full name is Mary Patricia O'Keeffe.
2. I hold a BA and Post Graduate Diploma in Anthropology from Otago University, and a Master of Literature in Anthropology from Auckland University.
3. I give this evidence as I feel it is important that the Tribunal be provided with accurate and full details of my work at Tamati Place, Waikanae, the location of the Karewarewa urupā. I have read the briefs of evidence filed by Mr Paora Ropata and Ms Mahina-a-rangi Baker filed with the Tribunal and I requested the Crown to allow me to respond to that evidence and to correct what I see as misrepresentations of the true facts.

My initial involvement in the site at Tamati Place, Waikanae

4. I became involved in Tamati Place in late 2000, after the koiwi had been revealed. The archaeologist then engaged by the Waikanae Land Company (the developer), Susan Forbes, had been involved in the initial discovery and re-revelment of the koiwi. As a prosecution under the then Historic Places Act 1996 was possible, she asked me to take over as project archaeologist as she felt she was conflicted.
5. I obtained as much information as I could to bring myself up to speed with the situation. I exchanged several emails with Ms Forbes over the ensuing months and had several conversations with her.
6. It became apparent to me very early on that this was a complex situation, and that the cultural and traditional values appeared to be greater than the archaeological values.

The scope of my work

7. It also became apparent to me that the developer was determined to continue with the development, and the presence of koiwi was not seen by him as a problem or an obstruction to development. I assumed that therefore this situation was very likely to end up in the Environment Court at some stage, and this assumption of a court process has been the fundamental driver of my work and research. I wanted to gather robust data and verified information to present in Court, so as to be in a position to be able to say "I know" rather than "I think".
8. Over the course of my involvement I have changed the scope of my work in a small way. Initially in 2000-2001, when I thought this situation may have an immediate resolution, I wrote an archaeological assessment which contained recommendations, as required by Historic Places Trust's authority application process. As it became apparent over ensuing years that this situation would not be resolved quickly or easily, and as the developer's determination became more apparent, I changed the scope of my written reports to serve the purpose of informing a discussion between the developer and iwi, by setting out verified facts, hypotheses based on known data, and not setting out any recommendations.
9. A second important contextual factor in determining my work is the relationship between and difference between archaeological values and cultural values. As an archaeologist I have been trained in a Western scientific discipline, that requires credible accepted methods and techniques, and robust, verified data. I am looking at material that is physical and tangible: it can be examined, investigated and evaluated. My understanding is that iwi are looking at the same physical sites, but with an additional and unique layer of value: my understanding is that iwi are also looking at the cultural, spiritual and traditional values of the place. These values are all intangible, and as such

cannot be evaluated in the same way as tangible physical values. So while we (archaeologist and iwi) are looking at the same site, we are each contributing unique and specific perspectives. As an archaeologist I limit myself to my professional scope: I cannot and do not look at the values specific to iwi. I do not have the mana nor the mandate to consider cultural values, plus to do so, I consider, would be an insult to iwi, as it would utterly undermine their role and right to determine their culture and outcomes.

10. I note this separation of archaeological and cultural values is supported by the Resource Management Act 1991 (the RMA) and the Heritage New Zealand Pouhere Taonga Act 2014 (the HNZPTA) (previously the Historic Places Act 1993).

11. Section 6 of the RMA sets out matters of national importance. Section 6 states:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance.

12. I note that natural and physical resources are interpreted to include archaeological sites.

13. Section 6 also separates cultural and historic values:

Section 6(e) notes "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga"

Section 6(f) notes "the protection of historic heritage from inappropriate subdivision, use, and development"

14. Archaeological sites are defined in the HNZPTA as:

- (a) any place in New Zealand, including any building or structure (or part of a building or structure), that—

- (i) was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
- (ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and
- (b) includes a site for which a declaration is made under section 43(1).

15. The HNZPTA also defines different types of heritage places:

historic place—

- (a) means any of the following that forms a part of the historical and cultural heritage of New Zealand and that lies within the territorial limits of New Zealand:
 - (i) land, including an archaeological site or part of an archaeological site:
 - (ii) a building or structure (or part of a building or structure):
 - (iii) any combination of land, buildings, structures, or associated buildings or structures (or parts of buildings, structures, or associated buildings or structures); and
- (b) includes any thing that is in or fixed to land described in paragraph (a)

wāhi tapu means a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense

wāhi tapu area means land that contains 1 or more wāhi tapu

wāhi tūpuna means a place important to Māori for its ancestral significance and associated cultural and traditional values, and a reference to wāhi tūpuna includes a reference, as the context requires, to—

- (a) wāhi tūpuna:
- (b) wāhi tūpuna:

(c) wāhi tipuna

16. Part 3 of the HNZPTA makes it illegal to modify or destroy an archaeological site with an authority to do so from Heritage New Zealand Pouhere Taonga.
17. Section 3 of the authority application form¹ requires an archaeological assessment.
18. Section 4 of the form requires an assessment of cultural values. The form states:

an assessment of the Māori or Moriori (Chatham Islands) values of the archaeological site and the effect of the proposed activity on those values must be provided. This may take the form of a Māori or Moriori (Chatham Islands) values statement or assessment **provided by Māori or Moriori (Chatham Islands)**. This assessment should be appropriate to the scale and significance of the proposed activity and the proposed modification or destruction of the archaeological site affected and can include information prepared for an associated resource consent if it addresses Māori or Moriori (Chatham Islands) cultural values" (emphasis mine).

19. These words in the form show clearly the expectation that a cultural values assessment will be provided by iwi and not an archaeologist.
20. This separation and individualisation of values underpins both pieces of legislation that protect and manage New Zealand's cultural heritage.
21. I have become aware through my professional practice that there is occasionally a perception that because the archaeologist has been engaged by the developer, that they are working primarily to meet the developer's desired outcomes and best interest. This is not the case. As an archaeologist I am bound by the voluntary code of ethics advocated by the NZ Archaeological Association. I also work to the purpose and principles of the HNZPTA.

¹ <https://www.heritage.org.nz/protecting-heritage/archaeology/standard-archaeological-authority-process>

22. A consultant archaeologist is trying to balance the competing needs and tensions of ensuring the best outcome for archaeology, whilst also facilitating reasonable use of land as a process of natural right. I note that often the proposal first presented to me by a client differs significantly from the proposal eventually presented to Heritage New Zealand staff within an authority application. Much of my work in completing assessments for proposed work is primarily avoiding adverse impacts on archaeology, and then maximising research opportunities if destruction of sites is considered reasonable. Avoidance often involves changing the nature, location, or scope of the proposed work, so as to avoid impact on sites.

Archaeology of Tamati Place

23. As noted above, my involvement with Tamati Place commenced in late 2000. I was engaged by the developer to prepare an archaeological assessment in terms of Part 1 of the Historic Places Act 1993.
24. Again, I stress that writing an archaeological assessment does not imply a predetermined outcome of granting an authority. An assessment investigates the nature, location, context, significance and value of known and potential archaeology that could be adversely impacted by proposed work, so as to determine whether granting an authority is appropriate.
25. Specifically for Tamati Place, I consider the archaeological values to be of less significance than what I understand are the cultural and traditional values of the site (I will expand on this below). Consequently much of my work has been to gather robust data to contribute to a conversation primarily to be had between the developer and the iwi.
26. My research has covered a great deal of complex work across several matters: archaeological, historical and geomorphological (this is, the physical landscape and landforms in which the archaeology sites).
27. I summarise the key aspects of this research:

Koiwi

28. Human bones were revealed in trenching work in 2000. Susan Forbes' evidence to the District Court states that 2 skulls, 1 shoulder bone, 2 collarbones, rib fragments and two leg bones were removed from the trench on 5 July 2000. During the same site visit Ms Forbes observed "extensive areas of intact and modified midden/oven material".² Ms Forbes observed shell and hangi stone scattered over the subdivision, and observed at least three apparent intact deposits of shell midden visible in service trenches.³
29. The bones were analysed by Dr Nancy Tayles, Otago University.

Headstones

30. Two grave headstones were located near the area. A 1992 report by the Wellington Regional Council (WRC) states that during the work in 1970-71 to create the Waimeha lagoons:

Nearby several gravestones made of Sydney sandstone were discovered. They mark the burial place of, among others, a whaler named William Browne and a little daughter of Major Durie.⁴....Until recently large flax bushes had grown over the headstones, all but obscuring the remnant of a large burial ground which once covered nearly 20 acres. However, they have been restored and are now visible by the Waimanu Lagoon".⁵

31. Unfortunately most of the information contained in this quote is not sourced. There is one reference to MacLean,⁶ and the text of the quote is extremely similar to that used in Chris and Joan MacLean's 1988 book on Waikanae,⁷

² Forbes, n.d.: 4

³ *ibid*

⁴ Police and Customs Officer at Waikanae, 1847-1851

⁵ WRC, 1992:106

⁶ *ibid*

⁷ MacLean, 1988

which suggests this could be the source. The text in MacLean only lists William Browne and "...a daughter of Major Durie...".⁸

32. I researched the Biographies Index of the National Library for these people. The Index lists a William Franklin Browne, born in Barbados and died 11 August 1911. He married Erena, daughter of William Jenkins, a well-known whaler of the Kapiti district, who married Paeroke Rawiri; William Jenkins built the Jenkins Accommodation House at Waikanae (now known as Jenkins Cottage, and still lived in by a family descendant).⁹ Marriage to a Waikanae woman would have explained why William Browne was buried at Waikanae; however, the obituary for William Franklin Browne notes he was buried at Karori cemetery, so this is unlikely to be the William Browne buried at Waikanae.¹⁰
33. The biographies index does not have an entry for Penelope Durie. She was probably named after her mother. Major David Stark Durie (1804-1874) arrived in New Zealand in May 1840, and was the Police and Customs Officer at Waikanae between 1847 and 1851. His entry in the NZ Biographies index notes he had 6 children, including 4 daughters. Only three of the daughters are named, and their "society weddings" are described; I speculated that the fourth daughter was not named, or her life noted, because she died as a child.
34. The register of deaths index at the National Library has deaths noted for a William Browne in 1890, 1892 and 1893, for a Margaret Nairn in 1893 and for a Penelope Durie in 1896.
35. I checked the New Zealand Cemeteries Records index at National Library, and the New Zealand Gazettes between 1857 and 1920. There is no record of a formal or gazetted cemetery at Waikanae.

⁸ MacLean, 1988:196.

⁹ NZ Biographies Index, Turnbull Library

¹⁰ NZ Times, 14 August 1911

Historic graves

36. Plan ML1491 dated to 1891 shows the area of Tamati Place. The field book for this plan, field book 2140, shows "graves". The graves are not marked on the survey plan itself. The page from the surveyor's notebook is appended to this brief of evidence as **Appendix B**. Survey plan ML 1491 is appended to this brief of evidence as **Appendix C**.
37. Three small rectangles are shown on the plan to mark the location of the graves. I consider it significant that the surveyor used the word "graves" in his field book. From my experience with the nomenclature of historic survey plans, I infer that the specific use of this term suggests that the graves were of European style, marked either with headstones, crosses or a boundary fence. Generally when surveyors were recording unmarked Māori burial grounds, they used terms such as "native burial ground", "burial ground" or similar. European style burial does not of course imply European people are buried there; they may be burials of Māori people dating from the post contact period.
38. Using survey information available in the notebooks, I asked Dr Bruce McFadgen¹¹ to georeference the location of these historical graves onto a contemporary map. They are located on Wi Kingi Place exactly where the burials were revealed in 2000. The georeferenced map from QGIS (a computer based geographic mapping system on my laptop) is included in this brief of evidence as **Appendix D**.
39. It is possible that the graves of Browne, Nairn and Durie are the same three graves shown in the surveyor's field book of 1891. However this has not been proven and can only be speculation.

¹¹ As noted later in this brief, Dr McFadgen is an archaeological colleague, with prior training in both surveying and geology.

Cemetery designation

40. An urupā or historic graveyard was located within the area of land parcel Ngarara West A14B. We know this because:
- a. the 20-acre area of land was identified and was partitioned for use as a graveyard in 1919. The land was surveyed in 1920, and the 20-acre cemetery area became Ngarara block section A 14B No 1. This cemetery designation formalised an already existing historic graveyard, which in turn was based on the older urupā. The cemetery designation was subsequently lifted.
 - b. In 2011, for the purposes of my work, I commissioned additional research from Evald Subasic, an expert in Māori Land Court minutes, to clarify the land ownership and subdivision situation. Subasic's full research report to me is included in this brief of evidence as **Appendix E**.
 - c. A summary of the key points from Subasic's research is:
 - November 1896: Māori owners of Ngarara West A14 block apply to have section set apart as cemetery reserve;
 - Provisional order granted on 10 November 1896, block to be known as Ngarara West A14A, not completed by survey (cemetery didn't come into existence);
 - February 1905: Māori owners made another application, this was dismissed as judge noted only the survey was required to complete the application, this survey didn't happen;
 - May 1906: different section cut out as Ngarara West A14C (this area being situated immediately to the north east of Ngarara West A14A);
 - August 1915: Owners (E D & H Barber) have their block cut out – this becomes known as Ngarara West A14A, but bears no relation to the 1896 application for parcel A14A (Barber's parcel is 9 acres 1 rood & 20 perches);

- June 1918: Māori owners again made application for cemetery block. Parcel surveyed off and called Ngarara West A14B1.

d. Subasic concludes:

The evidence examined suggests that the block of approximately 10 acres [sic – it is not clear if Subasic meant 10 acres, or mistyped 20 acres] which the Māori owners of Ngarara West A14 sought in 1896 to set apart as a cemetery reserve was in the location of Ngarara West A14B1 which was partitioned in 1918. Ngarara West A14B1 was gazetted as a cemetery under the Horowhenua County administration (although the lifting of that status in 1969 has not been examined by me).

41. However it is not clear whether the majority of the 20-acre cemetery block was already in use in 1918 and the Māori Land Court was formalising an existing land use, or whether a small part of the area was used and a larger piece being set aside for planned future use. It is noted that the Partition Order of 1918 in respect of it did not stipulate that the area would be inalienable (as was proposed for the 1896 partition).
42. If the block were being defined for both existing and future use, some parts of the block would presumably include existing burials and some empty parts would be flagged for future use. It is likely that the 20 acre block would include existing burials: it is assumed that Hira Parata,¹² who was asked by the judge in 1918 to assist the surveyors, would have advised the surveyors where any burials were located, and they would have placed the block boundaries to include these areas. It is assumed that the linear edges of the 20-acre block do not mark the precise boundaries of a possible already existing graveyard, and are straight lines for surveying convenience.

¹² Also known as Natanahira Parata; Wi Parata's son.

Physical landscape and geomorphology

43. Because of the complexity of the landscape and geomorphology, I sought the assistance of my colleague Dr Bruce McFadgen. Dr McFadgen is an archaeologist and geologist, and has specialist knowledge of landscapes and geomorphology.
44. He visited the site with me in 2001, discussed the history of the landscape including the dredging, and together we formulated a probable scenario.
45. Dr McFadgen wrote me a summary report on our site visit; this report is included as **Appendix A**.
46. The geomorphology of the area provided critical information in interpreting what was thought to be archaeological material. Historic survey plans and aerial photos housed at Land Information New Zealand were studied to gain information on the changing environmental context of the area.
47. Tamati Place subdivision is near the seaward edge of the sand dune belt that extends from Paekakariki in the south to beyond the Manawatu River in the north. It is on the south bank of the former Waimeha Stream, which was once a large tributary of the Waikanae River¹³ that flowed west to southwest behind the coastal dunes towards the present Waikanae estuary. It is bounded to the southeast by a low dune ridge roughly parallel to the coast.
48. The sand dune belt has formed during the last 6500 years.¹⁴ Before then, the shoreline was near the foot of the hills,¹⁵ and since then, as a result of sand accretion, the shoreline has moved seawards some 3.5 km to its present position.
49. About a kilometre inland of the subdivision a prominent sand dune ridge roughly parallel to the coast marks an intermediate position of the shoreline.

¹³ Adkin, 1941

¹⁴ Gibb, 1978

¹⁵ Fleming, 1972

The dune ridge, called the Taupo Dune, is a relict foredune that was the shoreline at the time of the Taupo Pumice eruption¹⁶ ca. 230 AD.

50. The sand seawards of the Taupo Dune has accumulated since about 230 AD and is identified as belonging to the Waitarere and Motuiti dune-building phases.¹⁷ At some time since 230 AD, the beach was where the subdivision is today, and has been buried as the shoreline advanced further seawards. The Waimeha Stream, which at one time would have flowed to sea north of the subdivision, was probably forced to flow south-westwards by the accumulation of sand between it and the sea.
51. Between 1969 and 1971 a swampy area that was the former bed of the Waimeha River was created into a lagoon named the Waimanu lagoon.¹⁸ The lagoon was excavated with a floating suction dredge that pumped material from the bed of the lagoon and discharged it onto the south-eastern lagoon shore¹⁹ in the area of what is now Tamati Place. How far from the lagoon shore the material was re-deposited is not known, but it is reasonable to expect that it would have been used to level the surface of the terrace between the stream and the low dune ridge. The nature of the dredge meant it was automatically compacting material as it was deposited.²⁰ A recreation reserve was created around the edges of the lagoon.
52. A report and photograph in the Kapiti Observer of 9 July 1970 shows the suction dredge at work. The story reports plans for a marina and housing development. The Kapiti Observer has further stories and photos in its editions of 29 October 1970 and 17 December 1970.

¹⁶ Stevens, 1988, Sparks *et al*, 1995

¹⁷ Stevens, 1988

¹⁸ Maurice Rowe, *pers. comm*. Maurice Rowe is the director of the Waikanae Land Company

¹⁹ James Hutchison *pers. comm*. James Hutchison worked for Montgomery Watson, the company engaged by the Waikanae Land Company in 2000 to manage the subdivision proposal.

²⁰ Maurice Rowe, *pers. comm*

53. A report made by WRC in 1992 stated "as the work proceeded on the lagoons "an extensive Māori burial ground was uncovered".²¹ This report speculated that these burials may have "included warriors killed during the battle of Kuititanga".²² A similar statement is also included in Chris MacLean's book *Waikanae: Past and Present* (as noted, it is likely that MacLean was a source for the WRC report – text in both is very similar).²³
54. This report from the MacLean book and the WRC report was discussed with Kapakapanui at a meeting of 13 February 2001; in a follow-up e-mail from Susan Forbes on this issue Susan states "some of that info has become somewhat generalised over the years. Burials were uncovered at the airport and at Queens Road and none of us could think of any at Waimeha – Chris's sources were probably talking about Queens Road - not far away but far enough to be unrelated to this project".²⁴
55. Following acquisition of the 20-acre block by the Company in 1969-70, "several gravestones" (as described in the WRC Report) were located, which were reported to mark the burial places of William Browne, Margaret Nairn, and Penelope Durie.²⁵ These headstones have been relocated to the recreation reserve beside the current lagoon; the WRC report does not state whether the remains of the people were also recovered, and if so, what became of them.
56. In 1990 and 1999 the ground surface of the subdivision was re-contoured.²⁶ In 1990 the ground to the west of Wi Kingi Place was cut to a maximum depth of slightly more than 3m on the dune ridge, and slightly more than 0.5m west of

²¹ WRC, 1992:105

²² *ibid*: 105

²³ This particular section was unreferenced in the MacLean book: I contacted Chris MacLean and asked if he could remember the source. Chris was kind enough to check his records for his book; he had no written records for this report, so suspected it came from an oral interview undertaken for his book. He postulated the lack of referencing would have been deliberate to ensure the anonymity of the source.

²⁴ E-mail exchange: Susan Forbes to Mary O'Keeffe, 15 February 2001, quoted in O'Keeffe, 2012: 23

²⁵ WRC, 1992:105

²⁶ Engineering plans: 1605836 sheet 1, 1990; 1272233 sheet 1, 1999

the intersection between Tamati Place and Wi Kingi Place. Fill was deposited on the eastern part of the subdivision to a maximum depth of 4m. In addition, small pockets in the western part were filled to a depth of less than 1m. The key issue here was the depth of the fill across the site: the words "to a maximum depth" are noted, suggesting the depth of fill varied in places

57. It would have been normal practice to use the nearest source of material as fill and this would have included spoil cut from the higher parts of the subdivision. In 1990, however, some spoil was also brought in from the Major Durie Drive subdivision between Tamati Place and the Waikanae River and deposited along the south-eastern dune ridge.²⁷

Origin and interpretation of the shell

58. The archaeologist on site during the initial discovery of the burials (Susan Forbes) also reported seeing lenses of shell²⁸ in section. When I made a visit to the site in December 2000 and January 2001, shell was observed scattered loosely over the surface of the partially vegetated sand surface of the proposed subdivision.
59. Shells on the present ground surface of the subdivision are nearly all on fill and would have been deposited in their present position either during or since 1990 AD.
60. The original material excavated from the lagoon was almost certainly reworked in 1990 and again in 1999. In 1990, the material west of Wi Kingi Place was cut and probably re-deposited on the eastern part of the subdivision. In 1999, material along Tamati Place and Wi Kingi Place was excavated and probably re-deposited on the western part of the subdivision.

²⁷ James Hutchison, *pers. com.* 2000

²⁸ Shell lenses would indicate shell deliberately discarded by people; and thus is an archaeological deposit

61. If the shell lens reported by Forbes to have been found 600 mm below the ground surface in Tamati Place was found east of the intersection with Wi Kingi Place, then even allowing for up to 1m of cut in 1999, it would be in fill and probably deposited in that position in 1990 AD. If it was found at or west of the intersection, it could have been deposited in that position in 1970 as dredge spoil.
62. It was therefore inferred from the history of earthworks on the subdivision that the shells on the ground surface and in the trenches are not in situ deposits. Excavation of a trench where the shell lens was found would test the inference that the shell lens is in re-deposited material.
63. To test this hypothesis a surface collection of shells was made in January 2001 for analysis and testing.
64. The shells (**Table 1**) are estuarine and open coast species found on the beach today. As similar species are also found in shell middens in the Waikanae area, the species themselves are not a reliable indication of either a natural or a cultural origin.

Table 1: Shell species collected from ground surface of the subdivision.

Shell species	
Scientific name	Common name
<i>Austrofuscus glans</i>	ostrich foot
<i>Dosinia anus</i>	ringed dosinia
<i>Macra discors</i>	
<i>Paphies australis</i>	pipi
<i>Paphies (Mesodesma) subtriangulata</i>	tuatua

<i>Paphies (Mesodesma) ventricosa</i>	toheroa
<i>Spisula aequilateralis</i>	triangle shell

65. There is a general absence on site of cultural material such as artefacts, animal bones from food species, burnt and fractured oven stones, or charcoal that might indicate the shells are from old middens.
66. Blackened twigs and sticks similar in appearance to charcoal were seen in several places, as were stone fragments with blackened surfaces, or with the reddish colour of iron oxide, but natural processes can explain these materials.
67. On the lower slopes of the sand ridge southeast of Tamati Place between the entrance to the subdivision and Wi Kingi Place irregular mounds of black peat about 2m across and 20 to 40 cm high were observed during a site visit in January 2001. The peat is mixed with swamp-blackened twigs and sticks, rounded lumps of Taupo Pumice discoloured by swamp black and iron oxide, shells stained with iron oxide, and occasional stones some with blackened surfaces others stained with iron oxide.
68. The peat is probably from either re-deposited material originally dredged from the lagoon in the 1970s, or is from a former in situ wetland. In either case it has probably been dug out of a service trench along Tamati Place. The wood fragments, stone, and shells can be matched on the present beach and are possibly from an old foreshore that later became incorporated in a wetland after the Waimeha Stream began to flow south-westwards.
69. A sample of shells was taken from the ground surface for radiocarbon dating. The ground surface over the subdivision had been sprayed with a mixture of PVA and grass seed, and PVA adhering to shells was removed by scrubbing the shells in tap water. The age of the shells, determined by radiocarbon dating, is between 935 and 1080 AD (**Table 2**). This age is substantially older than the

generally accepted date for the human settlement of New Zealand of ca.1250 AD²⁹ and indicates that the shells are not from an archaeological midden.

Table 2: Radiocarbon and calibrated ages (95% confidence interval) for tuatua shells (*Paphies (Mesodesma) subtriangulata*) collected from the ground surface of the Tamati Place subdivision. The shells were physically pretreated by scrubbing in cold water to remove traces of PVA and then air-dried. The shells were chemically pretreated by washing in 5 M dilute hydrochloric acid for 500 seconds, rinsing and drying. $\delta R = -30 \pm 13$ (McFadgen and Manning, 1990).

Laboratory number	Conventional Radiocarbon Age (years BP)	$\delta^{13}C$ ‰	Calibrated Age (years AD)
Wk9144	1360 \pm 40	1.4 \pm 0.2	935–1080

70. The age of the shells indicates that they are from a natural deposit. Considering the earthworks that have been carried out on the subdivision, especially the excavation of the lagoon in the 1970s, it is inferred that the shells on the subdivision are derived from a former beach in the position of the present lagoon. The lagoon water level is less than a metre above mean high water mark, and the suction dredge would almost certainly have intercepted an old beach when the lagoon was excavated.
71. Not all of the shells on the subdivision are necessarily from a natural deposit, however. Some could possibly be from shell middens that were originally on the subdivision, or brought from Major Durie Drive, but their status as former midden shells would need to be demonstrated.

²⁹ Anderson, 1991; McFadgen *et al*, 1994; Higham and Hogg, 1997

Geophysical surveys

72. A ground penetrating radar (GPR) survey was commissioned by Waikanae Land Company (WLC) and carried out in March 2002 to check for the possibility of further unrecorded and unknown burials in the Tamati Place area. The entirety of the Tamati Place proposed subdivision was scanned; nine anomalies that the technician considered could conceivably (but not presumably) have been further possible burials were recorded in the vicinity of Wi Kingi Place, immediately around where the first burials were revealed by the trenching in 2000. Three anomalies were also recorded at the very north boundary of the site; no further anomalies were recorded anywhere else on site.
73. This 2000 work was undertaken by a surveyor with some experience in geophysical surveying.
74. In order to have the very best and most up to date information, I recommended to the developer that a new geophysical survey be undertaken on the site. This was because geophysical survey technology has improved markedly in the 14 years since the previous survey. This second geophysical survey was undertaken on 13-14 July 2016 by Dr Hans Bader, an archaeologist who is very experienced in geophysical surveying, so capable of interpreting the data from a specialist archaeological perspective.
75. Dr Bader recorded a large number of anomalies across the site; more than in the 2000 survey. He also verified the placement of a dredging stockpile on the eastern side of the site. Dr Bader required testing the geomorphological context of the site with a hand-dug test pit, in order to confirm the nature of his recorded anomalies. Dr Bader stated in his report:

“A relevant question for the anomalies identified in this geomagnetic survey, is their depth within the original ground surface before sand was dumped onto the surface. If the original surface is close to the current surface, these anomalies would be consistent with pits to a

reasonable depth. If the original surface is deeper than a metre, these items are more likely part of the dumping event.”³⁰

A copy of Dr Bader’s (Archaeology Solutions Ltd) report appears at Error!

Reference source not found..

76. The test pit is discussed below.

Consultation and discussion with Iwi

77. When I first became involved with Tamati Place I undertook discussions with the Takamore Trustees, who I was advised by Susan Forbes were managing the situation at this time. These discussions continued over several years. Recently, Mahina-a-rangi Baker criticised me in a conversation with her for not contacting the Te Ati Awa Ki Whakarongotai Trust Board (**Whakarongotai**). Unbeknownst to me, the Board had taken over the role of managing the situation; this information had not been conveyed to me and I am uncertain as to how I was supposed to have known this if no one informed me of it. Given my past work and contact with the Takamore Trustees, Whakarongotai would have been well aware of my work in the area and one would have expected they, if not the Takamore Trustees, would have updated me as to who the iwi expected me to consult with.

Responding to evidence

Brief of evidence of Mahina-a-rangi Baker³¹

78. In para 187 (d) of her evidence Ms Baker states “The suggestion by the WLC and their archaeologist Mary O’Keefe (sic) that the burials are localised to one site, and hence the rest of the site is not significant is outrageous...”. This is not a correct representation of my work. It is correct that the geophysical

³⁰ Archaeology Solutions, 2018: 17

³¹ Wai 2200, #F11

survey suggests that burials are localised to one site, but I have never stated the rest of the site is not significant. I also note Ms Baker's reference to me as "their" archaeologist in relation to WLC, which I feel implies a relationship which does not exist. As noted, whilst I have been engaged by WLC, I maintain my professional independence.

79. In para 189 of her evidence, Ms Baker refers to the process behind the 2016 archaeological test pit. This pit was hand dug, under the conditions of an archaeological authority granted by Heritage New Zealand.³² The authority issued by Heritage New Zealand states that its purpose was to determine the depth of deposited fill at Tamati Place in a particular location. The purpose of the test pit is to establish depth of natural ground surface to assist with the interpretation of data obtained by geomagnetic survey. Ms Baker references an email authored by me in which I state "Historical data established that there was an urupa within the area of the proposed subdivision. What is not known, and what is a crucial issue, is the [extent] of the urupa and so the potential for further koiwi". In her evidence Ms Baker states that this statement is not true. She has misunderstood and misrepresented my statement – I agree that the historical boundary of the designated cemetery is documented and well understood; my specific point was to determine the possible extent of koiwi across the site, as they may not have been limited to the boundary of the designated cemetery.
80. Ms Baker has further misrepresented the reasons behind the 2016 test pit, despite them being clearly set out in the documentation. The geophysical survey completed by Dr Bader recorded the presence of anomalies. Dr Bader stated:³³

"The existing service trenches (earthworks in 2000), some with metal pipes (strong dipolar signals) and some with plastic pipes (light,

³² Authority 2017/316

³³ Archaeology Solutions, 2018: 15-17

positive lines), can clearly be seen in the data (Figure 6 and 7, and Figure 11 and 12). Figure 8 shows a multitude of mainly metal objects (strong dipolar signals) that are within the area. Most of them are shown very sharp which would suggest that they are close to the surface. Major disturbances and many foreign items in the ground can be seen close to the boundary at the western edge. These are most likely remnants of the building processes next door and any previous activities on the property (see above).

Figures 9 and 10 show some small anomalies which present themselves quite 'washed out' and are largely negative. These are consistent with small pits. Some fall within or very close to the previously recorded 'anomalies' in the GPR survey. But there are a good number more of similar 'anomalies' towards the north and northwest of the area of the previously recorded anomalies, tentatively identified as possible burial pits. A relevant question for the anomalies identified in this geomagnetic survey, is their depth within the original ground surface before sand was dumped onto the surface. If the original surface is close to the current surface, these anomalies would be consistent with pits to a reasonable depth. If the original surface is deeper than a metre, these items are more likely part of the dumping event. A small hand dug test trench showed that there is no overburden in the north and northwestern area of the investigation and therefore the anomalies can be understood as possible small pits cut into the original topsoil (see chapter 5.1.)."

81. Dr Bader's statement makes it clear that validation of the nature of the anomalies depended on testing of the overlying sand, hence the need for the test pit.
82. An authority for this work was gained from Heritage New Zealand, with their support and approval for the reasons for the work, and a test pit was hand dug in April 2017. Les Mullen from Te Ati Awa was present for this work. Les Mullen was present on site at the request of Ben Ngaia, of the Takamore Trustees. A copy of Mr Ngaia's email to me appears as **Appendix G**.
83. I discuss Les Mullen in para 98 below.
84. The location for the pit was deliberately chosen to be well away from any possible koiwi shown through anomalies in the geophysical testing. I do not agree with Ms Baker's analogy of Gallipoli stated in her evidence.

85. The test pit showed that there is no overburden (overlying placed soil) in the western side of the site and therefore the anomalies can be understood as small pits cut into the original topsoil.
86. A clearer understanding of the wider stratigraphy of the landscape was also enabled by the results of the test pit, as well as data from the geomagnetic survey and observation of physical landform. Of particular note is a large spoil heap of deposited dredged material on the eastern corner of the site.
87. The test trench has shown two important things that are relevant to an understanding of the physical site of Tamati Place:
- Dredged material is only located over part of the subdivision. Therefore anomalies shown by a geophysical survey are not being interpreted through a thick layer of deposited material, and are likely to be reasonably close (less than 2m) below the ground surface; and
 - The topsoil build-up is substantial and sufficiently different to the lower sand layer to express a different magnetic signature. This validates the results of the geophysical survey and the credibility of the anomalies recorded.
88. Again, as with all other aspects of my work, the reason for this test pit was to gather robust, verified data to contribute to the discussion on the site.
89. I note that in fact an archaeological authority was actually not needed for this test pit work. In discussion with Heritage New Zealand, we agreed that the selected location was deliberately well away from any possible koiwi, and thus did not technically trigger the requirement for an authority (Heritage New Zealand confirmed this). However, due to the high sensitivity of this entire site, the desire to keep iwi fully informed and involved through their role in the authority process, and my desire to act with transparency and integrity, I decided to seek an authority. Heritage New Zealand supported this action and the research motives underlying it. After assessment by Heritage New Zealand which involved assessment of both the archaeological and cultural components of the authority, it was granted.

90. In para 191 of her evidence, Ms Baker states that "She [meaning me] informs Heritage [New Zealand] that herself and another archaeologist had undertaken geophysical surveys of the property...". This is a disingenuous statement. Heritage New Zealand were advised of the intention to undertake a geophysical survey before it happened, as was required by the authority, and indicated their support for this work, based on the information it would potentially yield. The iwi were also informed, again, as an authority requirement, and were invited to be present. I note that Les Mullen from Te Ati Awa was present for the survey, and the subsequent test pit. Ms Baker uses the word "surveys" in her para 191 which implies more than one geophysical survey was undertaken; this is not correct.

91. Reports on the geophysical survey and on the subsequent test pit were written; these reports were supplied to the client, the iwi and Heritage New Zealand. Copies of these reports appear as Error! Reference source not found. and

Appendix H.

92. In para 195 of her evidence, Ms Baker states that "...an archaeological authority had been issued to WLC for O'Keefe (sic) to undertake a test pit. This came as a shock to us...". I do not understand how this could be a shock to Ms Baker as Heritage New Zealand's process for considering applications for authorities requires the iwi to be consulted (I note the authority process does not require iwi to agree to proposed work), and to be advised of granted authorities.

93. In para 195 of her evidence, Ms Baker states:

Worse still, she [O'Keefe] had in recent times met with our Board to discuss matters to do with the [MacKays to Peka Peka] Expressway archaeology and withheld any information relating to the application, despite knowing how significant an issue Te Karewarewa was to us as an iwi".

94. This is a complete misrepresentation of this meeting. It is correct that I met with the Board in September 2016, for the purpose of discussing the archaeological programme and progress of the MacKays to Peka Peka

Expressway. This was a major archaeological project being undertaken on the Kapiti Coast at the time, yielding significant results, and I wished to keep the Board informed of the progress and important results of the work. This meeting was specifically arranged to discuss M2PP; no mention had been made of Te Karewarewa in relation to this meeting nor any request issued to me to discuss this. As I had been asked to talk about M2PP, I consider it would have been profoundly discourteous and very poor manners for me as the guest to change the agenda on the spot to another matter, with no prior notice. Talking about a different topic from that agreed would have meant that people in the room would not have had the opportunity to gather their thoughts on the new issue and think of their questions and discussion points, plus it is possible that people who might have wished to be involved in such a discussion would not have been given the opportunity to be present.

95. I am deeply offended by the suggestion in Ms Baker's evidence that I have "withheld any information... relating to" Te Karewarewa; this is absolutely not the case. I note that since about 2016 I have repeatedly sent numerous emails to the Chair of the Trust Board and Ms Baker requesting a meeting to specifically discuss Tamati Place; these emails have also been cc-ed to the Board Admin officer. I have had no response from either the Chair or Ms Baker to these emails. Examples of my emails are included as **Appendix I**.
96. I have had one meeting just with Ms Baker in October 2017, in which I explained to her much of the information and context of my work, as set out in this brief of evidence. She had this knowledge when she wrote her brief of evidence.
97. In para 197 and 198 of her evidence, Ms Baker states:

On reviewing the application material it sets out that the applicant 'had been engaging on and off with various members of TAKW over the life of the development of the land'. It notes that TAKW were invited to be present during the geophysical investigations, and that an iwi member representing TAKW attended at this invitation and at this site visit the

intention to conduct the test pit was discussed with him. This was a fabrication on the part of the applicant, as the iwi member was in reality a colleague of the archaeologist O'Keefe (sic) on another construction project and had attended the survey at her invitation, seemingly without any knowledge of the true intentions of WLC, and potentially without knowledge of the full history connected with the site.

98. This, again, is an absolute misrepresentation of the situation. The iwi member referred to is Les Mullen, who is a member of Te Atiawa Ki Whakarongotai. Les and I have worked together for many years on numerous earthworks projects and developments on the Kapiti Coast and I am proud and honoured to call him a friend and colleague. Les and I have worked in a collaborative relationship, with him acting as the iwi monitor, and I have always understood him to be endorsed by the iwi in this role. I refer to the email from Ben Ngaia included as Appendix G.

99. In para 206 of her evidence Ms Baker states:

In 2018 the WLC's planner contacted the Trust twice with requests to meet and discuss their desire to conduct further test samples to 'physically investigate and confirm what the [geophysical survey] anomalies are'. This is a euphemistic way of saying that they wish to exhume the urupa yet again.

100. This reference to a "wish to exhume the urupa yet again" is utterly and categorically not correct, and an extraordinary statement to make in the face of the information available. Nowhere is the intention to "dig up the urupa" stated as a required archaeological outcome. This task is not required, and there is no need for it, and to do so would serve absolutely no purpose.

Brief of evidence of Paora Tuhari Ropata³⁴

101. In para 110 of his evidence, Mr Ropata states:

Mary O'Keefe was commissioned by the development consultants to undertake an archaeological assessment of the site for the application. As

³⁴ Wai 2200; #F11

part of this assessment she wanted to re-excavate some trenches and dig test pits to determine whether the site constituted an archaeological site in terms of the Act. An email relating to this is attached as Appendix U. Susan Forbes was contacted by Mary O'Keeffe about this but was concerned that her intent was to get the authority for the developers and to demonstrate that no sites remained intact, so subdivision work could continue.

102. This statement is incorrect, and a misrepresentation of my intentions and motives. My suggestion to re-excavate some trenches was to be able to view the stratigraphy of the trenches, as I had not been on site during the initial discovery and did not know what the sand layers looked like, in terms of colour, depth and nature. My work was not to determine whether the site constituted an archaeological site, as it clearly did. My work was to determine the nature of the geomorphology, and thus the stratigraphic nature of the known archaeology; in other words, was it within or under the overlying dumped sand.
103. As noted in Mr Ropata's Appendix V, I met with Rick McGovern-Wilson, then senior archaeologist for Historic Places Trust, to discuss the situation and the archaeological context. In this email exchange, Ms Forbes on 14 December 2000 notes "I am suspicious because her intent is to get the authority to destroy". This is simply not correct. This has never been my intention.
104. In a further email dated 14 December 2000, Ms Forbes stated:³⁵

Kaumatua are also clear that Mary will be biased about this. She has been employed to demonstrate that there are no intact sites so this is very problematic. She was also the archaeologist that gave evidence to say our urupa at Takamore had no archaeological value.

105. None of these statements are correct. I have no bias on this project and, as stated above, engagement of a consultant archaeologist does not imply their client's desired outcome is the primary goal. As a former consultant

³⁵ Mr Ropata's Appendix V

archaeologist, Ms Forbes knows this. At no time was the point of my engagement to demonstrate “that there are no intact sites”, and I have no idea where such an idea could have originated. I suggest my work demonstrates exactly the opposite motive – to robustly verify the presence of sites, and the geomorphological context of these sites.

106. Ms Forbes is also incorrect in stating that I “gave evidence to say our urupa at Takamore had no archaeological value”. This was in relation to issues for the then Western Link Road, which in turn became the MacKays to Peka Peka Expressway, and this statement is both utterly incorrect and very insulting.
107. I also note that the first time I have seen this email exchange between Susan Forbes and Historic Places Trust contained in Mr Ropata’s Appendix V is in viewing this as part of this Tribunal inquiry. This email exchange was never brought to my attention at the time of its writing in 2000.
108. Most notably I have never wished for subdivision work to continue, I have never stated this, and this has never been my intention.
109. In his evidence Mr Ropata refers to the work of Susan Forbes in excavating koiwi at Whareroa and Weggery Drive.
110. Koiwi are a relatively common unexpected find in the dunes of the Kapiti Coast.
111. In 2005, I excavated six koiwi tangata unexpectedly revealed in a residential subdivision in Paraparaumu. This work was undertaken with full approval and involvement of iwi, and I participated in the reinternment of the koiwi.
112. At the time of writing this brief (July 2019) I have just completed excavation of 16 koiwi tangata in a previously unknown urupa in the path of the Peka Peka to Ōtaki Expressway. The presence of this urupa prior to construction was not known; otherwise it would have been avoided. This work has been done with the full support and collaboration of Ngā Hapu o Ōtaki, and with iwi members working alongside me on site to undertake this work.

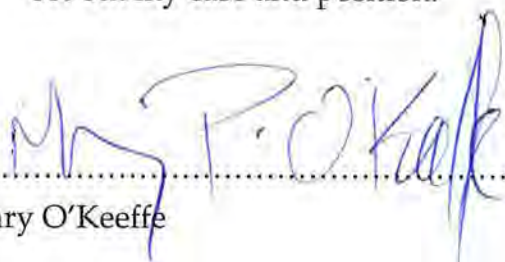
113. I consider myself a proficient, credible, and respected archaeologist, able to undertake high quality work with full knowledge of and respect for tikanga, and I am deeply distressed by suggestions to the contrary.

Conclusions

114. I believe I have been quite clear in my intentions and scope of work throughout my involvement with Tamati Place since 2001. A draft report authored by me in 2001 states in its conclusions:³⁶

Archaeological values [of the site] are considered to be such that further development is considered inappropriate. It is recommended that the client does not apply for an authority under the Historic Places Act, as the archaeological values are considered sufficiently high to preclude further work. It is considered very unlikely that Historic Places Trust would grant an authority with strong evidence of the presence of a burial ground.

115. At all times I have maintained this position. My primary motive has been to obtain robust, credible and verified data to contribute to a conversation about outcomes for this important site. I am distressed that my work and motives have been misunderstood and misinterpreted; I appreciate this opportunity to set out my case and position.


.....
Mary O'Keeffe

8 July 2019

³⁶ O'Keeffe, 2001, executive summary: See **Appendix J**.

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