

Whangarei Maori are seeking redress for a long-standing grievance over the loss of ancestral land in the former city port area without a sale agreement or payment. Recent sales passing some of this property from public to private ownership have sparked calls for compensation. The *Northern Advocate* investigates.

# Maori ponder action over port land

Percy Smith, born in England in 1840 — the year the Treaty of Waitangi was signed — became one of the most powerful men in New Zealand.

He helped survey the wild new country, his work defining great tracts of land the Crown bought from Maori and, as he climbed to the pinnacle of his profession as Surveyor-General, decisions he made were beyond challenge.

But Smith didn't always get it right, say Mira Norris and Marina Fletcher.

When running his theodolite over Whangarei in 1879, he took for the Crown 279ha of coastal land southeast of Limeburners Creek which he reckoned was covered by water at high tide.

Mrs Norris and Mrs Fletcher are descendants of the iwi who had been camping, fishing, launching waka and living on the land — called Opau — for about 800 years before Smith turned up.



**DISPUTED:** All the area below Pohe Is (the green strip at the top) and more land up to Limeburners Creek is part of the Opau blocks taken by the Crown in 1879 without payment to the Maori owners.

PICTURE / MICHAEL CUNNINGHAM

They didn't have a Foreshore and Seabed Act back then to lay out rules about public ownership of coastal areas. They just knew their feet stayed dry when they

were at Opau during high tides. And they knew they had not sold or been paid for their land. Not a guinea, blanket or twist of tobacco.

The iwi tried to take this case to the Native Land Court a couple of times, but judges dismissed their applications advising them that the court didn't have jurisdiction over lands below high water mark.

Apparently, Smith had applied the legal doctrine of "eminent domain" which allowed for compulsory acquisition of private land for public benefit with compensation payable to the private owners. No compensation was paid to the then owners.

Fast forward to the present day and there's been so much progress at Opau, Smith would barely recognise the place. City fathers and the former Northland Harbour Board have drained and reclaimed and much of the land is now covered in wharves, engineering works, boatbuilding yards and many other commercial installations.

But the Te Parawhau haven't forgotten they still haven't been

paid. Applying common law rights and Te Tiriti to their case, they are hoping justice will eventually be done.

They have lodged a claim for the land with the Waitangi Tribunal, which has filed it away with the hundreds of other northern claims the tribunal will get around to hearing when its Te Paparahi o Te Raki Inquiry reaches that stage, possibly in two years, perhaps in five.

In 2008, caveats were filed against Opau titles which the current owner, the Whangarei District Council, has been selling to put cash in its coffers.

There's a caveat on the 6.7ha Kaituna block on Whangarei Harbour at the end of Hewlett St which the council last year sold to neighbouring firms Culham Engineering and Norsand for a combined \$6.158 million.

The WDC sent letters seeking removal of the caveat.

Mrs Norris also tried to put

caveats on titles for the 101ha Port Nikau development, but she said it had been "fobbed off" by the present Surveyor-General insisting a lawyer was needed to present the caveat application properly. "We are grounding our boat every time we try to do something. But we don't want to use lawyers — we don't want debt," Mrs Norris said.

They would like the Waitangi Tribunal to hear their claim — the biggest in the Whangarei area — as a matter of urgency because of the land sales. Mrs Fletcher said although they would like the Opau titles back, they realised the legal difficulties of this happening with so much of the property in apparent private ownership after 138 years.

The alternative was compensation, she said.

The hapu of Whangarei will meet at the Terenga Paraoa Marae this evening to decide what further action is needed.