

68. To avoid the danger of assuming that words in the deed are surplusage, we must assume that the Island of Roro-o-Kuri was specifically reserved to the Natives because it was deemed to be included in the first parcel of land covered by the deed. This island would be included within the boundaries of the first parcel in the deed if the boundary-line were deemed to run in a direct line from the mouth of the Esk River to Te Niho. If, therefore, the boundary-line runs directly from the mouth of the Esk to Te Niho so as to include part of the Whanga and the Island of Te Roro-o-Kuri, it must, I suggest, run directly between Te Niho and Rere-o-Tawaki, thus including a further part of the Whanga, and the Natives have not been given an area reserved to them by a strict reading of the terms of the deed.

69. Both of the portions already mentioned of the Whanganui-o-Rotu that were within the boundary-line of the Ahuriri deed are now included in the Harbour Board's title under the 1874 Act, together with the portion of the Whanganui-o-Rotu, which was outside the boundaries of the territory passed by the deed.

70. We can now revert to a further examination of the question of construction of the deed. Attached to the deed is a plan (Appendix A). It will be noticed that the red edging includes the Whanga and that the reserves are shown in red. There is no mention in the deed of colour or of colour having any significance, and it is therefore possible that the plan annexed to the deed was not in any way coloured when the deed was signed. One might go as far as to say that either there was no colour on the plan when the deed was signed or that if it were there it was not treated by any of the parties to the deed as being of any effect, for this reason: not only does the red edging include the Whanganui-o-Rotu, which the Natives say they did not sell, but it includes numerous islands which the Crown admits, and has always admitted, are Native papatipu land. It may be that the colouring was due to a mistake and it may be that it was applied after the deed was executed.

71. On the 7th August, 1866, before Judges Smith and Munro, an order for Crown grant under the Native Land Act, 1865, was made in favour of Paora Torotoro and nine others for lands which were included in a consequent Crown grant dated the 3rd October, 1866, and therein described as follows:—

All that parcel of land in our province of Hawkes Bay in our Colony of New Zealand containing by admeasurement 620 acres more or less situate at or near Napier in the Province of aforesaid being called or known by the name of Pahou and numbered Ten N (10N) being an isthmus bounded towards the East by High water line on the Shores of Hawkes Bay towards the westward partly by the waters of the Waiohinga and partly by high water line on the Shore of Napier Harbour and bounded towards the South by a line bearing N 80° E.E. one thousand two hundred (1200) links. Also all those other parcels of land situate as aforesaid containing by admeasurement four (4) acres more or less being islands in Napier Harbour called or known by the name of Te Ihu-o-terei (Te Ihu-o-Tikei) and Parapara and numbered Eleven N (11N). Bounded on all sides by high water mark on the shores of the said Islands and also that other parcel of land situate as aforesaid containing by admeasurement seventy (70) acres more or less being an Island in Napier Harbour called or known by the name of Te Roro-o-Kuri and numbered Twelve N (12N) Bounded on all sides by high water line on the shore of the said Island.

72. The four parcels of land included in this one order of the Native Land Court stand in the following relationship to the Ahuriri deed of cession:—

- (a) The Pahou Block is bounded at the South by Ruahoro (the northern limit of the shingle bank that comprises the second parcel of land in the deed), and is bounded on the west partly by the Waiohinga River, with the Ahuriri Block on the opposite bank. It is wholly *outside* the boundaries quoted in the deed, and is *outside* the red edging on the plan attached to the deed.
- (b) The Island of Roro-o-Kuri is included *within* the boundaries quoted in the deed; is *within* the red edging on the plan, and is the first reserve made from the first parcel of land described in the deed.