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‘Fallen Plumage’:
A history of Puhipuhi, 1865-2015

Mark Derby

A report commissioned by the Waitangi Tribunal

Te Paparahi o Te Raki inquiry (Wai 1040)

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The Author

Tēnā koutou. My name is Mark Derby. I am a Pākehā of Irish descent, living in Wellington. I hold a Masters in New Zealand Studies, with honours in history and te reo Māori, awarded 'with distinction' by the Stout Centre for New Zealand Studies, Victoria University of Wellington. My thesis examined the 1916 arrest of Rua Kēnana by Police Commissioner John Cullen, who was formerly superintendent of the North Auckland police district, in which the Puhipuhi blocks lie. This was later published as *The Prophet and the Policeman: the story of Rua Kenana and John Cullen* (Nelson: Craig Potton, 2009).

I was employed at the Waitangi Tribunal as a researcher and claims facilitator from 2003 to 2007. During that time I completed a commissioned scoping report, ''Undisturbed Possession' – Te Tiriti o Waitangi and East Coast Maori, 1840 – 1865' (Wai 900, #A11). I have also worked for the Ministry for Culture and Heritage as a writer on *Te Ara – the Encyclopedia of New Zealand* and have published widely on historical issues, both in this country and overseas.[1] My research has also appeared in the form of conference papers and peer-reviewed journal articles, and contributions to films, TV series and museum exhibitions on New Zealand history.[2] Each of these projects has drawn extensively on unpublished archival as well as secondary research sources. I am a member of the Professional Historians Association of NZ/Aotearoa and on the advisory board of the international research network H-Spain, and a life member of the Labour History Project Inc.

[1] My other books include *Mautini – A History of Mt Eden Prison,* (Auckland: Potton and Burton) Publishing (in progress); *Petals and Bullets – Dorothy Morris: New Zealand Nurse in the Spanish Civil War,* (Sussex Academic Press, UK, 2015); *Kiwi Compañeros - New Zealand and the Spanish Civil War*, (Christchurch: Canterbury University Press, 2009/Spanish-language edition published 2011 in association with the University of Castilla-La Mancha, Spain)

[2] My other historical projects include the conference paper 'Hakaraia Mahika – Son of Satan or Prophet of peace?' NZ Historical Association biennial conference 2013; the book chapters 'Māori tourism' in *Selling the Dream – The Visual Story of Early New Zealand Tourism,* (Auckland: Craig Potton Publishing, 2012) and 'Méliès in Maoriland' in *Making Film and Television Histories - Australia and New Zealand,* J. Bennett, R. Beirne, I B Tauris, (eds.). UK, 2011; the TV documentary *Dr Smith of the Hokianga,* Greenstone Pictures/TVNZ 2001; and the journal article 'Ossian in Aotearoa – Ponga and Puhihuia and the Re-Creation of Myth', *Journal of New Zealand Studies* 2009, pp.29-40

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Abbreviations

AJHR	Appendices to the Journals of the House of Representatives
ANZ	Archives New Zealand
Auck	Auckland
ATL	Alexander Turnbull Library, Wellington
c.	circa (about a certain date)
CFRT	Crown Forestry Rental Trust
ed,eds	editor(s)
n/d	no date
No, no.s	number(s)
NZPD	New Zealand Parliamentary Debates (Hansard)
MHR	Member of the House of Representatives
ML	Maori Land plan (North Auckland District)
p.	page
pp.	pages
pt	part
s.,ss.	section(s) (of an Act)
SO	Survey Office plan (North Auckland District)
vol, vols	volume(s)
Wai	Waitangi Tribunal claim number
Wgtn	Wellington
#	number (of document)

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Introduction

Project background

This project is part of the agreed local issues research programme for the Te Paparahi o Te Raki (Wai 1040) inquiry. The Chief Historian's review of the sufficiency and adequacy of the existing evidence on local claim issues and recommendations for further specific local research was released to the parties in October 2013.[3] Following consultation with the parties on this review and its recommendations, including the 16 November 2013 judicial conference at Waitangi, on 24 December 2013 the presiding officer, Judge Coxhead issued a direction approving a list of research projects to be commissioned. This included a set of local studies of Native Land Court blocks.[4]

Between April and June 2014 Te Raki claimants were asked to nominate land blocks to be included in these studies. By 1 April 2014 a total of 13 submissions had been received on behalf of individual claimants or groups of claimants. The submissions nominated 68 blocks and, to varying degrees, indicated in what manner they qualified in terms of the seven 'key characteristics' identified in the local issues research review: location, period, representative status, exceptional circumstances, significance, issues in contention between Māori and the Crown, and research feasibility.

The Puhipuhi block was proposed by claimant counsel:

- Bryan Gilling, C. Savali and R. Sandri on behalf of the Puhipuhi State Forest Claim (Wai 246) claimants Te Raa Nehua and others on behalf of themselves, the Ngāti Hau Trust Board and Ngāti Hau Hapū o Ngāpuhi; and the Paremata Mokau A16 Land Claim (Wai 1148) claimants Te Raa Nehua and others on behalf of themselves and the owners of the Paremata Mokau A16 Block.[5]
- John Kahukiwa and Alana Thomas on behalf of Te Waiariki/Ngāti Korora, Ngāti Taka Pari claimants:
    - Te Waiariki/Ngāti Korora Hapū Land and Resources Claim (Wai 620);
    - Descendants of Kerepeti Te Peke (Brown) Claim (Wai 2239);

[3] Richard Moorsom, Chief Historian, 'Te Paparahi o Te Raki: Local Issues research Review', Waitangi Tribunal, October 2013, Wai 1040, #6.2.13
[4] Wai 1040, #2.6.51
[5] Wai 1040, #3.2.507

- Te Waiariki, Ngāti Korora and Ngāti Taka (Glenbervie State Forest, Horahora and Tiriraukawa) (Wai 1411);
- Te Waiariki, Ngāti Korora and Ngāti Taka (Land and Water Pollution) Claim (Wai 1412);
- Te Waiariki, Ngāti Korora and Ngāti Taka (Land Alienation and Reserves) Claim (Wai 1413);
- Te Waiariki, Ngāti Korora and Ngāti Taka (Tutukaka and Ngunguru) Claim (Wai 1414);
- Te Waiariki, Ngāti Korora and Ngāti Taka (Traditional Management and Customary Ownership) claim (Wai 1415); and
- Te Waiariki, Ngāti Korora and Ngāti Taka (Pollution and Significant Sites) Claim (Wai 1416).[6]

On 11 June 2014, Judge Coxhead approved a list of local land block history commissions recommended by the Chief Historian, including one for the Puhipuhi block.[7] The blocks selected for the local studies were considered to provide scope for investigating certain key regional historical themes at the local level within particular sub-regions or areas, and, taken together, to achieve a balanced geographical distribution across the region. Blocks were also chosen on the basis that sufficient archival and other source material was available to cover the significant historical issues raised.

The Puhipuhi lands

Today, the rural settlement of Puhipuhi is the only marker of what was once an area of 25,000 acres created by Native Land Court determination in 1883 as the Puhipuhi block. The boundaries of the block are shown overlaid as red on Figure 1 at the end of this chapter.

Puhipuhi is situated 25 kilometres north of Whangarei and 20 kilometres southeast of Kawakawa. The boundary between the Whangarei District Council and Far North District Council bisects Puhipuhi at its northern end. Puhipuhi lies almost entirely to the east of State Highway 1, which adjoins it at Whakapara. A further small portion of Puhipuhi land, at the Waiotu Stream, lies on the west side of the highway. Puhipuhi is an entirely inland region, and the Whangaruru Harbour lies some 15 kilometres to the

[6] Wai 1040, #3.2.512
[7] Wai 1040, #2.6.73

east at its closest point. The northwest corner adjoins the Ruapekapeka block, the site of a famous 1845-46 battle during the Northern Wars.

Much of the Puhipuhi lands, covering approximately 154.75 hectares, are now held in non-Māori ownership and used for pastoral farming.[8] An area in the northwest corner forms part of the Glenbervie State Forest. A total of approximately 470 acres (190 hectares.) remain in Māori title, all in the southern part of the lands.

The Commission

A copy of the commission for this block study is appended to this report.[9] The commission requires this report to focus on the following local issues (briefly summarised) to the extent they are not already covered in relevant overview reports:

- How title and initial subdivision of Puhipuhi were determined, the Crown's response to disputes over these processes, and the outcomes for the owners.
- How the Crown's protection mechanisms operated in respect of the titling, alienation and administration of land in the block. The extent to which Māori who wished to retain ownership and control of land were able to utilise protections for this purpose, the Crown's monitoring of these protections, and the outcome for owners.
- The major forms of land alienation, and their causes, such as public works takings and compulsory vesting.
- The extent to which the Crown and delegated territorial or special purpose authorities were involved in such alienation, and through what practices and processes this occurred.
- The extent to which Puhipuhi lands remaining in Māori ownership were subject to Crown policies and practices intended to overcome title fragmentation and other difficulties in the form of Māori title provided.
- The kinds of Crown assistance available to Puhipuhi owners to manage and utilise their lands as they wished, and the extent to which Crown agencies such as the Tokerau District Maori Land Council/Board were involved in the development and administration of Puhipuhi land.

[8] Paula Berghan, 'Northland Block Research Narratives: Vol. VII: Native Land Court Blocks, 1865 – 2005', CFRT, 2006, Wai 1040, #A39(f), p 292
[9] Wai 1040, #2.3.13

Statement of Issues

This report is relevant to the following topics in the Te Raki statement of issues for stage 2 of that inquiry (Wai 1040, #1.4.2):

- Topic 5: The Native Land Court, 1865-1910;
- Topic 6: Māori Land alienation, 1865-1910;
- Topic 7: Twentieth century alienation, retention, titling and administration of Māori land;
- Topic 8: Public works and other takings;
- Topic 9: Local government and rating, and;
- Topic 12: Economic development and capability.

Claims relating to the block

Several claims within the Paparahi o Te Raki district inquiry raise issues that identify or relate to part or all of the Puhipuhi blocks. Major issues include the following:

- Wai 246 Puhipuhi State Forest Claim (Ngāti Hau) was filed by Te Raa Nehua (senior), Te Raa Nehua, Michael Kake, Sam Kake, Wi Waiomio and Allan Haliday on behalf of themselves, the Ngāti Hau Trust Board and the Ngāti Hau hapū o Ngapuhi.

  Para 9.48-49 alleges that the Crown's use of advance payments resulted 'in a sustained period of conflict and division… Crown land purchase agents placed great pressure on Native Land Court judges to award title to those who had received tamana payments.'

  Para. 9.65 claims that Puhipuhi land was sold in 1883 for well below the market value estimated by government agents such as the Assistant Surveyor General.

  Para. 11.31c-e alleges that areas within Puhipuhi blocks were acquired by the Crown under public works legislation for roadways in 1929, 1930 and 1943.

  Para. 11.56-57 claims that areas within Puhipuhi blocks were acquired by the Crown under public works legislation for a quarry in 1944.[10]

[10] Wai 1040, #1.1.28(c)

- Wai 1384 the Whangaruru Lands Claim was filed by Elvie Reti, Henry Murphy and Merepeka Henley on behalf of the marae and hapū of Whangaruru. They affiliate to Te Uri o Hikihiki and the iwi of Ngāti Wai.

  Para. 170-173 alleges that advance payments and Crown pre-emption resulted in Ngāti Wai's interest in Puhipuhi being sold to the Crown for a sum that did not reflect its market value.

  Para. 188-192 claims that Ngāti Wai objected to the appointment of Judge Maning at the first (1873) Native Land Court hearing into Puhipuhi, but their objection was ignored. They further say that the Native Land Court hearings into Puhipuhi 'failed to provide a consistent outcome on the issue of ownership.'

  Para. 426.15 claims that Puhipuhi lands were included in the Bay of Islands Land Development Scheme, and therefore transferred to Crown control.

  Para. 478-9 states that much of the millable timber in the Puhipuhi forest was destroyed by fire before it could be logged. Some of the remainder was salvaged and sold by the Crown for much more than it initially paid for the land.[11]

- Wai 1959, the descendants of Sylvie Jones (Tita Nehua) Claim was filed by Lissa Davies-Lyndon on behalf of the descendants of Sylvia Jones (the granddaughter of Tita Nehua). They are affiliated to Ngāti Hau of Ngapuhi.

  Para. 44 alleges that the Māori Trustee 'assisted in the eventual alienation and disposition of Māori from their ancestral lands', including Puhipuhi land blocks.[12]

Scope and methodology

Although the Puhipuhi block features in several regional overview research reports covering differing time periods, more detailed and targeted research is needed to provide adequate coverage of sub-regional and local claim issues for the key themes for the twentieth century. This research report is therefore designed to produce a focused study of Puhipuhi within the Whangarei district, with a focus on how regional and sub-regional themes relating to Crown policies, acts, and omissions operated at

[11] Wai 1040, #1.1.162(a)
[12] Wai 1040, #1.1.319(a)

this local level during the nineteenth and twentieth centuries. The key themes are land titling, alienation, administration, title reform and development. The study addresses these themes to the extent that they applied to land in the Puhipuhi block and are not already covered by existing scholarship and by technical research on the Te Paparahi o Te Raki record of inquiry (Wai 1040 ROI).[13] In doing so the report also considers whether the history of this block is broadly representative of the larger historical experience or differs from the region-wide patterns.

The story of the titling and alienation of Puhipuhi up to 1883 has been told briefly by Armstrong and Subasic in their overview report, 'Northern Land and politics: 1860 – 1910' along with a more general examination of the operation of the Native Land Court and Crown land purchasing in the Te Raki inquiry district. However, the authors of that report acknowledge that in doing so they 'have not made a full study… of Native Land Court minute books (or at least those that have survived)', and this report therefore provides a more detailed study utilizing all available minute books for the succession of Puhipuhi Native Land Court hearings, along with other primary source material, particularly correspondence found in MA-MLP files.[14]

A considerable portion of the report discusses the titling of Puhipuhi in the Native Land Court and the purchase of a large northern portion of the block by the Crown between 1873 and 1883. This is largely because the complexity of these events, particularly the series of Native Land Court hearings, rehearings and appeals, and their impact on Māori owners, warrants detailed examination. Coverage of the use, development, administration and alienation of the much smaller portion of the block remaining after 1883 has necessarily been less detailed. This more detailed account and analysis is also warranted as the commission refers to 'the extensive and

[13] Those overview reports include, in particular:
David Alexander, 'Land-based Resources, Waterways and Environmental Impacts', CFRT, 2006, #A7
David Armstrong and Evald Subasic, 'Northern Land and Politics: 1860 –1910', CFRT, 2007, #A12, #A12(a)
Paula Berghan, 'Northland Block Research Narratives: Native Land Court Blocks, 1865 – 2005', vol. VII, 'Pae-Putoetoe', 2006, CFRT, #A39(f), pp 265-292
Terry Hearn, 'Social and Economic Change in Northland c. 1900 to c. 1945: The Role of the Crown and the Place of Maori', CFRT, 2006, #A3
Bruce Stirling, 'Eating Away at the Land, Eating Away at the People: Local Government, Rates and Maori in Northland', CFRT, 2008, #A15
Tony Walzl, 'Twentieth Century Overview Part II: 1935 – 2006', CFRT, 2008, #A38, #A38(a)
[14] Armstrong and Subasic, 2007, #A12, p. 2

prolonged disputes over the Puhipuhi title and subdivision.' Statements of claim allege that 'the Native Land Court hearings into Puhipuhi failed to provide a consistent outcome on the issue of ownership.'[15]

The following key issues addressed by relevant overview reports are of particular significance for Puhipuhi, and therefore for this report:

- The impact of the 1873 Native Land Act (under which the first Puhipuhi hearings were held) on the sale of Puhipuhi lands, in particular whether Armstrong and Subasic's assertion that 'In effect the Native Land Act 1873 further eliminated the possibility that hapū and iwi, working through Runanga or other tribal organisations, would play a real role in the title adjudication process', applied in the case of Puhipuhi, and whether the local District Officer or Native Land Court judge carried out a prior investigation and identified rights-holders, as the Act allowed.[16]
- The actions and land purchase methods of Crown land purchase agents, especially their use of advances. Armstrong and Subasic state that advance payments, 'were made to any willing vendor that could be found, often surreptitiously, despite the sometimes violent opposition and conflict this engendered when non-sellers or counter-claimants.'[17] A number of advance payments were made to various owners of Puhipuhi while the title to the block was still being investigated and disputed, and this report will examine whether such opposition and conflict ensued.
- Whether the Crown and its land purchase agents respected the wishes of some Puhipuhi land-sellers to retain part of their lands in their possession, and ensured that the sellers 'retained sufficient good land to have enabled them to engage with the new settler economy from a position of equality.'[18]
- Crown policy and practice on the role of surveys in the NLC title process. Armstrong and Subasic assert that, 'The northern surveys remained in a shambolic state well into the 1870s' and that 'inaccurate plans… created

[15] Wai 1040, #1.1.162(a)
[16] Armstrong and Subasic, 2007, #A12, pp. 701-702
[17] Armstrong and Subasic, 2007, #A12, p. 674
[18] Armstrong and Subasic, 2007, #A12, p. 769

confusion and were not assisting the court in its work.'[19] The accuracy of these assertions in respect of surveys of Puhipuhi will be tested in this report.

- Crown land purchase activity in the 1880s which, according to Armastrong and Subasic, 'appears to have principally focused on completing the acquisition of land for which [advances] had already been paid, and connecting existing Crown lands.'[20] Both of these conditions applied in the case of Puhipuhi.
- The impact of Crown policies, such as the ban on harvesting gum from state forests, on the social and economic conditions faced by Puhipuhi Māori in the period 1880 – 1910. Armstrong and Subasic claim that Crown policies in that period delivered 'failure at multiple levels fundamentally or structurally associated with economic development.'[21]
- The impact of the actions and policies of Māori Land Councils and Māori Land Boards on Puhipuhi lands remaining in Māori ownership. According to Hearn, 'Within less than a decade [after 1900], legislation intended to secure Māori in possession of their remaining land had been transformed into legislation intended to provide for its rapid and easy alienation.'[22]
- Whether, as a result of Crown actions and policies, Puhipuhi Māori retained enough land for their ongoing economic and social support. Elsewhere, according to Hearn, 'the lands retained were insufficient in terms of both area available to individuals and families and in terms of quality to sustain the development of fully commercial agro-pastoral farming.'[23]
- The impact of twentieth century Crown policies and actions on Māori-owned farms on Puhipuhi lands. In Northland generally, according to Hearn, those policies resulted in 'the emergence of Māori dairy farms characterised by small areas and small herds, low levels of land and stock productivity, low levels of butterfat production, and an inability to finance the purchase of inputs required to raise productivity.'[24]

[19] Armstrong and Subasic, 2007, #A12, p. 784-785
[20] Armstrong and Subasic, 2007, #A12, p. 1035
[21] Armstrong and Subasic, 2007, #A12, p. 1269
[22] Hearn, 2006, #A3, p. 172
[23] Hearn, 2006, #A3, p. 754
[24] Hearn, 2006, #A3, p. 755

In addition to the above analysis of the overview reports, this project has aimed to identify additional issues, not addressed in those reports, which arise from my own local and detailed research. Those additional issues include:

- Crown actions concerning the longstanding dispute between rival claimants to the Puhipuhi block.
- Competition by private buyers for purchase of the block, and the Crown's actions in arriving at a final sale price.
- Crown actions concerning the loss of the kauri forest through fire, logging and milling.

The approach in this report has been to avoid unnecessarily repeating or relying upon those overview reports, but rather to test their content for relevance to the major themes and issues concerning Puhipuhi. Where applicable the contents of those reports have been summarised, and then expanded upon with more local and detailed research. In regard to the titling and alienation of Puhipuhi prior to 1883, particular attention has been given to understanding the nature and outcome of Judge Maning's 1873 title investigation and the response of various Crown officials to Māori calls for further action to resolve matters of title. The report also seeks to more fully articulate the consequences of the extended and sometimes confusing titling process that eventuated in the case of Puhipuhi.

For the period following the 1883 purchase by the Crown of the northern portion of the block (Puhipuhi 1 – 3), this report asks how the Crown's development and regulation of economic activity on that portion (timber milling, gumdigging and mining), and the infrastructure to support that development, impacted upon the hapū living on the Māori-owned portion (Puhipuhi 4 and 5) directly adjacent. The answers had consequences for the way Māori owners of Puhipuhi 4 and 5 were able to retain, use and develop their land into the twentieth century.

The aim in the last three substantive chapters of the report has been to examine the use, development and alienation of these two parallel but interconnected portions of Puhipuhi from 1883 to the present. Rather than attempt to document the progressive partition and alienation of every piece of Māori-owned land within Puhipuhi 4 and 5,

the focus has been on identifying and understanding the differing pattern of use and alienation of these two portions of that land. Archives New Zealand files relating to particular subdivisions of Puhipuhi No. 4 and No. 5 were then located and examined. Bearing in mind the need to discuss both blocks, those files that contained sufficient detail to provide an insight into the wishes of Māori owners and the actions of Crown officials were then used in these latter chapters.

The discussion of Puhipuhi in the twentieth century has involved identifying and exploring some of the main economic, cultural and legislative circumstances facing Māori owners of land at Puhipuhi, and then examining how these affected the choices Māori owners of the remaining land at Puhipuhi made about using, retaining, developing and alienating their land through the late nineteenth and twentieth centuries. These forms of use and alienation include leasing, selling, reserving and gifting land, as well as the compulsory acquisition of Māori land by the Crown for public works. In particular, the report examines the extent to which the compulsory acquisition of parts of Puhipuhi for public works and the changing Crown regime for the administration and alienation of Māori land shaped and constrained those choices.

This report focuses on land issues. Other issues of concern likely to be relevant have been or are being covered in other reports. They include environmental and management issues concerning waterways, particularly the Whakapara, Waiariki and Waiotu Rivers and their various tributaries, will also be covered by a separate report.

Sources

This report relies heavily upon primary sources including archives held at Archives New Zealand (Wellington and Auckland). These sources include files created by the Survey Department, Native Affairs and Native Land Purchase Departments, and Department of Conservation. A range of private correspondence generated by Judge Maning and Crown officials has been located in the Alexander Turnbull Library (Wellington), Grey Collection at the Auckland Public Library, and the Auckland War Memorial Museum. Block order and correspondence files for the block from the Whangarei District Maori Land Court were supplemented by other land records including, ML and SO plans, certificates of title, and Crown purchase deeds. The minutes of the Native Land Court and of the Taitokerau District Maori Land Board

were also a significant source. Māori-language sources consulted include the *Kahiti*, Māori-language newspapers, and documents in te reo Māori within Native Department files. Records held in those collections which are referred to in this report are attached in the accompanying document bank.

The *Appendices to the House of Representatives (AJHR)* also provide material on a diverse range of matters including Crown reports and correspondence relating to the purchase of Māori land by the Crown, railways, roading, mining, forestry and agriculture. Statutes and notices of various statutory processes, including those of the Native Land Court, were provided by the *New Zealand Gazette.* Recent material on mining in the area was also obtained from the records held by the Department of Conservation's Whangarei office, and from media and online sources. A range of local and regional newspapers were utilised, and discussions with claimants and informants provided further information. A wide range of secondary and reference sources were also consulted during the research. These include dictionaries of biography, local histories and theses, and a range of journal articles in specialist academic journals. The report also draws heavily upon briefs of evidence filed by tangata whenua witnesses in the Te Raki inquiry, technical research and oral and traditional reports for the inquiry.

Despite the author's best efforts, some potentially important records relevant to this project have not been located. Of the three Native Land Court hearings into Puhipuhi, the minutes of the first (1873) hearing have not been found, and perhaps never existed. This gap in the official record is discussed in chapter 3.3 of this report. The minutes of the second (1882) and third (1883) hearing have been fully drawn upon for this report, and both refer at various times to the first hearing. Some Archives files relating to public works takings at Puhipuhi could not be found and it has not been possible to examine all the minutes of hearings dealing with public works takings at Puhipuhi in the period after 1910. As a result the report has not been able to document the amount of compensation awarded to owners for those takings.

The official records dealing with the post-World War II period were found to hold little material on Puhipuhi after the 1950s. This may be due to the small and decreasing resident Māori population, and areas of Māori-owned land, in Puhipuhi in

that period. It is hoped that tangata whenua evidence may be able to inform the Tribunal about the experience of Puhipuhi owners during the post war period.

In addition to consulting written primary and secondary sources I attended several claimant hui to discuss this report and related issues, including:

- Ngāti Hau hui at Whakapara Marae, Whakapara, 24 January and 19 June 2015.
- Ngāti Hine hui at Te Pokapu Research Centre, Kawakawa, 20 June 2015.

I also participated in a meeting between Crown counsel and Te Raki local issues research programme commissionees at the Tribunal's office on 21 May 2015. Mia Gaudin and Andrew Irwin attended on behalf of the Crown Law Office.

Report structure

The first chapter of this report provides an introduction to the lands and resources that became the Puhipuhi block and the people with interests in them prior to 1871 when the first application for title was made. In doing so it summarises existing literature. It also describes post-contact occupation, new pressures and opportunities for those with interests in Puhipuhi leading up to the application of 1871, including Crown purchases in the surrounding area. The chapter is designed to provide a brief background to assist the reader understand the chapters that follow.

Chapter 2 considers the first application to the Native Land Court for a title determination for Puhipuhi, in 1871, the boundary survey commissioned by Ngāti Hau at the same time, and the resulting survey map produced in 1872. This chapter also describes relevant developments occurring in Puhipuhi by this time including early gumdigging activity and conflicts between rival groups claiming rights to the land and its resources.

Chapter 3 investigates the Native Land Court hearings into Puhipuhi in 1873 and 1875. Neither of these hearings resulted in title being officially provided to owners nor did they lessen the dispute between rival claimants with traditional interests in Puhipuhi. It also considers the period of dispute from 1875 to 1881, when further applications for a title investigation hearing were lodged, and Crown officials and

representatives attempted to resolve isssues with Puhipuhi by negotiation between the parties.

Chapter 4 traces the beginning of pressures from Crown purchase agents and private buyers to negotiate to buy the Puhipuhi lands, including the payment of advances toa number of the parties who had participated in the 1873 title investigation hearing and the 1875 re-hearing.

Chapter 5 records the third Puhipuhi title investigation hearing in 1882, and the rehearing in 1883. The rehearing resulted in a final title determination and titles to Puhipuhi were awarded accordingly.

Chapter 6 investigates the Crown purchase of the bulk of the Puhipuhi lands in late 1883, including negotiations on the final purchase prices for three blocks acquired by the Crown. It describes the lands withheld from sale by Ngāti Hau, and attempts to protect the lands from future alienation.

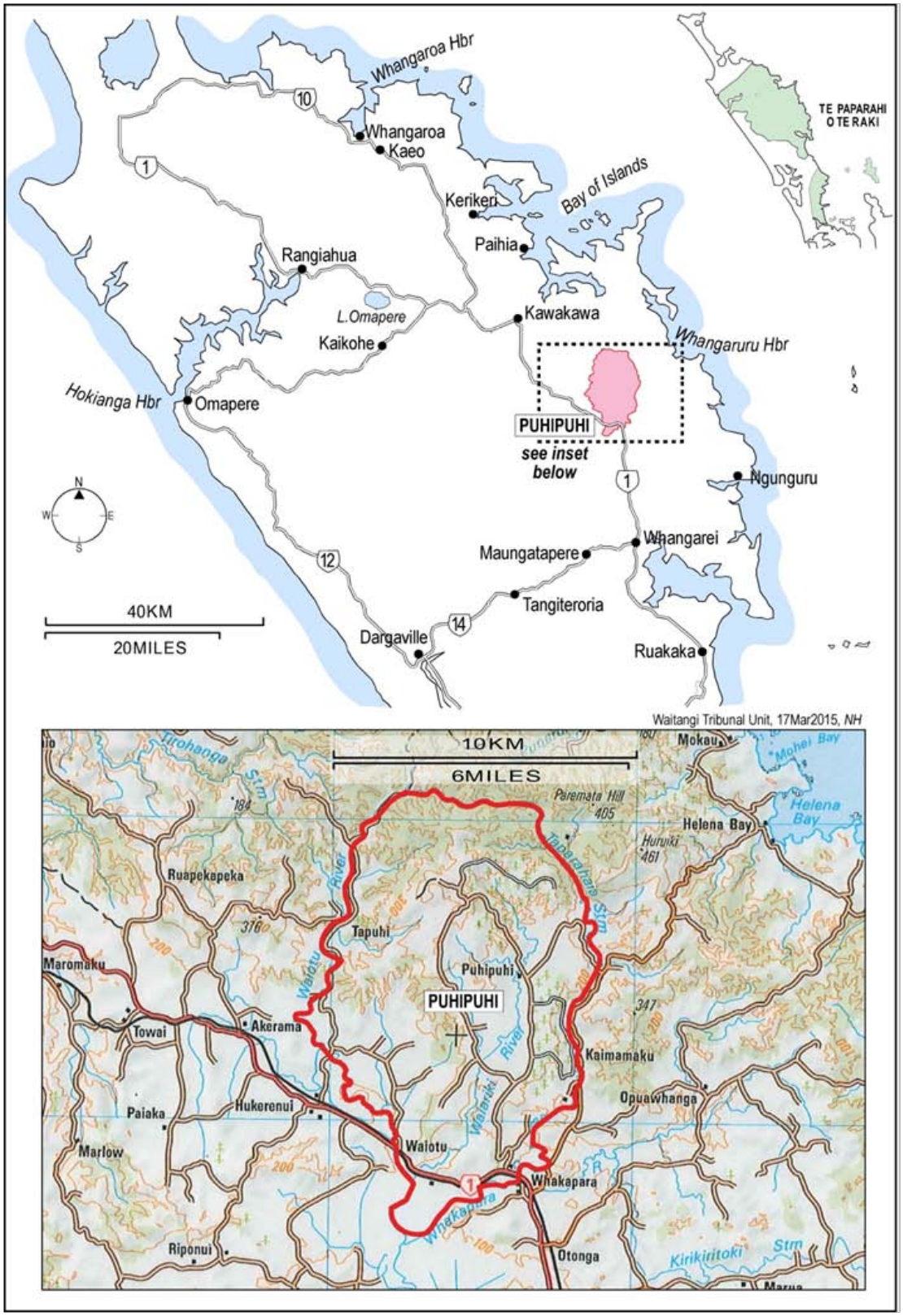
Chapter 7 describes the impact of Crown developments on its Puhipuhi blocks in the period 1883 – 1890 on the owners in the remaining Māori-held Puhipuhi lands. Those impacts included public works takings for roading, and restrictions on gumdigging in the Puhipuhi forest, by then designated a State Forest.

Chapter 8 continues the investigation of the impact on Māori owners of developments in the Crown-owned portion of Puhipuhi to cover the period 1890 – 1912. These include further public works takings for railway and roading purposes, a silver mining rush in the Crown-owned portion of Puhipuhi, and substantial logging and milling industries in the State Forest. These two chapters were necessary because economic activities taking part on the Crown-owned portion of Puhipuhi played a part in the infrastructure and settlement that arose on the Māori-owned portion of Puhipuhi and its fringes. These chapters give some indication of how Puhipuhi Māori coped economically after large portions of the Puhipuhi lands were alienated from their ownership, and look particularly at the extent to which this development provided opportunities but also constrained their economic choices.

Chapter 9 records the use, development and alienation of the Māori-owned portion of the Puhipuhi lands in the period 1883 – 2015. In that time the lands withheld from Crown purchase in 1883 were reduced from 5,400 to about 470 acres, by a range of alienation processes. This chapter examines the reasons for this transformation of ownership, and its implications for the landowners.

The final chapter briefly reviews the history of Puhipuhi, and considers each of the questions in this report commission in the light of the report's findings. It then draws a number of conclusions based on those findings.

Figure 1: The location of the Puhipuhi Block



Chapter 1 – Lands and people: Puhipuhi before 1870

1.1 Introduction

The following chapter introduces the Puhipuhi lands and resources, and the people with interests in them, prior to the application to the Native Land Court for title investigation in 1871. It outlines how those with interests in Puhipuhi used their interests in the period prior to 1870. The chapter draws on existing literature to provide a summary of pre-European occupation and resource use by a number of iwi and hapū. It then traces change around Puhipuhi in the early colonial period up to 1860. The chapter finishes by delineating the Crown purchasing of adjacent lands from 1864 to 1871.

The Puhipuhi forest was a rich and valuable source of food in pre-European times, and competition for these resources appears to have been a primary reason for conflict between rival iwi-hapū to the land. Following European contact a wider range of food resources was produced within Puhipuhi, both for self-sufficiency and sale, but lack of road or water access meant that the kauri timber was largely inaccessible to Europeans. The 1846 Battle of Ruapekapeka, which took place very near Puhipuhi, had a major impact on the region's population, causing some established occupants to be displaced by new arrivals. From the mid-1860s a number of large areas of Māori land in the near vicinity of Puhipuhi were sold to the Crown. The tribal groups and individuals identified as owners of these lands, and the sale process, were highly significant for the later sale of much of Puhipuhi. The major tribal groups recognised in these sales are briefly identified in this chapter.

1.2 The physical geography of the Puhipuhi lands

The Puhipuhi lands lie in an inland area north of Whangarei and southeast of Kawakawa. The land itself ranges from gently undulating and fertile farmland in the south to fairly steep hill country in the north, rising to 400m above sea level. Three main waterways, the Waiotu ('waters of the departed ones'), Waiariki ('chiefly waters', a healing place for warriors after battle), and Whakapara ('the clearing' or initial settlement) streams, run through Puhipuhi. These three rivers have many tributaries including the Pukekaikiore ('food source'), and the Kaimamaku ('eating

place'), which marks a hapū boundary.[25] The three join to form the Waihou River which flows westward to form the Wairoa River, which in turn drains westward through the former Hikurangi swamp to the Kaipara Harbour. Smaller streams flow eastward from the block to the coastal Bay of Islands. The region has an exceptionally high rainfall – around 2,000 millimetres annually, among the highest in Northland, and flooding is common in low-lying areas. The Puhipuhi region forms the northern end of the Puhipuhi-Whangarei volcanic field, and its geology includes deposits of gold, silver and mercury, although to date these have not generally been extracted in payable quantities.

1.3 Occupation and use of traditional resources before the 1820s

Since the mid-seventeenth century, several hapū/iwi have claimed rights to Puhipuhi and its resources, either through ancestry or by conquest. Their occupation is recorded in the names of early pā, wāhi tapu and other significant sites. The dense stands of magnificent kauri and other forest species at Puhipuhi, and its various waterways, traditionally made it a rich and desirable source of food for several Ngāpuhi iwi and hapū. Representatives of those tribes in the nineteenth century described how they and their forebears either lived periodically on or visited the block to harvest kiwi, pigeons and hinau berries. Rats were snared in the bush, and eels, some of great size, were caught in weirs or in specially dug pools.

This forest world is reflected in the name 'Puhipuhi' itself. One of the meanings of 'puhipuhi' is 'ornamented with plumes', such as bird feathers.[26] According to evidence given by Ngāti Hau chief Eru Nehua at the 1883 Native Land Court hearing into Puhipuhi, this dense, inland kauri forest gained its name in the mid-seventeenth century in the time of Kahukuri, a prominent tūpuna of Ngāti Hau: 'Kahukuri's spear was made at Puhipuhi and ornamented with feathers and the place was named therefore.'[27]

[25] Irene Kereama-Royal, 'Cultural impact assessment report of the Puhipuhi Quarry consent application', Whangarei District Council, 2000, pp. 8-9
[26] H. W. Williams (ed.) *Dictionary of the Maori Language,* 7th ed. (Wellington: Legislation Direct, 2003), p. 304
[27] Evidence of E. Nehua, 24 May 1883, Northern Minute Book No. 6, p. 221

According to Irene Kereama-Royal's 2000 cultural impact report on the Puhipuhi quarry for the Whangarei District Council, Kahukuri was the son of Haukaiwera (or Hau Takowera), who gave his name to Ngāti Hau. Haukaiwera descended from Rahiri, one of the predominant ancestors of Ngāpuhi.[28] Both Haukaiwera and Kahukuri are depicted on pouwhenua erected by Ngāti Hau and Ngāti Hine at neighbouring Ruapekapeka in 2010.

Ngāti Hau are one of the iwi/hapū who have traditionally claimed rights to Puhipuhi. Prior to Kahukuri's time, Ngāti Hau was based at Omanaia in the southern Hokianga. In 2010 Ngāti Hau-Ngāti Wai kaumatua Patuone Hoskins described how Ngāti Hau expanded out of their original settlements about three or four generations after Rahiri:

> Basically they were looking for the elite soils for gardening and to cope for their people as the tribe grew. As an example, our ancestor [of] Ngāti Hau, Kahukuri, left Omanaia and he moved to Puhipuhi (which is where my marae is) and established marae at Pehiawiri, Puhipuhi, and Akerama, at the base of Ruapekapeka, and all those were volcanic areas and capable of growing very early crops. At Puhipuhi there are still mounds of stone where they mounded up the stone to grow hue (gourds) which require a long growing season, and those stones are still there where their crops were.[29]

According to McBurney's *Traditional History Overview of the Mahurangi and Gulf Islands District,* 'the migration of Ngāti Hau into the Ruapekapeka and Puhipuhi districts was linked to population growth and increased competition for good gardening lands.'[30] Kahukuri himself is thought to have occupied land at Whakapara, at the southern end of what later became the Puhipuhi lands, in the mid-1600s. In 1882 Riwi Taikawa of Ngāti Hau gave the Native Land Court a genealogy tracing nine generations between himself and Kahukuri. Puhipuhi was considered by many in Ngāti Hau to be central to their history and tribal authority: Taikawa told the court 'This block is situated in the centre of our possessions.'[31]

Speaking before the Native Land Court in 1882, Eru Nehua stated that Kahukuri had 'died at Otewana [in Puhipuhi] from old age and was buried there, but his bones were

[28] Irene Kereama-Royal, 'Cultural impact assessment report of the Puhipuhi Quarry consent application, Whangarei District Council', 2000, pp. 8-9. No sources cited.
[29] Patuone Hoskins, quoted in Peter McBurney, 'Traditional History Overview of the Mahurangi and Gulf Islands District', 2010, #A36, pp. 312-313
[30] McBurney, 2010, #A36, p. 313, no source cited
[31] Evidence of R. Taikawa, 21 April 1882, Northern Minute Book No. 6, p. 6

removed to Tupapaku afterwards, outside of this [Puhipuhi] block. It is the custom after a person has been dead some years to remove the bones to a "wahi tapu", and which is practised to the present day' [i.e. the 1880s].[32]

Riwi Taikawa named the Ngāti Hau burial places within Puhipuhi as 'Tauarere and Te Piripiri [near the Waiariki falls].' Another Ngāti Hau burial place, for former occupants of Otukehu, was named Popoia.[33] A current Ngāti Hau landowner, Dr Benjamin Pittman, states that:

> The burial area in the precinct of the [Waiariki] falls was highly tapu and we never went near there. There were also koiwi tupuna behind the falls themselves. When there were deaths in our immediate whānau, all the clothes and linen used were also taken and disposed of there.[34]

Through marriage, Ngāti Hau is intermingled with all hapū and iwi in the surrounding area including Ngāti Wai, Ngāti Manu, Ngāti Hine, Te Parawhau, Te Waiariki, Ngāti Te Rā, and Ngāti Hao, all of whom belong to Ngāpuhi. Today Ngāti Hau consider that the boundaries of the ancestral and tribal domain enclose its marae – Te Maruata, Pehiaweri, Whakapara (sited within Puhipuhi), Akerama and Maraenui.[35]

The Puhipuhi lands and the Ruapekapeka Crown purchase lie immediately inland of the coastline running south from Whangaruru to Ngunguru and Tutukaka. According to McBurney, this coast is the traditional territory of Ngāti Wai, who were already established there at the time of the Ngāti Hau migration.[36] He notes that, 'traditions indicate that the Ngāti Hau soon came to blows with their Ngāti Wai neighbours.'[37] Ngāti Wai kuia Hana Paengata gave evidence in 1928 that her people 'suffered a defeat on the mainland at the hands of Ngāpuhi during the late 1700s', and moved offshore to the Poor Knights Islands.[38] In the following century Ngāti Wai re-established themselves along the coast. By 1870 their chief Hoterene Tawatawa was based at Whangamumu, northeast of Puhipuhi.[39]

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[32] Evidence of E. Nehua, 24 April 1882, Northern Minute Book No. 6, pp. 25-26
[33] Evidence R. Taikawa, 21 April 1882, Northern Minute Book No. 6, p. 7
[34] B. Pittman, personal communication, 9 December 2014
[35] Kereama-Royal, 2000, pp. 8-9. No sources cited.
[36] McBurney, 2010, #A36, p. 599
[37] McBurney, 2010, #A36, p. 313
[38] H. Paengata, quoted in McBurney, 2010, #A36, p. 313
[39] Papers relative to the visit of His Excellency the Governor to the Ngapuhi tribes, *AJHR* 1870, A-7, p. 16

Manuka Henare, Hazel Petrie and Adrienne Puckey in their *Northern Tribal Landscape Overview* report produced for this inquiry affirm that

> During the late eighteenth and early nineteenth centuries many of the Ngāpuhi tribes [which included Ngāti Hau] pushed in an easterly direction towards Kawakawa, Te Rāwhiti and the Whangaruru coast, where they absorbed other tribes, including Ngāti Manu, Te Kapotai, Te Uri o Rata, Ngāre Raumati and Ngāti Wai.[40]

Several of those tribes later claimed rights to Puhipuhi lands on the basis of ancestry.

On the basis of evidence given at the 1882 Native Land Court hearing into Puhipuhi, the judges found that Ngāti Wai and its associated hapū of Ngāti Te Ra and Ngāti Manu traditionally occupied the northern end of Puhipuhi.[41] Both Ngāti Manu and Ngāti Te Ra traced their occupation of Puhipuhi from the time of the marriage of Ngāti Manu chief Tara to Wehi of Ngāti Te Ra. In the Native Land Court in 1882, Henare Kaupeka of Ngāti Te Ra traced his genealogy through five generations from Te Pari, who had once lived at Te Wana pā, near Puhipuhi's northwest boundary.[42]

In his Native Land Court evidence, Eru Nehua stated that Te Atihau, whom he described as a 'very ancient hapū', lived on Puhipuhi in the past.[43] Te Atihau's relationship with other local hapū, especially Ngāti Hau, was disputed in 1882 and 1883 by representatives of those hapū, and this report will leave such questions to the oral testimony of the claimants themselves. In 1882 and 1883 members of a further Ngāpuhi hapū, Whanauwhero, although based on the coast at Whananaki, stated that they had made food-gathering expeditions to Puhipuhi, living at kainga such as Haumakariri, Te Kupapa and Kaimamaku.[44]

Among the subgroupings of Ngāpuhi which moved eastward towards Puhipuhi was Ngāti Hine. Ngāti Hine is a large and influential hapū of Ngāpuhi. Today Ngāti Hine includes Puhipuhi in its tribal domain of incorporates, and its 15 marae are located

[40] Manuka Henare, Hazel Petrie and Adrienne Puckey, '"He Whenua Rangatira"' Northern Tribal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands)', CFRT, 2009, #A37, p. 287
[41] Judgement, 26 April 1882, Northern Minute Book No. 6, p. 34
[42] Evidence of H. Kaupeka, 18 April 1882, Northern Minute Book No. 5, p. 161
[43] Evidence of E. Nehua, 24 April 1882, Northern Minute Book No. 5, p. 21
[44] Northern Minute Book No. 5 pp. 171, 177; Northern Minute Book No. 6 p. 21

from Kawakawa to Whangarei.[45] The founding ancestor of Ngāti Hine, Hineamaru, lived at Waiōmio.[46] The oral and traditional report produced for the Te Aho Claims Alliance for this inquiry, notes in reference to this eastward migration that 'Māori settlement ... occurred in waves and layers that overlapped and were hotly contested', and like Ngati Hau, Ngāti Hine are known to have attacked and dispossessed other iwi/hapū living on or claiming traditional rights to Puhipuhi.[47]

In his 1882 Native Land Court evidence, Ngāti Hine chief Maihi Paraone Kawiti said that one of his ancestors, Tarare, had been killed by the Atihau at Puhipuhi and another ancestor, Hineamanu, led a war party to seek vengeance. In a battle at Otonga, adjacent to Puhipuhi, the Atihau chiefs Mokoparu, Ruamataro and Keto were killed. Following this conquest, according to Kawiti, the Ngāti Hine ancestor Waro lived and cultivated on Puhipuhi. Kawiti himself lived with Waro, as his 'tamaiti' at Taharoa, near what would become the southern boundary of the block, but 'went backwards and forwards' between Waro and his other kainga, outside Puhipuhi.[48]

In 1882 Eru Nehua named Marowhata, in the centre of the eastern boundary of Puhipuhi, as a location where his ancestors had caught eels, pigeons and kiwis, and gathered hinau berries. Traditional Ngāti Hau eel weirs on Puhipuhi included Puremu, Te Nomuwhawha and Te Wekaweka.[49]

Riwi Taikawa named four Ngāti Hau pā that once stood on Puhipuhi – Te Wana, Te Miripahore, Ohaukapua and Te Marere (which stood beside the Waiariki stream). Taikawa said that his people also once had cultivations:

> At Otukehu, near Aramai, on the northwestern boundary, also at Tangiapakura and Matanginui (western boundary) … And these cultivations belonged to the pas I have named. Opuwhawha was a cultivation belonging to Kahakuri's descendants Opito, Papahuru, Pukeahuahu, Te Waiohika, Upokongaruru, Waihopahopa, Te Kupapa, Taharoa and Waiariki. On the eastern

[45] Ngati Hine Forestry Trust website - http://www.ngatihine.maori.nz/about-us/Owners-Marae
[46] Manuka Henare, Angela Middleton and Adrienne Puckey, 'He Rangi Mauroa Ao te Pō: Melodies Eternally New. Ngā Rangi-waiata a Te Ao: Ngā Waiata o te Māramatanga: Songs of Te Aho: Songs on the Theme of Knowing. Te Aho Claims Alliance (TACA) Oral and Traditional History', 2013, #E67, pp. 73-74
[47] Henare, Middleton and Puckey, 2013, #E67, p. 75
[48] Evidence of M. P. Kawiti, 20 April 1882, Northern Minute Book No. 6, p. 175
[49] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 18

> side my ancestors used to go and kill kiwis. The names of the places are Hungahungatawa and Taiora near the eastern boundary within this block.[50]

Hori Winiana of Ngāti Manu named some of the kainga once occupied by their ancestors as Otukehu, Otewhana, Tangiapakura and Tereawatea, a place on the Waiotu River dug out for catching eels, which was named for the large eel killed there. On the eastern side of the block, towards the coast, he named more permanent residences where his ancestors had cultivated, including a wharepuni near the Kaimamaku River called Karotahi, and Kauhanga. Pari 'lived, died and was buried at Kaputa, near Kauhanga, and it is a burial place of ours at the present time. Te Ruakaikore also lived upon this land and the cultivations I have named belonged to him. He also died at Kauhanga and is buried at Kaputa.'[51] This statement indicates that traditional occupation and use of Puhipuhi included sites not only of periodic seasonal use but of lifelong occupation, cultivation and the practice of cultural beliefs.

At some Native Land Court hearings into Puhipuhi, judges favoured the claims of those who lived on Puhipuhi continuously for significant periods of time, over those who lived there periodically or briefly. The judges at the 1882 hearing, for example, found that 'no continued occupation followed the conquest' by Maihi Paraone Kawiti, and did not award him any of the Puhipuhi lands.[52] However, Native Land Court judges sometimes failed to recognise that certain influential chiefs by whakapapa and rangatiratanga had recognised 'over-right' over lands, which was not based on day-to-day occupation.[53]

1.4 Post-contact occupation and use, 1800 – 1830

From the late eighteenth century, European voyagers and whalers began to appear along the coastline east and north of Puhipuhi, and word of their new technologies and trading opportunities is likely to have reached hapū/iwi claiming rights in the Puhipuhi region well before the first Pākehā themselves set foot along the coast nearest to the Puhipuhi lands. By 1801 Māori in the Bay of Islands were growing

[50] Evidence of R. Taikawa, 21 April 1882, Northern Minute Book No. 5, p. 184
[51] Evidence of H. Tiaki, 19 April 1882, Northern Minute Book No. 5, p. 163
[52] Judgement, 26 April 1882, Northern Minute Book No. 6, p. 34
[53] Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c.1769 to c.1945* (Wellington: Victoria University Press, 1998), p. 201

quantities of potatoes to supply the whaleships.[54] There is no evidence of European settlement ashore in this period, although some Māori worked on board the ships as crewmen.[55]

It was due in part to contact between Europeans and Māori travelling overseas on whaleships that missionaries arrived in the Bay of Islands from 1814. Like the whalers, they traded extensively with Māori, and obtained much of their building timber from Kawakawa, a base for the Ngāti Hine people, who later asserted their claims to the Puhipuhi lands.[56] Rev. Samuel Marsden first came to Whangaruru in 1820 after travelling on foot up the coast from Whangarei, a journey which took him past Puhipuhi, some miles inland.[57]

In 1824 the carpenter Gilbert Mair arrived in the Bay of Islands and worked for the missionaries as a shipbuilder and as captain of the missionary vessel *HMS Herald.* Mair eventually owned a fleet of trading and whaling ships, and ran business ventures as far as Ngunguru, on the coast south of Puhipuhi.[58] In 1840 Mair was visited by a US sea captain who urged him to export kauri gum to his country, thus helping to launch a lucrative industry that became of great significance to Māori with interests in Puhipuhi.[59]

Missionary activity on the coast near Puhipuhi increased slowly from 1830, when 'Wiremu te Minita' (either Rev. Henry Williams or his brother William) preached at Whangaruru.[60] In 1831 Henry Williams purchased land from Ngāti Hine at Opua, on the Kawakawa inlet, as a base for his activity among the Māori people of the region.[61] He had some success in converting Ngāti Hine, but made no impact on the population

[54] James Belich, *Making Peoples – A History of the New Zealanders,* (Auckland: Penguin, 1996), p. 146
[55] Jack Lee, *"I have named it the Bay of Islands",* (Auckland: Hodder and Stoughton, 1983), p. 37
[56] Lee, 1983, *"I have named it the Bay of Islands",* map opp. p. 108
[57] Madge Malcolm, *Where it all began – the story of Whangamumu taking in from Mimiwhangata to Whangamumu,* (Hikurangi: M. Malcolm 1982), p. 116
[58] Nancy Pickmere, *Whangarei - the founding years*, (Whangarei: N. Pickmere, 1986), p. 31
[59] Florence Keene, *Between Two Mountains - A History of Whangarei*, (Whangarei: Florence Keene, 1966), p. 28-29
[60] Malcolm, *Where it all began …,* 1982, p. 91
[61] Jack Lee, *Opua - Port of the Bay of Islands,* (Russell: Northland Historical Publications Society, 1999), p. 11

of nearby Otuihi, a notorious resort for whalers headed by the Ngāti Manu chief Pomare.[62]

Whalers were mixing freely with local Māori by this period and according to one source, around 1830 an American whaler named Edwards, from Manhattan Island, New York, fathered a child named Eru Nehua who would later become very significant for the development of the Puhipuhi lands.[63] Remo Wetere of Oakura, a near contemporary of Eru Nehua, says that Nehua's mother was named Piri.[64] When Piri's Māori husband learned that his wife was pregnant to another man, 'He said he would kill the baby if it was a boy. When a boy was born, his mother pinned the baby's penis back so that when her husband picked up the baby, he said '"Huh, a girl, let him [sic] live." After that he could not go back on his word. Eru was that baby.'[65]

A biographical account published in Nehua's lifetime, and probably with his approval, states that his mother was of the Ngāti Rahiri hapū of Ngāpuhi, and the aunt of Hone Heke. It seems possible, therefore, that Nehua spent his earliest years in the Bay of Islands, around Waitangi where Ngāti Rahiri was based.[66] In an 1871 official record, Nehua was described as 'a half-caste, brought up entirely as a Native.'[67]

In the period of early contact with Europeans, 'half-caste' status was often very advantageous for mediating between new settlers and tribes, and could provide considerable opportunities for both parties. However, in the somewhat later period in which Nehua was a leader within Ngāti Hau, other Māori often felt that 'half-castes' were too close to settlers and too willing to use their dual origins to their personal advantage. That advantage might, for example, mean acquiring land through their Māori parent, but using their European connections to alienate it from iwi/hapū control. In Nehua's case, while he evidently chose to retain his European father's surname, the US whaler Edwards appears to have played no part in his son's

[62] Lee, *Opua…*, 1999, p. 16-17
[63] Malcolm, *Where it all began…*, 1982, p. 71
[64] Evidence of Pomare, 18 May 1883, Northern Minute Book No. 6, p. 176
[65] Malcolm, *Where it all began…*,1982, p. 82
[66] *The Cyclopedia of New Zealand (Auckland Provincial District),* (Christchurch: Cyclopedia Company Limited, 1902), p. 564. Available online at http://nzetc.victoria.ac.nz/tm/scholarly/tei-Cyc02Cycl.html
[67] Appendix to Colonel Haultain's Report on the working of the Native Land Court Acts, Statement of Eru Nehua, *AJHR* 1871, A-02a, p. 34

upbringing. The possibility that Edwards might eventually claim land through Piri's family was therefore remote.

Settlers and the colonial government, on the other hand, were concerned at the uncertain loyalty of 'half-castes' to the government and British cultural values.[68] As a result Nehua's 'half-caste' status could eventually present him with both pressures and opportunities as a tribal leader. Compared with the traditionalist Kawiti, Nehua was a modernising and entrepreneurial figure, closely involved with local Pākehā. These characteristics are likely to have endeared Nehua to Maning, and may have given other claimants to Puhipuhi further grounds to suspect that Maning might show favour to Nehua's claims to the land.

George Greenway built a trading station at Waikare, near Otuihi, in 1832. Here he had a general store and malthouse to supply both whaleships and local Māori.[69] Greenway's son John Hamlyn Greenway later became Clerk of the Court at Russell, owned large stretches of coast between Whangaruru and Helena Bay, and was a key figure in the 1883 Crown purchase of Puhipuhi.

In the late 1830s, according to Lee, vigorous and often unscrupulous private land speculations took place along the coast opposite Puhipuhi, between Ngunguru and Whangaruru.[70] Gilbert Mair senior and James Busby acquired around 40,000 acres at Ngunguru and Whangarei and built a sawmill, probably the most ambitious business venture in the North to that time.[71] Early land transactions of this kind were dealt with by the Crown after 1840 as old land claims, pre-emptive waiver purchases, and surplus and script land. No such transactions are known in the Puhipuhi lands.[72]

Another early land purchase took place at Mimiwhangata, on the coast almost due east of Puhipuhi. The Church Missionary Society catechist Charles Baker, based at

[68] Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* (Auckland: Auckland University Press, 2013), pp. 57-58
[69] Lee, *"I have named it the Bay of Islands"*, 1983, p. 194
[70] Lee, 1983, p. 214-218
[71] Lee, 1983, p. 236
[72] Map4_March 2012 and Map6_March 2012 in Arcflax 1.0, Northland, 2D & 3D Geographic Information System Viewer, including Crown Purchases, Old Land Claims, Native Land Court Blocks, and other historical map image DVDs, Disks 1- 5, Jan 2007, CFRT, 2013, #A45

Waikare, traversed this coastline between 1839 and 1842, preaching and holding church services.[73] In 1840 he arranged with the local chief Puanaki to sell land at Mimiwhangata to Henry Holman, a naval and general architect.[74] Holman's wife Elizabeth recalled that 'All the payments to the different chiefs went through Mr Baker's hands.'[75] Holman soon sold this property to John Hamlyn Greenway, who came to own other large tracts of land on the same coast. Holman moved to Whangarei, and as an elderly man he worked on a crushing battery during the Puhipuhi silver mining boom of the early 1890s.[76]

1.5 European influences and Puhipuhi, 1830s – 1860s

The years immediately preceding and following the signing of the Treaty of Waitangi saw a succession of other events of great significance for Northern Maori, including those claiming interests in Puhipuhi. In 1835 the British Resident, James Busby, called together a number of northern chiefs representing an existing confederation of hapū, Te Whakaminenga, to sign a Declaration of Independence known to Māori as He Whakaputanga. This document was 'an affirmation by the rangatira of their authority.'[77] One of those who signed was Te Turuki Kawiti of Ngāti Hine, one of the tribal groups which later claimed rights to Puhipuhi. For Ngāti Hine 'the effect of He Whakaputanga… has never been in doubt. It was the affirmation by the King's representative (and later the King himself) of the mana or sovereign power of the Chiefs.'[78] In 1837 a petition signed by 192 British residents of Northland, including Gilbert Mair, George Greenway and his son John Hamlyn Greenway, was sent to Britain's King William IV, asking for the Crown's protection.[79]

The British naval captain William Hobson, with the title of New Zealand's Lieutenant-Governor, arrived in the Bay of Islands in January 1840 to acquire

[73] Malcolm, *Where it all began…,* 1982, pp. 39-40. Unfortunately Baker's surviving diaries (now housed at the Alexander Turnbull Library, Wellington) do not cover this period; the earliest of them begins in 1845.
[74] Florence Keene, *Milestone - Whangarei County's first 100 years 1876 – 1976*, (Whangarei: Florence Keene, 1976?), p. 25
[75] E. Holman 'Journal', quoted in Madge Malcolm, *Tales of Yesteryear* (Russell: Kororareka Press 1994), p. 4
[76] Keene, *Between Two Mountains..,* 1966, photo opposite p. 33
[77] Henare, Middleton and Puckey, 2013, #E67, p. 216
[78] Henare, Middleton and Puckey, 2013, #E67, p. 215
[79] Lee, *"I have named it the Bay of Islands",* 1983, pp. 190-191

sovereignty of the country on behalf of the British Crown.[80] Mindful of the Declaration of Independence signed five years earlier, Britain's Secretary of State for the Colonies had instructed Hobson to obtain Māori cession of sovereignty over 'the whole or any parts of New Zealand.' Te Tiriti o Waitangi was drawn up as the legal vehicle for this end, and the signatures of the chiefs who had signed He Whakaputanga were especially sought for this new document.[81] Among those who signed were Pōmare II, Te Taewaewae, Wareumu, and Hori Kingi Tahua of Ngāti Manu, Marupo of Ngāti Hau (at Hokianga) and (some months later) Te Turuki Kawiti and his son Maihi Kawiti of Ngāti Hine.[82] All these groups would later claim traditional rights to the Puhipuhi lands. Eru Nehua's sphere of authority was not as overarching as these rangatira but his ability to walk in both worlds provided certain advantages. He was a professional Kaiwhakahaere, who was able to navigate Māori through the alien and sometimes confusing Native Land Court processes.

Some of the speculative land purchases around the Bay of Islands were based on the hope that Russell would become the capital of the newly founded country. When the capital was established instead at Auckland, many businesses in the region, such as Mair's, declined, and their owners moved elsewhere. The Bay of Islands experienced a severe economic depression, causing Māori to feel deeply resentful at the loss of their former trading opportunities. In 1846 Governor Fitzoy wrote that 'the removal of the seat of government, in 1841, from the Bay of Islands to Waitemata or Auckland, caused very great dissatisfaction to the natives of the northern districts, living near that Bay and Hokianga.'[83] The pre-1840 land sales were subsequently investigated by a government commission, and retrospectively authenticated by the issuance of Crown titles. This action, in the eyes of many Ngāpuhi rangatira, undermined their authority in having agreed to the original land transactions.[84]

These events and their outcomes foreshadowed later circumstances surrounding the 1871 title application for Puhipuhi, lodged by Nehua and other Ngāti Hau leaders. As with the earlier land sales in the Bay of Islands, one aim of the title application is

[80] Lee, *"I have named it the Bay of Islands"*, 1983, p. 219
[81] Quoted in Henare, Middleton and Puckey, 2013, #E67, p. 218 (no source cited)
[82] Henare, Middleton and Puckey, 2013, #E67, pp. 223, 231
[83] Governor Fitzroy, 1846, quoted in G. Phillipson, 'Bay of Islands Maori and the Crown, 1793 – 1853', CFRT, 2005, #A1, p. 307
[84] Phillipson, 2005, #A1, p. 318

likely to have been to achieve economic ambitions by stimulating local trade with and settlement by Europeans, but in a manner which did not fundamentally challenge chiefly authority and traditional power balances. In short, as Armstrong and Subasic have said about this period more generally, 'they desired to encourage settlement on their own terms.'[85]

These tensions exacerbated historic grievances between factions within Ngāpuhi, represented by chiefs such as Kawiti, Hone Heke and his father-in-law Hongi Hika on one side, and Tamati Waka Nene, Patuone and others on the other.[86] The arrival in the North of growing numbers of European settlers, who negotiated large and sometimes contested land purchases, was a further aggravation. In 1844 Heke wrote to Gilbert Mair, who had moved from the Bay of Islands to Whangarei, instructing him not to allow further European settlement in that area.[87]

In 1845 minor and localised unrest erupted into open warfare between the British, supported by Waka Nene and his people, and Heke, Kawiti and their followers and allies. In March 1845, following the sacking of Kororareka, the twelve Pākehā families then living in Whangarei, totaling about 50 people, heard rumours that Heke and his men were about to attack them. They escaped by boat to Auckland, and did not return to Whangarei for nearly two years.[88]

The final major battle of the Northern War was fought on Kawiti's land at Ruapekapeka, close to Puhipuhi's western boundary, from early December 1845 to 11 January 1846. Before the battle began, ships carried British troop reinforcements up the Kawakawa River, and artillery was hauled along a track cut for this purpose.[89] The pā built at Ruapekapeka to resist this large force was large, comfortable and designed to protect its inhabitants against artillery fire.[90] Hori Winiana of Ngāti Manu later told the Native Land Court that 'All the hapus then joined and went to live in the pah at Ruapekapeka, when built. The hapus of which I speak were N' Hau, N' Manu,

[85] Armstrong and Subasic, #A12, p. 23
[86] Lee, *"I have named it the Bay of Islands",* 1983, pp. 252-254; Henare, Middleton and Puckey, 2013, #E67, p. 255-246
[87] Pickmere, *Whangarei - the founding years,* 1986, p. 3
[88] Keene, *Milestone - Whangarei County's first 100 years…*, 1976?, p. 8
[89] Henare, Middleton and Puckey, 2013, #E67, p. 306-307
[90] Henare, Middleton and Puckey, 2013, #E67, p. 308

N' Hine and N' Rangi etc.'[91] Other members of the same iwi/hapū provided them with food and other supplies.[92] According to later Native Land Court evidence, Eru Nehua, who later became one of the most influential figures associated with Puhipuhi, first came to the Puhipuhi district at the time of this battle. He told the Court;

> During the war of 1846 with the Europeans I was about 12 years old. My mother lived at Pukeahuahu first [at the northern end of Puhipuhi] and when the Europeans came to Ruapekapeka I went to her. When I got there I saw an old whare which belonged to my ancestor Ruku. During the fights he was killed at Omapere (Okaihau)…. Ruku and family had cultivations at Pukeahuahu, also pigs. The food which we ate at Ruapekapeka came from Ruku's plantation. I lived at Pukeahuahu before the fighting and seven years after it ceased.[93]

Governor Grey did not demand a cession of land after the fall of Ruapekapeka. However, according to Eru Nehua's 1882 Native Land Court evidence, Māori fighting with the British claimed lands as raupatu from the defenders in the battle. Nehua stated that Ngāti Manu lost their ancestral lands at Puhipuhi in this way, as Tamati Waka Nene 'had taken all their lands in the European fight [i.e. the 1845 Northern War].'[94] Phillipson points out that 'The Crown's allies [such as Nene and his followers] had to feed themselves – they were not paid by FitzRoy.'[95]

Later, a parcel of land named Kohea, to the west of Puhipuhi, was given by Rewa of Ngāti Hau to Pōmare Kingi of Ngāti Manu, 'through aroha [i.e. as a gift, rather than through rights of ancestry].'[96] Acquiring land 'through aroha', often as part of a peacemaking and mediation process, was a recognised way of gaining traditional interests in land, in addition to ancestry and conquest.

The Northern Wars had a major effect on land settlement patterns and peacemaking in the Puhipuhi area. The dispute is also likely to have encouraged further conflict between iwi/hapū with rival claims over Puhipuhi. It may later have even encouraged sales of those lands to the Crown, whether to avoid such inter-hapū conflict or to re-establish shaken authority. For example, in terms of the Crown purchases discussed in

[91] Evidence of H. Winiana, 14 May 1883, Mair Minute Book No. 1 p. 193
[92] Henare, Middleton and Puckey, 2013, #E67, p. 310
[93] Evidence of E. Nehua, Northern Minute Book No. 6, p. 7
[94] Evidence of E. Nehua, 24 April 1882, Northern Minute Book No. 6, p. 17
[95] G. Phillipson, 2005, #A1, p. 361
[96] Evidence of E. Nehua, 24 April 1882, Northern Minute Book No. 5, p. 22

further detail below, we see Kawiti participating in Crown purchases to the west of Puhipuhi (Hukerenui and Wairua) and Nehua participating in those to the east and the south (Otonga and Opuawhango). They could be said to be competing 'in pursuit of mana' (in Parsonson's phrase) to vindicate their claims to land and to ultimately secure European settlement in their rohe.[97] The Northern Wars also helped the Crown to categorise chiefs as either loyal or rebel, and those categories could continue to be played out in the Native Land Court. This gave opportunities for some chiefs to gain further influence and potentially disadvantaged others.

Some of those already living at or near Puhipuhi were forced by the fighting and its aftermath to relocate, while other Ruapekapeka combatants with no prior history of living at Puhipuhi chose to remain there after the battle. According to Nehua's later Native Land Court evidence, in the years following the Northern Wars the majority of Ngāti Hau went to live at Ngunguru and other settlements in the vicinity of Whangarei.[98]

After the Batttle of Ruapekapeka, according to the 1902 *Cyclopedia of New Zealand,* Eru Nehua, 'with some of his relatives went to reside at Ruatangata at the Ngamako settlement, whence they moved to Pehiawiri.'[99] In his 1882 evidence before the Native Land Court, Nehua confirmed that he left Puhipuhi in about 1853, aged about 19. He was asked by Haki Whangawhanga, a Ngāti Hau chief based at Ngunguru, to live with other Ngāti Hau at Pehiaweri (later known as Glenbervie), near Whāngarei.[100] A Ngāti Hau authority has said of Whangawhanga that, 'From 1865, during the investigations of titles to lands of hapu of Whangarei', he 'was one of the old men who spoke for Ngati Hau. He enjoyed the support of other Ngapuhi rangatira and hapu of adjoining land blocks.'[101]

While living at Pehiaweri, Nehua later stated, he made regular return visits to Taharoa, at the southern end of Puhipuhi, to harvest the semi-feral pigs grazing there.

[97] Ann Parsonson, 'The Pursuit of Mana' in W. H. Oliver and B. R. Williams (eds), *The Oxford History of New Zealand* (Wellington: Claredon Press/Oxford University Press, 1981), pp 140-167
[98] Evidence of E. Nehua, 23 May 1883, Mair Minute Book No. 1, p. 257
[99] *Cyclopedia of New Zealand (Auckland Provincial District)*, 1902, p. 564
[100] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, pp. 6-8
[101] H. Maxwell, *Nga Maumahara – Memory of loss,* MA thesis, Auckland University of Technology 2012, fn 9, p. 25

'Whilst we lived at Pehiaweri we kept no pigs and were continually returning to Taharoa to catch pigs.'[102]

In about 1861 Nehua returned to live permanently at Taharoa. 'He did so, he told the 1883 Native Land Court, 'as I found all my pigs which had increased very much in number hunted and killed by others. Our old people later told me to do so if I thought I could hold it by myself. They described the boundaries to me.'[103] Few other people appeared to live permanently within the boundaries of Puhipuhi at that time. Nehua testified that ten of his Ngāti Hau relatives helped to carry his food and other supplies to this remote, bush-covered and otherwise unoccupied location. At that time, he told the court, 'There was no road from Whangarei to Taharoa. It was all forest.'[104] Nehua's re-occupation of Puhipuhi, after earlier living there between the ages of 12 and 19, was therefore apparently based on Ngāti Hau's ancestral claims to the land, and on permission from his tribal community.

Nehua's action in seeking and gaining permission to occupy Taharoa according to tikanga suggests he was very closely linked to tribal tikanga. However, his ambivalent status as a 'half-caste' may also have given him the opportunity to increase his personal mana in new ways - such as by participating in Crown land purchases and the Native Land Court. These actions are likely to have reinforced the official view of him as a prominent chief. This status was also valued by many Māori as it helped with mediation between Māori and Europeans. However, some 'half-castes' were regarded with suspicion by their Māori whānau as being too close to Europeans and their ways.

In 1862 Nehua travelled to the Hokianga where he married Te Tawaka, the grand-daughter of Eru Patuone, whose younger brother was Tamati Waka Nene. Te Tawaka's father Hohaia Patuone permitted his daughter to return to Taharoa with her new husband.[105] Malcolm's history of Whangaruru provides a slightly different account of Nehua's return to Taharoa. This states that Eru Nehua received the land at Taharoa through his wife Te Tawaka, whose grand-uncle Tamati Waka Nene, as noted above,

[102] Evidence of E. Nehua, 23 May 1883, Mair Minute Book No. 1 p. 257
[103] Evidence of E. Nehua, 23 May 1883, Mair Minute Book No. 1 p. 257
[104] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, pp. 6-8
[105] Evidence of E. Nehua testimony, 22 April 1882, Northern Minute Book No. 6, p. 9

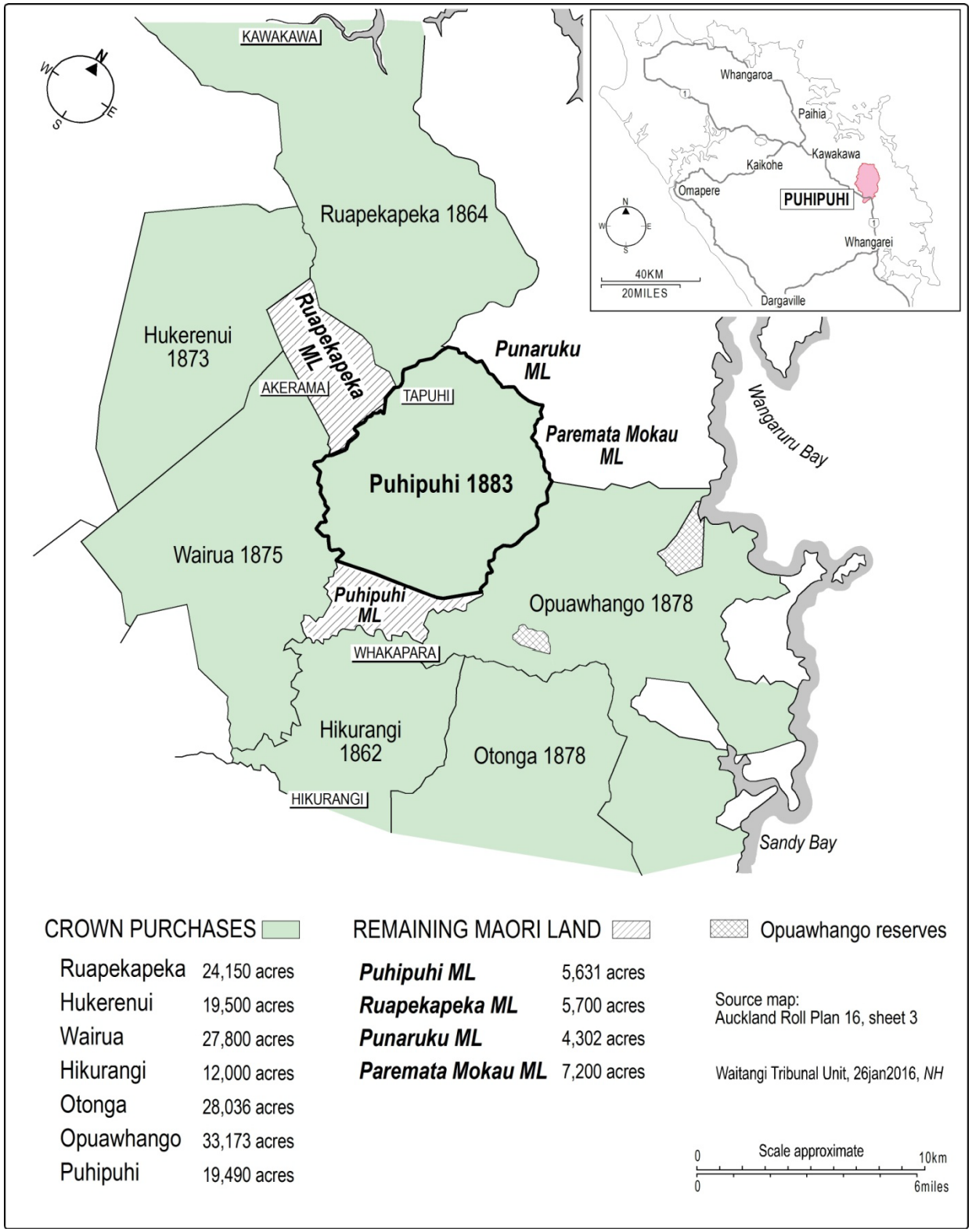
had acquired lands at Puhipuhi by conquest after the battle of Ruapekapeka.[106] Te Tawaka's sister, Hoana Pitman, was also given land by Tamati Waka Nene, and thereafter lived at Waiotu on the western edge of the property.[107] Te Tawaka's father Hohaia Patuone also gave the Nehua whānau land at Whakanekeneke, Okaihau.[108]

The two accounts of how Nehua acquired the right to re-occupy land at Puhipuhi appear conflicting, but may be complementary. It is possible that the Taharoa lands were gifted to the Nehua whānau through Te Tawaka, and that Ngāti Hau leaders then gave Nehua permission to return to those lands. It also seems possible that Nehua chose not to refer to the gifted lands in his 1882 Native Land Court evidence, feeling that this might weaken his claim to Puhipuhi through Ngāti Hau ancestry in the eyes of the court.

Eru Nehua and Te Tawaka were joined at Taharoa by Pokaia of Ngāti Hine and his wife. Eventually about ten people lived at Taharoa, farming the land and leasing some of it for grazing.[109] Eru Nehua remained on this property for the rest of his long life. However, he owned interests in land throughout the wider Whangarei area and frequently represented those interests on behalf of Ngāti Hau in the Native Land Court.

[106] Malcolm, *Where it all began…*, 1982, p. 73
[107] Malcolm, *Where it all began…*, 1982, p. 73
[108] David Armstrong, 'Ngati Hau Gap-filling Research', CFRT, 2015, #P1, p. 5
[109] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 9

Figure 2: Map showing Crown purchasing in and around Puhipuhi, 1864 – 1883



1.6 Crown purchasing around Puhipuhi, 1859 – 1870

In 1855 the government issued directions to Donald McLean, the Principal Land Purchase Commissioner in the Bay of Islands, to initiate the acquisition of Māori land there. McLean delegated this responsibility to H. Tacy Kemp, his assistant commissioner.[110] By that time the hostile relations between the Crown and many northern iwi/hapū, including those with interests in Puhipuhi that had resulted in the 1845/46 wars had greatly subsided. This newly conciliatory relationship was exemplified by Maihi Paraone Kawiti's 1858 re-erection of the flagstaff at Kororareka, as 'payment' for the felling of the earlier flagstaff, an action in which his father had participated.[111] Ngāti Hau leaders joined Kawiti in making this gesture of reconciliation.[112]

In the following year, 1859, Kawiti sold the 25,500 acre Kawakawa North block to the Crown.[113] This block included Ruapekapeka, although that purchase was not concluded until 1864, as noted below. According to Nehua's later testimony, 'There was great lamentation among N' Hau when they heard that all the lands on which their ancestors had lived, and been buried, were sold.' Nevertheless, Kawiti proposed at that time to also sell Puhipuhi to the Crown, and Ngāti Hau leaders Hori Winiana and Whatarau Ruku consented to this intention. 'All claims to land were left in Marsh's [i.e. Kawiti's] hands', according to Nehua.[114]

The pattern of Crown purchasing that emerged by the early 1860s suggests that the Crown was seeking land with access to protected anchorages along the eastern side of the long peninsula north of Tāmaki Makaurau.[115] In 1862, the Ngāti Hau leader Eru Nehua and his wife Te Tawaka settled permanently at Taharoa, at the southern end of the Puhipuhi lands. In the same year, the 12,000-acre Hikurangi block to the west of Puhipuhi, and adjoining it at Waiotu, was purchased by the Crown (see Figure 2).

This purchase was the subject of considerable debate among the leaders of the several iwi/hapū who claimed interests in Hikurangi. These include Nehua and others of

[110] Lee, *Opua…*, 1999, p. 10
[111] Armstrong and Subasic, 2007, #A12, p. 544
[112] Evidence of Eru Nehua, 23 May 1883, Mair Minute Book No. 1, p. 256
[113] Berghan, 2006, #A39(b), p 49
[114] Evidence of E. Nehua, 23 May 1883, Mair Minute Book No. 1, p. 257
[115] See Plate 19, 'Northland Crown Purchases, 1840-1865', CFRT Stage 2 Map Book, #E59

Ngāti Hau. Nehua later stated that 'Riwi Taikawa and myself went to the meeting at Whangarei about the sale … Hori Kingi, Tirarau, Ngamoko and other principal men were present, also [Crown land purchase officer] Mr Rogan.'[116] The purchase deed states that the block was conveyed to the Crown by 'the Chiefs and People of the Tribe Ngatikahu and Ngatihau' for £600.[117] The signatories to the deed included Haki Whangawhanga, who was later also included amongst the owners of part of Puhipuhi, after title to the block was determined by the Native Land Court in 1883.

According to Crown land purchase officer John Rogan, during the sale negotiations for Hikurangi, two other chiefs, 'Eru' (probably Eru Nehua) and 'Riwi' (probably Riwi Taikawa) raised objections to the sale of part of this block. The nature of their objections is not known.[118] Their names do not appear amongst the list of those who signed the Hikurangi purchase deed.[119] However, Nehua's later Native Land Court evidence states that, 'Riwi said he would not consent to N' Hau's portion being sold – wished it cut off. Tirarau [Te Parawhau chief Te Tirarau Kukupa] said let there be no division, let the land go. It was done.'[120]

A note at the end of the deed, signed by Nehua and Taikawa and dated five days after the purchase, states that the two men were paid £20 'he whakaotinga mo to maua whakaae ki runga ki tenei whenua kua hokona ki te kawanatanga' ('as a final payment, for our agreement to the sale of this land to the government').[121] Both these chiefs later received payment and were included as owners in one of the Puhipuhi title deeds, after title was determined by the Native Land Court in 1883.

Two years later, on 11 June 1864, the Crown purchased the 24,150-acre Ruapekapeka lands, to the northwest of Puhipuhi and adjacent to the Ruapekapeka pā site, for £3,800. According to the purchase deed, those conveying the land to the Crown were 'the Chiefs and People of the Tribe Ngatihene [Ngati Hine] & Ngatimanu.' The first

[116] Evidence of Eru Nehua, 23 May 1883, Mair Minute Book No. 1, p. 257
[117] Hikurangi Crown purchase deed, ABWN 8102, W5279, box 164, AUC 290, ANZ Wgtn
[118] District Commissioner to Chief Commissioner, 29 January 1862 in Report of Land Purchase Department Relative to Extinguishment of Native Title, Bay of Islands District, *AJHR* 1862, C-1, No. 14, p. 379
[119] Hikurangi Crown purchase deed, ABWN 8102, W5279, box 164, AUC 290, ANZ Wgtn
[120] Evidence of Eru Nehua, 23 May 1883, Mair Minute Book No. 1, p. 257
[121] Hikurangi Crown purchase deed, ABWN 8102, W5279, box 164, AUC 290, ANZ Wgtn. Author's translation

signatory to this deed was the Ngāti Hine chief Maihi Paraone Kawiti, who later claimed interests in Puhipuhi.[122] The purchase of Ruapekapeka was concluded only after several years of negotiations, since hapū and iwi refused to accept the original price offered by the Crown. In early 1864 a coal deposit was discovered on Ruapekapeka, leading the Crown to agree to the higher price asked by Māori. Kawiti later made repeated, but unsuccessful, attempts to have parts of these lands returned to tribal ownership.[123]

These purchases in the vicinity of Puhipuhi by the Crown were conducted under the 1862 Native Land Court Act, and its 1865 successor Act. Section 25 of the 1865 Act determined that the Court could only issue a Crown title for land if 'a survey of the lands is produced before the Court.' Section 67 of that Act stipulated that surveyors needed to be licensed and section 70 required that the cost of the survey was 'to be apportioned between all owners.' However, section 71 of the 1865 Act also gave the Court the power 'to make investigations and determinations without a prior survey if it thinks fit.'[124]

In his testimony to the 1883 Native Land Court hearing Nehua described how Otongo and Opuawhango (also known as Opuawhanga), both directly adjacent to Puhipuhi's eastern boundary, were surveyed. He recalled that in about 1866:

> Riwi Taikawa and myself went to the meeting at Whangarei about the sale of these 2 blocks [Otonga and Opuawhango]… Haki Whangawhanga then said he would like to sell this block [Puhipuhi] and Otonga. I also at that time was inclined to sell all our N' Hau land. We had a talk over our respective boundaries and defined the portions which belonged to the [illegible] … We sold all the land outside and lying to the SE of this block [Puhipuhi]. All this was agreed to before the surveyor came.[125]

As with the earlier Hikurangi purchase, the purchase of Otonga and Opuawhango took place only after prolonged discussion between the iwi/hapū claiming interests in the land. Nehua later referred to a 'runanga' at which Ngāti Wai, Te Atihau and Ngāti

[122] Ruapekapeka Crown purchase deed, ABWN 8102, W5279, box 151, AUC 35, ANZ Wgtn
[123] Vincent O'Malley, 'Northland Crown Purchases 1840 – 1865', CFRT, 2006 #A6 p. 351. For a full account of this purchase, refer to pp. 348-352; 357-359; and 499-508 of this report. Throughout the 1870s the Crown purchased further blocks surrounding what would later become the Puhipuhi block. These included Hukerenui (1873), Wairua (1875) and Otonga and Opuawhanga in 1878.
[124] Section 71, Native Lands Act 1865
[125] Evidence of E. Nehua, 23 May 1883, Northern Minute Book No. 6, p. 211-212

Hau discussed the proposed purchase.[126] According to his 1882 Native Land Court testimony, Nehua wrote to the Ngāti Wai representatives Hone Tiaki, Hori Wehiwehi and Ngawiki Ngamoko requesting that they meet him to define the boundaries of Opuawhango. They met at Oteaka together with John White, who was then acting as a private land agent on behalf of Māori sellers.[127] 'Haki Whangawhanga then said he would like to sell the Opuawhango and Otongo. I also at that time was inclined to sell all our N' Hau land. We had a talk over our respective boundaries… All this was agreed to before the surveyor came.'[128]

At this meeting the western boundary of Opuawhango (which later formed part of the eastern boundary of Puhipuhi) was defined from Kakahu, at the junction of the Whakapara Stream with the Kaimamaku River. Nehua later said that, '[Ngāti Hau] were to have the western side of the Kaimamaku and [Ngāti Wai] the eastern side of that river as far as Kakahu … and the survey of the Opuawhango and Otonga block was the result.'[129] Therefore an agreed boundary between the two iwi for the purposes of that survey later became part of the boundary of the Puhipuhi block when it was surveyed in 1871 (this is discussed in detail in the following chapter).

The subsequent survey, commissioned by the Auckland provincial government and carried in 1868 by surveyor F.T. Newbery prior to the Native Land Court title investigation hearing, was furiously contested by the Ngāti Hau-Ngāti Manu chief Whatarau.[130] Nehua's 1883 testimony records that:

> When Whatarau learned of it he was very angry. He said that if they brought their survey across the Whakapara River on to this block he would shoot Haki Whangawhanga or anyone else who tried it. We were frightened.
>
> Mr [John] White came to meet us and N' Wai at Oteaka to discuss the sale of Opuawhango and Otonga to the [Auckland provincial] Government. We said to N' Wai that we were frightened of Whatarau and that we would not extend our line beyond their boundary at the Kaimamaku stream. So we only sold the portion upwards from the bridge and Otonga. In our

[126] Evidence of Eru Nehua, 10 May 1883, Mair Minute Book No. 1, p. 181
[127] Michael P. J. Reilly 'White, John', *Dictionary of New Zealand Biography*, *Te Ara - the Encyclopedia of New Zealand*, www.TeAra.govt.nz/en/biographies/1w18/white-john
[128] Evidence of E. Nehua, 23 May 1883, Mair Minute Book No. 1, pp. 257-258
[129] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 10
[130] *Auckland Provincial Government Gazette* No. 13, 19 March 1868, p. 146

> first discussion we had intended selling this block [Puhipuhi] as well but were prevented by Whatarau. N' Wai were quite willing then that we should do so.[131]

After the completion of this survey, the ownership of Otongo and Opuawhango was determined by the Native Land Court on 14 May 1867. Native Land Court certificates of title were issued for Opuawhango No. 1 (9,450 acres), No. 2 (6,784 acres), No. 3 (1,782 acres) and No. 4 (15,157 acres); and Otonga No. 1 (26,810 acres) and No. 2 (1,226 acres) on 7 February 1868. The title for the large Otonga No. 1 block recorded its owners as Haki Whangawhanga and Eru Nehua of Ngāti Hau.[132]

Advance payments were made by the provincial authorities for both blocks in 1866. The balance of the purchase price was to be paid after the land had passed through the court. The title was subsequently determined by the Court, but the Provincial authorities failed to pay over the balance as agreed. Therefore, in April 1869, a number of Māori took the opportunity of sending a deputation to Whangarei in order to obtain the remainder of their payment from the Superintendent of the Auckland Province who was then visiting the town.[133] Amongst them was the Ngāti Wai chief Hoterene Tawatawa who also later claimed interests in Puhipuhi.

By the beginning of the 1870s the Native Land Court was fully operational in the Te Raki inquiry district. The Native Land Act 1865 and its amendment set out the powers of the court, with the detail of its operation covered by the gazette rules of the court. This legislative framework 'permitted any Maori individual or group of Maori to make an application for title investigation without reference to the wider community. There was no provision for Runanga to arrange ownership prior to the court hearings or mediate disputes when they arose - as had been the case before 1865.'[134]

The Native Land Act 1865 abolished the Native Department and temporarily ended Crown purchases of Māori land. However, between 1864 and 1870 substantial purchases of land continued (as described above), including in the areas immediately

[131] Evidence of E. Nehua, 23 May 1883, Northern Minute Book No. 6, p. 212
[132] *NZ Herald,* 28 April 1869, p. 5
[133] *New Zealand Herald*, April 9, 1869 and *New Zealand Herald*, April 28, 1869. See also *New Zealand Herald*, 29April 1869 and *New Zealand Herald*, 23April 1869 cited in Armstrong and Subasic, #A12, p 410
[134] Armstrong and Subasic, p. 412-3

around Puhipuhi, conducted by private buyers and the Auckland Provincial Government.[135]

In conclusion, land purchases in regions surrounding Puhipuhi between 1862 and 1870 were transacted with the chiefs of tribal and hapū groups who would later bring their Puhipuhi lands before the Native Land Court. By 1870 those groups had participated in the Native Land Court's title investigation process for other blocks of land and in negotiating with Crown land purchase agents. They also had some experience of public meetings and district and intertribal discussions about some purchase boundaries during the land surveying.

Names on title deeds:
Opuawhango No. 1 – Wiremu Kingi, Henare Kaupeka
Opuawhango No. 2 – Pita Punua and Parore
Opuawhango No. 3 – Eruera Maki
Opuawhango No. 4 – Hori Wehiwehi and Erana
Otonga No. 1 – Haki Whangawhanga and Eruera Nehua
Otongo No. 2 – Rawiri Te Himu and Kataria Te Puatahi

1.7 European settlement in the vicinity of Puhipuhi in the 1860s

Since Puhipuhi had no sea access, navigable waterways or formed roads, its kauri timber was not readily accessible to Europeans and, prior to 1870, does not appear to have been important for trade with them. The place-name 'Puhipuhi' does not appear on any pre-1870 maps of this region sighted for this report, suggesting that the kauri forest was not well known to or valued by Europeans until a later period.

However, due in part to Crown purchases of adjacent lands which were later on-sold to settlers, as well as to private dealings with local Māori, a number of Europeans lived around the periphery of the Puhipuhi Forest from the mid-1860s. One of the first to live in the area was Donald McLeod, who took up land at the south end of Hikurangi in 1863, the year after its purchase by the Crown.[136]

[135] Armstrong and Subasic, 2007, #A12, p. 447
[136] Madge Malcolm, *Hikurangi – the story of a coal-mining town,* (Kamo: M.S. Malcolm, 1997), p. 3

One influential figure was T. Hutchinson, who owned general stores at Mimiwhangata and Whananaki from about 1865. He renamed Mimiwhangata Helena Bay after his wife, and it is most commonly known by this name today. Hutchison traded with Māori with kauri gum which they gathered in the inland forests and carried to his store by boat.[137] As we will see in the chapters that follow, kauri timber and gum were important ingredients in the subsequent dealings between hapū and iwi at Puhipuhi and the Crown after 1870.

[137] Malcolm, *Where it all began…*, 1982, p. 116

Chapter 2 – Native Land Court title application and survey, 1871 – 1873

2.1 Introduction

This chapter sets out what is known about the genesis and execution of the title investigation application and related boundary survey of Puhipuhi. The chapter also outlines opposition to the survey by a number of individuals and hapū who claimed customary interests in the land, and examines how the ensuing conflict was dealt with by Crown officials. Following the title application and survey, Puhipuhi became important to several iwi/hapū as a locality for gumdigging. This chapter outlines the hotly contested claims to gumdigging rights within the forest. This record of disagreement and conflict between rival claimants, and the responses of national and local Crown representatives, set the pattern for the later Native Land Court hearings into Puhipuhi, and the Crown's purchase of the lands dealt with in subsequent chapters.

2.2 The initial impetus for the application for title investigation

The reasons behind the application for title determination in October 1871 are not entirely clear. However, at least four years before the application was lodged, Eru Nehua had proposed that Taharoa, the kainga and its surrounding lands where he and his whānau were living, be secured for him. In his later testimony to the Native Land Court, he said that in 1867 he and his fellow Ngāti Hau leader Haki Whangawhanga each received payments of £800 for the Auckland Provincial Council purchase of the Otonga block (as described in the previous chapter). 'With my sum,' said Nehua, 'I gathered N' Hau together. I then proposed that a piece of land should be set aside for me - Taharoa. They would not consent but said we will survey the whole block and then we will cut a piece off for you. I then thought that Whatarau would again be angry but he consented to the survey.'[138] Ngāti Hau appeared concerned at this time to protect and establish title to their kainga at Taharoa, and also to establish title to the forested part of Puhipuhi, which would enable them to later lease milling rights for its timber.

[138] Evidence of E. Nehua, 23 May 1883, Northern Minute Book No. 6, p. 213

By the early 1870s the forested portion of Puhipuhi was also highly valued as a source of income from kauri gum. Competition amongst Māori for this resource and the need to secure ownership of the land to control its exploitation by Pākehā gumdiggers may have motivated Eru Nehua and others to lodge an application for title determination with the Native Land Court. Gumdigging, in the Puhipuhi forest and elsewhere in the north, became a consistently financially rewarding year-round activity from about 1870, when kauri gum's use in making linoleum meant that market prices reached much higher levels than in the past. For the next 40 years, according to David Alexander, 'it was gum digging, more than any other industry, which attracted and sustained Maori.'[139] While other means of earning cash income appeared in that period, including timber milling, mining and agriculture, gumdigging was unique among forms of self-employment in requiring practically no start-up investment beyond the cost of a spade and spear. This made it highly attractive to Māori who generally lacked funds or the ability to borrow them. The collective nature of the work was also appealing to Māori, and entire whānau groups, including children as young as six, worked together on the gumfields.

The cleaned and scraped gum was sold to storekeepers. The cash paid out by the storekeepers was frequently spent immediately afterwards on store goods such as flour, sugar, tea, candles and tobacco. In many cases the storekeepers allowed their customers to run up large bills on credit, knowing that the income from gum would eventually return to them. This cycle of debt, repayment, and further debt tied the gumdiggers to the stores, and often ensured that they were obliged to keep digging even if it meant neglecting other activities such as fishing, growing crops or sending their children to school.

Eru Nehua told the Native Land Court that the first white man he ever saw at Puhipuhi was Thomas Hutchinson, whom he encountered there about six months after the survey, i.e. about December 1871.[140] Hutchinson was the storekeeper at Mimiwhangata, near Helena Bay.[141] He was apparently scouting the forest's resources of kauri gum, and offered to advance store goods in return for quantities of Puhipuhi

[139] Alexander, 2006, #A7, p. 125
[140] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, p. 262
[141] Malcolm, *Where it all began…*, 1982, p. 116

gum. As a result, said Nehua, 'All the natives from Whangaruru and Whananaki said they would dig gum and got provisions from Hutchinson.'[142] Disputes amongst various groups of Māori at Puhipuhi over gum royalties intensified tensions over the survey of the block (this is discussed further below).

2.3 Application for investigation of title

By 1871, as noted in the previous chapter, Puhipuhi was one of the few remaining large areas of Māori-owned land within the region between Hikurangi and Kawakawa. Most of the lands surrounding Puhipuhi had already been purchased by the Crown (or, in the case of Opuawhango, part-purchased by 1871, with the transactions completed some years later) as part of a wave of purchases that would eventually provide land for settlers to develop for farming. Ngāti Hau had been a party to several of the Crown purchases around Puhipuhi. Their actions were consistent with those of other iwi/hapū in their region who entered transactions with the Crown over land in this period.

In October 1871 three leading figures of Ngāti Hau - Eru Nehua, Riwi Taikawa and Whatarau Ruku - applied to the Native Land Court for a title investigation into the lands they referred to as Puhipuhi. All three belonged to a group described, according to Ngāti Hau artist Hana Maxwell, as the 'old men' of Ngāti Hau.[143] Of this group, Taikawa was 'one of the younger men chosen to lead Ngati Hau.'[144] Later, in 1892, he was elected as a Ngāpuhi representative to the Whare o Raro, or Lower House, of the first session of Te Kotahitanga, the Māori Parliament.[145] Whatarau Ruku, of both Ngāti Hau and Ngāti Manu, is likely to be the same man who had so vigorously opposed the 1862 survey of Otonga and Opuawhango, as described in the previous chapter.[146] By joining Nehua and Taikawa in making this application, he apparently regarded it as well founded.

This application was made under section 21 of the Native Lands Act 1865, which specified that 'Any Native' seeking an investigation of title to Native land must do so

[142] Evidence of E. Nehua, 25 May 1883, Northern Minute Book No. 6, p. 216
[143] Maxwell, 2012, pp. 25-26
[144] Maxwell, 2012, fn 16, p. 27
[145] *Paremata Maori o Niu Tireni. Nohanga Tuatahi. I tu ki Te Waipatu, Hune 14, 1892* Otaki 1892, p. 4
[146] Evidence of E. Nehua, 23 May 1883, Mair Minute Book No. 1 , p. 258

by naming it or otherwise describing it and 'and stating the name of the tribe or the names of the persons whom he admits to be interested therein with him.' [147] Upon investigation the court could then issue of a certificate of title or several titles. The titles were to 'specify the names of the persons or of the tribe who according to Native custom own or are interested in the land.'[148]

Rules of the Native Land Court issued in 1867 included a proposed form for this application, and Nehua, Riwi Taikawa and Whatarau Ruku's application was made on that form.[149] The three applicants gave both their names and their tribe ('Ngatihau') as required. They referred to the land under investigation as Puhipuhi and defined its boundaries in terms of both major natural features and the surrounding Crown purchases:

> Ko te rohe ki te Marangai, ko te wai o Whakapara, ko te whenua o te Kawanatanga, ko Otonga, Opuawhango. Ko te rohe ki te hau raro, ara, ki te Nota ko Taumata Hinau. Ko te rohe ki te hauauru, ko te wai o Waiotu, ko te whenua o te Kawanatanga ko te Ruapekapeka. Ko te rohe ki te tonga, ko nga puaha a Whakapara o Waiotu, ko te whenua o te Kawanatanga ko Hikurangi.
>
> *The northern boundary – from the Whakapara Stream to the Crown lands of Otonga and Opuawhango. The eastern boundary – [illegible] Taumata Hinau. The western boundary – from the Waiotu Stream to the Crown land of Ruapekapeka. The southern boundary – the mouths of the Whakapara and Waiotu Streams and the Crown land of Hikurangi.*[150]

Section 22 of the 1865 Act stated that when the Court received such an application, it would be 'circulated in such a manner as shall give due publicity thereto and in the same or in a subsequent notice shall be notified the day and the place where and when the Court shall sit for the investigation of the said claim.'[151] This provision was strengthened in 1867, by prohibiting a court sitting unless notice of it had been published in the *Kahiti* for a period of a month beforehand.[152] The 1867 rules of the Court further specified that such publicity should appear in the *Kahiti* in Māori and

[147] Section 21, Native Lands Act 1865
[148] Sections 23 & 24, Native Land Act 1865
[149] Rules under the 'Native Lands Act, 1865', No. 7 and Form 2, *NZ Gazette* 5 April 1867, p. 135 and 138
[150] Application for title investigation, E. Nehua and others, 12 October 1871, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn. M. Derby translation; *Te Kahiti*, 16 Nov 1872, p. 75
[151] Section 22, Native Lands Act 1865
[152] Section 5, Native Land Act 1867

the *New Zealand Gazette* in English, with copies sent to interested individuals such as Resident Magistrate and Native Assessors.[153] Such a notice, accurately recording the details of the application form, duly appeared in *Te Kahiti* in November 1872.[154]

Under an 1867 amendment to the Native Lands Act 1865, a title investigation hearing required the presiding judge to consider evidence not only of those tribes or individuals who had applied for the investigation but also 'evidence referring to right title estate or interest of every other person who and every tribe which according to Native custom owns or is interested in any such land whether such person or tribe shall have put in or made a claim or not.'[155] Therefore, although Kawiti and Ngāti Wai had not formally applied for the title investigation into Puhipuhi, their evidence, and that of other claimants for Ngāti Manu, Ngāti Te Rā and Te Atihau, was required to be heard as part of that investigation as long as they made out that evidence in the hearing.

The Native Lands Act 1865 was repealed by the Native Lands Act 1867 which, in part, empowered the Court to require applicants to deposit a sum of money to cover any subsequent court costs.[156] No such requirement was apparently imposed on the Puhipuhi applicants. The 1867 Act also reduced the number of Native Assessors assisting the judge on court cases from two to one.[157] A single Native Assessor therefore took part in future court hearings into Puhipuhi.

2.4 Boundary Survey

Frederick Maning of Onoke, Hokianga, one of the Native Land Court judges presiding in the Native Land Court in the North (who is discussed further below),, informed his friend Donald McLean, the Native Minister, in May 1871 that, 'The natives … are sending in their claims [for Court hearings] as fast as they can get surveys made. I am half killed with office work; but won't give in until I have cleared off all the claims now on hand.'[158]

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[153] Rules under the 'Native Lands Act, 1865', No. 8, *NZ Gazette* 5 April 1867, p. 135
[154] *Te Kahiti,*16 November 1872, p. 75
[155] Section 17, Native Lands Act 1867
[156] Section 8, Native Lands Act 1867
[157] Section 16, Native Lands Act 1867
[158] F. E. Maning to D. McLean, 12 May 1871, Donald McLean papers, MS-Papers-0032-0445, ATL Wgtn

Maning's description of land claimants applying to the Court 'as fast as they can get surveys made' refers to the Native Land Court's general requirement for a formal survey plan in order for a Court determination of title to proceed. According to Armstrong and Subasic this requirement was not always imposed since, due to the large number of land claims heard by the Native Land Court in this period, the Survey Department was not always able to keep up with the demand for plans drawn up by registered surveyors. Native Land Court judges were therefore sometimes prepared to accept sketch plans or other non-approved physical descriptions of the land under adjudication.[159] In the case of the Puhipuhi title application, however, a survey and resulting boundary plan were eventually produced.

The Native Land Court's rules required such a plan to be prepared by a licensed surveyor, and produced such that 'the boundaries of such land have been distinctly marked on the ground.'[160] The 1867 Rules under the Native Land Court Act 1865 specified further requirements for surveys, such as that 'when in forest, or in high fern, [boundary lines] must be cut and cleared four feet wide.'[161] The resulting plan had to be certified by the surveyor, submitted to the provincial Chief Surveyor for approval and, if necessary, amended before being produced in court.[162] The Native Lands Act 1867 created the office of Inspector of Surveys, charged with certifying survey plans prior to court hearings.[163] According to Armstrong and Subasic, 'While this potentially had the advantage of ensuring greater accuracy, it also added another level of fees to the already costly process.'[164]

The cost of surveys was generally imposed on the Māori applicants, and in 1871 the Haultain Commission into the Native Land Court Acts noted that 'The Provinces have acquired … maps of much greater value [than they cost] at the expense of the Natives.'[165] For Māori commissioning private surveyors could prove expensive, and there was a risk that they were not professionally competent. Armstrong and Subasic noted that Crown officials were inclined to:

[159] Armstrong and Subasic, 2007, #A12, pp. 689-670 and following pages
[160] Section 25, Native Lands Act 1865
[161] Section 37, Rules under the Native Lands Act 1965, *NZ Gazette* 5 April 1867, p. 137
[162] Ssections 48, 50-52, Rules under the Native Lands Act 1965, *NZ Gazette* 5 April 1867, p. 137
[163] Section 6, Native Lands Act 1867
[164] Armstrong and Subasic, 2007, #A12, p. 403
[165] The Hon. Colonel Haultain to the Hon. D. McLean, 18 July 1871, *AJHR* 1871 A2-a, p. 9

> characterise many surveyors active in the north at this time as incompetent and corrupt charlatans intent on exploiting Maori, who were thus exposed to years of "lamentable confusion and neglect". The inflated price of surveys often consumed nearly all the proceeds of land sales. Many of these surveyors were in the habit of tricking or deceiving Maori into signing orders for grossly overpriced survey plans, and then recovered their debt in the Supreme Court.[166]

In the case of Puhipuhi, Eru Nehua proposed using his share of the purchase money from the earlier sale of the Otonga 1 block to pay for the survey himself. It is possible that he saw this considerable expense as an investment in his future security of tenure at Taharoa.

The survey of Puhipuhi began several months before the application for title investigation was lodged in October 1871. From the middle of that year several letters were sent to government representatives by Māori aggrieved at the survey. From the wording of these letters, the survey appears to have begun in advance of the application, perhaps in June 1871. Nehua, speaking in 1883, estimated that it took two months to complete, suggesting that it was carried out before the October 1871 title application.[167]

In later evidence before the Native Land Court, Eru Nehua stated that he commissioned the Puhipuhi survey, 'after calling a meeting of N' Hau at which it was agreed that Sydney Taiwhanga should make the survey, preferring him to a European. Hirini himself at that time was quite a stranger to me. I went and fetched him and he made this survey.'[168] The resulting plan was completed the following year, in 1872.[169] Taiwhanga, of Te Uri o Hua at Kaikohe, was the son of the agricultural entrepreneur Rawiri Taiwhanga, regarded as New Zealand's first commercial dairy farmer. Hirini was well educated and wrote and spoke English, as well as Māori, fluently.[170] He became the first Māori licensed surveyor, authorised by the Native Office to appear

[166] Armstrong and Subasic, 2007, #A12, p. 784
[167] Evidence of E Nehua, 23 May 1883, Mair Minute Book No. 1 p. 261
[168] Evidence of E. Nehua, 21 April 1882, Northern Minute Book No. 6, p. 10
[169] ML 2638
[170] R. Ritchie, *Rawiri Taiwhanga*, ?1790s – c. 1879, Kaikohe information booklet No. 1 (Kaikohe: Pukepuriri Productions, 1998), p. 1; G. H. Scholefield (ed) *A Dictionary of New Zealand Biography,* vol II, (Wellington: Department of Internal Affairs 1940), pp 359-360

before the Native Land Court, in February 1869.[171] Employing a Māori surveyor may have appealed to Ngāti Hau, at a time when the poor reputation of private European surveyors was becoming known.

Giving evidence before this commission, Eru Nehua said, 'Disputes between Natives with regard to whether lands should be surveyed or not should be referred to the Resident Magistrate who should authorise the survey if he thinks proper, and the Court can then decide between the claimants. It would be a good way to settle disputes.'[172]

2.5 Protests at the survey of the Puhipuhi block

A survey carried out prior to a Native Land Court title hearing often resulted in conflict with other claimants. Applicants to a title investigation were able to apply to the court without wider discussion with others with interests to the land, but a boundary survey was a much more visible process and often the first time many people learned that the land was to go before the Native Land Court. As indicated in the previous chapter, neighbouring hapū disputed the claims by Ngāti Hau to hold traditional rights to all of Puhipuhi.

Ngāti Hau had earlier experience of the ill-feeling that could be provoked by a survey. Nehua's fellow Ngāti Hau leader, Haki Whangawhanga, formally protested during the 1865 Native Land Court Otonga hearing that Nehua had denied him the opportunity 'to accompany the Surveyor.'[173] In 1868 the 'Hokianga war' broke out after members of Ngāti Kuri (allied with Te Rarawa) proposed to survey land at Whirinaki without consulting the resident hapū, Te Hikutu.[174] Ngāti Hau therefore had reason to proceed with caution in commissioning their survey of Puhipuhi.

It appears that there were objections to the survey of Puhipuhi almost as soon as it got underway on the ground. In early June 1871 Hoterene Tawatawa (Ngāti Wai) wrote to Chief Judge Fenton, 'with regard to our land that is being stolen by Eru Nehua, by Haki and by Watarau [i.e. Haki Whangawhanga and Whatarau].' Tawatawa urged the

[171] *NZ Gazette*, 19 February 1869, No. 9, p 75
[172] The Hon. Colonel Haultain to the Hon. D. McLean, 18 July 1871, *AJHR* 1871 A 2-a, p. 34
[173] Evidence of H. Whangawhanga, 15 March 1865, Whangarei Minute Book No. 1, p. 31
[174] Armstrong and Subasic, 2007, #A12, pp. 423-436

judge to 'warn the surveyors that our land be not secretly surveyed.'[175] A few days later Native Minister Donald McLean received a similar letter from Te Tane Takahi (Ngāti Te Rā) of Kawakawa. Takahi named several landmarks on Puhipuhi, which he claimed were being 'surveyed secretly.' He asked McLean to intervene and halt Ngāti Hau's survey, saying,

> it is for you to consider about my lands and your surveyors also lest they do wrong, even if money is offered to them they must listen. You know that this is disputed land. You must tell the surveyors of Whangarei, Kaipara, Bay of Islands not to survey these lands.[176]

Takahi then also wrote to Judge Fenton, indicating that violence might erupt if the planned survey proceeded. He asked that, 'my land should not be surveyed as that would be theft on the part of those persons of my land or rather the land belonging to many persons.' Takahi belittled both Nehua and Whatarau as 'half-castes.'[177] He may have been expressing frustration at how more cooperative chiefs with better links than his to the European world used those links to their advantage.

These letters of protest were sent to national representatives but referred back to Northland for consideration, probably because Chief Judge Fenton and Native Minister McLean felt that a local judge with knowledge of the land, people and issues at stake was best placed to develop a response. In effect, therefore, Fenton and McLean were asking a local judge to assess whether it was safe to allow a court application to proceed.

The individual they chose to consider the complaints of Takahi and Tawatawa was a Frederick Edward Maning. Maning was an early 'Pākehā-Māori' who had been appointed a judge of the Native Land Court in 1865. He would remain involved in protracted discussions over Puhipuhi for the following several years.

Maning was born in Dublin about 1811 and arrived in the Hokianga in 1833 as a trader.[178] He mixed easily with both the European and Māori communities and learned to speak Māori with great fluency, although he was apparently impatient with

[175] Hoterene Tawatawa to F. D. Fenton, 5 June 1871, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[176] Te Tane Takahi to D. McLean, 3 June 1871, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[177] Te Tane Takahi to F. D. Fenton, 28 June 1871, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[178] David Colquhoun 'Maning, Frederick Edward', *Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand* www.TeAra.govt.nz/en/biographies/1m9/maning-frederick-edward

the requirements of tīkanga and expected Māori to follow European practices in their dealings with him and other Europeans. Maning later moved to Onoke, at the mouth of the Whirinaki River, and had four children by Moengaroa, a young Te Hikutu woman of rank. He was also known to have strong views about rebels in the Northern Wars. His disapproval of their 'disloyalty' raised issues of his impartiality.[179]

In his July 1871 report to Fenton, Maning highlighted Takahi's and Tawatawa's objections to the Puhipuhi survey. He described Tawatawa as 'the principal chief of the party who complain of these encroachments being made on their lands.' However, Maning maintained that he himself had no authority to halt the survey:

> The Court would not give validity to any unjust attempts to deprive anyone of their lands. This I think was as much as necessary to say on the matter as no-one can tell which party may be in the right until a claim is brought before the Court.[180]

In refusing to investigate the issue of this disputed boundary survey, Maning was acting entirely in character, in the view of Armstrong and Subasic. They describe his professional manner as 'formal and highly legalistic', and claim this approach 'increasingly resulted in less opportunity for land ownership to be settled informally by hui or Runanga, which in turn led to increasing conflict within his court and outside it as disappointed claimants threatened to take up arms.'[181] That was indeed the outcome in this circumstance.

The Native Land Court's function as the legally-sanctioned forum for testing and determining claims to the ownership of land left those such as Takahi and Tawatawa, who had not made the application (or launched the survey) in a dilemma. They were asked to allow surveys to go ahead so that matters could be settled by court but if they did the court was likely to regard applicants who produced the resulting boundary plan as having good authority to do so (or the survey would not have been completed), and therefore a strong claim to the lands. Maning's comment to Fenton that,

> I do not think any surveyor here (except perhaps Hirini Taiwhanga the native surveyor) would endeavour to push a survey on without the consent of the parties complaining. Should the

[179] Jennifer Ashton, *At the Margin of Empire – John Webster and Hokianga, 1844 – 1900,* (Auckland: Auckland University Press, 2015), pp. 56-59
[180] F. E. Maning to F. D. Fenton, 21 July 1871, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[181] Armstrong and Subasic, 2007, #A12, pp. 21-22

> attempt be made it would probably be resisted and possibly some disturbance would arise between the parties.[182]

This suggests that Maning considered that if a survey was successfully completed, this was a demonstration of support for those commissioning the survey. If Maning was correct in suggesting that Hirini Taiwhanga was more likely than a European surveyor to push ahead with a survey in the face of vehement local opposition that may be a further reason why Ngāti Hau selected Taiwhanga for this very task.

According to Eru Nehua's later Native Land Court testimony, he accompanied Taiwhanga throughout the survey, and on several occasions stopped to consult with representatives of other hapū, such as Hone Tiaki of Ngāti Te Rā.[183] Tiaki had been one of the sellers of the Opuawhango No. 1 block.[184] Nehua testified that these representatives agreed not only to allow the survey to proceed, but also that they accepted the designated boundary lines, based on a combination of physical landmarks and tribal traditions.[185]

The survey began at the Whakapara stream, and from there southward to Matangirua on Puhipuhi's western boundary. At that point, according to Nehua, the survey party met Hone Tiaki and other representatives of Ngāti Te Ra. 'At night we had a talk about the boundary on the north of this block, so that we should not intrude upon each other's land.'[186] In his own evidence at the same Native Land Court hearing, Tiaki gave a somewhat different version of his discussion with Nehua about the survey, admitting that 'I was present when this land was surveyed', but telling Nehua 'You asked me to let the survey go on and the Court to decide between us. I replied, "you look after your interest and I will look after mine."'[187] This response may indicate that although Tiaki did not disrupt the survey, he did not agree with either it or the title application, and was prepared to defer his objections for a later court hearing rather than resort to physical violence.

[182] F. E. Maning to F. D. Fenton, 21 July 1871, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[183] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 10
[184] ABWN 8102, W5279, box 193, AUC 1081, Opuawhango No. 1 Crown purchase deed
[185] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, pp. 10-11
[186] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, pp. 11-12
[187] Evidence of Hone Tiaki, 22 April 1882, Northern Minute Book No. 5, pp. 165-166

Atimana Wharerau of Ngāti Hine and Ngāti Manu also objected to the survey while it was in progress. He later told the Native Land Court that, 'It was by Marsh Brown's [Maihi Paraone Kawiti's] influence that the survey was allowed to proceed … He proposed that he should conduct the case [in the Native Land Court], and they, excepting Eru, consented.'[188]

At this stage, therefore, objectors to Ngāti Hau's claims to the Puhipuhi lands were willing to confine those objections to a later hearing of the Native Land Court. Soon afterwards, however, the steeper and more heavily forested Puhipuhi land to the north of Taharoa assumed greater economic importance as a source of kauri gum.

2.6 Continuation of disputes over gumdigging

Despite opposition to the survey, it was ultimately allowed it to proceed. It is possible that the application for title determination made in October 1871 was motivated by the need to establish the ownership of the land in order to settle disputes over kauri gum royalties derived from the land, which threatened to escalate by early 1872. Tane Takahi of Ngāti Te Ra, who six months earlier had attempted to halt the survey of Puhipuhi by writing to Government officials and confronting Nehua in person, now assembled members of his own hapū and of Whanauwhero, Ngāti Wai and Te Kapotai, and they collectively agreed to go and dig for gum on Puhipuhi.[189] 'They built huts for themselves at Kaimamaku [near the eastern edge of Puhipuhi] and in the woods.'[190] Nehua testified to encountering both Māori ('from all hapus') and Europeans digging gum on the land while he was searching in the bush for stray cattle.[191]

Following his objections to the boundary survey, Takahi's large, systematic and multi-hapū gumdigging efforts raised a further challenge to Nehua's, and Ngāti Hau's claims to the Puhipuhi lands. Those lands now promised a cash income to members of other iwi/hapū, some of whom were already concerned at the title investigation application. During 1872, matters escalated into threats of armed violence.

[188] Evidence of Atimana Whatarau, 16 May 1883, Mair Minute Book No. 1 p. 209
[189] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 12
[190] Evidence of E. Nehua, 25 May 1883, Northern Minute Book No. 6, p. 216
[191] Evidence of E. Nehua, 24 April 1882, Northern Minute Book No. 6, p. 20

In a letter to Native Minister McLean in September 1872, Nehua outlined a sequence of events resulting in 'troubles that have arisen about our lands.' In this account he claimed that 'a certain tribe' had come to Puhipuhi to dig for gum, and that he had written to them instructing them to stop. His letter, he told McLean, was not only ignored, but:

> Certain of their chiefs gave orders to their tribe that they should take firearms with them to the gum-digging ground for the purpose of shooting (opposing) me and my tribe. I did not agree that I and my tribe should go there for that purpose. I considered that this proceeding on their part must be settled by the law.[192]

By 'the law' Nehua evidently meant the office of the local magistrate. He told McLean that he then wrote to Robert Barstow, the Resident Magistrate in Russell, requesting him to advise the chiefs 'to desist from digging.' Barstow, who had lived in New Zealand since 1843, became Resident Magistrate for the Bay of Islands in 1859 and from May 1872 held the same post in various parts of the Auckland region.[193] Barstow accordingly wrote to Hori Wehiwehi, Tane Takahi, Hone Tiaki and Piripi Titore, who replied that they were determined to proceed. Barstow wrote again, saying, according to Nehua's letter, 'if you will persist in digging gum it will be on your own responsibility.'[194] These letters, regrettably, have not been located in any collections of documents searched for this report.

Ten years later, Nehua gave a slightly different version of these events to the Native Land Court. There he said that his initial letter objecting to the gumdigging expedition was written to Hori Keri of the Whanauwhero. Nehua's testimony made no mention of a defiant reply threatening armed violence.[195] In both accounts, Nehua states that he referred the dispute to Barstow as an independent mediator. Presumably he asked Barstow to serve as mediator rather than magistrate since no actual crime had yet been committed, but only threatened. Nehua asked Barstow to attend a meeting at Te Mimiha, on the coast north of Mimiwhangata, to resolve the question over rights to dig Puhipuhi gum. Barstow became ill and James Hamlin Greenway, his interpreter

[192] E. Nehua to D. McLean, 7 September 1872, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[193] 'Obituary', *NZ Herald*, 6 October 1890, p. 9
[194] E. Nehua to D. McLean, 7 September 1872, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[195] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 12

and clerk, appeared on his behalf, the only European to do so. Greenway would later come to play a significant role in the Puhipuhi purchase.

Although no precise dates have been found, the Te Mimiha meeting appears to have taken place in early 1872, some months before Nehua's letter to McLean. It was attended by an assembly of chiefs from all the leading iwi/hapū of the district, indicating the importance they placed on the related issues of access to Puhipuhi gum, and Eru Nehua's claim of authority over resource allocation. According to Hone Tiaki of Ngāti Te Ra, who came from Whangaruru to participate, those present included Hori Wehiwehi, Wi Te Tete, Mohi Kaingaroa and Reupena Puni of Ngāti Wai, Hori Ngere of Te Whanauwhero (the Native Assessor of the district), Te Ngawha of Kaingakuri, Wiremu Puanake and Tamati Te Maru of Whanauwhero, Aukaha Te Werauroa and many others.[196] In Nehua's letter to McLean, he said, 'we discussed the matter before Mr Greenway "Pakeha Kaiwakawa" [arbitrator] and Hori Ngere "Maori Kaiwakawa".'[197] Greenway later recalled that, 'when I got there I found them in great disorder. Ngati Wai wished to continue digging gum but Eru Nehua objected.'[198]

Greenway therefore proposed the idea of levying a royalty payment on the sale of gum. The funds raised in this way would not be paid to Nehua or any other potential owners of Puhipuhi, but instead would be collected by Ngere and held by Barstow until the issue of Puhipuhi's title had been decided by the Native Land Court, thus deferring the critical issue of which of the iwi/hapū represented held mana whenua over the Puhipuhi lands. Nehua responded, 'I approve, and the price I agree to is 3/6 a 112 (cwt) as royalty … I signed my name to this as proof of sincerity.' The agreement, he said, was then co-signed by Riwi Taikawa, Hori Wehiwehi, Hone Taioka, Te Tane Tiaki and Piripi Titore.[199] The accumulating royalties would presumably amount to a valuable sum once rights to the land had been legally established.

[196] Evidence of Hone Tiaki, 19 April 1882, Northern Minute Book No. 5, p. 164-5
[197] E. Nehua to D. McLean, 7 September 1872, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[198] Evidence of J. Greenway, 24 April 1882, Northern Minute Book No. 6, p. 28
[199] E. Nehua to D. McLean, 7 September 1872, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn

Numbers of gumdiggers then went to work at Puhipuhi under this royalty agreement, but according to Nehua, many failed to honour it. His letter to McLean specified that fifty nine tons, four hundredweight, three stones and nine pounds of gum had by then been sold, but that Hori Ngere had been unable to collect a royalty from the sellers.[200] At least one digger, Hone Tiaki, later testified that when he sold his gum, he received in return cash for himself and a separate royalty payment for delivering to 'Mr [Thomas] Anson and Greenway to take care of it until the title of the land is ascertained.'[201] Evidently not all sellers were willing to comply with this arrangement.

Nehua therefore wrote again, in stronger terms, to Native Assessor Hori Ngere, advising him that the agreement signed at Te Mimiha was no longer in force and that if anyone attempted to continue digging gum at Puhipuhi, 'there would be a war.'[202] In his letter to McLean of September 1872, written around the same time, Nehua warns that 'if this matter cannot be settled … I will consent to the desire of these people (for fighting).'[203]

Ngere again attempted to find a peaceable solution and Edward Williams, the new Resident Magistrate at Russell, agreed to officiate. Williams appears to have enjoyed the trust and respect of Māori in other northern districts, and was a logical and significant figure to serve as a circuit-breaker. In 1872 he was 54 years old, and had lived in New Zealand since the age of five. He was a son of Archdeacon Henry Williams, the leading CMS missionary in the Bay of Islands, and had helped his father to render Te Tiriti in Māori immediately before its first signing at Waitangi. His knowledge of Māori language led to his appointment as Government Interpreter, and he held the post of Resident Magistrate for the Bay of Islands and Northern Districts from 1861 until 1880, when he became a Native Land Court judge.[204]

[200] E. Nehua to D. McLean, 7 September 1872, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[201] Evidence of Hone Tiaki, 19 April 1882, Northern Minute Book No. 5, p. 164
[202] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 13
[203] E. Nehua to D. McLean, 7 September 1872, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn
[204] *Cyclopedia of New Zealand (Auckland Provincial District)*, p. 276.

Five years earlier, in 1867, Edward Williams had become involved in another inter-hapū dispute at Waimate, near his home in Pakaraka. Judge Maning was due to hold a court sitting at Waimate while the conflict was raging, but refused to do so and stayed well clear of the dispute. Several men were killed before the issue was finally resolved in 1871 by the intervention of Tamati Waka Nene.[205] As at Puhipuhi, the Waimate conflict reflected much older and longstanding feuds between tribes or hapū. With Williams as arbitrator, a second meeting was held about the gum dispute, this time at Hemi Tautari's house at Kawakawa. Tautari was a well-known trader who had owned schooners sailing between the Bay of Islands and Auckland, and made trading voyages to Rarotonga. Historian James Cowan described him as 'thoroughly trusted by all settlers and traders.'[206] Tautari also served as a Native Assessor, and assisted Judge John Rogan at a hearing of the Te Aroha block in the Coromandel in 1869.[207] By 1872 he had retired from the sea and owned a large general store at Taumārere in the Bay of Islands.[208]

Again, all the hapū were represented. Their chiefs declared that the royalty of 3/6 was too high, and Nehua claimed he agreed to reduce it to 2/6. A revised agreement was drawn up, and Nehua later recalled that he was warned to be more reasonable and diplomatic in his future dealings over Puhipuhi: 'Mr Williams and the whole of the Ngapuhi chiefs told me not to interfere any more but let the Court settle the ownership of the land.'[209] In a note appended to Nehua's letter to McLean, Williams added that the troubles at Puhipuhi 'have been satisfactorily resolved … after a long discussion' and that 'the land will now soon be adjudicated upon through the N. L. [Native Land] Court, which is very good.'[210]

[205] Armstrong and Subasic, 2007, #A12, pp. 415-419
[206] James Cowan, *The New Zealand Wars – A History of the Maori Campaigns and Pioneering Period, vol. 2,* (Wellington: R.E. Owen, 1922), p. 43
[207] P. Hart, 'The Te Aroha Block to 1879.' Te Aroha Mining District Working Papers, No. 13, 2016, p. 16
[208] Steven Oliver, 'Tautari Hemi and Tautari, Mary' from *the Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand*, updated 6-Jun-2013, at http://www.teara.govt.nz/en/biographies/2t12/tautari-hemi
[209] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 13
[210] E. M. Williams memoranda, n/d, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn

In a March 1872 letter to Native Minister Donald McLean, apparently referring to Puhipuhi, Maning referred to the dispute over gumdigging rights: 'The Ngapuhi are fighting a little about a gum field, or rather a gold field, for they can make more money out of it than at a gold digging.' Maning evidently felt that the dispute would greatly complicate any subsequent Native Land Court hearing into ownership of Puhipuhi:

> the title of either party to the land is only partial but from its great value, each party wants the whole, and so neither party will come into the Land Court, as they know that in that case they would only get their just rights.[211]

Maning dismissed the risk of violence erupting between the disputing parties: 'If a few of them are killed it will be no loss, and then they will make peace and come into Court, when tired of fighting.'[212]

The revised agreement by the competing claimants to the block to pay a royalty on its gum did not survive much longer than the original agreement. According to Greenway, the revised royalty agreement lasted a further year or two before some of the gumdiggers again refused to pay it.[213] Apart from the written agreements mediated by the magistrates Barstow and Williams, the Crown provided no adequate way of enforcing such an agreement, although Maning's comment above indicates that his court relied on such an agreement before it could determine title.

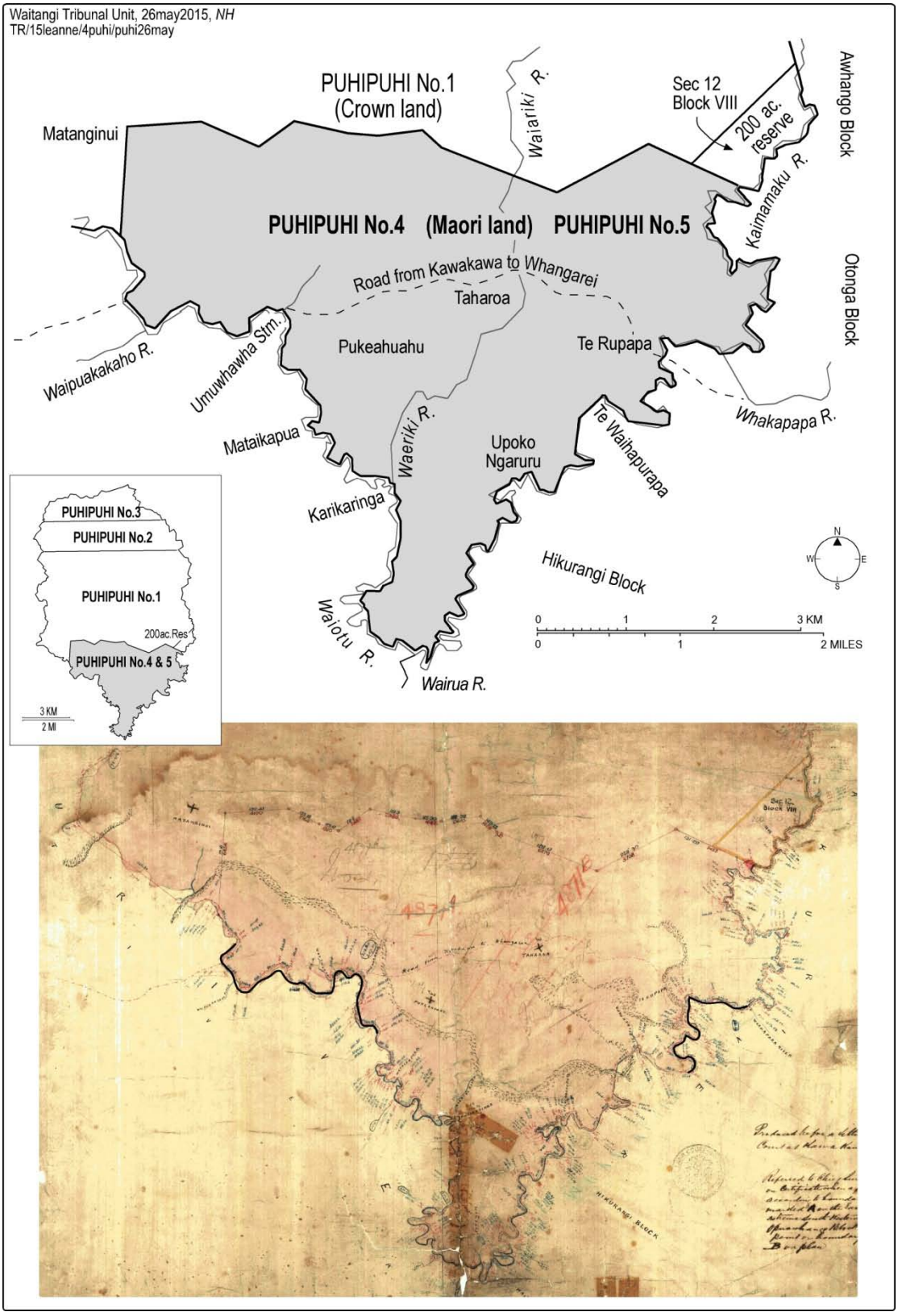
Thomas Anson, another European who lived in this area during the 1870s and had close dealings with the Ngāti Wai and Te Uri o Hikihiki hapū, said that by about 1878 Ngāti Te Ra were still paying the royalty, but Ngāti Manu stated that 'they were not going to pay for digging gum on their own land.'[214] Nehua challenged them over this defiance of the agreement and Ngāti Wai, a group closely related to Ngāti Manu and sometimes regarded as having identical interests in Puhipuhi, 'cleaned their guns' (i.e. prepared for armed combat).

[211] F. E. Maning to D. McLean, 7 March 1872, McLean Papers, MS-Papers-0032-0445, ATL Wgtn
[212] F. E. Maning to D. McLean, 7 March 1872, McLean Papers, MS-Papers-0032-0445, ATL Wgtn
[213] Evidence of J. Greenway, 24 April 1882, Northern Minute Book No. 6, p. 27
[214] Evidence of T. Anson, 22 April 1882, Northern Minute Book No. 6, p. 30

Ngāti Wai waited for an attack from Nehua at an inland site called Mirowhata, and meanwhile planted a cultivation of potatoes there.[215] Maihi Paraone Kawiti of Ngāti Hine, who claimed substantial interests in Puhipuhi, heard of this impending battle and sent word to Ngāti Wai to remain peaceful. According to Anson, Ngāti Wai then 'returned back with their guns, after which they returned upon this block [Puhipuhi] to dig gum and had done so up to the present day [i.e. 1882].'[216] Their response indicates Kawiti's considerable authority throughout this area, even among other iwi/hapū than his own Ngāti Hine people. So the issue of gum royalties and how they were to be apportioned apparently remained a live one for at least some of the period between 1873 and 1883, while the court determined title to Puhipuhi.

[215] A more exact location for Mirowhata has not been discovered
[216] Evidence of T. Anson, 22 April 1882, Northern Minute Book No. 6, p. 29-30

Figure 3: The lower portion of Taiwhanga's 1872 survey plan



(Source: ML 2638, Sheet 1)

2.7 Crown objections to Hirini (Sydney) Taiwhanga and his survey of Puhipuhi

In the interim, Hirini Taiwhanga, having completed his survey of Puhipuhi in mid-1871, was finalising the initial Puhipuhi plan. He lodged this with the Survey Office in December 1872. The lower portion of the resulting plan (wich later became Puhipuhi No. 4 and 5) is shown in Figure 3. The upper portion shows the boundaries of Puhipuhi No. 1 – 3 but little other detail. [217] No information has been found to explain the delay in lodging the plan, and it may have been due simply to heavy demand for Taiwhanga's surveying activities.

When he was engaged for the survey of Puhipuhi, Taiwhanga was gaining a reputation as an advocate for greater Māori authority under Te Tiriti o Waitangi.[218] This, combined with his politically contentious surveying activities, brought him into conflict with Native Land Court Judge Maning, who was an increasingly conservative critic of all expressions of rangatiratanga that challenged or required equality with colonial authority.[219] Maning's objections were reinforced by other officials including Mangonui Resident Magistrate W. B. White who described Taiwhanga as 'utterly reckless in his conduct', and as having brought the Native Land Court, 'which had hitherto been regarded by the population of the north with so much satisfaction … into discredit.'[220] This letter referred to land in the Bay of Islands which, in 1871, was surveyed and then claimed by Taiwhanga, although it had already been sold to Europeans.

In letters to the Inspector of Surveys, Theophilus Heale, Maning also alleged that Taiwhanga's surveys could not be relied upon.[221] In January 1872 Maning described Taiwhanga's work for a Haruru court sitting as 'in bad condition, unfinished and slovenly', and said that he would recommend his dismissal.[222] This, however, was not

[217] Puhipuhi plan dated 1873, ML 2638
[218] Armstrong and Subasic, 2007, #A12, p. 77
[219] J. Nicholson, *White Chief – The Colourful Life and Times of Judge F.E. Maning of the Hokianga,* (Auckland: Penguin Books, 2006), p. 167 and following pages
[220] W. B. White to Native Minister, 24 January 1872, ACIH 16056 MA 23, 1/1, ANZ Wtgn
[221] F. E. Maning to F. D. Fenton, 13 January 1872; BBOP 4309 A52, 3/d-2111872/95; T. Heale minute 23 January 1872; BBOP 4309 A52 3/d-195 1872/211; F.E. Maning to F.D. Fenton, 5, 9, 13 February 1872; BBOP 4309 A52, 3/d-211 1872/95 and T. Heale to F.D. Fenton, 17 February 1872, BBOP 4309 A52 3/d-195 1872/211, all ANZ, Auck
[222] F. E. Maning to S. von Sturmer, 10 January 1872, MS 191, vol. 1, Auckland War Memorial Museum and Library

an isolated accusation, since the work of many other northern surveyors was also of suspect quality before such surveys were centralised in 1876.[223]

In March 1872, after Taiwhanga's survey of Puhipuhi was completed but before his plan was lodged, Maning told Donald McLean, 'I am of [the] opinion that it is necessary that the License of Mr Hirini [Taiwhanga] should be cancelled.'[224] In the months immediately preceding the lodgement of the initial Puhipuhi plan, Maning and the Inspector of Surveys, Theophilus Heale, succeeded in having Taiwhanga disqualified as a licensed Native Land Court surveyor.[225] The Native Office revoked Taiwhanga's licence in June 1872. The revocation was backdated to 20 April 1872.[226] He was therefore still licensed to practise at the time he carried out the 1871 survey of Puhipuhi. His licence was restored by Native Minister McLean in May 1873.[227] These official objections to and limitations on Taiwhanga's work as a surveyor did not, however, prevent his survey plan being accepted for the first (1873) Native Land Court hearing.

2.8 The 1872 Puhipuhi survey plan

On 17 December 1872 Taiwhanga certified the plan he had drawn up from the survey he had undertaken for Ngāti Hau (ML 2638). The certification reads: 'I certify that this survey is correct and in accordance with General Instructions [;] the lines have been cut and correctly chained and [this] was done under my own Supervision. [Signed] S.T. Taiwhanga, Licensed Surveyor [;] Opango, Kaikohe.'[228] This certification accords with No. 48 of the General Instructions referred to:

> A certificate is to be written on every plan, and signed by the surveyor, certifying that all boundary lines have been distinctly marked on the ground and chained as indicated, and that all the work has been performed under his own inspection.[229]

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[223] Armstrong and Subasic, 2007, #A12, p. 785
[224] F. E. Maning to D. McLean, 4 March 1872, ACIH 16056 MA 23, 1/1, ANZ Wtgn
[225] F. E. Maning to F. D. Fenton, 13 January 1872; BBOP 4309 A52, 3/d-211 1872/95; T. Heale minute 23 January 1872; BBOP 4309 A52 3/d-195 1872/211; F.E. Maning to F.D. Fenton, 5, 9, 13 February 1872; BBOP 4309 A52, 3/d-211 1872/95 and T. Heale to F.D. Fenton, 17 February 1872, BBOP 4309 A52 3/d-195 1872/211, all ANZ, Auck
[226] *New Zealand Gazette*, 22 June 1872, No. 31, p. 573
[227] *New Zealand Gazette*, 22 May 1873, No. 31, p. 315
[228] Puhipuhi survey plan ML 2638
[229] Rules under the Native Lands Act 1865, No. 48, *NZ Gazette* 5 April 1867, p. 137

This plan of Puhipuhi (ML 2638) produced from Hirini Taiwhanga's 1871 survey is a critical document for what became, over a decade later, the Puhipuhi Crown purchase (Puhipuhi No. 1 – 3) and land remaining in Māori ownership (Puhipuhi No. 4 and No 5). In the absence of Maning's minutes of the original (1873) Puhipuhi hearing in the Native Land Court, this plan provides an incomplete record of the decade-long process that started with the 1871 title application. The survey plan records the estimated acreage and the rough shape of what became the Puhipuhi block. Because of subsequent annotations and additions on the plan, it also records some of the Native Land Court and Crown actions from 1873 to 1883.

Any attempt to understand the significance of Taiwhanga's Puhipuhi plan must acknowledge its limitations as a source of historical information. It is reproduced as Figure 3. This illustrates the plan's essential features. It shows key boundary markers, place names, roads and streams and annotations that summarise Native Land Court and Crown actions. Native land purchase officials may have added the subdivision lines between Puhipuhi No. 1, 2 and 3 at some point after these purchases were confirmed in September 1883. Damage to the lower right corner of the original plan has obliterated most of the date information on Maning's statement that it was produced in one or more of his Kawakawa court sittings.

Under the Native Lands Act 1865, surveyors' plans produced at Native Land Court hearings were subject to General Instructions imposed by the Court.[230] In 1867 the surveyors' General Instructions were revised to state that:

> after completion of such surveys, the maps have to be examined by the Inspector of Surveys, and … if they are defective, the work, or part of it will be required to be done over again … Surveys sent in grossly faulty condition will be rejected altogether, and in cases of …. misconduct tending to destroy confidence in his surveys, if no satisfactory explanation can be given by the surveyor, he will be liable to have his certificate cancelled.[231]

ML 2638 was examined on 7 January 1873 by the Government Surveyor, who responded: 'Several inaccuracies as noted should be rectified. The natural features within these boundaries should be shown.'[232] This was evidently not an uncommon

[230] Section 14, Native Lands Act 1865
[231] Instructions to Surveyors, *NZ Gazette*, No. 20, 1867, p. 139-140
[232] Notes to ML 2638, North Auckland ML Plan Register covering ML 2354 to 3594, Linzone

response to surveyors' plans in this period. Immediately below his December 1872 plan certification, Taiwhanga declared on 20 September 1873, 'Erros [sic] Corrected.' That second date is a month after the first (August 1873) Native Land Court title investigation into Puhipuhi. This suggests that the uncorrected plan was used in the August 1873 title investigation hearing.

Nevertheless, as noted earlier, judges had discretion to proceed with hearings with an uncorrected plan if necessary. Maning, the judge at the 1873 Puhipuhi hearing, had been specifically authorised to do so by Chief Judge Fenton, although he was unhappy with that instruction and told Fenton in 1868 that the 'letter of the law is clear that the survey plans should be certified to as correct before the Court can act.' He noted that:

> should the Inspector of Surveys decline to certify a plan, as he might see cause to do, after a decision of the Court, he would then virtually exercise the power of annulling the decisions of the Court, which I think would be more objectionable than that officer should stay the action of the Court at the outset.[233]

Maning might therefore have refused to admit Taiwhanga's uncorrected plan for use at his 1873 title investigation hearing. The fact that he proceeded seems somewhat expedient, if not cynical, given that officials had disqualified Taiwhanga on the basis of such errors.

2.9 Conclusion

Puhipuhi's economic significance, not only to Ngāti Hau but to other groups claiming rights to the forest, became increasingly evident from 1871. By that time almost all other large areas of formerly Māori-owned land between Hikurangi and Kawakawa had been purchased by the Crown. Furthermore, Puhipuhi contained large and valuable stands of kauri timber, prized by Māori in the short term especially for the kauri gum they held, and in the longer term because they could potentially be sold to Pākehā timber merchants.

When Ngāti Hau initiated the process of applying for a Native Land Court title investigation and a corresponding boundary survey, other groups asserted their claims

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[233] F.E. Maning to F. D. Fenton, 17 August 1868, quoted in Armstrong and Subasic 2007, #A12 p. 404

to these lands by objecting to both processes, both to Ngāti Hau directly and to Crown representatives.

Ngāti Hau, and particularly Eru Nehua, showed both determination and diplomacy in pressing ahead with plans for a Native Land Court hearing into Puhipuhi. Although Nehua did not consult with other claimants before commissioning the survey, he apparently did so once the survey began, and it was completed without incident. Similarly, after violence threatened to erupt over gumdigging at Puhipuhi, Nehua enlisted local Crown officials to help arbitrate an agreement. When that agreement broke down and armed conflict again seemed imminent, the Ngāti Hine leader Kawiti used his authority to defuse the situation.

The responses by Crown officials to the succession of disputes over Puhipuhi's land and resources varied considerably. Appeals by Māori to national figures such as McLean and Fenton were generally referred to the Hokianga judge F. E. Maning. He declined to intervene over either the survey or the gumdigging disputes, and insisted that he would only address contesting claims to Puhipuhi in the context of a Native Land Court hearing. Other officials such as the magistrates Edward Williams and Robert Barstow, and the clerk and interpreter James Hamlin Greenway, actively participated in efforts to reach agreement between the parties. Their involvement was initiated by the Māori disputants themselves, rather than by the Crown. Although the results of their mediation efforts were modest and short-lived, they were relatively successful.

One conclusion to be drawn from this situation is that the Native Land Court was at that time either unwilling or unable to resolve serious inter-iwi/hapū disputes. Although the court was seen by the government as a superior option to mediation and runanga in settling differences between iwi/hapū, in practice it chose to leave such disputes to mediators and tribal leaders to resolve before it would become involved. This suggests that a more formal system of mediation, with chiefly involvement, may have better provided for dispute resolution, rather than the Native Land Court.

The following chapter will examine the Native Land Court's first two Puhipuhi hearings, presided over by Judge Maning. The history since 1871 of contestation and

dispute over these lands, sometimes escalating to armed confrontation, ensured that much would depend on the thoroughness and impartiality of the Native Land Court process. It will also consider the responses to those Native Land Court hearings by the main claimants to Puhipuhi. Over the following three years, those responses included numerous applications for a further title investigation, and requests for Crown officials to intervene as mediators to resolve conflicts about the ownership of the lands.

Chapter 3 – First Native Land Court hearings, 1873 and 1875, and their aftermath

3.1 Introduction

The Native Land Court's first title investigation hearing into the 1871 Puhipuhi application took place in August 1873 at Kawakawa, under Judge F. E. Maning. The outcome of this hearing began the work of making a judgement on title to the Puhipuhi lands, but failed to complete it, leaving those claiming ownership without certainty at a time of significant pressure over gum royalties. A further hearing took place in February 1875, also at Kawakawa and under Maning. Records of these proceedings are scarce and sometimes conflicting. No minutes of these hearings have been found, and it is unclear whether formal minutes were ever taken, or whether they were lost at some time after the hearings. However, later correspondence between Maning and Crown officials, and the recollections of Nehua, Kawiti and others given at subsequent title investigation hearings in 1882 and 1883, provide some information about the 1873 and 1875 hearings.

This chapter discusses the concerns voiced by hapū and iwi with connections to Puhipuhi about Maning's appointment to hear the 1873 title investigation, and how these concerns were dealt with by Native Minister Donald McLean and F. D. Fenton, the Chief Judge of the Native Land Court. Allegations made against Judge Maning are noted, and the grounds for them examined. The chapter then explores what is known about the evidence given at the 1873 hearing, and Maning's deliberation on that evidence. In particular, the chapter seeks to untangle confusion about what exactly Maning communicated to the parties at the end of the 1873 title investigation hearing, the legal status of that pronouncement, and the respective claimants' understanding of and reaction to the judge's proposal.

This chapter also examines the efforts made following the 1873 and 1875 hearings, by the claimants themselves and by Crown officials, to resolve the disputes over rights to the Puhipuhi lands and their resources.

3.2 The first Native Land Court hearing, 1873

The hearing of the 1871 application by Nehua, Taikawa and Ruku, all of Ngāti Hau, for a Puhipuhi title determination in the Native Land Court was first scheduled for 21 January 1873 at Waitangi.[234] For some reason not apparent from the archival record, this hearing eventually took place on 7 August 1873 at Kawakawa.[235] Native Land Court hearings were very frequently adjourned in this way, for a wide variety of reasons.[236] Both Hone Wehiwehi and Tane Takahi, in their letters to Native Minister Donald McLean, had requested Kawakawa as the venue. However, their further request, for a judge other than Maning to hear the case, was not acceded to.

The August 1873 hearing took place over a single day.[237] It was conducted under the Native Lands Act 1865 as amended in 1867, 1869 and 1870.[238] As judge of the 1873 hearing, Maning heard the claimants' evidence together with Native Assessor Wi Taua.[239] Taua was a leader of the Patukoraha hapū of Ngāti Kahu, whose father had signed te Tiriti at Kaitaia.[240] He had been appointed a Native Assessor in 1862.[241] The Native Lands Act 1865 specified that the judge of the Court was to act with at least two Native Assessors, whose role was to help the judge in assessing evidence at a Native Land Court hearing. The Act stated that 'there shall be no decision or judgment on any question judicially before the Court unless the Judge presiding and two Assessors concur therein.'[242] The Native Lands Act 1867 reduced from two to one the number of Native Assessors.[243] The lack of minutes or other documentation of the 1873 hearing has meant that it has not been possible to ascertain the part Taua may have played in the hearing. However, Maning was known to be highly critical of

[234] Notice of Court sitting date and location, 25 October 1872, BOI 318 applications Puhipuhi, Maori Land Court, Whangarei
[235] *Te Kahiti,* 27 January 1873, p. 75
[236] Richard Boast, '*The Native Land Court, 1862 – 1867: A Historical Study, Cases and Commentary*', (Wellington: The Law Foundation New Zealand/Thompson Reuters, 2013), pp. 165-177
[237] 'On the 7th August 1873 the claim to Puhipuhi was heard in court.' F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[238] Although the 1869 Act was comprehensively repealed by the Native Land Act 1873, the latter Act did not come into force until 1 January 1874.
[239] Evidence of M. P. Kawiti, 17 May 1883, Northern Minute Book No. 6, pp. 159-160
[240] See biography of his son Wiremu Hoani Taua in *DNZB* - www.teara.govt.nz/en/biographies/3t7/taua-wiremu-hoan
[241] 'Native Assessors', *AJHR* 1862, E-9, p. 13
[242] Section 12, Native Lands Act 1865
[243] Section 16, Native Lands Act 1867

Native Assessors in general.[244] Two years earlier he had advised the Chief Clerk of the Native Land Court that:

> it should be left to the discretion of the Judge whether or not to employ a Native Assessor. There are many cases where the presence of a Native Assessor is not really required, and consequently the expense not necessary.[245]

Maning is therefore unlikely to have allowed Taua a substantive role in the Puhipuhi hearing.

The 1865 Act empowered the Court to sit and 'ascertain by such evidence as it shall think fit the right[,] title[,] estate or interest of the applicant and of all other claimants to or in the land in question.'[246] These provisions were amended slightly by the Native Lands Act 1876. A title investigation hearing then required the presiding judge to consider evidence not only from those tribes or individuals who had applied for the investigation but also 'evidence referring to right title estate or interest of every other person who and every tribe which according to Native custom owns or is interested in any such land whether such person or tribe shall have put in or made a claim or not.'[247] Therefore, although Kawiti and Ngāti Wai had not formally applied for the title investigation into Puhipuhi, they and other claimants for Ngāti Manu, Ngāti Te Rā and Te Atihau were entitled to give evidence in the hearing as part of that investigation.

Having investigated the title, the Court would then order that a certificate of title be drawn up and issued. The Native Lands Act 1865 stated that the title was to 'specify the names of the persons or of the tribe who according to Native custom own or are interested in' the said land.[248] Where the Court found that there was more than one owner or groups of owners of the land, it could be apportioned amongst the owners or groups of owners and a separate title of each portion could be issued.[249] The number of owners on the title was to be limited to ten. Blocks over 5,000 acres could be

[244] See, for example, F. E. Maning to A. J. Dickey, 3 June 1876, BBOP 4309 7a, ANZ Auck, cited in Armstrong and Subasic, #A12, p. 802
[245] 'Working of the Native Land Acts', 2 September 1871, *AJHR* 1871 A-2a, encl. No. 4, p. 23
[246] Section 23, Native Lands Act 1865
[247] Section 17, Native Lands Act 1867
[248] Section 23, Native Lands Act 1865
[249] Section 24, Native Lands Act 1865

awarded to a 'tribe by name.'[250] Boast, Erueti, McPhail and Smith concluded that this provision for title to be awarded to a tribe 'seems to have been a dead letter.' They point out that Judge Fenton, the Chief Judge of the Native Land Court, in giving evidence before the Rees Commission in 1891, 'was only able to recall two instances where a block had been vested in a tribe rather than in individuals.'[251] The Native Lands Act 1867 amended the requirement that a certificate of title 'shall be ordered to no more than ten persons.'[252] Instead, if the court found that 'any persons more than ten in number or … any tribe or hapu' held interests in a piece of land, the names of all those persons would be recorded as owners, although no more than ten would be named on the certificate of title.[253]

Details of the evidence presented in 1873 are regrettably scanty because no minutes of Judge Maning's Native Land Court hearings, including the 1873 Puhipuhi hearing, appear to have survived.[254] It is unclear why this is. The 1865 Native Land Act established the Native Land Court as a 'Court of Record for the investigation of the titles of persons to Native Land'[255] and Boast notes that,

> the actual minute book system began in 1865, when the Court, still operating under the 1862 Act, was reconstituted into a nation-wide court under new regulations made in late 1864. The 1865 Act did not become law until October of that year, well after the Court began recording its cases in the Kaipara, Whangarei and Coromandel minute books.[256]

By 1870 the Court had 'become a settled and important institution' with established procedures, including the recording of minutes.[257] Maning's are apparently the only northern Native Land Court hearings that entirely lack any minute book record of evidence and procedure.

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[250] Section 23, Native Lands Act 1865
[251] Richard Boast, Andrew Erueti, Doug McPhail, Norman F Smith, *Maori Land Law (second edition),* (Wellington: LexisNexis, 2004), p 75
[252] Section 23, Native Lands Act 1865
[253] Section 17, Native Lands Act 1867. The Native Land Act 1871 repealed the 1856 Act and its amendments and abolished the ten-owners system. Rather than vesting the blocks in ten owners, the Court was required to list all the owners in a "memorial of title" (Boast, Erueti et al, 2004, p 81)
The nature of the title awarded under the '10-owner' rule provisions has received some attention from scholars of the Native Land Court, most recently in Boast, '*The Native Land Court, 1862 – 1867 …*, 2013, pp 68-69
[254] Nicholson, *White Chief …*, 2006, p. 189
[255] Section 4, Native Lands Act 1865
[256] Boast, '*The Native Land Court, 1862 – 1867…'*, 2013, p 62
[257] Boast, '*The Native Land Court, 1862 – 1867…'*, 2013, pp 66-67

Maning is known to have provided detailed reports on some of his court hearings (although not, apparently, of the Puhipuhi hearing), and those reports appear to draw on a personal record made at the time of the hearing, such as a diary.[258] In his 1879 letter to Fenton, Maning quoted from a notebook he claimed to have kept at the time of the 1873 hearing, stating, 'I now give you an extract from my notebook of what took place.'[259] Other Native Land Court judges also kept records of their hearings in notebooks, which would have been their personal property and not the property of the court. Sometimes judges chose to provide their notebooks to the court to supplement the information in the minutes, but they were under no formal obligation to do so. A number of judges' notebooks have been added to the Native Land Court minute book sequence. Unfortunately, any notebooks or diaries Maning kept relating to the Puhipuhi hearings have not survived. Late in his life, on at least two occasions, Maning ordered that a number of his personal papers should be burnt.[260] Those papers may have included his notebooks of court proceedings such as the 1873 Puhipuhi hearing.

Contemporary newspapers often contained detailed reports of Native Land Court hearings, and those reports were sometimes added to the official record of the hearings.[261] Unfortunately, this does not appear to have been the case with the 1873 Puhipuhi hearing. *Te Waka Maori o Niu Tireni* (the only Māori-language newspaper known to have been published at the time of the hearing), and *Te Korimako* (which began publication in 1882) do not mention this hearing. No English-language local papers for this period have been located, indicating the very small number of Europeans living in the district around 1873. The *Whangarei Comet and Northern Advertiser* (dating from 1875) and Kawakawa's *Northern Luminary* (from 1879) contain no retrospective accounts of the 1873 hearing.

Surviving accounts of the 1873 Native Land Court hearing into Puhipuhi include two letters written by Maning to Chief Judge Fenton several years after the event (in 1877 and 1879), apparently drawing on a combination of his memory and his notebook.

[258] See, for example, Boast, *The Native Land Court 1862 - 1887…*, 2013, pp. 657-682, regarding Maning's voluminous 1871 Te Aroha judgment
[259] F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[260] Nicholson, *White Chief…*, 2006, p. 224
[261] Boast, *The Native Land Court 1862 – 1887…*, 2013, pp. 229-230

Other references to this hearing, from Māori claimants, occur in the minutes of the subsequent 1882 and 1883 hearings into the block, including Judge Mair's minute book. Each of the above sources of information raises concerns as to its reliability as historical evidence of the 1873 hearing. The sources recall events that had taken place years earlier, and may therefore not report them accurately.

As noted in the previous chapter, the individuals who applied for the Puhipuhi hearing were Eru Nehua, Riwi Taikawa and Whatarau Ruku, who gave their tribal affiliation as Ngāti Hau. They claimed the entire area of Puhipuhi on behalf of their iwi/hapū.[262] Immediately prior to the hearing Kawiti sought to be included with the applicants. In his 1882 Native Land Court testimony Nehua recalled that on the night before that hearing began, Kawiti:

> met me at the Public House, he called me on one side and moved to the back of the house and said, he was only one individual and asked me to admit him, I replied 'why should I admit you' he said never mind put my name in. I then said 'if you had a claim I should do so.' This is all that took place then. After this he again came to me and made the same application, he came a third time and again applied. I refused him, he then said 'I will appear in the Court and oppose you' … Next morning we appeared in Court.[263]

Nehua repeated this evidence during the title investigation in 1883.[264] Kawiti's own testimony at the 1882 hearing broadly supports Nehua's account. Kawiti said that at Kawakawa in 1873:

> I asked [Nehua] to admit my name on the Certificate. He refused, saying I had no claim. I spoke to him quietly again and he refused for the second time. I then said to him 'Do you wish me to go and state my claim before the Court?' He replied 'Yes' and the case was brought before the Court for the first time. I then told them I was going to claim through conquest.[265]

It is reasonably clear that Kawiti is speaking about the same discussions between him and Nehua on the eve of the first title determination hearing. However, Kawiti's wording makes it unclear whether he was simply requesting that he be admitted as an applicant with Nehua or asking Nehua to put his name forward to be included as one of the owners named on the certificate of title which the court would issue once the owners of the land had been determined. As one of the registered applicants, Nehua

[262] Title investigation application, E. Nehua and others, 12 October 1871, AECZ 18714, MA-MLP1 16/h, 1884/21, ANZ Wgtn. M. Derby translation; *Te Kahiti*, 16 Nov 1872, p. 75
[263] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, pp. 14-15
[264] Evidence of E. Nehua, Mair Minute Book No. 1 p. 263
[265] Evidence of M. P. Kawiti, 20 April 1882, Northern Minute Book No. 5, p. 175

could have agreed to add Kawiti to his own claim for the land. However, if the hearing was contested, Kawiti might have to give evidence in court, or Nehua might be required to give evidence on his behalf. Both Kawiti and Nehua would therefore need to agree in advance on what elements of each others' claim they would support. Nehua was evidently not prepared to agree to this.

In 1877 Maning recalled that those appearing in the court in 1873 as counter-claimants included Kawiti, on behalf of Ngāti Hine, opposing Ngāti Hau's claim and also claiming the entire area of the land, and Hoterene Tawatawa, in opposition to both Nehua and Kawiti, claiming the northern portion of Puhipuhi on behalf of the Ngāti Wai.[266] According to Nehua's 1882 recollections, Kawiti and Tawatawa were joined and supported by Ngāti Manu, Ngāti Te Ra, Kaputai and Te Atihau.[267] He indicated that those opposing Ngāti Hau's application had met together before the hearing and 'arranged how they should make their case.'[268] By the time of the final Puhipuhi title investigation in 1883 he was describing them less charitably as having 'leagued together.'[269]

It appears that the title investigation hearing began with Ngāti Hau making their case. In 1882 Nehua recounted that he stated the source of his claim, then 'Tane Takahi was the first to oppose me, his witnesses were Hori Wehiwehi, Hori Winiana, and Hoterene Tawatawa.'[270] Nehua then stood to cross-examine Hoterene Tawatawa but, according to his account, Judge Maning told him 'not to trouble [himself] by cross-examining him [Tawatawa].'[271] At some point Kawiti took the stand to make his case. In 1883 he testified that at the 1873 hearing, 'I claimed by conquest the whole [of Puhipuhi]. Hoterene Tawatawa was there - he made a claim for ancestry. All these hapus - N' Wai, N' Tera, and N' Hau - claimed. Hori Winiana also claimed thro [sic] Tara (N' Manu).' At the 1873 hearing, said Kawiti, the claims of Ngāti Wai, Ngāti Te Rā, and Hori Winiana all 'fell thro' [sic].[272]

[266] F. E. Maning to F. D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[267] Evidence of E. Nehua, Mair Minute Book No. 1, p. 263
[268] Evidence of E. Nehua, Mair Minute Book No. 1 p. 15
[269] Evidence of E. Nehua, Mair Minute Book No. 1, p. 263
[270] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 15
[271] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, p. 15
[272] Evidence of M. P. Kawiti, Mair Minute Book No. 1 p. 216

At the hui held in 1872 to discuss the gum-digging royalty, Nehua, Kawiti and other chiefly leaders appeared amenable to sharing interests in the Puhipuhi land. In the Native Land Court, however, both Nehua and Kawiti claimed full and exclusive rights to it. The Native Land Court process encouraged such a winner-take-all outcome, in contrast with the greater degree of compromise and co-operation delivered by hui or mediation.

3.3 Maning's proposal following the 1873 hearing

Immediately after the court finished hearing the evidence of claimants and counter-claimants, Maning called the parties together. In his evidence to the 1883 Native Land Court into Puhipuhi, Nehua stated that 'before judgement was given we were called together by Maning. He said he wished to hear what we had to say about it.'[273] Similarly, Kawiti recalled in 1883 that 'After the Court we all went out and I and Hoterene Tawatawa and Eru Nehua went to a house at Judge Manning's [sic] and the assessor Wi Taua and Hirini Taiwhanga.'[274]

It appears from Nehua's and Kawiti's later recollections that Maning did not make any pronouncements at this meeting. Instead the leading figures for each party spoke. Nehua stated,

> I said that Hirini Taiwhanga would speak for N' Hau. He [Taiwhanga] then related the story of Solomon's judgement about the child and two claimants to be the mother. He meant that the whole should go to N' Hau. If the court gave any to the others – give the whole. Maihi P. [Kawiti] said what is the use of talking about Solomon? He was not a correct man. Marsh Brown [Kawiti] proposed that it be divided and that Hoterene Tawatawa as rep. of N' Wai should be given one portion. That is how they [Ngāti Wai] got into it ….[275]

Kawiti's account is less detailed, He simply recalled that 'I then consented that H. Tawatawa should have an interest.'[276]

It is not clear why Nehua chose to have Taiwhanga present Ngāti Hau's response to Maning. Taiwhanga, unlike Nehua, spoke fluent English, but Maning was similarly fluent in Māori. Likewise, Taiwhanga's recounting of the biblical story of Solomon can be read in a number of ways. It could point at the difficulty of weighing the

[273] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, pp. 64
[274] Evidence of M. P. Kawiti, 17 May 1883, Northern Minute Book No. 6, pp. 159-160
[275] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, p. 264
[276] Evidence of M. P. Kawiti, Mair Minute Book No. 1, pp. 216-217

conflicting evidence and determining ownership, or, as Nehua later insisted to the court, it could have been intended to enforce Ngāti Hau's claim to the entire Puhipuhi lands. Kawiti clearly opposed this proposal and instead wished to see the land divided between the three principal claimants, including himself.

Maning's action in calling together the principal claimants immediately after his hearing, to discuss a possible judgement on the division of the Puhipuhi lands, is curious in light of his previously stated opposition to rangatira contributing to court-ordered decisions. He was particularly hostile to Kawiti in this respect, and the year before his Puhipuhi hearing, had informed his friend Donald McLean that:

> The Native Land Court and Marsh Brown Kawiti are fairly at issue - he is determined to make the Native Land Court a mere instrument to be used or abused as he chooses and I am determined *he shall not* he is the most utterly spoiled and thoroughly conceited, and most dangerous savage in New Zealand, perhaps.[277]

The explanation that appears most likely is that Maning recognised, at the conclusion of his complex and strongly contested Puhipuhi hearing, that he needed to enlist the support of key rangatira in order for any judgment on the division of the land to be accepted by them. He thus tacitly accepted, although did not openly admit, that the Native Land Court system could not, in this instance at least, entirely replace older systems of tribal rūnanga and chiefly debate and decisionmaking. In other Native Land Court hearings under other judges, the court was prepared to act collaboratively with chiefs to reach a mutually acceptable judgement. Despite his own distaste for this practice, Maning appears to have resorted to it in this instance, although only partially and at a late stage of the hearing process.

This situation also reveals that in cases of serious conflict between rival claimants, the court was sometimes unable to resolve disputes and had to fall back on seeking chiefly agreement before it could 'impose' its authority. In the case of the 1873 Puhipuhi hearing, it appears the interests of the court and its reputation were put before the interests of the owners, who had sought timely help in resolving their dispute.

[277]F. E. Maning to D. McLean, 20 October 1869, McLean Papers MS-0032-0444, ATL, Wgtn. Emphasis in original

According to Nehua, Maning then finished the meeting by informing the parties that 'he would send his judgement after he got home to Onoke', in the Hokianga.[278] Kawiti's account agrees, stating that 'Judge Maning intimated to the 3 parties in writing what he believed the [illegible] should be.'[279] Both Nehua and Kawiti therefore agreed that Maning delivered a written version of his 1873 hearing recommendation to them. Maning may have sent the same letter to Hoterene Tawatawa, although Tawatawa does not mention this in his evidence. Unfortunately, no version or copy of those letters appears in the archival records of this case, and the letters themselves have not been located for this report.

According to both Nehua and Kawiti, in this letter Maning proposed that the ownership of Puhipuhi would be divided: 14,000 acres to Eru Nehua and Ngāti Hau; 6,000 acres to Kawiti and Ngāti Hine, and 5,000 acres to Hoterene Tawatawa and Ngāti Wai, Ngāti Manu and Ngāti Te Rā.[280] For the sake of clarity and brevity, this proposal will be referred to hereafter as 'the 14-6-5 proposal.'

However, both of Maning's letters to Fenton give a sharply different account from Nehua and Kawiti of the outcome of the 1873 hearing. In 1877 Maning stated that he had ordered the 25,000-acre Puhipuhi lands to be subdivided into three 'nearly equal' portions', i.e. of approximately 8,000 acres each. This will be referred to hereafter as 'the thirds proposal.' He explained to Fenton that:

> The Court at length after much pains and consideration made an order [in writing] that the block should be divided by regular survey into three portions of nearly equal area (defined by the Court on the survey plan) but considerably different in value – the portion awarded to Eru Nehua is the most valuable, being the southern end of the block which he resides on, and has considerably improved, and has the best land. The northwestern division was awarded to M. P. Kawiti, and the northeastern, to the Ngātiwai tribe, and the expense of the subdivision was ordered to be divided between the three parties.[281]

[278] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, p. 264
[279] Evidence of M. P. Kawiti, 17 May 1883, Northern Minute Book No. 6, pp. 159-160
[280] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, p. 264; Evidence of M. P. Kawiti, 17 May 1883, Northern Minute Book No. 6, pp. 159-160 and Evidence of M. P. Kawiti, Mair Minute Book No. 1, pp. 216-217
[281] F. E. Maning to F. D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

In 1879 he reiterated that 'an order was made that the Block should be divided into three nearly equal portions for the three principal claimants and their respective hapus.'[282]

In the same 1879 letter, Maning went on to recall that 'the subdivisions being indicated on the survey plan, and the portion for each particular claimant and hapū decided on. The court was then adjourned to give time for the survey to be made.'[283] Maning's 1879 reference to a division of parts of Puhipuhi between Ngāti Hine and Ngāti Wai describes an internal boundary division significantly different from that eventually marked on the Puhipuhi survey plan, even though Nehua later claimed that Maning marked that division on the plan 'with his own hand.'[284] The reason for this disparity is not clear. It is possible that Maning's initial division did not survive once errors on the draft plan were corrected.

Maning's later statements to Fenton that the Court had '*made an order* that the block should be divided by regular survey into three portions of nearly equal area' (emphasis added) in 1873 require some comment, given Nehua and Kawiti's evidence that all that occurred was the hearing of evidence and a proposal by Maning conveyed to them by letter after the 1873 hearing.

For Maning's proposal to have the force of law, it needed to be made in the form of a title determination order. As Richard Boast puts it, 'It was and is the formal orders, not the minute books, which give binding effect to the [Native Land] Court's decisions.'[285] Maning did not complete the process of making a formal order, but his partial process – identifying three main parties and proposing a division of the lands between them (and possibly amending the survey plan accordingly) – would still carry some legal weight, for example as a starting point for later hearings.

At that stage, the court had the power to recommend restrictions on the alienability of the land to the Governor (an important consideration in the case of Eru Nehua's

[282] F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[283] F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[284] E. Nehua to Native Secretary, 20 September 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[285] Boast, *The Native Land Court 1862 – 1887…*, 2013, p. 226

papakainga at Taharoa, which he was determined to reserve from sale), and to be endorsed on the certificate of title.[286] The certificate, 'duly authenticated and recorded', then had to be sent to the Governor for his formal approval.[287] The Governor could then issue a Crown grant for the land to those persons named on the certificate of title.[288] No certificate of title, and therefore no Crown grant, was issued to any of the claimants following the 1873 hearing, indicating that the case remained adjourned.

Regardless of whether Maning's written proposal had been for the 14-6-5 division or for a division into thirds, there was opposition to dividing the block, particularly from Kawiti. In his 1877 letter to Fenton, Maning recalled that the proposal to divide the block into three portions

> of nearly equal area but considerably different in value … was strongly objected to by both Eru Nehua and MP Kawhiti [sic], both of whom claimed the <u>whole</u> to which neither have [sic] a right. The Ngatiwai tribe made no objection.[289]

In his 1883 Native Land Court evidence, Kawiti stated that when he received Maning's letter,

> I got very angry with Eru because of such a [illegible] award.'[290] Kawiti told the 1883 court, I objected because I wished the block to be divided equally. Eru Nehua approved of the judgement but I told him the law left it in our hands to settle. Eru replied that I was "too cheeky altogether in not agreeing to the judgement."'[291]

The phrase 'the law left it in our hands to settle' probably refers to Maning's later proposal that the claimants should aim to reach agreement among themselves (see below).

3.4 Maning's attempts to persuade the parties to renegotiate their portions

Shortly after Nehua received Maning's letter after the 1873 hearing, he visited the judge to discuss it.[292] The 14-6-5 proposal was exceptionally favourable to Nehua,

[286] Section 28, Native Lands Act 1865
[287] Section 29, Native Lands Act 1865
[288] Section 46, Native Lands Act 1865
[289] F. E. Maning to F. D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn. Emphasis in original.
[290] Evidence of M. P. Kawiti, Mair Minute Book No. 1, pp. 216-217
[291] Evidence of M. P. Kawiti, 20 April 1882, Northern Minute Book No. 5, p. 176
[292] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, pp. 264-265

and he was apparently not optimistic that the other claimants would agree to it. Nehua recalled in 1883 that:

> I told Maning that I thought his judgment would not be accepted. He said the reason of it was he was afraid there would have been trouble otherwise. He also advised me to persuade M. Brown to accept it. I said I would do so. I saw M. Brown and said I was tired of the work and asked him to accept the judgment. He refused. He said, "it is Sydney Taiwhanga's judgment."[293]

Nehua's expression 'I was tired of the work' seems to refer to his weariness at the longstanding dispute over Ngāti Hau's and Ngāti Hine's interests in Puhipuhi, and his eagerness to resolve the dispute. Kawiti's expression 'It is Sydney Taiwhanga's judgment' appears to refer to Taiwhanga's reference, immediately following the August 1873 court hearing, to the wisdom of Solomon. That reference implied that the most appropriate judgment would allot the entirety of Puhipuhi to one of the three principal claimants. By allotting the majority of it to Nehua and Ngāti Hau, Kawiti seems to have suggested, Maning was largely following Taiwhanga's proposal.

Maning then proposed to Nehua a further and more complex division of the lands:

> Maning proposed that the piece at Taharoa, that I should have that alone and that my name should go into the pieces of the block awarded to M. Brown and Hoterene Tawatawa and also with the rest of N' Hau into that part awarded to them.[294]

For the sake of clarity and brevity, this proposal will be referred to hereafter as 'the intermixed proposal.' A significant feature of the suggestion was that the only part of Puhipuhi which Maning proposed to award to a single individual was Taharoa, where Nehua was living. Nehua would also share interests in all other parts of the land, including those awarded to both Kawiti and Tawatawa.

Maning's grounds for allocating these shared interests in each division appear to reflect the complex nature of the various customary interests in Puhipuhi, and to have aimed at overcoming opposition from contesting claimants. Maning seems to have attempted a solution that roughly resembled an equal three-way division, while ensuring that Nehua (whose efforts at farming the Taharoa lands Maning evidently respected) gained substantially more in 'value' than the other principal claimants. The

[293] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, pp. 264-265
[294] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, p. 264

judge may then have realised that the two northern divisions contained the majority of the kauri gum, and were therefore more valuable than he had initially appreciated. His attempt to address this may account for his complicated proposal of three divisions, with some chiefs granted shares in other subdivisions as well as their own.

Maning does not mention, in either of his letters to Fenton, the 14-6-5 proposal or the intermixing proposal. Instead, he refers only to the thirds proposal, implying that this was the sole proposal made to any of the Puhipuhi claimants. However, as noted, both Nehua and Kawiti, although they disagreed about much else, understood that Maning had proposed to them a 14-6-5 division. There is no evidence that Maning clearly explained this to either Fenton or the government. This may reflect the subsequent fierce disagreements between Nehua and Kawiti over their claimed interests in Puhipuhi. It seems at least possible that Maning hoped to distance himself from these disagreements by alleging to Fenton that he, Maning, had been consistently clear and firm in his actions following his 1873 hearing, and that any misunderstanding and dispute that resulted was entirely the fault of the rival claimants.

Maning's personal written record of his own hearing and/or his memory of it was therefore greatly at odds with the claimants' version (and both differ significantly from the final 1883 Native Land Court decision). It is difficult to understand how the judge and the claimants could have held such widely varying versions of the same written recommendation. The most likely explanation is that Maning realised, possibly only after the 1873 hearing, that Kawiti exerted sufficient political influence to reject the 14-6-5 proposal in favour of the thirds proposal. Maning may therefore have taken advantage of the lack of official documentation of his 1873 hearing to deliberately misrepresent his own actions in his later letters to Fenton.

The outcome of Maning's 1873 hearing was undoubtedly complex and confusing for at least some of the parties, and some then had the opportunity to gain advantage from this confusion. Yet Maning does not appear, in 1873 or afterwards, to have made significant attempts to clarify his court decision. Instead he appeared to avoid committing much of his thinking to paper and instead to have preferred discussions, both collectively and with individual claimants, which can only have encouraged differing understandings. Those actions are likely to have materially contributed to the

claimants' confusion and disharmony over the subdivision of the block. Maning may well have wished to deny his official responsibility for their refusal to reach an agreement.

On 24 September 1873, little more than a month after issuing his 1873 decision and some time after his face-to-face discussion with Nehua, Maning appears to have tried to persuade Kawiti to accept the 14-6-5 proposal or thirds proposal himself (Maning doesn't specify which), to offer the 'intermixing proposal' he had outlined to Nehua, and if necessary to invite an alternative proposal. He wrote to Kawiti in Māori, and this letter, happily for the present report, is held in the Puhipuhi land purchase file. Maning told Kawiti:

> Kia rongo koe kua wahia e ahau a Puhipuhi, ki nga wahi e toru. Kotahi ki a koe, kotahi kia Ngati Wai, kotahi kia Eru Nehua
>
> Kia tae atu a Hirini ka kite koutou i te pakaruhanga i runga i te mapi. Tera pea koutou e kino ki taku pakaruhanga i tenei whenua, otira ko taku whakaora mo te ngakau riri, pea, me whakauru a hea kia tokotoru o koutou ki roto i te pihi ma Eru Nehua, kia tokotoru hoki o Eru Nehua ki roto i te pihi mau. Ki te pai koutou katoa ki tenei tikanga aku ka hohoro te oti o tenei whenua.
> Ki te kahore koutou e pai, kahore aku whakaaro ke atu e tae atu ana, erangi ki te kino koutou me homai ra pea i tetahi tikanga e pai ai koutou katoa nga hahu e toru, a ka whakaaetia tera e ahau.
>
> *You will have heard that I have divided Puhipuhi into three parts. One for you, one for Ngātiwai, one for Eru Nehua. When Hirini* [presumably Taiwhanga] *arrives, the nature of the subdivision will become apparent on completion of the survey.*
>
> *You may perhaps all object to my subdivision of this land. However, my solution for any potential enmity arising is the following: that you have three shares within Eru Nehua's piece and Eru Nehua has three shares within your piece.*
>
> *If you are all happy with [my] decision, this land will soon be finished (decided upon). If, on the other hand, you disagree, perhaps you should send a proposal that suits you all regarding the three-part subdivision, and I will agree to that.*[295]

This appears to be consistent with Maning's oral proposal to Nehua to solve the problem by allocating shares to other parties in the blocks that would be set aside for

[295] Te Manene [F. E. Maning] to M. P. Kawiti, 24 September 1873, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn. Translation - M. Derby and B. Keane

each party. It appears clever in theory but not practically helpful, and it is hardly surprising that the chiefs found it mystifying. If Kawiti replied to this letter, his reply has not been located.

However, there is indirect evidence that Kawiti rejected both Maning's 14-6-5 and intermixing proposals. He added to Maning's letter a table apportioning the 25,000-acre Puhipuhi block to the three claimants in precisely equal shares – 8,333 1/3 acres each.[296] This thirds proposal appears to be the only one he favoured, and he repeatedly insisted upon it in future.

Nehua and Kawiti, by the fact of their initial claims to the whole of the Puhipuhi block, became the focus of Maning's post-hearing discussions in 1873. However, the position of the third party to the hearing, Hoterene Tawatawa, at this point also needs to be considered. Although Tawatawa does not mention in his evidence to the court in 1882 or 1883 that he received Maning's letter after the 1873 hearing, it seems likely that as the other key party before the court, Maning also wrote to him. [297]

Maning does not seem to have suggested to Hoterene Tawatawa 'the intermixing proposal' he discussed with both Nehua and Kawiti. Maning states in his 1877 letter to Fenton that 'The Ngatiwai tribe [represented by Tawatawa] made no objection' to the outcome of the 1873 Native Land Court hearing.[298] Maning may therefore have assumed that Tawatawa was likely to agree to the eventual division of the land if the other two principal claimants accepted it.

However, Tawatawa was evidently not as satisfied with Maning's proposal to divide Puhipuhi as Maning believed. In November 1873 the elderly Ngāti Wai rangatira wrote to Native Minister McLean asking him to intervene in the court process,

[296] Marginalia to Te Manene [F. E. Maning] to M. P. Kawiti, 24 September 1873, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[297] Evidence of H. Tawatawa, Mair Minute Book No. 1, p. 210. Tawatawa was then a very elderly man, and claimed at the 1883 hearing to have been born 'shortly after Cook was here' and 'at the time of Marion' (presumably a reference to the French explorer Marion du Fresne). If true, Tawatawa would have been more than 100 years old in 1873, and around 110 when he gave his 1883 evidence.
[298] F. E. Maning to F. D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

> to put a stop to further encroachment upon my land – Te Puhipuhi. And also other pieces of land belonging to me which Eru Nehua is endeavouring to obtain possession of. Two different portions of my land have already been taken possession of, including Pukepoto.[299]

McLean's reply to this letter, if any, has not been located.

The expression 'other pieces of land belonging to me' refers to properties outside the Puhipuhi lands. At the time this letter was written, the 1,478-acre Pukepoto area, near Ngunguru, had not yet passed through the Native Land Court. It did so four years later, in September 1877, when part of it was apparently awarded to six Ngāti Hau individuals, including Nehua.[300] Another portion was awarded to Te Waiariki, a Ngunguru-based group related to Ngāti Wai.

Alongside these discussions between Maning, Nehua and Kawiti, and the objections of Tawatawa during 1873, some of these parties apparently submitted an application to the court for a rehearing. A note by Gill in the Native Land Purchase Department dated 28 October 1878 stated that 'an application for rehearing was submitted but not entertained (not received within the time fixed by law).'[301] The note does not indicate who had made the application for rehearing. Under section 20 of the 1869 Native Lands Act, a rehearing had to be ordered within three months of the original hearing. That time limit was reduced from the six months specified in the earlier 1865 Act.[302] The six-month time limit was restored in the subsequent Native Land Act 1873.[303] However, since the 1873 Puhipuhi hearing began under the provisions of the 1869 Act, the shorter time limit still applied. The application form for this rehearing does not appear in any of the files searched for this report, and the rehearing is not referred to in any other documentation apart from the 1878 minute noted above.

In summary, the combined available evidence regarding Maning's proposal following the 1873 Puhipuhi hearing is regrettably incomplete and sometimes mysteriously

[299] H. Tawatawa to Native Minister, 12 November 1873, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[300] Armstrong, 'Ngati Hau 'Gap-filling' Research', 2015, #P1, p. 28
[301] R. Gill, minute to letter from E. Nehua to Sir G. Grey, 28 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[302] Section 81, Native Lands Act 1865
[303] Section 58, Native Land Act 1873

contradictory. With those provisos, that evidence indicates the following sequence of events:

- Immediately after the hearing, Maning called together the three principal chiefs, together with assessor Wi Taua and surveyor Hirini Taiwhanga, and sought an agreement on the boundaries as the basis of these divisions.
- Maning then returned to his home at Onoke. Two of the principal parties claimed he then wrote to them with a '14-6-5 proposal.' They claimed he also marked on Taiwhanga's survey plan his proposed boundaries for the three divisions of the Puhipuhi lands.
- in his own accounts to Chief Judge Fenton in 1877 and 1879 of the proposal put to the parties in his letter following the 1873 hearing, Maning claimed that he proposed a 'more or less equal' division of the land between the three parties ('thirds proposal').
- The '14-6-5 proposal' was further complicated by Maning's proposal to some of the chiefs that they be allocated shares in other subdivisions to make the divisions more acceptable ('intermixing proposal').

The outcome of this sequence of events, and particularly of Maning's September 1873 letter to Kawiti, was that Nehua and Kawiti were left with sharply divergent understandings of the immediate outcome of the 1873 hearing. Nehua believed that Maning had allocated him the largest share (the 14-6-5 proposal), and he was willing to accept that proposal. Kawiti believed that Maning had given him the right to renegotiate for three equal shares (the thirds proposal), and he was determined to do so. Indeed, magistrate E. M. Williams later described Maning's September 1873 letter to Kawiti as 'well meant' [but] 'so worded as to give [Kawiti] a pretext for reopening the question.'[304] Maning's 'well meant' proposal to Kawiti undermined his earlier proposal, and invited further rancour between Nehua and Kawiti.

In fairness to him, Maning was tasked with resolving a very difficult and tense situation. He was quite clear following the hearing that he intended dividing the land into three, although this was against the expressed wishes of at least some of the principal claimants. To his credit (although he probably had no other choice), he tried

[304] E. M. Williams to Native Secretary, 25 May 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

to resolve this situation with the chiefs themselves. This was much less formal and autocratic than the normal court approach, which he was known to otherwise favour.[305]

However, the best that can be said of his communications with the principal opposing chiefs is that they were sufficiently unclear as to encourage quite different understandings among them. They were also very poorly documented, meaning that they remain very unclear. Maning suggested quite complicated share reallocations in addition to physical divisions as a means of making his proposals more acceptable, but this only caused further annoyance, and may have been a major factor in the failure of the chiefs to come to an agreement. Rather than resolve an existing dispute over interests in the land, Maning's actions in this tense and complex situation appear to have actually worsened and extended the dispute.

By comparison, if the matter had been placed before a hui or mediation process, it would have been discussed in public, with more likelihood that some compromise would be reached. That outcome, however, would have revealed the limitations of the court's authority. As a result, a pressing dispute was allowed to fester. The 1873 Puhipuhi hearing reveals the Native Land Court's ineffectiveness in cases of serious dispute.

3.5 The uncompleted 1875 re-hearing

Over the two years following the 1873 hearing, Nehua and Kawiti grew vehemently hostile to each other's competing claims.[306] As a result, Nehua refused to permit a survey of the internal boundaries as requested by Maning. This refusal meant that none of the divisions proposed by Maning could be marked out on the ground and so the matter could not progress to the issue of certificates of title.

By 1874 the 63-year-old Maning was growing ill and infirm, and increasingly reluctant to hear the very large volume of cases coming before his court. Two Crown land purchase agents, Thomas McDonnell and E. T. Brissenden, visited him at his Hokianga home in late 1874, and discussed 'passing blocks of land for which

[305] Armstrong and Subasic, 2007, #A12, p. 377
[306] F. E. Maning to F. D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

[Brissenden was] in negotiation in the North through the Native Land Court.' Maning made the extraordinary suggestion that Māori land which the Crown hoped to purchase should not come before the Native Land Court so that its title could be legally determined, but instead that Brissenden, a US-born agent who spoke little or no Māori, should 'trust to the result of [his own] investigation' into the ownership of these lands. Brissenden rejected this proposal.[307] Brissenden reported that Maning then suggested:

> that a Judge of the Native Land Court should conduct investigations of title previous to my completing purchases, and that, on his being satisfied, the land should be bought and declared waste land.
>
> I [i.e. Brissenden] pointed out to him that he himself had already so much work in hand under the old [1869 Native Lands] Act, and that it was hardly to be expected that he could devote the time necessary for this. He then suggested that there were more than one Judge; that, if I made the request, no doubt the Government would authorise me to act for them in this matter. I therefore shall be glad if the Government will consent to this arrangement, and to receive instructions on the subject.[308]

The reply from the Native Office (Land Purchase Branch) confirmed that before the Crown could purchase Māori land, 'a request to the Chief Judge for an investigation should be made in each block by not less than three of the claimants, as per clause 24, Native Lands Act 1873.'[309] Maning's extraordinary suggestion that Crown land purchase agents could bypass or take a shortcut through the Native Land Court's process of title investigation was therefore firmly rejected at the national level.

In November 1874 the three original applicants, Eru Nehua, Riwi Taikawa and Whatarau Ruku of Ngāti Hau, made a further application to complete the title investigation into Puhipuhi.[310] That hearing was held at Kawakawa on 4 February 1875, again with Maning as judge.[311] The hearing was apparently dismissed after only

[307] E. T. Brissenden to D. McLean, 28 September 1874, *AJHR* 1875, G-7, Encl. No. 68, p. 21
[308] E. T. Brissenden to D. McLean, 28 September 1874, *AJHR* 1875, G-7, Encl. No. 68, p. 21
[309] J. H. H. St John, Native Office (Land Purchase Branch) to E. T. Brissenden, 16 October 1874, *AJHR* 1875, G-7, encl. No. 69, p. 21. Section 24, Native Land Act 1873, prescribes the requirement of the local District Officer to inquiry into native land prior to its purchase by the Crown, and specifically to reserve from sale lands amounting to 50 acres per head of the Māori residents of the district.
[310] Notice of Court hearing date and location, Native Land Court, Auckland, 2 November 1874, BOI 318 applications 1875-1940, Maori Land Court, Whangarei: Notice of court sitting for Puhipuhi, "e tata ana ki te Kawakawa" ("in the vicinity of Kawakawa"), *Kahiti*, 23 November 1874, No. 14, p. 43
[311] F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

one claimant, Nehua, had given preliminary evidence, and just as in 1873, the Puhipuhi conflict remained deadlocked.[312]

Other details of the 1875 hearing cannot be conclusively determined due to the same unfortunate lack of reliable documentation concerning the 1873 hearing. Again, no minutes or newspaper reports have been located. Furthermore, neither Nehua nor Kawiti refer to this hearing in their evidence for the 1882 and 1883 hearings. Maning, however, in his 1879 letter to Fenton, quotes from his earlier notebook record of the 1875 hearing:

> Eru Nehua, Claimant, appeared, said that the subdivision by survey as ordered by the Court had not been made as the opponents (Kawhiti [sic] and others) threatened to prevent it by violence and that in fact the order of the Court could not be complied with.
>
> In consequence of the above the case was dismissed, it being thought that the parties would be more likely to come to some arrangement where the claim was not in any way before the court.[313]

Although corroborative detail is lacking, this brief note suggests that Nehua may have been seeking an enforcement order from the court for the subdivisional survey, which Maning refused to entertain. This raises the issue of how useful the Native Land Court was to claimants such as Nehua and others of Ngāti Hau. They had abided by all the requirements of the court process, and now wished to see the court carry out and resolve Maning's proposal to divide the block between the three parties, but this was denied to them.

Maning apparently blamed his inability to make a judgement in the 1875 rehearing entirely on the (potentially violent) disagreement between Nehua and Kawiti, but makes no admission that this disagreement might owe something to his own post-hearing actions, which produced radically different proposals for partitioning the land. Similarly, government land purchase agent Charles Nelson, writing in 1879 to Richard Gill, Under-Secretary of the Native Land Purchase Department, stated that after the 1875 hearing, 'The Court did not pronounce a formal decision owing to the inability of the three successful claimants … to agree upon a basis of subdivision.'[314]

[312] F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[313] F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[314] C. Nelson to R. Gill, 29 November 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Both Maning and Nelson are effectively blaming these two chiefs for failing to agree a basis of subdivision, when the judgment on such a subdivision was precisely the role of the court hearing. In other such hearings, whenever it felt able to do so, the court made no effort to solicit chiefly agreement for the basis of its divisions. So in this case the chiefs were effectively being blamed for the court's limitations.

In then stating, in his final comment to Fenton above, that Nehua and Kawiti were more likely to reach agreement among themselves than through his court, Maning comes close to admitting that the court was doing more harm than good at settling the disputes over Puhipuhi. This further reinforces the conclusion to be drawn from the 1873 hearing – that at that time there was really no effective alternative to chiefs being centrally involved in major disputes between iwi/hapū, and reaching agreements among themselves.

3.6 The situation by the end of 1875

Since Eru Nehua and Ngāti Hau surveyed Puhipuhi in 1872, they had made little, if any, progress in establishing their customary interests in the land. The 1873 Native Land Court hearing had resulted in a proposed subdivision by Judge Maning that gave Ngāti Hau the largest share (the 14-6-5 proposal), but also an alternative proposal that gave the three leading claimants approximately equal shares (the thirds proposal). Maning had further suggested that Ngāti Hau and Ngāti Hine should each agree to hold shares in the other's portion of the land (the intermixing proposal).

Nehua had accepted the 14-6-5 proposal and Kawiti the thirds proposal, and in spite of suggestions from Maning that they should negotiate outside his court to reach a mutually acceptable division, they had signally failed to do so. Their opposition had resulted in the abandonment of a second Puhipuhi hearing, and by the end of 1875 their mutual distrust and rancour made further direct negotiations between them apparently fruitless. The situation therefore appeared to call for an intervention at either judicial or governmental level.

There is a gap of three-and-a-half years, between 1873 and 1877, in the otherwise substantial documentation of dealings between Puhipuhi claimants and the Crown. The previous chapter of this report has quoted from Tawatawa's letter to McLean of

November 1873, objecting to Nehua's claims to Puhipuhi.[315] This may be accounted for by hopefulness on the parts of Maning and other Crown officials that either the parties would resolve the matter of dividing the lands, or that the purchase of the land by the Crown would mean no further action would be needed. No other documents appear in that MA-MLP file until May 1877, when Kawiti wrote to the new Native Minister, Daniel Pollen, alleging that Nehua had threatened to murder him as a result of their disagreement over the subdivision of Puhipuhi.[316] This substantial gap in official evidence may also suggest that, following the inconclusive 1873 hearing, for some years the government and its officials paid little attention to Puhipuhi, or to the increasingly vituperative conflict between at least two contending claimants, until that conflict had escalated to threats of extreme violence.

3.7 Crown and claimant attempts to settle differences out of court, 1876 – 1878

Despite this evidentiary gap, it is apparent from other documents that after 1875, Māori continued their attempts to resolve the dispute in various ways, including:

- further applications for title investigation in the Native Land Court;
- face-to-face negotiations between Nehua and Kawiti;
- appeals to locally-based Crown officials to mediate, and;
- seeking action from the Native Minister.

These attempts suggest a great deal of positive effort from Māori and a willingness to try all the government-sanctioned avenues open to them to resolve the dispute of the ownership of Puhipuhi. But they also reveal an increasing frustration with the failure of the court to deal effectively with the matter. That sense of frustration is strongly echoed by some of the officials they consulted, such as the Member of the House of Representatives Wiremu Katene, who demanded of Civil Commissioner George Clarke in October 1878:

> Why do the Government act thus in causing Maori difficulties, why do they not deal with them promptly? ... They say that Mr Williams and I are the cause of the delay. I answer the Government themselves are the cause of the delay … If the Government had carried out the propositions made by the Resident Magistrate [Williams], the matter would long ago have been arranged. Owing to its being delayed, the trouble increased. It appears to

[315] H. Tawatawa to D. McLean, 12 November 1873, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[316] M. P. Kawiti to D. Pollen, 9 May 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

> me that the Government have no wish to settle difficulties that arise among the Maoris themselves.[317]

This section will examine the success of each of the attempts by Māori to resolve the Puhipuhi dispute.

3.7.1 Ngāti Hau applications for further title investigations

In April 1876 the three Ngāti Hau representatives who had applied for the original Puhipuhi hearing, Nehua, Taikawa and Ruku, applied for a further title investigation hearing. This application provided a written description of the boundaries of the land under investigation, as follows:

> Puremu [Illegible] ki te raina o Hikurangi i te awa o Whakapara te puaha o Kaimamaku kei huri ka haere i te raina o Opuawhango ki te awa o Kaimamaku ka [illegible] ki roto taparahia ka huri ki Taumatahinau ki te taha hauraro haere tonu ka pa ki te raina o te Ruapekapeka i runga i te awa o Waiotu ka huri ki waho ka pa ki te raina o Wairua ki te taha hauauru ka haere tonu ka tu te [illegible] ano ki te timata i puremu mo te raina o Hikurangi
>
> *Bounded… to the line of Hikurangi [block] at the Whakapara River, from the mouth of Kaimamaku it turns, from the line of Opuawhango [block] to the Kaimamaku River it [illegible] under Taparahia to Taumatahinau, on the east it continues until it reaches the Ruapekapeka line above the Waiotu river, where it turns inland to reach the line of the Wairua [River], on the west it continues [illegible] to the beginning, bounded by the line of Hikurangi [block].*[318]

Nehua alone lodged a further application in October 1876.[319] The three original applicants lodged yet another application in June 1877.[320] These two applications describe the boundaries of the area under investigation as 'kei te mapi' ('on the map'), i.e. as described on Hirini Taiwhanga's 1872 survey plan. Given that neither the 1873 investigation nor the 1875 hearing had delivered a definitive decision on the division of the block, these applications were a way of pursuing a completed judgement on the matter of title. However, none of those applications apparently resulted in a court

[317] Wiremu Katene to G. Clarke, 18 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[318] Application for title investigation, R. Taikawa, E. Nehua, W. Ruku, 11 April 1876, BOI 318 applications Puhipuhi 1875-1940, Maori Land Court, Whangarei. Translation – Mark Derby
[319] Application for title investigation, E. Nehua, 20 October 1876, BOI 318 applications Puhipuhi 1875-1940, Maori Land Court, Whangarei
[320] Application for title investigation, E. Nehua, R. Taikawa and W. Ruku, 6 June 1877, BOI 318 applications Puhipuhi 1875-1940, Maori Land Court, Whangarei

hearing, although as with the 1873 and 1875 hearings, the archival record is frustratingly incomplete.

None of these three applications was apparently set down for hearing in the Native Land Court. This reluctance to permit the claimants to return to the Native Land Court may be at least partly explained by the very heavy workload facing the Court in this period, as a result of Crown land purchase activities. Between 1875 and 1877 Crown land purchase agent E. T. Brissenden personally initiated at least 60 Crown purchases in Te Raki, a remarkable number when compared with the total of 106 purchases for the entire period 1840-1865.[321]

A further possible reason why the Native Land Court declined to grant the Puhipuhi applicants a hearing during 1876-1877 concerned the former judge Maning. By the time of the abandoned February 1875 Puhipuhi hearing, Maning was frequently ill, discontented and hoping to end his duties as a judge. However, McLean was reluctant to lose his services in the north and did not accept his resignation until September 1875.[322] Maning later moved to Auckland where his health steadily declined. The Native Land Court had the power to seek his explanation of his Puhipuhi hearings for a subsequent Puhipuhi hearing, when he would have been able to provide direct evidence, perhaps by letter, of his confused and contested 1873 decision. It did not do so, so any subsequent Native Land Court hearing into Puhipuhi was not able to draw upon Maning's accumulated knowledge of the land and the contesting claims to its ownership, or on his knowledge of Māori language. That may not have troubled the claimants to Puhipuhi, some of whom were clearly not comfortable with Maning's past actions as a judge, but it may have initially discouraged the Native Land Court from granting a rehearing in front of a new judge.

3.7.2 The response of the District Officer, 1876

A potentially significant development for the Puhipuhi claimants was a provision of the 1873 Native Lands Act which created the new government post of District Officer, whose role was 'to work with Maori right-holders and the Native Land Court, to make preliminary inquiries into customary tribal ownership and to make inalienable

[321] Lands purchased and leased from Natives in North Island, *AJHR* 1878, G-4, pp. 2-4
[322] Nicholson, *White Chief…*, 2006, p. 205

reserves of not less than 50 acres per head.'[323] Under a system envisaged by Donald McLean, District Officers would investigate land ownership before cases came before the Native Land Court. According to Bassett et al 'This did not eventuate, however, and it continued to be the case that the claimant initiating action through the Court had an advantage over others with interests in the land.'[324]

William Webster was appointed District Officer for the Northern district on 1 January 1875.[325] He held that post until 1880, when his services were dispensed with by the government for reasons that are unclear, although perhaps due to the economic recession at the time and the government's view that the position of District Officer was not a high priority.[326] During his five-year term in the role, Webster met repeatedly with Nehua and Kawiti, and with other government officials based in the north, and attempted to negotiate an agreement concerning the division of Puhipuhi, as Maning had recommended. Webster was evidently attempting to enforce the incomplete outcome from Maning's two hearings, rather than dealing with the matter afresh. This is clear from correspondence from the claimants themselves, and from other officials, held in MA-MLP files, particularly the letter cited immediately below.

In an 1877 letter to the Native Secretary, Eru Nehua recounted earlier dealings with Webster, unfortunately without specifying dates. However, internal evidence, noted in square brackets below, suggests that those events took place in 1876. Nehua told Native Secretary H. T. Clarke that since the 1873 (and possibly also the 1875) hearing, he had 'repeated talks respecting [Puhipuhi]' with Kawiti:

> and Maihi's one word has always been that the land should be divided into two equal portions. [This is apparently a misrepresentation of the 'thirds' proposal which Kawiti advocated, but may also indicate that the major dispute was about the two portions of Puhipuhi disputed between Nehua and Kawiti.] I say that it should be left as decided by the Court, the line of division having been drawn on the plan by Mr Maning with his own hand. His [Maihi's] second word was this, that a new sitting of the Court should be held, to which I agreed and wrote accordingly to Mr Fenton, Chief Judge of the Native Land Court. [This may refer to the April 1876 Ngāti Hau hearing application above.] Mr Fenton wrote to me saying that he had

[323] Section 21, Native Land Act 1873; Waitangi Tribunal, *He Maunga Rongo – Report on Central North Island Claims,* Wai 1200, Vol. 3, (Wellington: Legislation Direct, 2008), p. 628
[324] Commentary on the Native Land Act 1873 in Heather Bassett et al, *The Maori Land Legislation Manual,* CFRT, 1994, pp. 76.3-76.4
[325] Nominal roll of the civil establishment of New Zealand, *AJHR* 1875, H-11, p. 33
[326] Civil servants appointed and dispensed with, *AJHR* 1881, H-37, p. 2

> written to Mr Maning recommending that we should meet Maihi and talk the matter over with him. Subsequent to that Mr Maning and Mr Webster came to the Kawakawa, from which place Mr Webster wrote to me; I went thither accompanied by my friends. On our arrival there Mr Webster said we have already had our talk with Maihi and others and Mr Maning has gone to Russell, this was his [Webster's] word to me; 'If you do not agree to the decision as marked on the plan, I will telegraph to him [Maning] in order that he may know whether you are agreeable to it or not.'
>
> I said 'Have Maihi and the others consented?' He answered, 'Yes, you are the only obstinate one.' I said, 'I am not obstinate, I agree to that subdivision.' He then telegraphed to Russell to Mr Maning. Well, then our trouble was finally settled. Somewhere about three months after that date, Maihi wrote to Mr Webster saying that he did not agree to this decision respecting Puhipuhi. Mr Webster then wrote to me, saying 'Maihi in his letter does not agree to that decision.' At the same time, Mr Webster wrote informing me that the arrangements respecting a rehearing rested with me. I replied to Mr Webster as follows: 'Has the decision agreed to by us become of no effect, inasmuch as Maihi and others not come?' Mr Webster in reply said, 'Yes, Mr Maning will not go to adjust the matter owing to pressure of business, but do you send your application to Mr Fenton and do so quickly so as not to be too late for the Court to be held at Ohaeawai.'
>
> I forwarded my application to Mr Fenton, at the same time asking for the hearing to take place at Whangarei if a court was to be held there, or to have it heard at Ohaeawai if a sitting of the Court was held there first… [Again, this is likely to refer to Nehua's October 1876 hearing application, above.]
>
> Friend, Mr Clarke… let the case be heard at Ohaeawai, so that this trouble may be finally settled. Whether you agree or not, write, for I am quite sure that the matter will never be settled by me or Marsh.[327]

Nehua's statement above that 'Maihi's one word has always been that the land should be divided into two equal portions', and the fact that he seemed at first to agree to a division of the land and then three months later to change his mind, may reflect Kawiti's confusion over just what Maning meant following his court hearings. Webster's statement to Nehua that 'the arrangements respecting a rehearing rested with me' refers to the fact that Nehua and his two fellow Ngāti Hau chiefs were the original claimants. Webster's further statement that Maning 'will not go to adjust the matter owing to pressure of business' may indicate that Maning and other Crown

[327] E. Nehua to H. T. Clarke, 20 September 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

officials were happy to delay a formal outcome to the Puhipuhi dispute – that it was not a priority for them in the mid-1870s.

Maning appears to give his own version of these 1876 negotiations in a letter to Fenton in 1879. He stated that following the dismissed 1875 hearing:

> endeavours have been made by all the parties to have the case reheard and, by their own request, I have met them more than once to assist in bringing them to some amiable terms, and on the last of these occasions all the contending parties agreed to submit to the former decision of the Court which I have mentioned; in consequence of this I was about to get the claim again advertised for hearing, when I found that I had scarcely left the place of meeting, before they had again broken out in the most furious and dangerous dissension and I consequently deferred taking any further steps in the affair.[328]

Maning's letter above appears self-serving. He states that 'all the contending parties agreed to submit to the former decision of the Court', although it is apparent that some, at least, of these parties were not at all clear what that decision was. Maning appears to be attempting to move the blame for the impasse to the chiefs.

3.7.3 The response of the Native Minister, 1877

Dissension between Nehua and Kawiti had indeed reached 'furious and dangerous' levels. In Kawiti's letter to Native Minister Daniel Pollen in May 1877, he wrote that Nehua,

> assured me he meant what he said – that if we met each other on the road (alone), he would murder me … First he challenged me to fight, then threatened to murder me, his object being to get possession of my piece of land called Taharoa, also that portion which belongs to Ngatiwai.[329]

Kawiti restated his wish to see the thirds proposal implemented, 'but if a rehearing is granted and it is decided to divide the block in some other way, the question will not be settled.'[330]

A month after Kawiti wrote this alarming letter, in June 1877, the original three Ngāti Hau applicants, Nehua, Taikawa and Ruku, lodged yet another application for a title investigation by the Native Land Court.[331] This application, the third from Ngāti Hau

[328] F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[329] M. P. Kawiti to D. Pollen, 9 May 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[330] M. P. Kawiti to D. Pollen, 9 May 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[331] Application for title investigation, E. Nehua, R. Taikawa and W. Ruku, 6 June 1877, BOI 318 applications Puhipuhi 1875 – 1940, Maori Land Court, Whangarei

since the dismissed 1875 hearing, suggests that they favoured judicial rather than violent methods of conflict resolution.

Nevertheless, Kawiti's letter appears to have jolted Native Minister Pollen into a more active stance than simply urging further meetings between the claimants and local officials. Pollen referred the matter to Chief Judge Fenton for comment. Fenton, whose low opinion of Kawiti has been noted in chapter 3, responded that Kawiti was 'a rogue, but writes plausibly', and recommended asking Maning's advice.[332] Maning responded with a carefully worded letter which, as described in the previous chapter, summarised the 1873 hearing. He said that,

> the Court at length, after much pains and consideration, made an order that the block should be divided by regular survey into three portions of nearly equal area (defined by the Court on the survey plan) but considerably different in value. The portion awarded to Eru Nehua is the most valuable …[333]

That is, the thirds proposal as described in the previous chapter. Both Nehua and Kawiti strongly objected to this decision, wrote Maning. 'Subsequently, M. P. Kawiti gave up his opposition and agreed to accept the portion allotted to him by the Court [this appears to refer to the c.1876 meeting brokered by William Webster, described above] but as the subdivision survey has been prevented by Eru Nehua, neither M. P. Kawiti or the Ngatiwai tribe have got their portions of the land.'[334]

Maning told Fenton that the decision made at the 1873 hearing 'is as nearly correct as may be, and … no decision by a second hearing that would differ in any material degree from it would be likely to take effect.' Instead, Maning advised that 'the most prudent and best course to take would be to inform Eru Nehua and M. P. Kawiti that as soon as the land has been subdivided peaceably, according to the former decision of the Court, *or in any other way agreeable to all the parties*, a Court will be held and certificates issued for the different lots, but that until this has been done no steps will

[332] F. D. Fenton, marginalia to Native and Defence Department memorandum, 8 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[333] F. E. Maning to F. D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[334] F. E. Maning to F. D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

be taken in the matter.'[335] That is, Maning recommended a further Native Land Court hearing to validate a partition negotiated among the parties themselves.

Fenton advised Pollen to follow Maning's recommendation, and Clarke wrote to Kawiti to say that the thirds proposal could not be legally enacted, as Kawiti requested, but that he should attempt to reach an agreement with Nehua over the division of the land, and that a new Court would then validate that agreement.[336] The Native Department apparently sent a similar letter to Nehua, without filing it.[337] Nehua replied to Clarke soon afterwards, on 20 September 1877, and his reply tracing the history of his unsuccessful meetings with Kawiti and his request for a new hearing at Ohaeawai is quoted at length above.[338]

Kawiti also replied, in November 1877, to 'the Government at Wellington, to those who enact the laws, to the Minister for Native Affairs.' In that letter, Kawiti revealed that he had already written to Nehua proposing a Puhipuhi subdivision (presumably the thirds proposal),

> but Eru Nehua does not approve but says to me that he goes by Mr Maning's decision [presumably the 14-6-5 proposal]. I replied 'do not go by what Mr Maning said – you and I both know that that arrangement is wrong whereby the people of your share were to be included in my share and [instead] that all three shares should be done the same way and that is why I object to such an arrangement.[339]

Kawiti concludes that, 'Evil is near at hand. It is my earnest wish that the Court should again investigate this land, so that I may know that the Court is managing these things.'[340]

Three days later Kawiti wrote a similar letter directly to Clarke. Again he said that Nehua was only willing to agree to the 14-6-5 proposal. Kawiti told Clarke that he

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[335] F. E. Maning to F. D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn Emphasis added
[336] H.T. Clarke to M. P. Kawiti, 11 September 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[337] Marginalia to Native and Defence Department memorandum, 10 September 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[338] E. Nehua to H. T. Clarke, 20 September 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[339] M. P. Kawiti to 'the Government at Wellington' and others, 15 November 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[340] M. P. Kawiti to 'the Government at Wellington' and others, 15 November 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

had urged Nehua to, 'Set aside Mr Maning's arrangement but let you and I divide the land.' Kawiti then described the thirds proposal to Clarke in tabular form, adding that 'no one share to be more or less than another.' Kawiti now appeared to attribute blame to Maning for continuation of the Puhipuhi conflict:

> if Eru Nehua had agreed to my proposal that the land should be divided into shares of equal acreage, the second decision of the Court whereby Eru Nehua's people were to participate in my share and my people in his – there have been two decisions given which are not right, hence the continuous trouble in connection with that land during the past years. After this, if Eru Nehua persists in maintaining his determined opposition, I will subdivide the land myself and sell my portion to the Pakeha.[341]

Kawiti's statement that 'there have been two decisions given which are not right' quite clearly indicates that the confused nature of what actually was being proposed by Maning had a major role in subsequent bitterness between the principal claimants, and their difficulty in reaching agreement.

Kawiti's later claim that 'if Eru Nehua persists in maintaining his determined opposition, I will subdivide the land myself and sell my portion to the Pakeha' suggests that Kawiti was considering a sale of part of Puhipuhi to private land purchase agents or to the Crown, who were both then increasingly active in the north, and were especially interested in valuable timber land such as Puhipuhi. Paradoxically, by using this argument to the Crown to strengthen his intention, 'that the Court should again investigate this land' Kawiti may have reinforced the Crown's intention to actually delay settlement of the Puhipuhi dispute, since a delay might make it easier to effect a purchase of the lands. Clarke may have feared the prospect of private purchase, or he may have supported the thirds proposal. He wrote that the thirds proposal 'appears to be fair and reasonable.' The Native Department evidently communicated this response to both Kawiti and Nehua.[342]

This apparent official endorsement of his thirds proposal must have reassured Kawiti. In a December 1877 letter to the new Native Minister, John Sheehan, Kawiti described the 1873 hearing result as '6000 acres for me, 5000 acres for Ngatiwai and

[341] M. P. Kawiti to H. T. Clarke, 18 November 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[342] H. T. Clarke, marginalia to Native Department memorandum, 10 December 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

for Eru Nehua 14,000 acres', i.e. the 14-6-5 proposal which he had rejected and which Nehua supported. 'I do not agree that the acres should be allotted in this manner. I wish the acres to be allotted equally.' Once again, Kawiti entreated Sheehan, 'The Court should again investigate this land for if matters go as they are, this land will be left and no law to take care of it. Evil is near at hand.'[343]

On the first day of 1878 Kawiti restated his confidence in an equal division of Puhipuhi, rather than continued dialogue with Nehua, in a further letter to Clarke. 'Let [Puhipuhi] be investigated by the law which will not allow itself to be led by one-sided statements … The law will find some way of making a final settlement of the question.'[344] Clarke minuted this letter with an irritated note that Nehua 'appears to have behaved badly throughout the matter. We have done all we can in the way of advice to both parties.'[345] Clarke appears here to believe that Kawiti has been acting reasonably in regard to Puhipuhi, and Nehua unreasonably. That view seems justified if Kawiti's claim that Nehua plotted to murder Kawiti is accurate, but that claim has not been independently verified. In fact, apart from that allegation, both Kawiti and Nehua appear to have used similar strategies to resolve their disagreements, and collaborated on several other occasions.

Throughout this correspondence during late 1877, the government kept both Nehua and Kawiti advised of the other's letters, and of the official replies. Nehua felt aggrieved at Kawiti's allegations 'that I am in the wrong so that you [i.e. H.T. Clarke] may think that he alone is in the right, and so the Government join him in blaming me who is in the right.' Clarke's support for the thirds proposal must have alarmed Nehua. When Nehua met in person with Chief Judge Fenton in his Auckland chambers on 21 December 1877, he told Fenton:

> that I accepted Mr Maning's decision in the Puhipuhi case. Mr Fenton said, 'Do you accept it?' I said 'Yes!' 'Then', said he, 'I will write to Maihi P. Kawiti and if he agrees, the whole thing will be settled.' I then saw Maihi P. Kawiti's lying letter about me in which he said that I was not willing to accept Mr Maning's decision but that he was. That is a lie. I say against him

[343] M. P. Kawiti to J. Sheehan, 12 December 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[344] M. P. Kawiti to Native Secretary, 1 January 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[345] M. P. Kawiti to H. T. Clarke, 1 January 1878; H. T. Clarke, marginalia to the same, 15 January 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

> that he is a robber of land, his proficiency in which art he is very proud of. I have seen it, and I have seen how he cajoles people and says 'Let me manage it, I will settle with the people', but when the money is to be handed over, he gives none to the people. Two blocks of land have been so dealt with by him …[346] I definitely accept Mr Maning's decision as shown by the line on the map of Puhipuhi.[347]

Both Kawiti and Nehua, therefore, claimed to be abiding by Maning's 1873 Native Land Court proposal and each accused the other of defying that proposal. However, the confusion around the alternative versions of Maning's proposal meant that Kawiti and Nehua, not unnaturally, each favoured the version which awarded them the largest share of land. Nehua's allegation above that 'when money is handed over' to Kawiti, 'he gives none to the people', appears to refer to the payment of advances by land purchase agents for lands in which Ngāti Hine held customary interests. This chapter will later describe the influence of these payments on the various Puhipuhi claimants.

Tawatawa, the third Puhipuhi claimant, eventually agreed with Kawiti's interpretation of the 1873 proposal, providing for an equal three-way division. Tawatawa alleged, in an April 1878 letter to Clarke that Nehua unjustly claimed a majority share of Puhipuhi. This is hardly surprising, since the thirds proposal would give Tawatawa a far greater share than the 14-6-5 proposal, which gave him just 20 per cent. Tawatawa maintained that:

> Maihi is in the right, for instance, what do you think is the cause of the difficulty in dealing with this land? It is the thievish action of Eru Nehua with respect of our lands, he did not tell Maihi that his portion – Taharoa – was being surveyed and he has not yet told us of our portion of Puhipuhi being surveyed, the first intimation we had of it was seeing the map. Let Eru's thieving cease with the surveying but let the division of the land be as Mr Maning made it.[348]

3.7.4 The response of the Resident Magistrate, 1878

In May 1878 Resident Magistrate E. M. Williams sent a package of correspondence in both English and Māori to the Native Secretary, evidently aiming to summarise and unravel the now tortuous dispute. Williams had been involved in discussions over Puhipuhi from as early as 1871 when he wrote to the Civil Commissioner, Auckland,

[346] These two blocks are likely to be Wairua (in which Kawiti was the sole Crown grantee) and Hukerenui (where he was among a group of grantees).
[347] E. Nehua to H. T. Clarke, 15 January 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[348] H. Tawatawa to H. T. Clarke, 22 April 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

to advise that at least one claimant to the land, Tane Takahi, was willing to sell his interest to the Crown.[349] During 1872 Williams was a trusted arbitrator of the gumfields dispute (see chapter 2). He was therefore well acquainted with most, if not all, of the key figures in the disputes over Puhipuhi. One of those figures, Maihi (Marsh) Paraone Kawiti, had even been christened with Williams' middle name.
Williams said that both Nehua and Kawiti had separately asked him to attend joint meetings 'with a view to settling the question at issue.' For that purpose Williams, together with Wiremu Katene, the former member of the House of Representative for Northern Maori, attended a meeting at Kawakawa on 28 March 1878, 'at which a large number of natives were present.'

Nehua and Kawiti steadfastly clung to their opposing interpretations of Maning's Puhipuhi subdivision. Williams therefore proposed that the government appoint a commission of inquiry to 'hear all evidence, examine all documents and decide upon the division of the property, finally submitting the same for confirmation by the Native Land Court.' Both Kawiti and Nehua had first to agree to be bound by the outcome of such an inquiry. Both parties, to their credit, accepted this process 'and the meeting terminated to the satisfaction of those present.'[350]

That satisfaction was short-lived. Two days later Williams received a telegram from Kawiti withdrawing his earlier agreement, and two weeks later Kawiti wrote that his relations with Nehua had again collapsed, as a result of letters sent by Nehua to government officials in Wellington (those letters are likely to include the September 1877 letter to Clarke quoted above).[351] The promising inquiry therefore progressed no further, and neither the Native Land Court nor the government acted upon the Williams proposal.[352] In June 1878 the Native Department Under-Secretary informed Williams that, 'The advice already given on the subject by the late Native Minister

[349] E. M. Williams, memo for Native Department, 1 August 1872, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[350] E. M. Williams to Native Secretary, 25 May 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[351] E. M. Williams to Native Secretary, 25 May 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[352] T. W. Lewis to J. Ballance, 5 June 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

[Dr D. Pollen] should be repeated to [Nehua and Kawiti], and the Government can add nothing further in the meantime.'[353]

E. M. Williams was a widely respected figure of great integrity, and his recommendation of a public enquiry to resolve the dispute over Puhipuhi's ownership was therefore very significant. Yet the Crown seemed to pay little attention to his advice, and apparently ignored his recommendation once Kawiti withdrew his agreement for it. One possible explanation for the Crown's reluctance to agree to the inquiry advocated by Williams was the risk of damaging political fallout. Three years earlier, in 1875, Sir George Grey had chaired the Tairua investigation which revealed the highly questionable actions of Crown purchase agents Brissenden and McDonnell. Those agents were later engaged in purchasing Māori lands in Te Raki, and had an out-of-court consultation with Maning in 1874, noted in the previous chapter. Grey and Sheehan are therefore likely to have been wary of further public exposure of these agents' activities.

Whatever the reason for the Crown's *laissez faire* approach to Williams' recommendation, it evidently did nothing to quell the longstanding grievance. In October 1878 Nehua made yet another plea, this time to the new Premier, Sir George Grey, his Native Minister John Sheehan 'and all the other members of the government', explaining that he and Kawiti:

> have now been eight years endeavouring to come to an arrangement but without success. I therefore write to you as perhaps you will be able to settle the situation. This is a very difficult question indeed. Let it be investigated in Auckland in order that it may be amicably arranged.[354]

The only apparent official response to this poignant letter was a minuted note that, 'A Board of Inquiry or arbitration is what these natives seem to wish for, or perhaps a rehearing by another Judge.'[355] This tepid response gives little indication that the government was willing to provide these now urgently sought interventions.

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[353] Native Secretary to E. M. Williams, 11 June 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[354] E. Nehua to Sir George Grey, 28 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[355] Marginalia to E. Nehua to Sir George Grey, 28 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

3.7.5 The response of the Member for Northern Maori, 1878

In October 1878, at much the same time that Eru Nehua wrote to Grey, Sheehan and the rest of the government to request their assistance in resolving his dispute with Kawiti, a local representative of both Māori and the government, the politician Wiremu Katene, made an almost identical request. Katene, who had a large farm at Te Ahuahu, Ohaeawai, had become Member for Northern Maori in 1871 and was appointed to the Executive Council (a forerunner of the Cabinet) the following year.[356] He lost the Northern Maori seat in 1875, but briefly regained it in 1887.[357]

Katene, who had accompanied Resident Magistrate Williams to Kawakawa earlier in 1878 to attempt to resolve the Puhipuhi dispute, sent a strongly worded letter to Civil Commissioner George Clarke junior (not to be confused with his father, the former Chief Protector of Aborigines, George Clarke senior, who died in 1875). Katene demanded to know why the government had taken no action since that meeting:

> Why do the Government act thus in causing Maori difficulties, why do they not deal with them promptly? ... a further difficulty has arisen with respect to that land not caused by Maihi but by Eru Nehua and his hapu. They say that Mr Williams and I are the cause of the delay. I answer the Government themselves are the cause of the delay … If the Government had carried out the propositions made by the Resident Magistrate [Williams], the matter would long ago have been arranged. Owing to its being delayed, the trouble increased. It appears to me that the Government have no wish to settle difficulties that arise among the Maoris themselves.[358]

The indignant Katene then outlined a new development in the dispute, apparently in the hope that it might finally spur the government to engage with the Puhipuhi claimants:

> The main cause of this trouble is that the friends of Eru Nehua are urging the sale of that land to the Europeans and Eru Nehua says that if the portion for him and his children had been divided off from the rest then this trouble would not have risen. Well then, will it not be possible to do so?
>
> I think that the portion occupied by Eru Nehua and which he is cultivating, fencing and about to build a wooden house upon, [should] be set apart, then there would not have been any

[356] 'Local and general news', *NZ Herald* 11 November 1895 p. 5
[357] G. Scholefield, *New Zealand Parliamentary Record, 1840–1949,* 3rd ed., (Wellington: Government Printer, 1950), p. 118
[358] Wiremu Katene to G. Clarke, 18 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

> trouble… [Nehua says] that if the Government do not speedily complete the arrangements respecting this land, that he would survey the portion now in his occupation and for himself alone and divide his people from the others, upon which probably evil might arise.[359]

This letter, unlike those from Nehua himself and others with contending interests in Puhipuhi, apparently provoked the government into action, but not for the sound reasons given by Katene. A new and galvanising factor had arisen in the troubled relationship between Puhipuhi's claimants and the Crown. Kawiti had earlier hinted that if he could not find satisfaction through the courts, he was prepared to sell his Puhipuhi interests to private buyers. Nehua was apparently considering doing the same, so long as he could withhold from sale an area for his own use. By late 1878 the prospect of such a private sale appeared suddenly imminent.

3.8 Conclusion

As noted earlier, in April 1873, a few months before the start of the first Puhipuhi hearing, Tane Takahi had written to McLean objecting to the selection of Maning as judge for that hearing since, among other grounds, 'the adjudication of the lands is not completed by him.'[360] That comment appears to refer to Maning's practice of adjourning and/or dismissing Native Land Court hearings without producing a decision in the form of a court order, if rival claimants were disputatious and the case proved very difficult to decide upon.[361]

Takahi's comment was prescient, since Maning did indeed fail to complete the adjudication of Puhipuhi at both the 1873 and 1875 hearings. The reasons for this repeated failure are uncertain, due in part to a lack of documentation, but the reasons Maning gave Fenton in his letters of 1877 and 1879, that the claimants themselves were so vehemently at odds that no durable order could be made, appear at least questionable. Although the claimants at the 1873 hearing undoubtedly vigorously disputed each other's claims, this was not unusual for title investigation hearings in this period, as Maning's correspondence with McLean concerning other such hearings makes clear.

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[359] Wiremu Katene to G. Clarke, 18 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[360] Tane Takahi to D. McLean, 30 April 1873, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[361] See examples of hearings adjourned by Maning in Armstrong and Subasic, 2007, #A12, p. 374

Yet Maning evidently found the evidence presented to him very complex, puzzling and inconclusive. He offered at least two of the claimants, Nehua and Kawiti, a series of proposals for subdividing the lands, indicating that those proposals were open to renegotiation by the claimants themselves. The claimants themselves, not unnaturally, favoured whichever of Maning's alternative proposals promised them the largest share in Puhipuhi, and it seems hardly surprising that this strategy did not produce agreement among them. Maning appears to have later misrepresented his actions to Fenton in order to absolve himself of any responsibility for the subsequent fierce hostility between Nehua and Kawiti.

This sequence of events clearly demonstrates that tribal rights to Puhipuhi were strongly and fiercely contested, especially between the two main claimants to the land – Nehua on behalf of Ngāti Hau and Kawiti on behalf of Ngāti Hine. Both men were energetic, charismatic leaders with impressive records of achievement. The differences between them were also apparent. Kawiti wore a full moko, was the son of another rangatira, and represented the traditional, as well as the transitional, culture of his people. Unlike Kawiti, Nehua was seen, especially by Pākehā, as a moderniser, open to new ideas and practices.

These two strong personalities were willing to entrust the Native Land Court with the responsibility of determining their interests in Puhipuhi (although the Crown offered no other process for obtaining legally recognised title to their lands). Given the recent history of contested rights to Puhipuhi, a Native Land Court hearing into those rights called for a thorough and judicious examination of the relative merits of each claimant, followed by a clear and considered judgment.

The ineffectual responses by Crown officials to the repeated requests from Māori claimants to complete a judgement on the Puhipuhi claim raise the question of whether the Court was in fact the useful dispute process it was claimed to be. With very serious disputes of this kind, the Court appeared to prefer to wait for the dispute to be settled before it would deliver a judgement – hardly an effective dispute resolution process.

The Puhipuhi dispute further suggests that the Court recognised that mediation involving chiefs themselves was likely to deliver a better outcome than the Court itself. That mediation was sometimes provided through native committees with officials as arbiters, but this seems never to have been seriously considered in the case of Puhipuhi. The Crown appeared to regard the case as too difficult, and feared that another inquiry would reveal how weak the Court process was was in this situation.

Member of the House of Representatives Katene, however, implied that the delays over Puhipuhi may have resulted from a lack of government motivation – that this case was not given sufficient priority to settle quickly. Katene then gives an explicit reason for the fundamental dispute between the claimants – that

> the friends of Eru Nehua are urging the sale of that land to the Europeans and Eru Nehua says that if the portion for him and his children had been divided off from the rest then this trouble would not have risen.[362]

According to Katene, the Puhipuhi dispute arose from Ngāti Hau's intention to sell all their Puhipuhi interests apart from the southern portion at Taharoa occupied by Nehua and his whānau. The prospect of that sale, Katene implies, drove other claimants to the lands to contest Nehua's claim at the two title investigation hearings. When those hearings failed to deliver a final decision, the dispute worsened, claimed Katene. He evidently blamed the government for its inaction over a land grievance which was not created by Crown actions, but exacerbated by them.

Other correspondence quoted in this chapter, by Maning and other Crown officials, indicates that they believed that the Native Land Court could not be effective until the chiefs themselves reached some accommodation over their competing claims, and that if the Court (or, as R.M. Williams and others suggested, a commission of inquiry) tried to intervene further while they were in conflict, this would only make matters worse.

By 1878, according to Katene's letter above, although the dispute raged as fiercely as ever, Nehua remained committed to selling Puhipuhi if he could retain Taharoa. The previous year Kawiti had also indicated, in his letter to H.T. Clarke above, his

[362] Wiremu Katene to G. Clarke, 18 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

intention of selling his Puhipuhi interests to Europeans. These assertions of an intent to sell the lands may have been made partly in the hope of pressuring the Crown to intervene, but they are also likely to have been sincere. The contesting owners knew that the timber-covered Puhipuhi lands were worth a good deal of money to both private purchasers and the Crown, and they prepared to part with them.

For several years after 1875, however, the Crown prevented, or at least delayed, such a sale by declining a further title investigation hearing or other form of title determination, primarily on the grounds that the chiefs remained uncooperative about agreeing to the result of any such determination. A succession of local officials made periodic and evidently well-intended efforts to broker a resolution, but no further Native Land Court hearing was scheduled.

The balance of evidence suggests that the ultimate reason for the Crown's delay was its own interest in acquiring the Puhipuhi lands, but only at the time, and on terms, that suited it. So many other Crown purchases were taking place in the mid-1870s that surveyors and the Native Land Court itself were overrun. While local officials urged immediate action, at a national level the Crown seems content to play a waiting game, and to repeatedly stall the chiefs, while blaming them for doing so. At the same time, the Crown's land purchase agents remained ready to secure an interest in the Puhipuhi lands, to forestall a sale to private buyers.

The following chapter will examine the actions of the main claimants to Puhipuhi in regard to sales of their interests in the lands over the six years following the 1875 hearing. In that period, although the ownership of Puhipuhi remained fiercely disputed, the Crown took its first steps towards its eventual purchase of the lands.

Chapter 4 – Advance payments by the Crown, 1875 – 1881

4.1 Introduction

Following the inconclusive 1875 Puhipuhi Native Land Court hearing, the main claimants to the land continued to seek a title determination through the court. They lodged four hearing applications between 1876 and 1880, but no hearing was granted. The Puhipuhi claimants also sought other means to resolve their differences and establish their rights to the land. They held meetings with each other, sometimes mediated by local Crown officials. They wrote repeatedly to national Crown officials such as successive Native Ministers.

At the same time, both private and Crown land purchase agents took steps to acquire the Puhipuhi lands, attracted by its valuable kauri forest. In 1878 Crown agents made the first of several advance payments for the land, to individual claimants they had selected. Those payments enabled the Crown to issue a proclamation giving it a pre-emptive right of purchase and making it illegal for private buyers to compete for the same lands. This chapter will examine the issues raised by the Crown's practice of making advance payments on land it intended to purchase.

4.2 Background – Crown and private purchasing in the Te Raki district prior to 1880

The prolonged dispute over customary rights to the Puhipuhi lands took place against a background of large-scale Crown purchases. From 1870 the Crown entered the land market in the north with great determination and vigour, often in direct competition with private buyers. Crown purchases had two main objectives:

- to provide the Crown with funds for large public works projects by on-selling the land to private buyers at a profit, and;
- to make land available for settlement, especially by recent European immigrants.

Massive state investment in rail, roading and other public works created an incentive to acquire large areas of Māori land to help pay for those investments, and the public works themselves simultaneously promised to make even remote and rugged lands

more accessible, and therefore more valuable. The result was a 'frenetic scramble' by Crown land purchase agents to acquire Māori land in the north.[363]

The Crown required secure title for land to be purchased (although, as we will see, in the 1870s advances could be paid to the owners prior to title determination.) Crown land purchase officials explicitly acknowledged this connection between the work of the Court and land purchasing. For example, during an 1891 commission of inquiry into Native land laws, Native Department under-secretary T. W. Lewis, who also held that post at the time of the final (1883) Puhipuhi purchase, acknowledged that:

> The whole object of appointing a Court for the ascertainment of Native title was to enable alienation for settlement. Unless this object is obtained the Court serves no good purpose, and the Native would be better off without it … fairer Native occupation would be had under the Maori's own customs and usages without any intervention from outside.[364]

The rate of Crown land purchasing in the region greatly accelerated from early 1874. Among the leading Northland land purchase agents in this period were Henry Tacy Kemp, Thomas McDonnell and Edward Torrens Brissenden.[365] Kemp was the New Zealand-born son of the Kerikeri-based missionary, spoke Māori, and had worked as a civil servant since 1840. From 1851 he worked in the north and was responsible for most of the pre-1865 Crown purchases in the Bay of Islands. He continued to buy land on behalf of the government, and to draw a salary, for some months after his position of District Commissioner was abolished in January 1865.[366] The following year his superior, W. Rolleston, noted the 'very unsatisfactory manner' in which some of his purchases had been conducted. 'In one case the only witness to the signature of the Natives selling the land is yourself who was the buyer.'[367] Kemp then held several other government posts simultaneously, including that of Northern district land purchase officer, in which role he was instrumental in negotiating the purchase of Puhipuhi.

[363] Armstrong and Subasic, #A12, p. 658
[364] Minutes of evidence, Native Land Laws Commission, 12 May 1891, *AJHR* 1891 Sess. II, G-1, p. 145
[365] Armstrong and Subasic, #A12, p. 653
[366] O'Malley, 2006, #A6, p. 368
[367] William Rolleston to H. T. Kemp, 8 March 1866, MA 4/8, ANZ Wgtn quoted in O'Malley, 2006, #A6, p. 369

Thomas McDonnell junior. was the son of the British resident at Hokianga during the 1830s, and there learned to speak Māori. He served for several years in the New Zealand Wars before working as a land purchase agent in the early 1870s.[368]

The US-born Brissenden took over from McDonnell in 1874 and became 'the most active and effective Crown land purchase agent.' He was described by McDonnell as 'a scoundrel and a Yankee sharper.'[369] While McDonnell received an annual salary of £300, Brissenden was paid a commission from the Crown of four pence an acre purchased, a system which encouraged him to acquire as much land as possible. He was also able to buy land for himself and other private buyers, allegedly telling McDonnell 'I pick up a good many bits of sugar.'[370] Brissenden boasted that he could convince Māori landowners to part with their land at low prices, sometimes half of what private buyers would have paid.[371] He negotiated to acquire almost 350,000 acres of Māori land between 1874 and 1876, when he was dismissed for unscrupulous behaviour such as paying advances to the wrong people.[372]

From the mid-1870s Brissenden's assistant, the Māori-speaking Charles Nelson, became prominent among northern land purchase agents, and from 1878 he took over all Crown purchase negotiations in the North.[373] Nelson was born in Sweden, later coming to Northland and marrying a Māori woman. He acted as interpreter for Brissenden during the 1875 purchase of lands at Kaipara and Pakiri.[374]

In 1875 the Tairua investigation was held into allegations that, among other charges, Brissenden and Nelson had native reserves, often containing valuable forests, 'excised' from parcels of land for Crown purchase, in order to sell them to private

[368] James Belich, 'McDonnell, Thomas', from the *Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand*, updated 30-Oct-2012
URL: http://www.TeAra.govt.nz/en/biographies/1m33/mcdonnell-thomas
[369] Report of the Tairua Investigation Committee, *AJHR* 1875, I-1, p. 13
[370] Report of the Tairua Investigation Committee, *AJHR* 1875, I-1, p. 14
[371] Armstrong and Subasic, #A12, p. 48
[372] Lands purchased and leased from natives in North Island, *AJHR* 1878, G-4, pp. 2-4; Armstrong and Subasic, #A12, p. 655
[373] Lands purchased and leased from natives in North Island, *AJHR* 1879 Sess. II, C-4, pp.4, 10; *AJHR* 1880, C-3, pp. 3, 11 and *AJHR* 1881, C-6, pp. 3-4, 12
[374] *NZ Herald*, 23 July 1875, supplement p. 1

buyers.[375] Although the specific allegations were not proven, the *NZ Herald* reported that

> the Government felt compelled to admit that some change was necessary in the system of land purchasing that prevailed. Things had, undoubtedly, got into an unhealthy state. The Government admitted that in several cases the agents had not been very scrupulous, and that what had been done could not be entirely defended.[376]

The Crown land purchase agents reported ultimately to Native Minister Donald McLean (succeeded, after his death in January 1877, by Dr. Daniel Pollen, and then by John Sheehan). More directly, the agents reported from 1877 to the Native Land Purchase Under-Secretary R. Gill, who eventually intervened personally to acquire Puhipuhi. Gill headed the Native Land Purchase Office within the Native Department until 1879, when that office became a government department in its own right. He remained in charge until 1885 when the office was returned to the Native Department (by which time the Crown had completed the Puhipuhi purchase).

Between 1872 and 1876 Crown purchase agents claimed to have acquired over 400,000 acres in Northland. They made advance payments on a further 57,000 acres.[377] The pace of those land purchases was so frenetic that, according to Armstrong and Subasic, 'the Native Land Court and the Survey Department could hardly keep up.'[378] In this period, much of that purchasing was concentrated on Northland's west coast, north and south of Hokianga, where logging and timber-milling was especially active.

Kauri forest land was especially sought after by the Crown and its purchase agents. McLean said in 1875 that,

> In purchasing timber in the North, I was anxious that all the good kauri forests of any value that could be secured should be secured … With regard to forests, I was anxious that the Government should get them, rather than that they should pass into the hands of speculators.[379]

[375] Report of the Tairua Investigation Committee, *AJHR* 1875, I-1, p. 39
[376] *NZ Herald*, 6 November 1875, p. 2
[377] Statements relative to land purchases, *AJHR* 1876, G-10, p. 3
[378] Armstrong and Subasic, #A12, p. 675
[379] D. McLean in Report of the Tairua Investigation Committee, *AJHR* 1875, I-1, p. 40

By 1880 the total area of land purchased by the Crown in the north amounted to more than half a million acres.[380] At that time just over 200,000 acres remained in Māori ownership in the Bay of Islands, including Puhipuhi, which Taiwhanga had estimated at 25,000 acres in extent.[381]

4.3 The practice of making advance payments

In 1875 Charles Nelson admitted that his main role was to negotiate with Māori landowners and persuade them to accept advance payments which would later oblige them to sell their lands to the government. This function, he wrote, 'might have been performed by any country shopkeeper of mediocre business tact, provided that he could speak a little Maori and had the "sugar" [funds] wherewith to stimulate the palate of our dusky indigenes [Māori].'[382]

Advance payments made on lands which had not yet passed though the Native Land Court entailed a risk to the buyer that the recipients of those payments might later be left off the titles to them.[383] Those recipients would then be unable to offer the lands for sale in return for their advances. Section 42 of the Immigration and Public Works Act Amendment 1871, which gave the Governor the power to enter into agreements for the 'acquisition' of Māori lands 'previous to the land passing through the Native Land Court', authorised this risky practice.[384]

The officers purchasing on behalf of the Crown faced the further risk that, after accepting advance payments, the Māori claimants to the land might then choose to sell it instead to private buyers offering a better price. For Māori the payment of money to some of those with customary interests but not others could engender or exacerbate tensions between individuals and hapū or put pressure on individuals who were resisting taking money for their interests. In the case of Puhipuhi, these risks were heightened by the disagreements that had arisen between the three parties participating in the 1873 and 1875 title investigation hearings in the court.

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[380] Maurice Alemann, 'The Impact of Legislation on Maori Lands in Tai Tokerau', PhD thesis, University of Auckland, 1998, Appendix V, Crown purchases 1865-1900, pp. 283-288
[381] Donald Loveridge, 'The Development of Crown policy on the Purchase of Maori Lands, 1865 – 1910', Crown Law Office, 2004, Wai 1200, #A77, Appendix. A, pp. 211-227
[382] *NZ Herald*, 23 July 1875, supplement p. 1
[383] Section 75, Native Lands Act 1865
[384] Section 42, Immigration and Public Works Act Amendment 1871

The risk posed to the Crown by private sellers was removed from early 1878 by the passage of the Government Native Land Purchases Act 1877:

> Where any money has been paid by or on behalf of Her Majesty the Queen for the purchase or acquisition of any Native lands … or where negotiations have been entered into for any such purchase or acquisition, whether the same lands have or have not passed through the Native Land Court … after the publication of a notification respecting such lands … it shall not be lawful for any other person to purchase or acquire from the Native owners any right, title, estate or interest in any such land or any part thereof, or in any manner to contract for any such purchase or acquisition.[385]

Advance payments were unregulated and erratic, but they remained legal for both Crown and private buyers until the passage of the Native Land Purchases Act 1892.[386] In 1874, however, Native Secretary H. T. Clarke warned government purchase agents that 'existing transactions were to be completed before new negotiations were entered into', usually in the form of advance payments. Clarke's instruction appears to have been neither heeded nor enforced.[387] Certainly, Brissenden and McDonnell continued to identify the *de facto* owners of lands they planned to acquire by offering them advance payments.

The amount of the advance payments often bore little relation to the market value of the land, or the total price eventually paid for it. They also sometimes bore little relation to any intention to sell. Agents could make payments to Māori for a variety of reasons, or provide credit at, for example, a general store, and then claim it was an advance.

Since no legal title to the land had been established, advances were made to influential individuals identified by the Crown purchase agents themselves. Those individuals were expected to distribute the money to those with customary interests in the land, but this was left to their discretion. In any case, the individuals who received

[385] Section 2, Government Native Land Purchase Act 1877
[386] Commentary on the Government Native Land Purchase Act 1877 in Bassett et al, *The Maori Land Legislation Manual,* CFRT, 1994, p 89
[387] Armstrong and Subasic, #A12, p. 658

advances did not always represent all those who claimed rights to the land. The payment of the remaining purchase price was frequently disputed and delayed.[388]

For Māori there was a risk that the fact that agents had paid advances to particular individuals might influence the court to award title in their favour. Armstrong and Subasic noted evidence of this in the mid-1870s in the Hokianga district, where the land purchase agent Preece (who had taken over from Brissenden) reported that of the 67,000 acres at Hokianga he had finally acquired for the Crown, all of which had subsequently passed through the Native Land Court presided over by Judge Munro, there was only one instance of the court declining to award title to a chief who had received an advanced payment. They concluded that although this might have been down to luck, or the 'extraordinary' skill of the purchase agents, that was fairly unlikely given 'the speed of the transactions, the very large areas involved, and the complex range of overlapping Maori customary rights and interests.'[389] Whether or not this was also the case with Puhipuhi is discussed in chapter 5.

Advance payments did not give the intending buyers legal ownership of the land, and if the sale subsequently fell through, the buyers were liable to lose all that they had paid. This appeared to happen very seldom, however, and instead the payment of advances appeared to commit the landowners to a subsequent sale even if they later wished to withdraw their lands from sale, or to renegotiate a better price. This was particularly the case after 1877. Under the Government Native Land Purchases Act 1877, a notification in the *New Zealand Gazette* that money had been paid to buy Māori land, 'or that negotiations have been entered into in respect thereof' was sufficient to prevent Māori from alienating their customary interests in the land to private buyers. This included leasing, mortgaging or otherwise obtaining royalties from the resources on their land.[390] In effect, advance payments or the claim that advances had been paid gave the Crown a pre-emptive monopoly right of purchase over the private purchasers with whom they were in competition. By giving itself such an advantage, the Crown then had an obligation to act scrupulously fairly and reasonably to the landowners.

[388] Armstrong and Subasic, #A12, pp. 678-679
[389] Armstrong and Subasic, #A12, p 702-703
[390] Native Office circular, 31 August 1878, Armstrong and Subasic supporting documents, #A12(a), vol. 2, No. 1408; Government Native Land Purchases Act 1877

The partitions of Opuawhango, adjacent to Puhipuhi, were gazetted, and thus restricted from private sale, under the new Act, on 1 August 1878.[391] A few months later, on 19 December 1878, a similar notice was published covering the whole 25,000 acres of Puhipuhi.[392] The effect of this proclamation is discussed further below.

Having accepted advances, Māori were often unable to take advantage of competing and better offers for their land from private purchasers willing to pay the full price outright. In August 1874 Brissenden, who had been buying Northland forest land for the government, advised McLean that the local Māori:

> complain at the great delay that occurs on the part of the Government in completing transactions for lands that their agents have negotiated with them for. They think the small deposit paid by Government agents is a trick to tie up their lands.[393]

On occasion, Brissenden claimed to his superiors that he sometimes outmaneuvered private purchase agents in order to facilitate Crown purchases of native lands. In 1875 he said that he, 'had a peculiar game to play in Auckland, where I was surrounded with land purchase agents and land speculators. I had a very difficult task to perform in breaking through these different rings. Generally, I have endeavoured to put the Auckland people off the scent.'[394]

Despite the hope of being able to engage with private purchases, stepping away from ongoing negotiations with the Crown could be difficult for those who had accepted advances in the hope of being able to use the purchase money to pay debts (an example in the case of Puhipuhi is discussed below). The fact that advances had been paid (or claimed to be paid) and a proclamation published could be judged by Crown officials as reasons to consider that the acceptance of an advance was binding. This was a significant issue with regard to Puhipuhi. Kawiti's unsuccessful attempts to return the payment made to him for his interests in Puhipuhi and withdraw from further negotiations with the Crown are discussed below.

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[391] *NZ Gazette,* No. 75, 1 August 1878, p. 1089. The purchase of Opuawhango was not, however, formally completed until 1878 owing to the destruction of the certificates of title in the 1872 Auckland Post Office fire.
[392] *NZ Gazette*, 19 December 1878, issue 128, p. 1812
[393] E. T. Brissenden to D. McLean, 3 August 1874, *AJHR* 1875, G-7, encl. No. 53, p. 16
[394] E. T. Brissenden in Report of the Tairua Investigation Committee, *AJHR* 1875, I-1, p. 19

4.4 Reasons for Crown interest in purchasing Puhipuhi

Up to 1878, the Crown's primary interest in acquiring Puhipuhi appears to have been to prevent private buyers from doing so, since private purchase would limit the massive programme of Crown land-buying in the north. From about October 1878, however, the government had a more pressing intention to acquire ownership of Puhipuhi – its large and valuable reserves of kauri timber.

By the 1870s the more accessible forests nearer to Auckland had largely been worked out, and timber millers were beginning to look further north. Furthermore, in addition to a local market for sawn timber, primarily for building property in Auckland, an export trade in kauri timber arose in the 1870s, and this soon eclipsed the local market. The first large steam-driven timber mill in Whangarei opened in 1874, and the first on the Hokianga Harbour in 1879. By 1886 the timber industry was regarded as the greatest manufacturing industry in New Zealand, and was certainly the biggest industry in the Auckland province.[395] The export market for kauri gum also remained strong, and this offered a further revenue stream from kauri forests, one which was particularly attractive to new settlers in the area since it supplemented the income they could derive from farming activities.

In the ten years to 1887, the kauri-based timber export industry was rapidly expanding and highly profitable, with Australia by far the largest market. In the late 1880s the industry collapsed just as suddenly, due to its inability to compete with a glut of timber from the Baltic and the Pacific coast of North America. In 1878, however, as the Crown's land agents manoeuvered to acquire a pre-emptive interest in Puhipuhi, the timber industry was still booming, and agents acting for a number of Auckland's wealthiest investors were eager to buy rights to Puhipuhi's magnificent kauri forest.[396] At least one overseas buyer was also interested in acquiring this property. The Whangarei newspaper proprietor G. Alderton later recalled that Joe Bennett, the

[395] R. C. J. Stone, *Makers of Fortune – A Colonial Business Community and its Fall*, (Auckland: Auckland University Press/Oxford University Press, 1973), p. 68
[396] Dignan & Armstrong to Clarke, 17 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

owner of the Kamo colliery, was fronting a bid for Puhipuhi on behalf of 'a Sydney capitalist.'[397]

Until mid-1878 neither Crown agents nor agents working for city speculators appeared to have any clear idea of the extent and value of Puhipuhi's timber resources. Puhipuhi's great stands of kauri were known to prospective buyers mainly by reputation, and certainly not well enough to value them accurately. Nevertheless, as the discussion below indicates, even those vague accounts are likely to have indicated the value of the Puhipuhi lands and timber. The value of the timber was certainly a factor that encouraged the Crown to acquire Puhipuhi and, as chapters 7 and 8 will show, this enabled the Crown to regulate and benefit from timber and kauri gum extraction, and to then sell the cleared land to settlers.

4.5 The appearance of private land-buyers

In October 1878, the same month in which, as described in the previous chapter, Wiremu Katene sent his strongly worded letter to Native Secretary Clarke demanding official intervention over the Puhipuhi dispute, the Bay of Islands Civil Commissioner H. T. Kemp telegraphed the Native Minister to advance further reasons why he believed Puhipuhi should be acquired by the government. He pointed out that it not only contained valuable resources of kauri and other timber but was adjacent to Opuawhango, which the government already owned. This presumably offered opportunities for economies of scale when both Puhipuhi and Opuawhango were later developed for commercial use. Kemp informed the Native Minister that there was:

> Some excitement in town re the purchase of the Puhipuhi block. Agents are at work on all sides … It is chiefly bush with some good accessible kauri and joins other contiguous Government block [presumably Opuawhango]. The Waiotu River is one boundary, the coast [this was incorrect – Puhipuhi was landlocked] and Ruapekapeka the other. The Govt must I think secure it against all comers. On May 12 1876 the sum of two hundred pounds was advanced by this office, Mr Preece, to relieve Marsh Brown [Maihi Paraone Kawiti] in an action by [storekeeper and gum-buyer] C. J. Hutchinson connected with a gumfield [probably at Aukumeroa, southwest of Motatau] which was to be repaid out of first land sale. Could not

[397] George Alderton, *The Resources of New Zealand Part 1 - North Auckland District,* (Whangarei: Alderton and Wyatt, 1897), p. 24

> this be taken as a lien or allowance and made applicable in this case and thus prevent its falling into others hands[?] A good deal of useful timber on it besides kauri.[398]

In this telegram, Kemp was suggesting that although the government's 1876 payment of £200 to Kawiti had been to help the influential chief out of a temporary financial difficulty entirely unconnected with Puhipuhi, it could be secured against a future sale of Kawiti's Puhipuhi interests. Kemp therefore proposed that it could be regarded as an advance payment under the newly enacted Government Native Land Purchases Act 1877. This would prevent private land purchasers from acquiring Puhipuhi.

This is an example of the various and imaginative ways in which payments to those with interests in Māori land, or credit extended to them, could be regarded, by the prospective purchaser at least, as advance payments on those lands.

Native Land Purchase Under-Secretary R. Gill minuted Kemp's telegram to point out that half of the £200 advance made to Kawiti in 1876 had already been repaid. The balance had formed part of the purchase price of Aukumeroa, acquired by the Crown in June 1877.[399] He advised against treating this sum as a lien against Kawiti's interest in Puhipuhi (an interest which, in any case, had yet to be definitively quantified in law). Nevertheless, Kemp's telegram set in train a sequence of events that resulted in a Puhipuhi pre-emption proclamation on 19 December 1878, thus imposing a Crown monopoly in purchasing by excluding the possibility of its private sale.[400]

Two days after Kemp's urgent telegram urging action to arrange a purchase by the Crown, Nehua wrote yet again to Grey and Sheehan, reiterating that he and Kawiti had, over the past eight years, failed to resolve their differences over Puhipuhi. He again asked the government to intervene in the conflict.[401] The government could therefore promote its acquisition of Puhipuhi as a public-spirited exercise to resolve the longstanding dispute between rival Māori claimants.

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[398] H. T. Kemp to Native Minister, 26 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[399] R. Gill marginalia, 29 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[400] *NZ Gazette,* 19 December 1878, No. 128, p. 1812
[401] E. Nehua to Governor Grey and others, 28 October 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

It is notable that during the seven years from 1871, the government had largely ignored the bitter disputes between rival claimants to Puhipuhi, and the resulting threat to public peace, and declined to intervene even when strongly urged to do so by the claimants themselves. Yet as soon as the Crown acquired an immediate interest in purchasing the Puhipuhi lands, its officials decided that the matter was more urgent and the quarrel had to be addressed.

Gill added a note to Nehua's letter; 'I think that if both Eru Nehua and Maihi Kawiti agree to sell, then the Government should purchase. It will put a stop to a nasty quarrel which, if allowed to go on, might lead to a breach of the peace.'[402] Commissioner George Clarke added that Crown purchase agent Charles Nelson, 'has been instructed to effect an arrangement with Eru Nehua and Kawiti for the purchase of their shares if possible.'[403] The phrase 'effect an arrangement' in this context may simply have meant to agree to some kind of purchase deal. However, once this arrangement began, then the Crown would assume it had a monopoly to purchase.

Gill instructed Nelson to purchase from Nehua and Kawiti alone if necessary. 'The other third of the block [i.e. what eventually became 2,000 acres for Ngāti Wai] can be dealt with separately, or a subdivision asked for. By this a serious grievance may be ended.'[404] Gill forwarded a copy of these very brief and non-specific instructions to Native Minister John Sheehan, who approved them.[405] This comment further suggests that the Crown saw its purchase of Puhipuhi as effectively ending the longstanding dispute over its customary rights.

The practice of purchasing Crown land in which interests were still the subject of dispute among rival claimants was an issue which had concerned the former Native Minister, Donald McLean, for some years. In 1871 he had issued a circular on this subject to Crown land purchase agents, and the same circular was reissued in 1873

[402] Native Secretary to Secretary, Native Land Purchase Department, 6 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[403] G. Clarke, marginalia of 7 November 1878 on Native Secretary to Secretary, Native Land Purchase Department, 6 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[404] R. Gill to C. Nelson, undated but filed with other documents dated 7 November 1878 and 8 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[405] Native Minister J. Sheehan to R. Gill, 8 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

and 1875, suggesting that McLean's concerns remained unsettled.[406] McLean's directive referred to land which the Crown wished to purchase, where there was a chance of incurring 'future trouble or disagreement' among the Native owners. Puhipuhi undoubtedly fell within this category. In such cases, said McLean, land purchase agents had to proceed with caution, since 'the Government do not desire to acquire any land from the Natives, however valuable it may be, if the acquisition is attended with any risk of disturbance or revival of feuds among themselves.' The agents were directed to report fully on the block and its 'capabilities', provide a rough sketch, describe any proposed reserves, and update the Minister with any developments.[407]

Land purchase agent Charles Nelson did not follow all of McLean's instructions in the case of the Puhipuhi purchase, but even if he had done so, as Armstrong and Subasic, point out, there was an inherent contradiction in the expectation that a Crown purchase of the lands would resolve a longstanding inter-iwi/hapū disagreement. The Native Ministry was under intense pressure to acquire large areas of Māori land and that pressure was also exerted on the land purchase agents on the ground. They were not willing to spend the necessary time negotiating a purchase, or take the scrupulous steps listed by McLean in his memorandum, or resist making advance payments on land where the titles were still in dispute. In fact, men such as Nelson may have lacked all of the qualities and abilities required to carry out delicate and complex investigations into important questions of traditional ownership and customary rights. Māori were greatly disadvantaged by the pressure on land purchase agents to acquire their lands on behalf of the Crown both rapidly and cheaply.[408]

In a letter to his superior, R. Gill dated 27 March 1880, Nelson claimed that around 1876 private buyers were also making strenuous efforts to acquire Puhipuhi's kauri forest, 'valued by Mr Holdership of Auckland … at £30,000', a figure equating to more than one pound per acre for the timber alone.[409] (No information has been found respecting the background or profession of Mr Holdership.) Nelson said that the

[406] Armstrong and Subasic, #A12 p. 679
[407] D. McLean memorandum [nd] 1875, *AJHR* G7 1875, encl. in No. 22, p. 7
[408] Armstrong and Subasic, #A12 p. 679
[409] C. Nelson to R. Gill, 27 March 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

private agents had offered him unspecified inducements to step aside and allow them to buy Puhipuhi privately:

> At this stage of affairs, overtures were made to me [by the agents of private buyers] which I dared not accept; but nevertheless I did promise not to interfere with their negotiations. A few days afterwards I was instructed to purchase the block in order to avert a serious quarrel. Of course I had to obey although placed in a most unenviable position. On the one hand wealthy, enterprising men might forever ostracise me, as guilty of the grossest perfidy, and on the other hand was the probability of being under the ban of suspicion as one personally interested in the speculative scramble.[410]

This obliged him to break his undertaking to the agents, who had already 'expended a good deal of money' to acquire the Puhipuhi lands.[411] A press report later claimed that at the time Nelson's advances thwarted their efforts, private purchase 'was almost a settled fact.'[412]

Although clearly anxious to portray himself to Gill as ethically scrupulous by choosing to continue acting as the Crown's representative for the land purchase, Nelson was also picking the most likely winner in the race to purchase, to ensure he was paid his commission. Once the government decided it wished to purchase, although there was still no settled title to Puhipuhi, the Crown had a clear advantage over private buyers since it could proclaim the land.

Auckland lawyers Dignan and Armstrong then wrote to Native Secretary HT Clarke regarding the proposed completion of the long-delayed purchase of the Opuawhango block, in which they were evidently involved. At the same time they passed on the information that Charles Nelson believed he could 'acquire at from 6 to 7 shillings [per acre] the Puhipuhi block … less three thousand acres now occupied by Eru Nehua and his people, numbering fifty or sixty, and without which reserve he will not sell.'[413] This is a reference to Nehua's determination to exclude the lands at the southern end of Puhipuhi, on which he and his whānau were living, from sale to the Crown. Those lands later became the 5,000 acres retained by Ngāti Hau.

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[410] C. Nelson to R. Gill, 27 March 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[411] C. Nelson to R. Gill, 27 March 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[412] *NZ Herald,* 2 June 1883, p. 5
[413] Dignan & Armstrong to H.T. Clarke, 17 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn. The law practice of Dignan and Armstrong had been founded by John Sheehan, who left the firm in 1873-74 and later became Native Minister.

Dignan and Armstrong asked Clarke for £1650 to complete the Opuawhango purchase, and a further £2000 to effect the purchase of Puhipuhi, both sums to be provided to the credit of Charles Nelson 'forthwith.' They emphasised that any delay in making the funds available would jeopardise the purchase of Puhipuhi by the Crown. 'Puhipuhi is not proclaimed and the natives are in town [i.e. in Auckland] and are offered 9/- [per acre] by private speculators, some of whom are the sons of the Hon. Mr Fisher, Bennett and Walker of Auckland.' The last of these names may refer to E. B. Walker, one of several Auckland speculators who acquired confiscated Waikato land in the late 1860s.[414] The lawyers stressed that Puhipuhi contained 'an immense [amount] of kauri and any delay in providing funds will destroy all hopes of getting it owing to the competition.'[415]

It is not clear to the writer, from the information available, just what role the firm of Dignan and Armstrong had in facilitating the Crown purchase of lands by Charles Nelson. It is possible that their Auckland offices were used by Nelson to send messages to his superiors in Wellington. One of the partners, H. Armstrong, later witnessed several of the documents recording advance payments for Puhipuhi.[416] The firm had been founded by John Sheehan, who left it in 1873 and then became Native Minister. By 1878 relations between the partners and the Native Minister evidently remained close.

On the same day this urgent advice was sent, Native Minister John Sheehan approved the instruction to purchase Puhipuhi. He noted that the 'price sounds rather high … but it is an acquisition considered to be of great importance in connection with other blocks bought by us which it adjoins.'[417] Sheehan ensured that Nelson received the requested sum of £3,650 without delay, via an 'urgent acquisition to audit' dated 28 November 1878.[418]

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[414] Stone, *Makers of Fortune …*, 1973, p. 131
[415] Dignan & Armstrong to Clarke, 17 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[416] See for example, Armstrong's signature as witness to the letter signed by Tawatawa and Nehua, 25 November 1878, and the accompanying Treasury vouchers, 45109 and 52540, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[417] J. Sheehan to H. T. Clarke, 17 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[418] Marginalia to above, 18 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

4.6 Proclamation prohibiting private purchasing, and advances to Nehua and Ngāti Wai, late 1878

Two days after Nelson was instructed to purchase Puhipuhi, on 19 November 1878, the Crown proclaimed its pre-emptive rights to the entire 25,000 acres of Puhipuhi. This proclamation appeared in the *New Zealand Gazette* of 19 December 1878, under the heading 'Notification of the Payment of Money on and Entry into Negotiations for the Purchase of Native Lands in the North Island.'[419] This notice, required under the Government Native Land Purchases Act 1877, meant that private buyers could no longer negotiate with the owners of Puhipuhi to purchase the land – the government then had a monopoly on purchasing.

The following week, after Dignan and Anderson had sent their urgent advice to release the funds for purchase, Nelson made an advance payment to Hoterene Tawatawa of £300 for Ngāti Wai's interests in Puhipuhi. In endorsing the payment voucher, Nelson attested that 'The person to whom this payment has been made has signed an agreement to convey the land to the Crown.' The voucher recorded Puhipuhi's total acreage as 25,000, and noted that the payment was made for a rate of 6/- per acre.[420] The exact acreage of Ngāti Wai's share of the total lands would presumably depend on a later Native Land Court finding regarding the certificate of title.

On the same day this advance was made, Nelson paid Eru Nehua £312 10/- as reimbursement for Ngāti Hau's 1871/72 survey of the Puhipuhi boundary. The payment voucher again recorded a price per acre of 6/-, but noted that 'This sum was paid to Eru Nehua over and above the price per acre to recoup his expense for survey of the block.' Again, the voucher confirmed that 'The person to whom this payment has been made has signed an agreement to convey the land to the Crown.'[421]

[419] *NZ Gazette*, 19 December 1878, issue 128, p. 1812
[420] Treasury voucher 45109 to H. Tawatawa, 25 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[421] Treasury voucher 52540 to E. Nehua, 25 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

That agreement was made in the form of a letter, written in Māori, signed by both Tawatawa and Nehua, and dated on the same day as the payments, 25 November 1878. It states:

> This is a letter of explanation regarding the sale of our land called Puhipuhi to the Government, not the portion set aside for the Ngatihau or that for Eru Nehua… The price agreed upon for the portion for sale to the Government was six shillings an acre, the Government to pay Eru Nehua three hundred and twelve pounds, ten shillings, the cost of the survey of this land Puhipuhi.[422]

Five years later, during the 1883 Native Land Court hearing into Puhipuhi, Eru Nehua claimed that in 1878, Nelson first proposed to Tawatawa that he buy Ngāti Wai's interest in Puhipuhi, and Tawatawa agreed. According to Nehua:

> I said I would have nothing to do with it. Hoterene rec. £300 on account. Nelson said there would be no trouble as he was a great friend of the N. [ie. Native] Minister Mr Sheehan. I said to Nelson, "Well, as the Govt have got a lien on this land now, you had better return the money I paid for the survey." It was done.[423]

In his 1883 evidence, therefore, Nehua claimed that in 1878 he had asked to be reimbursed for the survey only after Tawatawa had agreed to sell Ngāti Wai's interests in Puhipuhi. Nehua clearly implied that the advance payment to Tawatawa would guarantee a later purchase of the entire Puhipuhi lands by the Crown. As a result, Nehua claimed, he felt obliged to recover his expenses for surveying the land, whether or not he wished to sell his and Ngāti Hau's interests.

Nehua's reference to Nelson being 'a great friend of Mr Sheehan' is not mentioned in any other Native Land Court evidence regarding Puhipuhi. However, this claim was not apparently disputed in court at the time it was made. If true, it presumably represented an attempt by Nelson to reassure Tawatawa that the Crown purchase of Puhipuhi would be completed on the terms offered by Nelson, and the balance of the purchase price eventually paid. The speed with which the advance payment and survey reimbursement were paid suggests that they were aimed at pre-empting sales by Nehua and Tawatawa to private interests.

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[422] Statement by H. Tawatawa and E. Nehua, (no recipient, but witnessed by Mitai Pene Taui and H. Armstrong), 25 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[423] Evidence of E. Nehua, 24 May 1883, Mair Minute Book No. 1, p. 265

4.7 Advance to Kawiti, 1878 – 1879

Before the Crown could complete the purchase of all of Puhipuhi, it had to persuade Kawiti to also cooperate. On 4 December 1878, a few weeks after Nehua and Tawatawa accepted advances for Puhipuhi, Kawiti wrote to Kemp condemning 'the clandestine manner' in which his rivals co-operated. This may be a reference to the fact that Nehua and Tawatawa had accepted advances without consulting Kawiti, and sought thereby to strengthen their Puhipuhi claims.

Kawiti also indignantly refuted Eru Nehua's allegation that he, Kawiti, had 'received money in Auckland for Puhipuhi', a reference to the advances paid to him for Aukumeroa, which the Crown had proposed to treat as an advance for Puhipuhi. This is a further example of the suspicion, ill-feeling and misunderstanding that the Crown's practice of dealing individually with claimants to land could generate among other claimants. By contrast, the earlier practice of discussing such matters openly and collectively through hui had helped to avoid such ill-feeling.

Kawiti now insisted that, 'I shall claim the whole of the three divisions of the land as my own, and there will be great difficulty in getting the block from me… Unless I get the last farthing [the smallest unit of imperial currency] of the amount I may ask for the block, I shall not alter my determination in regard to it.' Kawiti reminded Kemp that the Puhipuhi dispute stemmed from Maning's 1873 court hearing. '… it was not arranged in the first instance that the block should be subdivided into three equal shares, hence the cause of the difficulty. This was Mr Maning's fault.'[424]

Kemp recognised the difficulty of negotiating with Kawiti under these circumstances. On 18 December 1878 he reported to Gill, 'I thought the matter of sufficient importance to lead me to visit the principal claimants interested, on the spot, and was fortunate in finding them assembled at Waiomio, to attend the funeral of Hori Paraone.' Kemp confirmed that Nelson had:

> Very recently made advances to the other two claimants without Kawiti, who stands in the position of headman, the others having been admitted before the Court under Mr Maning, by his permission and with his consent, the title itself remaining incomplete, from the fact that no

[424] M. P. Kawiti to H. T. Kemp, 4 December 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

> division of the block has ever taken place, although several attempts out of Court have been made, but without success, and thus it is that Kawiti, backed by his people, assumes the position, according to Native custom, of being the real holder of the block, there being at present no other title but the 'Native title', and that one held, as in most cases, in common, Kawiti being in this instance recognised as the leading man.[425]

Kemp here clearly recognises that Kawiti holds, at least in the eyes of some of those with interests in Puhipuhi, an overarching mana that extends beyond his own Ngāti Hine iwi. Kemp also appears to suggest that where no clear legal title to land exists, as in the case of Puhipuhi in this period, then traditional interests in the land continue to trump individual claims.

In letters written to the Native Secretary and Fenton soon after the meeting with Kemp at Waiomio, Kawiti revealed that his dispute with Nehua was not based solely on his claim to be the 'leading man' concerning Puhipuhi. Instead, the May 1876 advance payment to Kawiti for Aukumeroa had apparently exacerbated the dispute. The Crown linked that payment to Kawiti's interest in Puhipuhi. Eru Nehua deeply resented the Crown's payment of this advance, since it tended to reinforce Kawiti's Puhipuhi claim. In a letter to the Native Secretary in December 1878, Kawiti defended his acceptance of the £200 payment, and described Nehua's furious reaction to it:

> It was said that I had stolen the Puhipuhi money amounting to £200. Eru Nehua made this public in Auckland … Eru Nehua has three times advocated fighting Te Hoterene Tawatawa and myself for Puhipuhi … it entered the mind of Eru Nehua to come to my settlement at Waiomio and murder me. Three persons were to put this into execution. These are their names - Eru Nehua and Whatarau, half castes, and Riwi Taikawa, a Maori. Eru Nehua suggested the following to his companions – 'Friends, let us go and murder our ancestor Maihi P. Kawiti. We will murder him without delay', then Te Whatarau said, 'You two alone can go and kill our ancestor, the helpless are for me, those who are able to escape, you, the brave must kill', when the intention of murdering me was given up… When the Court sat at Ohaeawai on 9 December 1878 and all Ngapuhi were assembled, the companion of Eru Nehua and Riwi Taikawa made a confession. Whatarau said 'Maihi would have been murdered by us if I had not said, "you two go and kill our ancestor. I will not go"'… This serious wrong was occasioned by Judge Manning [sic] for he did not deal with the subdivision in Court, he did

[425] H. T. Kemp to R. Gill, 18 December 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn. Emphasis in original.

> not subdivide the land into three equal parts. Owing to this the matter has been a constant source of trouble and dispute to us.[426]

In his final point above, Kawiti confirms that at the 1873 Native Land Court hearing into Puhipuhi, Judge Maning had identified the principal parties claiming ownership to the land, but had failed to deal with the subdivisions between their respective interests.

Kawiti wrote to Fenton in similar terms, repeating that Nehua and Tawatawa had defamed him by alleging that he had 'stolen the money of Puhipuhi', and that Nehua with his accomplices had planned to murder him as a result. Kawiti clearly believed that Maning had contributed to the dispute through his failure to go through with awarding subdivisions to Puhipuhi in 1873. If Maning 'had carefully divided the acres into (or upon) the principle of three [equal] divisions – had it been thus, [Nehua and Tawatawa] taking their shares out of Puhipuhi would have been right.'[427]

After meeting both Nehua and Kawiti at the tangi at Waiomio, Kemp advised his superior, that although 'the dispute … is really a serious one', he thought progress might be made through either of two courses of action:

> 1. Hold a Special Court, with a view to obtain more evidence than was collected before Mr Maning's Court, and thus to perfect the title;
>
> 2. For the three claimants … to leave the decision in the hands of, say, two officers of the Government and one Native Assessor, having no interest in the District.
>
> I think the former would perhaps be the better course.[428]

In the event, the Crown followed neither of Kemp's suggested courses of action (which had both also been long advocated by the Puhipuhi claimants themselves). Instead, it appears that officials held further discussions with Kawiti in late December 1878 and/or early January 1879, and persuaded him to drop his objections to selling an interest in Puhipuhi. They also persuaded him to let the Native Minister settle his longstanding grievance with Eru Nehua over their respective rights to the land.

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[426] M. P. Kawiti to Native Secretary, 17 December 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

[427] M. P. Kawiti to F. D. Fenton, 24 December 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

[428] H. T. Kemp to Native Secretary, 18 December 1878. See also M. P. Kawiti to Native Secretary, 17 December 1878, both in AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Unfortunately, the only surviving record of these discussions appears to be a written purchase agreement between Sheehan and Kawiti.

This 27 January 1879 Crown purchase agreement with Kawiti recorded a price for his interests in Puhipuhi of £2,500, of which £500 was paid in advance. The agreement stated that it was left to Ngāti Hine to decide whether Kawiti would retain this money or whether it would be distributed more widely among the tribe. Kawiti also agreed to Sheehan 'settling the difficulty between him and Eru Nehua.'[429]

Kawiti's motives for suddenly abandoning his former refusal to admit Nehua's claims to Puhipuhi cannot be determined from archival sources. The limited available evidence suggests that:

- Kawiti faced temporary financial difficulties, and the prospect of converting his interests in Puhipuhi into cash was evidently tempting;
- He owned large landholdings elsewhere, especially around Kawakawa and at Motatau, so that his mana and resources would not be harmed by parting with an interest in Puhipuhi;
- He had grown thoroughly tired of the battle with Nehua, and so was willing to make a financial settlement if that promised to bring the dispute to an end, and;
- He had reached the conclusion that he was never likely to succeed in his claim to the whole of the block, and so was content to accept a significant payment for a portion of it.

In a comment made the following year, 1880, to Gill, Nelson suggested that the advance paid to Kawiti was not distributed fairly among Ngāti Hine landowners. He described Kawiti as 'an acknowledged chief of a somewhat waning mana, who selfishly retained the bulk of the money Mr Sheehan paid him, having distributed about £30 only, among his immediate relatives.'[430] No further evidence has been found to support or challenge this claim, and it may simply reflect a continuing official animosity towards Kawiti, already amply displayed by Judge Maning.

[429] Memorandum of Agreement between Hon. J. Sheehan and M. P. Kawiti, 27 January 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[430] C. Nelson to R. Gill, 27 March 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

In the same letter to Gill, Nelson insisted that, 'while paying Eru Nehua and others [later in 1879] I took every possible care to see the money fairly apportioned among the whole of the Ngatihau people who, in my opinion, have the best claim to the land.'[431] Again, no further evidence has been found in respect of this claim. It suggests that Nelson used his opinion of the strength of Ngāti Hau's claim to Puhipuhi to decide on the advances the Crown would pay. However, since the Native Land Court had not yet issued a final order on title to the land, Nelson's only ground for making such a judgment was Maning's 1873 preliminary finding in respect of the principal claimants. By favouring Ngāti Hau's claim, Nelson was anticipating a result which (as the chiefs suspected) would help to strengthen the position of the favoured chief in any later court hearing.

Some years later, in 1891, Mary Tautari, a witness to the Rees-Carroll Native Land Laws Commission, made a further, non-specific allegation that the Puhipuhi advances were paid unfairly, and influenced the eventual title determination. Mrs Tautari, neé Perry, was born in Mahia and married Hemi Tautari, the sea captain and storekeeper whose house at Taumārere in the Bay of Islands had hosted a hui in 1872 to discuss the Puhipuhi gumdigging levy (see Chapter 2). In 1875 Mrs Tautari opened Taumārere Native School next door to her husband's store. She also worked as an interpreter and postmistress.[432]

Tautari described the Native Land Court system to the 1891 Commission as unfair, and said that a runanga-based system would give better results. She named the Native Land Court hearing into Puhipuhi (presumably the final, 1883, hearing) as an example of a hearing she had witnessed at which the land was awarded to the wrong owners because of the advance payment system:

> It was only because the Government had advanced money on that land to certain people that the land actually passed to the people who received that money; and yet they had no right to it. It looked very like as if the Government [presumably, the Native Land Court is meant here] favoured the people who had received the money.[433]

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[431] C. Nelson to R. Gill, 27 March 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[432] Steven Oliver, 'Tautari Hemi and Tautari, Mary' at http://www.teara.govt.nz/en/biographies/2t12/tautari-hemi
[433] Minutes of evidence, Native Land Laws Commission, 12 May 1891, *AJHR* 1891 Sess. II, G-1, pp. 75-76

4.8 'Taihoa! Taihoa!', 1879 – 1880

By convincing all three of the major claimants to Puhipuhi to agree to a purchase and two of them to accept advances, the government believed that it had not only settled the long-running conflict over ownership, but was also now in a position to acquire most of the land from those claimants. In June 1879, several months after agreeing to pay an advance to Kawiti, Sheehan advised Fenton, 'The Government having now arranged for the purchase of the interests of all the grantees in the Puhipuhi Block, there is now no reason why the title (withheld in consequence of the dispute between Marsh Brown and Eru Nehua) should not issue, and the Chief Judge is requested to be good enough to issue instructions accordingly.'[434] This advice apparently assumes that since all interests had been acquired by the Crown, there was no need to proceed with the Native Land Court's title investigation process.

However, the confusion surrounding the outcome of Maning's 1873 hearing remained an obstacle to legally transferring ownership of the land from its several Māori owners to the Crown. As he had previously done in 1877, Fenton asked Maning to supply a written account of the 1873 hearing, with the aim of clarifying the legal status of the land. Maning's reply, as discussed in chapter 3, stated that following the 1873 hearing, he ordered that 'the Block should be divided into three nearly equal portions for the three principal claimants and their respective hapus… The case was then adjourned for the survey to be made.' Maning's letter then quoted from his notebook regarding the subsequent 1875 're-hearing', which was dismissed after 'Kawiti and others' had threatened violence to prevent it. Maning concluded his 1879 letter by advising that a further Native Land Court hearing over Puhipuhi should take place 'for the sake of regularity.'[435] That expression further reinforces Sheehan's advice to Fenton, above. Although Maning proposed that a court hearing should take place, he suggested that its purpose would not be to legally confirm the real owners to the land, but simply to validate the Crown's purchase.

Having secured the right to buy Puhipuhi, the Crown showed no further urgency to complete the purchase. This appears to be another stark example of the Crown according priority to its own interests, while leaving Māori concerns to languish. For

[434] J. Sheehan to F. D. Fenton, 21 June 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[435] F. E. Maning to F. D. Fenton, 8 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

the next two years little further action was taken, perhaps because during 1879-1882, the Crown's land purchase priorities were elsewhere, in Te Rohe Potae and Hauraki.[436]

For Māori with interests in Puhipuhi, however, their grievances remained live and urgent. During 1879-1880, all three Puhipuhi claimants wrote a succession of increasingly agitated letters to officials, each requesting the balance of their payment for their interests. Tawatawa wrote first in April 1879, asking for both himself and Kawiti to be paid in full.[437] In July 1879 Kawiti wrote on his own behalf to Premier Grey, asking for payment of the £2,000 owed to him.[438] The following month Kawiti wrote again, this time to Sheehan, asking for an immediate payment to Tawatawa in order to settle a debt which the court had found that Tawatawa owed to Charles de Thierry.[439] Sheehan approved payment of £100 for this purpose.[440] No details of the 1879 action by de Thierry against Tawatawa have been located, but several years later, in 1883, Kawiti and de Thierry also faced each other in the debtors' court, this time over an allegation that Kawiti owned de Thierry the sum of £5 14 shillings.[441]

The Crown apparently made two further payments, totaling £620, to Eru Nehua and his people in September-November 1879 (see table of advance payments below), although no specific correspondence concerning these payments has been located.

By advancing payments to specific individuals whose claims to ownership of Puhipuhi had not been established in court, others who also claimed rights to this land could understandably feel aggrieved that they had not received similar payments. In September 1879 Hori Winiata asked Sheehan, 'let no more money be given to Tawatawa as he has no claim to this land …. we, the people who have a claim to it, have not yet taken any money upon it.' Gill responded by instructing Nelson to see Winiata in person and 'explain to him that his position is in no way injured by any payments which may have been made to Tawatawa and that the Native Land Court

[436] R. C. J. Stone, 'The Maori Lands Question and the Fall of the Grey Government, 1879', *New Zealand Journal of History*, vol. 1, No. 1, April 1967, pp. 51-74
[437] H. Tawatawa to Native Office, 8 April 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[438] M. P. Kawiti to George Grey, 22 July 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[439] M. P. Kawiti to J. Sheehan, 24 August 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[440] J. Sheehan to R. Gill, 20 August 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[441] *Auckland Star,* 31 May 1883, p. 5

will determine who are the owners of the land.'[442] This response did not appear to mollify Winiata, who wrote in October 1879 to Fenton, saying that the land on which Tawatawa had accepted advances was 'for the whole of Ngatiwai. He alone is appropriating the money - £400.'[443] Fenton forwarded that letter to the Native Minister who apparently instructed Gill to halt further advances. Gill told Nelson, 'I think no more money should be paid on the Block before the Court makes an order.'[444]

Under the terms of the first (1873) hearing, a maximum of ten owners could be listed on the certificate of title. It was also possible to append a list of other owners to the certificate of title, but the incomplete hearing meant no court order was made, no certificate of title was issued and no list of owners was ever drawn up.[445] So by 1879 the three chiefs representing the three parties or groups of parties who had appeared in the court were still regarded by the Crown as the only known 'principal' customary owners. Rather than pay all its advances to those three, the Crown could have withheld payment until a court hearing produced a full list of owners. This was the position belatedly adopted by Sheehan and Gill in November 1879.

In an explanation and defence of his advances, Nelson replied to Gill that

> The reason why so large a sum was paid to Hoterene is that at the investigation which took place before Mr Manning [sic], Maihi Paraone, Eru Nehua and Hoterene made good their claims to the block, but the court did not pronounce a formal decision owing to the inability of the three successful claimants … to agree upon a basis of subdivision… I fully concur with you that it would be inadvisable to pay any money on this block until the [Native Land Court] order has been made.[446]

[442] H. Winiata to J. Sheehan, 18 September 1879, and marginalia, R. Gill to C. Nelson, 3 November 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[443] H. Winiata to F. D. Fenton, 20 October 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[444] R. Gill to C. Nelson, memoranda, 22 November 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[445] The effect of the '10-owner' rule, and the debate amongst scholars about whether it was intended that the 10 people listed on the titled were to act as trustee for the remaining owners is referred to briefly in the previous chapter.
[446] C. Nelson to R. Gill, 29 November 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Nelson added that claimants had sought a new Puhipuhi hearing the following August 1880, 'when I have no doubt that the decision arrived at by Judge Manning [sic] will be confirmed.'[447]

Once again Nelson blamed the chiefs, rather than the confusion engendered by Maning, for the failure of the 1873 hearing to produce a court order. Evidently, however, by November 1879 Sheehan and Gill had begun to realise that they were taking a legal, and perhaps also a political, risk in advancing payments to the three principal Puhipuhi claimants.

A document filed with purchase deeds and advance payment vouchers for the Puhipuhi block appears to list all advance payments made for Puhipuhi.[448] It is unfortunately undated, but evidently dates from or after 10 November 1879, the latest date on the list. That list appears in Table 1 below.

Table 1: Advanced payments and other costs made by the Crown for Puhipuhi land, 1878 – 1879

Date	Paid by	Paid to	Amount
25 Nov. 1878	C. Nelson	E. Nehua	£313.10 [reimburse 1871 survey costs]
25 Nov. 1878	C. Nelson	H. Tawatawa	£300
2 Jan. 1879	T. Lewis	M. P. Kawiti	£500
19 Aug. 1879	R. Gill	M. P. Kawiti	£500
28 Aug. 1879	C. Nelson	H. Tawatawa	£100
26 Sept. 1879	C. Nelson	E. Nehua and others	£500
10 Nov. 1879	C. Nelson	E. Nehua	£120

[447] C. Nelson to R. Gill, 29 November 1879, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[448] Undated list, signature illegible, headed 'Puhipuhi Block', in AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Total advance payments to each of the three recipients were therefore:

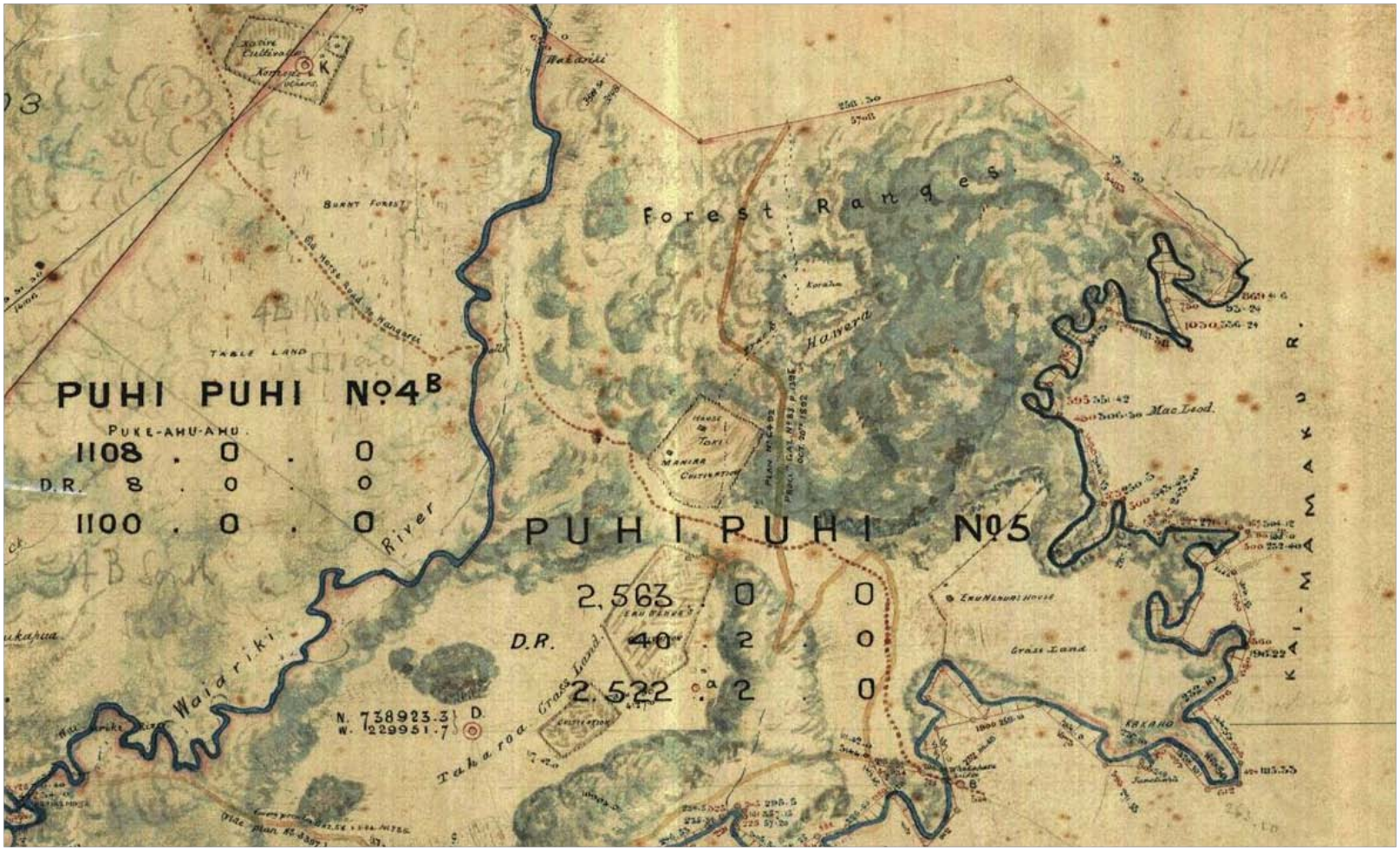
E. Nehua	£620	(plus £313.10 reimbursement survey costs)
H. Tawatawa	£400	
M. P. Kawiti	£1,000	
Total	***£2,020***	

The same table records three additional payments, totaling £150, to surveyor J. J. Wilson for the survey of the 5,500-acre 'Puhipuhi reserve', i.e. what became the Puhipuhi 4 and 5 blocks. A note adds that 'a proportion of this amount (one half I think) is chargeable to purchase money.'

Figure 4: Plan of the area Eru Nehua sought as a reserve (later known as Puhipuhi No. 4 and No. 5), 1880

(Source: ML 4871, sheet 2)

Figure 5: Close up of plan showing houses and cultivations on the area Eru Nehua sought as a reserve (later Puhipuhi No. 4 and No. 5), 1880



(Source: ML 4871, sheet 2)

4.9 Nehua withholds part of land from sale, 1880

The Crown purchase of Puhipuhi depended on the retention of the southernmost 5,000-odd acres. In their joint sale agreement dated 25 November 1878, Nehua and Tawatawa emphasised that although they had both accepted money for Puhipuhi (Tawatawa as an advance and Nehua as reimbursement for the initial boundary survey), they insisted on what could described as a Ngāti Hau reserve. The letter then described 'the boundary of the portion set apart for Ngatihau.'[449] This is the area that later became Puhipuhi blocks 4 and 5.

In March 1880 Nelson acknowledged in a letter to Gill that any purchase of Puhipuhi land from Nehua was conditional on excluding a portion of the Ngāti Hau land from sale. Nelson described the area reserved as comprising 'the Native settlements, a swamp of about 500 acres, and about 300 acres of cleared grassland, but no portion of the kauri forest.'[450] The lack of valuable kauri timber on this area may have made the Crown more willing to accommodate Nehua's wish to withhold it from sale. In addition, Maning's 1873 hearing had found that Ngāti Hau's interests and settlements were focused in this part of the Puhipuhi lands. This reserve area is shown on an 1880 ML plan reproduced as Figure 4 above.

For Nehua, therefore, accepting payment for his Puhipuhi interests did not threaten his whānau's and hapū's ongoing occupation of their papakainga, although they must have expected eventually to lose ownership of the forested lands to the north. Since rights to those lands were contested by other claimants, Ngāti Hau may well have expected to fail to gain ownership of at least part of the northern portion of Puhipuhi anyway. The Crown's payments, for the survey and the later advances, compensated Nehua and Ngāti Hau for this loss.

In about July 1880, (i.e. before he and his people had been awarded legal title to any land at Puhipuhi) Nehua reinforced his determination to withhold from sale the area of Puhipuhi which he and his whānau were farming, by agreeing to a survey of the proposed reserve area. On 1 December 1880 S. Percy Smith, by then the Chief

[449] 'Letter of explanation' by H. Tawatawa and E. Nehua, Auckland, 25 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[450] C. Nelson to R. Gill, 27 March 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Surveyor, approved three payments to surveyor W.W. Wilson, totalling £150, for 'the survey of the Puhipuhi reserve, area 5,510 acres.'[451] That area is very similar to the total area of the two blocks later known as Puhipuhi 4 and 5. The survey was ordered by Charles Nelson, and the cost split equally between the government and Nehua.[452] The resulting plan, ML 4871, shows the location of Nehua's own and other houses, cleared and cultivated areas, tracks, streams and other significant features of the area which would later become the Puhipuhi 4 and 5 blocks. A close-up of these features is shown in Figure 5 above.

It seems remarkable, in the absence of a formal title order granting ownership of the land to Nehua and Ngāti Hau that the Crown agreed to making this reserve, and ordering its survey. The Crown may have made these concessions through its eagerness to acquire the rest of the Puhipuhi lands, aware that Ngāti Hau was likely to be awarded some interests in them and would only agree to their purchase by the Crown if their retention of the reserved area was guaranteed in advance.

As with the initial 1872 survey, the smaller 1880 internal survey appears to have gone ahead without consulting other Puhipuhi claimants. This offended Kawiti, who wrote to Native Minister Bryce, informing him that the survey was taking place and asking who had authorised it: 'Is it by the authority of the Government, or by whose authority is it?'[453] Neither Bryce nor any other official appears to have answered this query.

4.10 Further applications for title investigation, and desire to complete purchase, 1880 – 1881

The matter of a new Native Land Court hearing to determine ownership of the block had been debated by both the claimants and the government since 1876. Nehua filed a further application for an investigation of title for Puhipuhi on 10 February 1880, on behalf of Ngāti Wai (which may have been a clerical error, and should have referred to Ngāti Hau). Kawiti joined in this application on behalf of Ngāti Hine.[454] Then, on

[451] Treasury vouchers 68278, 78741 and 14918 for survey payments, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[452] R. Gill, memorandum, 14 March 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[453] M. P. Kawiti to Native Minister, 4 July 1880 AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[454] Application for investigation of title, E. Nehua and M. P. Kawiti, 10 February 1880, BOI 318 applications 1875-1940, Maori Land Court, Whangarei

12 March 1880, all three claimants applied together - Kawiti for Ngāti Hine, Nehua for Ngāti Hau, and Tawatawa for Kapotai (rather than for Ngāti Wai).[455]

These were the first title determination applications in which Ngāti Hau was joined by other claimants. This suggests that by 1880 all three groups of claimants were eager to resolve the matter of title to Puhipuhi, which had been uncertain and a source of tensions for almost a decade. This would allow them to see the Crown purchase of Puhipuhi completed, with the hope of European settlement to be established in the vicinity, bringing greater economic opportunities and infrastructure such as roads and railway. It would also allow them to collect the balance of their payments for the land, to pay off debts or to develop their remaining land. Those payments had been stalled, on Gill's order, in November 1879, pending a title determination order. This joint application for title determination may have appeared to the claimants to be the only route to obtaining legal certainty about the ownership of Puhipuhi, and concluding the Crown purchases of those interests after they had exhausted their own efforts to resolve their disagreements outside the court. The last of these applications, dated March 1880, was dealt with in the subsequent April 1882 Puhipuhi title determination hearing.

In March 1880 Charles Nelson warned his superiors that some members of Kawiti's Ngāti Hine hapū, who resented not receiving a share of the advance payment made to their chief, might use the opportunity of a further Native Land Court hearing to press fresh claims to the block, given that the title to the block has still not been awarded. Many of these 'malcontents, especially half-castes, are living in the Hokianga district', wrote Nelson, and 'it would be impossible to foresee the difficulty and loss of time which might ensue upon this bone of contention being thrown in the middle of these disaffected Micawbers [opportunists], encouraged as they are by invidious agents, expectant publicans, and unscrupulous Pakeha Maories.' For this reason Nelson advised against hearing the case in the Hokianga, but if that location was chosen, he promised 'I shall do my utmost not to be beaten' by the expected influx of additional claimants.[456] This letter of Nelson's is difficult to understand since very few Ngāti Hine actually appeared to live in Hokianga in 1880. Nelson may have

[455] Application for investigation of title, M. P. Kawiti, E. Nehua and H. Tawatawa, 12 March 1880, BOI 318 applications 1875-1940, Maori Land Court, Whangarei
[456] C. Nelson to R. Gill, 27 March 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

intended to impress his superiors with his local knowledge and his dedication to their interests.

The government's moratorium on the payment of further advances frustrated those who had already received advances and wished to see the remainder of their money. In April 1880 Kawiti wrote to Bryce asking for an advance on Puhipuhi like those paid to Nehua and Tawatawa. '… if the Government wish to acquire this block, let me have the balance of the purchase money.'[457]

In July 1880 Kawiti wrote again to the new Native Minister John Bryce, pointing out that, 'it is now three years since the first advance was made upon the land by Mr Sheehan' and declared 'We are weary of taihoa! taihoa!'[458] Gill recommended that Kawiti be advised in response that the delay in completing the purchase was not the fault of the government but of the claimants themselves for failing to agree on a subdivision.[459]

In accordance with Gill's instructions to Nelson, the Crown paid no further advances while the Puhipuhi case was awaiting a rehearing, and that proved a lengthy business. In April 1881 Kawiti wrote again, to Bryce's successor William Rolleston, objecting that the government had by then withheld his final payment for four years:

> Why do you leave it lying in the bank instead of letting me have it? I wish now to remind you that in the course of a few days the Native Committee appointed by the Treaty of Waitangi meeting will have its first sitting, and this Puhipuhi block will be remitted to them for consideration. The committee has been appointed by Ngapuhi to deal with the Native lands, to prevent the alienation of same, and if the Government persists in the course they have adopted with regard to Puhipuhi, then, on 4 May next, the committee will meet and this and other lands will come before the said committee of chiefs.
>
> Then no doubt you will be angry with us. If so, you have yourself to blame for cheating us by withholding the money.[460]

The committee Kawiti refers to above is likely to be the 'Committee of Twelve', an influential body made up of himself and 11 other northern chiefs which, in the

[457] M. P. Kawiti to J. Bryce, 25 April 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[458] M. P. Kawiti to J. Bryce, 4 July 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[459] R. Gill, memorandum to Native Minister, 20 July 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[460] M. P. Kawiti to W. Rolleston, 21 April 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

following years, intervened effectively in several inter-hapū disputes – an example of rangatiratanga agency.[461]

The Crown advised Kawiti that Rolleston upheld Bryce's ban on further advances. 'A Court will sit soon in Whangarei, then the money will be paid.' Rolleston warned Native Department clerk Davis that when writing this letter to Kawiti, Davis should 'be very civil', an indication, perhaps that the government felt that Kawiti had some grounds for his impatience.[462]

During 1881 Eru Nehua and others of Ngāti Hau asked several times for the next Puhipuhi hearing to take place at Whangarei, the closest location to his own settlement.[463] The Native Secretary initially acceded to this request and in June 1881, the Native Land Court issued a preliminary notice that Puhipuhi would be heard at the next court sitting at Whangarei.[464]

Kawiti, however, was equally adamant that the hearing should take place at Kawakawa, where he had extensive interests. In July 1881 he wrote that if Kawakawa was not the chosen location, he intended to return his advance payment and reopen negotiations with private buyers.[465] This was evidently no idle threat. Kawiti later wrote that he had been approached by one of those buyers, Billy McLeod, and his lawyer, hoping to acquire part of his share.[466] (No information has been found respecting the identity of Mr McLeod). Whether this letter proved decisive in establishing the hearing location is not known. However, the Puhipuhi case was ultimately heard at Kawakawa, as Kawiti requested. In December 1881, a hearing was scheduled at Kawakawa for 14 April 1882.

[461] Armstrong and Subasic, #A12, pp. 1043-1046
[462] Marginalia, T. W. Lewis memorandum, 16 May 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[463] E. Nehua to Native Minister, 1 June 1881; E. Nehua to J. Bryce, 12 December 1881, both in AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[464] Memorandum, T. W. Lewis to Native Minister, 13 June 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn; *NZ Gazette,* No. 23, 6 March 1882, p. 365
[465] M. P. Kawiti to Native Minister, 16 July 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[466] M. P. Kawiti to T. W. Lewis, Native Secretary, 9 December 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

In March 1882 Eru Nehua asked for an advance payment of £100, possibly to help him meet the expenses of the forthcoming hearing.[467] The Crown again declined, in continuation of its moratorium on advances.

4.11 Attempts to repudiate the purchase, 1882

In late 1882 all three groups of Puhipuhi claimants made a demonstration of their collective wish to rescind the terms on which they had accepted advances. Kawiti, Nehua, Tawatawa, Riwi Taikawa and Haki Whangawhanga, whose names would all later appear in different combinations on the several Puhipuhi title deeds, wrote jointly to Bryce attempting to repudiate their advance payments by refunding the government:

> We are in great trouble about this land Puhipuhi. For eleven years we have been engaged in a dispute concerning it and the end of it will be fighting, therefore we have decided to refund the money advanced by the Government, so that you may be free of the matter and we alone responsible. When this letter reaches you, please forward the account showing the amount paid.[468]

Although the Crown's 1878 pre-emption proclamation still prohibited private purchasers and their agents from bidding on Puhipuhi, restrictions of this kind on purchasing Māori land had become the focus of ferocious political controversy. Sir George Grey's 1877 – 1879 government, with John Sheehan as Native Minister, re-introduced Crown pre-emption with the Government Land Purchases Act 1877. Grey's government had claimed to bring 'expertise and incorruptibility' to Māori affairs, after a string of scandals concerning Crown land purchase agents such as McDonnell and Brissenden in the mid-1870s.[469] A 'free trade' lobby, which advocated for the unrestricted right of speculators to purchase or lease Māori lands, opposed Grey's and Sheehan's restoration of pre-emption. During 1878, when the Puhipuhi lands, along with many thousands of acres elsewhere, were proclaimed under the 1877 Act, this lobby campaigned vigorously to overturn the new legislation. In some cases, such as in Patetere, near Tokoroa, speculators surreptitiously advanced money to the Māori owners in breach of a pre-emption proclamation.[470] In September 1879

[467] J. Clendon to R. Gill, 8 March 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[468] M. P. Kawiti, E. Nehua, H. Tawatawa and others to J. Bryce, 1 November 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[469] Stone, 'The Maori Lands Question …', *NZJH,* vol. 1 No. 1, April 1967, p. 52
[470] Stone, 'The Maori Lands Question …', *NZJH,* vol. 1 No. 1, April 1967, p. 63

the Grey government fell, in part due to organised opposition to its Crown purchase legislation.

By 1882, when the three groups of Puhipuhi claimants attempted to return their advances, the new Hall government, although it did not remove the December 1878 proclamation on Puhipuhi, expressed support for private speculation in Māori land.[471] Such speculators, or their agents, may have convinced the Puhipuhi claimants that they could sell their lands at a better price once the government repealed the proclamation. It is also possible that they had lost confidence in the Government's ability or willingness to help these resolve the issue of ownership of the block and obtain freehold title to it, after the incomplete deliberations, repeated applications and attempts at resolving the matter. The establishment of the Native Committees referred to by Kawiti in April 1881 also indicated that there was a growing desire amongst some in the Te Raki district to reclaim autonomy in dealing with disputes over title. O'Malley's history of Native committees in the nineteenth century indicates that by the late 1870s many committees had formed around the North Island and there was considerable pressure from Māori for legislation to give those committees the power to investigate and determine title to land. This ultimately resulted in the passing of the Native Committees Act 1883.[472]

However, Bryce again dismissed the claimants' request and repeated that the government 'has no desire to break the agreement for the sale and purchase of Puhipuhi respecting which these advance payments have been made.'[473]

4.12 Conclusion

The Native Land Court hearings of 1873 and 1875 left the main Puhipuhi claimants in a state of confusion and bitter hostility, sometimes escalating to threats of physical violence. For the next several years, however, Crown officials made only occasional and somewhat desultory efforts to help resolve this conflict. When officials such as resident magistrate Edward Williams or ex-Member of the House of Representatives Wiremu Katene proposed more active intervention, such as a commission of inquiry,

[471] Stone, 'The Maori Lands Question …', *NZJH,* vol. 1 No. 1, April 1967, p. 71
[472] See Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century*, (Wellington: CFRT, 1997), pp 91-112
[473] J. Bryce memorandum, 13 November 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

those recommendations were not followed up the government. Nor did the Crown agree, despite repeated applications from Ngāti Hau and other Puhipuhi claimants, to grant a further Native Land Court hearing to determine title to the lands.

The reasons behind this Crown inaction are not easy to identify. They may include the Crown's focus, in the mid-1870s, on Māori land purchases elsewhere in the north. It is also possible that, following Maning's two hearings, the issues of title to Puhipuhi appeared too complex and hotly contested to be resolved by a further hearing at that time. However, neither of these reasons evidently appeared adequate to officials such as Williams and Katene, who felt that more Crown action over Puhipuhi was urgently required. Both these officials clearly believed the issues which divided the main Puhipuhi claimants were not likely to be resolved at a local level, and that the government should therefore investigate them through a process such as a commission of inquiry. The Crown's failure to take such action was avoidable, and probably contributed substantially to the ill-feeling that persisted and worsened between Kawiti and Nehua particularly.

The interest of private, and then of Crown land agents in purchasing Puhipuhi was the factor which, more than any other, broke this impasse. Once the prospect of a Crown purchase seemed desirable, and then inevitable, the Crown appeared much more willing than previously to engage with the rival claimants to the land. By paying advances to selected claimants, the Crown excluded competition from private interests, and moved the claimants beyond arguing with each other over ownership rights to the land, to bargaining with the Crown over payment for parts of it.

The Crown was apparently determined to acquire Puhipuhi at a per-acre price lower than private buyers were offering. Those private buyers may have been negotiating only for certain sections of Puhipuhi, whereas the Crown was willing to buy the entire forested area. It also had the resources to offer substantial advances, which were used by Crown officials on at least one occasion to bind the claimants to conclude a purchase with the Crown. These factors may have affected the Puhipuhi claimants' decisions to accept the Crown's offers, in preference to the more tempting offers made by private buyers.

All three of the main claimants would have understood that by agreeing to sell the bulk of Puhipuhi to the Crown, they were foregoing the possibility of benefiting fully in the future from its valuable timber resources, if they were able to resolve the impasse over the title to the block. However, exploiting kauri forest for commercial gain was an expensive and complex exercise, often requiring construction of rail or road links and timber mills. Few, if any, northern Māori could assemble the expertise and investment to carry out their own logging and milling operations. They were therefore obliged to lease cutting rights to European forestry operations. The income from these rights was small, and not always reliably paid.

It is not difficult, therefore, to understand why tribal owners of forest lands would have chosen instead to accept a promised substantial cash payment from the Crown. Māori could then expect to see European-owned logging and milling companies working in the forest, and to receive at least some employment from these activities. In the future, as a rail link was provided and the forest was cleared, its former owners could expect to see the cleared land sold or leased by the Crown to settler-farmers. The improvements these settlers made to the land through roading, fencing, building and so on would also benefit any neighbouring Māori-owned lands that had not been sold.

As to whether the appropriate owners were selected for the payment of pre-title determination advances, customary rights to Puhipuhi had been twice considered by the Native Land Court and although those hearings were inconclusive, and did not award formal title, the same principal claimants appeared in them on each occasion. Those claimants were then offered, and accepted, advances for their Puhipuhi interests. The Crown may therefore have felt reasonably certain as to the principal owners of Puhipuhi. However, it could have no certainty about the proportionate interests each of these owners, or group of owners, held in the land. So the Crown had no reliable basis for deciding the amount of advance each principal owner should receive, relative to the others.

Crown purchase agents acted over Puhipuhi much as they had acted elsewhere in Te Raki during the 1870s and '80s. Nonetheless, the payment of Crown advances prior to title determination was likely to influence the Native Land Court's subsequent decisions over which claimants it would favour with determination orders.[474]

While the payment of advances secured the purchase of Puhipuhi by the Crown, that purchase could not be completed until a decisive Native Land Court hearing awarded title to the land's owners. The following chapter will describe the course of the two further Puhipuhi hearings, and their legal outcomes.

[474] See for example, Armstrong and Subasic, #A12, pp. 699-714

Chapter 5 – Re-hearing and title determination, 1882 – 1883

5.1 Introduction

A third Native Land Court title investigation hearing into Puhipuhi was held in April 1882 at Kawakawa, under Judge John Symonds. It produced a judgment which awarded the majority of Puhipuhi to Ngāti Manu, Ngāti Te Ra and Ngāti Wai collectively, and the remainder to Eru Nehua and Ngāti Hau. That decision differed dramatically from the divisions suggested by Maning's earlier hearings, and several claimants successfully appealed against it.

A re-hearing was held in May 1883, again at Kawakawa, under judges L. O'Brien and Major W. Mair. The decision issued from that hearing awarded Ngāti Wai and their co-claimants 2000 acres of the northern part of Puhipuhi, Maihi Paraone Kawiti and Ngāti Hine 3000 acres immediately to the south of this, and the remainder of the land, about 20,000 acres, to Eru Nehua and Ngāti Hau.

Riwi Taikawa of Ngāti Hau then applied successfully to subdivide the Ngāti Hau portion into three parts, later known as Puhipuhi blocks No. 1, No. 4, and No. 5. At the request of the landowners, restrictions on alienation were placed on the latter two blocks.

Minutes were kept of both hearings, and Mair also kept his own minutes of the 1883 hearing. This chapter will describe the course of both hearings, including the negotiations between Crown officials concerning their intentions to later purchase the bulk of the Puhipuhi lands.

5.2 Tensions over the location of the court sitting, 1880 – 1882

Both the claimants and the government had debated the issue of a new Native Land Court title investigation for Puhipuhi since at least 1876 when, as detailed in the previous chapter, Eru Nehua and other Ngāti Hau leaders applied several times for such a hearing. From 1880, after all three main claimants had accepted advances on Puhipuhi they applied jointly for a new title investigation.

Two applications were lodged in 1880, the first, dated 10 February 1880, by Nehua on behalf of Ngāti Wai (presumably a clerical error, when Ngāti Hau was intended), and Kawiti on behalf of Ngāti Hine. This application claimed the entire 25,000-odd acre area of the Puhipuhi lands, described in terms of the waterways that marked its boundaries.[475]

The second application, dated 12 May 1880, was lodged on behalf of all three principal claimants – Kawiti for Ngāti Hine, Nehua for Ngāti Hau and Tawatawa for Kapotai (a hapū of Ngāti Wai). This application claimed the southern third of the Puhipuhi lands, including the 5000-odd acre 'reserve' area which was surveyed by W.W. Wilson the following year. (The reasons for this joint application are discussed in the previous chapter).[476]

During 1881 Nehua asked several times for the Puhipuhi hearing to take place at Whangarei, the location closest to Puhipuhi.[477] The Native Secretary initially acceded to this request.[478] Kawiti, however, was equally adamant that the hearing should take place at Kawakawa, near his Waiomio kainga. In October 1881 he wrote that if the Native Land Court did not choose Kawakawa, he intended to return his advances and re-open negotiations with private buyers.[479] Kawiti later wrote that one of these buyers, Billy McLeod, offered to acquire part of Puhipuhi.[480] This may have persuaded the Native Land Court to prefer Kawakawa as the venue for the Puhipuhi hearing, in April 1882.

The Native Land Court conducted this hearing under the 1880 Native Land Act.[481] This Act was largely an updating and amalgamation of the much-amended 1873 Act,

[475] Application for title investigation, 10 February 1880, Puhipuhi applications, Maori Land Court Whangarei
[476] Application for title investigation, 12 May 1880, Puhipuhi applications, Maori Land Court Whangarei
[477] E. Nehua to J. Bryce, 1 June 1881 and E. Nehua to J. Bryce, 12 December 1881, both in AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[478] T. W. Lewis to J. Bryce 13 June 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[479] M. P. Kawiti to Native Office, 16 July 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[480] M. P. Kawiti to T. W. Lewis, Native Secretary, 9 December 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn. No further information has been located regarding the identity of Mr McLeod.
[481] See records of hearing such as list of owners for Puhipuhi No. 1, 27 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

and differed little from it in any substantive way.[482] The 1880 Act required the Chief Judge to give advance notice of a forthcoming hearing 'in such manner as appears to him best calculated to give proper publicity to the same.'[483] The *New Zealand Gazette* of 6 March 1882 included three notifications of the April 1882 Puhipuhi hearing. One followed the terms of the 10 February 1880 application above, with Nehua and Kawiti listed as joint applicants and claiming the entire area of Puhipuhi. The next followed the format of the 12 May 1880 application above, with Kawiti, Nehua and Tawatawa listed as joint applicants, claiming the southern portion of the Puhipuhi lands. A third notification recorded an application by the Governor, representing the Crown and claiming the entire area of Puhipuhi, described in terms almost identical to those used by Nehua and Kawiti in their 10 February 1880 application above.[484] Given that the Crown had already paid advances to many of the applicants, the Crown's intention in making its application was almost certainly for the court to award it title to a portion of the block in recognition of the the interests it had acquired. This application was later withdrawn (see below). The three applications also appeared in Māori language in the same *NZ Gazette*, in accordance with the rules governing the Native Land Court Act 1880.[485]

5.3 Witnesses and their evidence in the 1882 hearing

Judge John Jermyn Symonds presided over the 1882 court, with Perini Mataiawhaea as Native Assessor. No information has been found concerning Mr Mataiawhaea. Symonds had lived in New Zealand since 1842, and earlier worked as sub-Protector of Aborigines. He negotiated the 1844 Otakou Crown purchase. He served as an officer in the 1845 Northern War, became private secretary to Sir George Grey, was briefly Native Secretary, and for many years Resident Magistrate in Onehunga and Kaipara before being appointed a Native Land Court judge in 1875.[486] The year before his Puhipuhi hearing he presided over an important Rotorua investigation.[487] He retired as a judge later in 1882 and died the following year.[488]

[482] Boast, *The Native Land Court 1862 – 1887…*, 2013, p. 100
[483] Section 20, Native Land Court Act 1880
[484] *NZ Gazette*, 6 March 1882, No. 23, p. 365
[485] *NZ Gazette*, 6 March 1882, No. 23, p. 367; *NZ Gazette* 1880, No. 114, p. 1704
[486] Symonds obituary, *NZ Herald*, 29 January 1883, p. 3
[487] Boast, *The Native Land Court 1862 – 1887…*, 2013, p. 135
[488] Schofield (ed.), *A Dictionary of New Zealand Biography*, 1940, pp. 355-356

Unlike Maning's 1873 hearing, which was apparently concluded in a single day, Symonds' court heard evidence regarding Puhipuhi for eight days, from 18 to 26 April. Land Court clerk John Greenway, based in the Bay of Islands, later said that Judge Symonds gave a 'most patient and impartial hearing.'[489]

In accordance with Section 22 of the Native Land Court Act 1880, Symonds ensured that his court operated with a survey plan.[490] Annotations on the 1872 survey plan (ML 2638) indicate that it was used for the April 1882 hearing. A later plan of the southern portion of the block titled 'Survey of the Puhi-Puhi Reserve … dated March 27[,] 1880 Claimant Eru Nehua and other aboriginals' (ML 4871) may also have been available to the court as it was approved on behalf of the Chief Surveyor on 29 March 1882. However, if it was used in the court in April 1882 this was not recorded in an annotation on the plan. The questionable accuracy of Taiwhanga's 1872 survey plan, and his temporary disqualification as a Court-approved surveyor, have been described in Chapter 2 of this report. While those issues may have breached the survey requirements of the 1880 Act, neither the claimants nor the Crown chose to raise any such objections.

In sharp contrast to Maning's 1873 and 1875 hearings, the minutes for Symonds' investigation of the title to Puhipuhi have survived. They total 34 closely written pages.[491] It is unclear which of the two applications listed in the notice of sitting was being heard. However, Eru Nehua (Ngāti Hau) was first to make his case which suggests that he and Ngati Hau remained the applicants despite the joint applications made to the court.[492] His evidence was objected to by Pomare Kingi, Hone Tiaki, Henare Kaupeka, Hori Winiana and Tamati Te Maru (Ngāti Wai and Ngāti Manu); MP Kawiti (also referred to in these minutes, for reasons unknown, as Wiremu Maihi Kawiti) and Wiki Te Ohu (Ngāti Hine); and Hirini Tamehana, Tamati Te Maru and Paerata Te Karetu (Te Atihau).

Symonds' court was required by statute to 'ascertain, by such evidence as it shall think fit (whether admissible in a Court of ordinary jurisdiction or not), the title of the

[489] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[490] Section 22, Native Land Court Act 1880
[491] Northern Minute Book No. 5, pp. 151-184
[492] Evidence of E. Nehua, Northern Minute Book No. 5, pp 151-152

applicant and of other Natives to the land, whether appearing in Court or not.'[493] In the court, Nehua claimed title to all of Puhipuhi through ancestry. He described his whānau's use of the land since they had reoccupied it about 20 years earlier (see Figure 5):

> I have 250 head of cattle running over this block which belong to two of us, also 210 sheep and, including the little ones, about 2000 pigs. The whole of N' Hau participate in the lease of this land to the Pakeha for running the cattle. The pigs and sheep belong to me. There are 20 horses grazing permanently at my farm, belonging to us … I have three paddocks at Taharoa, one at Te Kupapa, another at Kaimokomoko.[494]

Kawiti contested Nehua's evidence and claimed the southern portion of Puhipuhi by right of conquest. Greenway later commented that 'it is somewhat singular that Kawiti laid no claim whatever to the portion of the block to which Judge Maning considered him entitled' in 1873.[495] This comment referred to Maning's proposal after the 1873 hearing, that Kawiti's portion of the block would be 'the North western division' of Puhipuhi.[496] Although the lack of minutes of that hearing makes detailed analysis difficult, it appears that Maning considered that Kawiti's portion ought to be located there because of the evidence Kawiti had given at the 1873 hearing about the customary interests of Ngati Hine. However, at the 1882 hearing Kawiti claimed the southern portion of Puhipuhi on the basis of a conquest by Ngāti Hine. That portion presumably included the 5,000-odd acres already surveyed in 1880 as a reserve for Ngāti Hau (shown on ML 4871), although Kawiti's 1882 evidence made no mention of this. It is unclear whether he was aware of this survey.

Kawiti stated that in former times Te Atihau people had occupied Puhipuhi. In retaliation for the killing of Kawiti's ancestor Tarare, Hineamaru had led a raid against Te Atihau and conquered Puhipuhi, kainga by kainga. They then lived there for several generations but in more recent times, said Kawiti, his people had occupied Puhipuhi only temporarily and periodically.[497]

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[493] Section 23, Native Land Court Act 1880
[494] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, pp. 15-16
[495] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[496] F.E. Maning to F.D. Fenton, 26 June 1877, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[497] Evidence of M. P. Kawiti, 20 April 1882, Northern Minute Book No. 5, pp. 173-174 and in the following pages

Pomare Kingi, representing himself and Ngāti Wai, Ngāti Manu and Ngāti Te Ra, claimed the northern portion of Puhipuhi only, 'through ancestry and a gift from Te Pari [and] Te Hana who were the chiefs of the land.'[498] Kingi, although not a lawyer, was eligible to act on behalf of these groups under section 63 of the Native Land Court Act 1880, which permitted claimants 'to appear or be assisted in Court by counsel or agent' with the assent of the Court.[499]

5.4 Crown decision not to pursue partition of its interests

A few days before the April 1882 hearing began, Gill updated Native Minister John Bryce that the Crown had proclaimed pre-emption of Puhipuhi in 1878. According to Gill, the Crown had already advanced a total of £2,332 and claimants expected payment of the balance, £3,668, at the court in April. This amounted to a total payment of £6,000.[500] Bryce responded that, 'The land should be purchased if it can bought at this price.'[501] He agreed to Gill paying the sum requested in order to complete the Crown purchase, once Judge Symonds issued a title investigation order.

On the first day of the hearing, Gill minuted Bryce to advise that:

> The application to determine the Government's interest in this land must be withdrawn. The first thing is to learn who are the grantees ... and then to endeavour to complete the purchase. Failing this the Court to cut out a piece of the block in volume [?] of the advances made.[502]

Gill was referring here to the application for title investigation lodged by the Crown for the whole of the Puhipihi block and advertised in the notice of sitting in the *New Zealand Gazette* on 6 March 1882.[503] The original of that application has not been located but it was almost certainly made before the survey plan of the southern block 'reserve' was approved by the Survey General in March 1882. This explains why that 'reserve' was not excluded from the Crown application.

Gill's minute indicates a fallback option in the event that the Court awarded some part of Puhipuhi to claimants other than those who had been paid advances. In that case, he suggested, the government would have to apply for a further court hearing for a

[498] Evidence of H. Winiana, 18 April 1882, Northern Minute Book No. 5, p. 151
[499] Section 63, Native Land Court Act 1880
[500] R. Gill minute to J. Bryce, 28 March 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[501] R. Gill minute to J. Bryce, 28 March 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[502] J. Bryce marginalia to R. Gill, 10 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[503] *NZ Gazette*, 6 March 1882, No. 23, p. 365

determination which would award it land equivalent in value to what it had already paid in advances.

Once the hearing was underway, Gill asked Bryce whether he approved 'of the Court cutting out land in return for the advances, or should the matter be allowed to stand over, trusting to time allowing the whole block to be bought.' Bryce replied that acquiring the entire block was the better course of action.[504] In effect, Gill was suggesting to Bryce that the court could be asked to determine one of two alternative courses of action – either, those areas of the Puhipuhi lands that had been purchased already by the Crown through payment of advances, and the remaining areas which still belonged to those owners who had not participated in the Crown purchases, or alternatively, that it should determine the rightful owners of the entire area of Puhipuhi, in the hope that more of those owners could eventually be persuaded to sell. Bryce favoured the latter option. Both men, it can be assumed, refer here only to the lands which the claimants were willing to sell to the Crown, and did not include the southernmost lands which later became Puhipuhi blocks 4 and 5.

Shortly before Symonds delivered judgment, Greenway sent a telegram to the Native Land Purchase office predicting the outcome:

> I am of opinion outside claimants [presumably, Pomare Kingi and those he represented] will make good their claims as against those the Govt have already negotiated with and partly paid. I will endeavour to have Govt claims secured. Eastern and north-eastern portion of block most valuable on account of Kauri. Lawyers offering more pounds than the Govt are shillings for same [i.e. a disparity of more than 20 to one in the price offered by private vs. government buyers].[505]

Greenway's telegram is an example of the risks to Māori of accepting advances for their lands. Greenway indicates that the government was by then determined to support a result that best suited its interests, rather than accepting an impartial finding for Māori.

Gill instructed Greenway to forward the details of the Puhipuhi judgment as soon as it was delivered:

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[504] R. Gill to J. Bryce, 21 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[505] J. Greenway to R. Gill, 21 April 1882 and 29 April 1882, both in AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

> Do not apply for the Government's interest in the block to be defined or cut out. Let that matter stand over till the time for application of rehearing has passed. Should you hear of any private persons treating [i.e. negotiating] for the land or the timber, warn them that the land is covered by a Proclamation and that any dealing on their part is illegal.[506]

Gill's purpose in issuing this instruction appears to be to maintain the Crown proclamation over Puhipuhi for as long as possible, to prevent any new owners of the lands from negotiating a better price with private buyers than the Crown had agreed with Nehua, Kawiti and Tawatawa.

Greenway here appears to be acting in a questionable dual role – first as a court official, with privileged access to the judge and to evidence presented to the hearing, and second, as a Crown purchase agent. The possibility of a conflict of interest is at least raised by his conduct during this hearing. However, Greenway was evidently acting under orders from more senior Crown officials.

5.5 The 1882 Native Land Court judgment

In his judgment, Symonds described the evidence presented to him as 'most conflicting and unsatisfactory' and said that he and his colleague, the Native Assessor Perini Mataiwhaea, 'had some difficulty arriving at a decision':

> As regards the conquest by Maihi Paraone Kawiti, no continued occupation followed the conquest and his evidence does not agree with that of his witnesses. One stated he did not know the boundaries of the conquest, the other contradicted his former statement regarding them. Under these circumstances we cannot admit his claim.
>
> Eru Nehua of Ngāti Hau has occupied the southeast portion of this block and has cultivations upon it. It has been shown that Ngāti Manu, Ngāti Te Ra and Ngāti Wai occupied the northern portion.
>
> We therefore award to each, that is, to Ngāti Hau the southern portion, and to Ngāti Manu, Ngāti Te Ra and Ngāti Wai the northern portion respectively, making the boundary a line A and B, that is, from the southern boundary of the Opuawhango block on the Kaimamaku river to the southern boundary of the Kohea block on the Waiotu river.[507]

Symonds dismissed Kawiti's and Ngāti Hine's claim, and the overarching rights he held as an influential chief, although they had already accepted advances for

[506] R. Gill to J. Greenway, 21 April 1882, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[507] Judgment of Symonds J., 26 April 1882, Northern Minute Book No. 6, p. 34

Puhipuhi. He awarded to Nehua and Ngāti Hau 9,000 acres and to Ngāti Manu, Ngāti Te Ra and Ngāti Wai collectively, 16,000 acres.[508] Clearly, Symonds' 1882 judgment differed dramatically from each of the proposals that emerged from Maning's 1873 hearing.

Immediately after Symonds' judgment was issued, Greenway read out to the assembled claimants the amount of the government's Puhipuhi claims, that is, the previous advances. Kawiti repudiated the second £500 advance he had received, claiming that it was unrelated to Puhipuhi. Greenway felt this reflected Symonds' dismissal of Ngāti Hine's claims.[509]

Under the Native Land Court Act 1880, the term 'certificate of title' replaced the 'memorial of ownership' specified in the 1873 Native Land Court Act. However, there were no other differences between the two forms of document.[510] The Native Land Court Act 1880 specified that:

> If the Court is satisfied as to the title of the applicants or of any other Natives to the land, or any part thereof, it shall order the names of those so entitled to be placed on the register as owners, and a certificate of title to issue. In cases in which a survey has been made prior to the hearing, and a sufficient plan and description are in possession of the Court, a certificate of title shall be issued forthwith.[511]

Eru Nehua and Ngāti Hau declined to submit a list of Puhipuhi owners' names. They therefore obtained no certificate of title. Given that Nehua and others were resident on the southern portion of the block it is likely that the 9,000 acres would have included at least some of the 5,510 acre 'reserve' in the south surveyed for Nehua and Ngāti Hau in 1880 as well as land elsewhere in the wider Puhipuhi block, but this is not clear from the court judgement. Ngāti Wai and their whanaunga, however, accepted the judgment and provided the court with a list of 36 names for the Puhipuhi certificate of title.[512]

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[508] *NZ Herald,* June 2, 1883, p. 5
[509] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[510] Section 25 and 70, Native Land Court Act 1880
[511] Sections 25 and 26, Native Land Court Act 1880
[512] Register of owners, Puhipuhi No. 1 block, 27 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Greenway noted the absence of the Whangaruru-based Hoterene Tawatawa's name from this list, although Tawatawa had accepted advances for Puhipuhi on behalf of Ngāti Wai. Greenway told Gill, 'Consequently, I made an application to the Court to have his name admitted. This was granted.'[513] The resulting Register of Owners includes Tawatawa's name.

In his lengthy report to Gill, Greenway stated his belief that the other Puhipuhi owners had omitted Tawatawa's name because they felt he had accepted derisory advances. By leaving him off the list of owners, they hoped to nullify that agreement with the Crown and instead negotiate for a higher price for the land. Greenway believed the Ngāti Wai claimants had 'already entered into an agreement to sell to private parties and that a petition has been signed for presentation to Parliament praying that the Proclamation be rescinded. There is little doubt that the Government advances will be gladly repaid for this concession.'[514]

To forestall that possibility, the Crown agreed to the registrar of the court adding Tawatawa's name to the certificate of title.[515] This action was apparently authorised under Section 25 of the Native Land Court Act 1880, which states:

> If the Court is satisfied as to the title of the applicants or of any other Natives to the land, or any part thereof, it shall order the names of those so entitled to be placed on the register as owners, and a certificate of title to issue.[516]

This would appear to be a clearcut instance of a Crown intervention to ensure that Court title determination reflected the payment of the Crown's advances, rather than the owners' wishes.

Greenway indicated to Gill that the successful Puhipuhi claimants had good grounds to expect a generous payment to conclude the purchase. 'The kauri forest alone on Puhipuhi No. 1 [i.e. the northern portion, awarded to Ngāti Wai] is, at a low estimate, worth £30,000 [illegible] as it is the key to the extensive and valuable government Kauri forest immediately adjoining – Opuawhango.' The Crown, in the person of Gill, was therefore aware that it was offering the claimants to Puhipuhi very much less than

[513] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[514] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[515] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[516] Section 25, Native Land Court Act 1880

the true current value of their lands, that is, an unfairly low price, with the assessed value for the time on Puhipuhi No. 1 being more than the Crown paid Māori in total for Puhipuhi No. 1 and No. 2. Greenway concluded that 'I would strongly advise the completion of this purchase by the government, if possible. It is one of the finest kauri forests in the colony. In the event of a line of railway being constructed between Kawakawa and Kamo, the increased value from [illegible] to this forest would nearly pay the costs.'[517]

5.6 Protests and applications for re-hearing

Three days after Symonds delivered judgment, Greenway advised Gill that he had applied 'to the Court for an adjournment of the Government claim on the [Puhipuhi] block.'[518] That is, to the Crown's application for interests in the whole of the Puhipuhi block that was advertised in the notice of sitting in March 1882.

On the same day, 29 April 1882, Iwi Taumauru and others, who described themselves as 'disinterested onlookers who heard the decision of the Court in respect of that land', wrote to Native Minister Bryce listing their objections to the court decision to award the northern portion of the land to Ngāti Manu, Ngāti Te Rā and Ngāti Wai. That decision meant, they said, that a wāhi tapu, pā, and cultivations and fences had been wrongly awarded to those iwi/hapū. The signatories asked for a rehearing of the case.[519]

It appears that these were Te Atihau people, who had not joined with other iwi/hapū in applications for this hearing, nor made their own individual application. Their claims in the 1873 hearing had not been upheld. They therefore appear to have abandoned their claims to interests in the Puhipuhi lands for the purposes of a certificate of title or for Crown advances (hence the description here of them as 'disinterested'). However, they evidently wished to see wāhi tapu and other sites of significance to them protected, and hoped to achieve this despite the decision of the 1882 hearing.

[517] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[518] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[519] I. Taumauru and others to J. Bryce, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Also on that day, Nehua, Whangawhanga, Taikawa and 30 other members of Ngāti Hau sent a petition to Bryce. They objected to the court's decision to include in Puhipuhi No. 1 'our Pas, our sacred place (wahi tapu) and our cultivations and fences.' This referred to sites and developments claimed by Ngāti Hau but lying within the portion of the block awarded to the Ngāti Wai claimants. The petition added that those claimants 'with European lawyers devised schemes whereby the Government should not have this land Puhipuhi, therefore we … pray that our land may be re-heard.'[520]

The dates of both the above applications complied with section 47 of the 1880 Act, which specified that rehearings had to be applied for within three months of the original hearing.[521] In a covering note to the Native Minister, Gill wrote that, 'The present judgement is so much at variance with the opinion held by Judge Manning [sic] who heard the case in I think 1874 [in fact, 1873] that probably a rehearing will be granted.'[522] Gill gave no indication in this note that the two applications were in any way technically invalid.

In May 1882 Nehua and Ngāti Hau wrote again to Bryce, repeating that the Ngāti Wai-related hapū who had been awarded the northern part of Puhipuhi had made 'false statements.' The letter claimed that 'Pomare Kingi, who conducted their case, said that the persons who had received moneys from the Government on this land should be excluded. We were astonished that Pomare Kingi, who was fed by the Government, should turn against them in order that the Government might be deprived of this land.' Ngāti Hau asked for a speedy rehearing into the case and noted intriguingly, 'Do not again send a Judge who is addicted to drink.'[523] No evidence has been found regarding Symonds' drinking habits.

Predictably, Kawiti also rejected Symond's judgment. Kawiti raised the issue that he had already been paid advances but was not awarded ownership of any part of

[520] E. Nehua and 31 others to J. Bryce, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[521] Section 47, Native Land Court Act 1880
[522] R. Gill, memorandum to J. Bryce, 19 May 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[523] E. Nehua and Ngāti Hau to J. Bryce, 18 May 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Puhipuhi. In early May 1882 he wrote to Bryce to say that he had applied for a rehearing into Puhipuhi, adding:

> If you do not agree to a rehearing, what is to be done about the five hundred pounds that I have received – you have proclaimed that 25,000 acres because of advances made upon it which we have received … grant a new hearing of that land, lest you should altogether lose the money you have advanced on this land.[524]

On 12 May 1882 Kawiti lodged another Puhipuhi rehearing application.[525] He restated the allegations made in the Ngāti Hau petition, that Judge Symonds' judgment was influenced by outside parties:

> it was settled outside by the lawyers and Europeans, who were extremely anxious that Puhipuhi should become the property of those European purchasers of kauri; it was the object of those Europeans to get possession of Puhipuhi and that it should not be acquired by the Government.[526]

Kawiti told Greenway that of the £500 he had received, £200 was for services rendered in connection with the sale of Opuawhango, and the rest for his wife's land at Otaki.[527] Kawiti's assertions undoubtedly echoed his outrage at Symonds' judgment. They also illustrate the potential for confusion and misappropriation the advance payment system could generate.

In about June 1882 Hone Tiaki and 34 other members of Ngāti Wai (again, not including Tawatawa) petitioned the government, objecting to the price of six shillings an acre, the basis for the amount of their Puhipuhi advances. This is the petition predicted by Greenway in his communication with Gill immediately after Symonds' judgment was released. The petition stated that:

> A considerable part of the said Block is covered with Kauri timber of great value and the price therefore fixed by the Government is very much below the value, as Kauri timber in the vicinity of the said Block is selling for fifteen shillings a tree and a great many trees grow upon an acre … other portions of the said Block consist of rich alluvial flats.[528]

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[524] M. P. Kawiti to J. Bryce, 8 May 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[525] M. P. Kawiti, application for rehearing, 12 May 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[526] M. P. Kawiti to J. Bryce, 12 May 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[527] J. Greenway to T. W. Lewis, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[528] Petition of Hone Tiaki and 34 others (undated but marginalia dated 12 June 1882), AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

The petitioners claimed that they themselves had never received any advances but were nevertheless prevented, along with the other owners, from negotiating the purchase price. They pointed out:

> The great injustice they will suffer if the proclamation is not removed from their land, as they will then be unable to obtain the value of what is their own property … the lands of Europeans are not proclaimed in the same manner as Maori lands but Europeans are allowed to obtain the highest price they can.[529]

Finally, they asked that the proclamation which created a Crown monopoly over Puhipuhi should be removed 'in order that your Petitioners may be entitled to deal with the said land in the same manner as if they were Europeans.'[530]

The Crown remained resolute. Bryce annotated the petition with a memo to his Native Secretary, Sheridan; 'Private persons are unlawfully interfering notwithstanding the Proclamation and are doubtless at the bottom of this petition, but nevertheless the Government means to purchase the block or as much of it as they can.'[531]

The Crown's response to this petition demonstrates the unenviable position of owners who had accepted advances. They subsequently regretted that decision and wished to repudiate it. They had a right to repay their advances, and the Crown accepted repayment of advances in some other cases. In this case, however, the Crown was evidently still determined to purchase. It was also competing to do so with private interests, which meant an impartial hearing was now very difficult.

Astonishingly, given the history of rivalry between them, a few months after the Ngāti Wai petition, in November 1882, Tawatawa, together with Nehua, Kawiti and all the other major claimants to Puhipuhi, wrote jointly to Bryce offering to repay their advances in full.[532] The claimants' wish to accept more generous offers for their land from private buyers almost certainly prompted this exceptional demonstration of unanimity. This suggests that a more robust of investigation from the start of the

[529] Petition of Hone Tiaki and 34 others (undated but marginalia dated 12 June 1882), AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[530] Petition of Hone Tiaki and 34 others (undated but marginalia dated 12 June 1882), AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[531] J. Bryce, marginalia to petition of Hone Tiaki and 34 others, 12 June 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn. Emphasis in original
[532] M. P. Kawiti, E. Nehua, H. Tawatawa and others to J. Bryce, 1 November 1882, A-MLP1 16 ANZ

Native Land Court hearing process might have achieved some degree of agreement between these claimants at a much earlier date. Bryce flatly rejected this collective offer, an indication that the Crown believed it had secured a good deal with its initial advances and was determined to hold the vendors to the original terms of that deal.

5.7 Conflict amongst claimants prior to the 1883 Native Land Court re-hearing

All sides to this dispute had long warned of the possibility of open violence. In June 1882 it appeared violence was about to erupt in the form of an armed showdown between Nehua's Ngāti Hau people and the Ngāti Manu, Ngāti Te Ra and Ngāti Wai grantees to the rest of Puhipuhi. The generally derisive press reports of these hostilities made much of their location on the site of the 1846 battle of Ruapekapeka. About 100 Ngāti Hau based at Pehiaweri, near Whangarei, travelled to Ruapekapeka, on the northwestern boundary of Puhipuhi, and confronted a larger party of Ngāti Wai and their whanaunga. This expedition then became an occasion for utu, as the Ngāti Hau proceeded to destroy waerenga (clearings for cultivation) and to burn fences.

Both sides armed themselves with weapons ranging from ancient 'Brown Bess' muskets to 'very neat modern rifles and fowling pieces.' However, the guns remained silent and the situation was resolved without bloodshed, apparently after the intervention of James Clendon, the Resident Magistrate and Civil Commissioner.[533] Clendon, the son of a pioneering Hokianga ship owner and magistrate of the same name, had lived in Northland for 50 years, since the age of five.[534]

Whether or not this armed confrontation was influential in the decision to grant a rehearing for Puhipuhi is not apparent from the archival record. However, the right to a rehearing of a Native Land Court decision has been described as 'a safety valve for when court decisions posed a risk of armed conflict.'[535] Prior to the 1894 formation of the Native Appellate Court, the right to apply for a rehearing was the sole right of appeal to a Native Land Court judgment. The 1880 Native Land Court Act placed the power to grant or dismiss such an application in the hands of the chief Native Land

[533] *NZ Herald,* 14 June 1882, p. 5
[534] Jack Lee, 'Clendon, James Reddy', from *the Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand*, updated 6-Jun-2013, at http://www.TeAra.govt.nz/en/biographies/1c19/clendon-james-reddy
[535] Grant Phillipson, '"An appeal from Fenton to Fenton" – the right of appeal and the origins of the Native Appellate Court', *New Zealand Journal of History*, vol. 45, No. 2, 2011, p. 172

Court judge.[536] According to Boast, 'How frequently rehearings were allowed is a subject that requires further quantitative study.'[537] However, Phillipson lists the factors that influenced the chief judge to recommend rehearings as including, 'the threat of trouble over a block, evidence that a decision was "manifestly wrong", technical or procedural mistakes, and glaring inconsistencies in the court's decision.'[538] The first and last of these factors were arguably present in regard to the 1882 Puhipuhi hearing. The evident desire of the Crown to purchase much of Puhipuhi may also have been a factor in the decision to rehear the case.

Once granted, a Native Land Court rehearing under the 1880 Act was 'final and conclusive' and claimants had no further legal recourse if they still disagreed with the rehearing judgment. However, a rehearing was also comprehensive in its scope, and gave the court power to 'affirm the original decision or reverse, vary, or alter the same, or to give such other judgment and make such orders as it may think the justice of the case requires.'[539]

In the month following the Ruapekapeka confrontation, Chief Judge Fenton acknowledged that shortly after the 1882 Puhipuhi hearing, three groups of claimants - Iwi Taumauru and others for Te Atihau, Eru Nehua and others for Ngāti Hau, and M. P. Kawiti and others for Ngāti Hine - had each applied for a rehearing of the title investigation. He directed that that rehearing should take place under the Native Land Court Act 1880 at Kawakawa on 3 January 1883.[540] The hearing was later rescheduled for 15 February 1883, and eventually took place in May 1883.[541]

Before that rehearing took place, both Kawiti and Tawatawa attempted to return the Crown's advances they had received for Puhipuhi. In November 1882 Kawiti wrote that 'for eleven years we have been engaged in a dispute concerning this land and the end of it will be fighting, therefore we have decided to refund the money advanced by

[536] Section 46, Native Land Court Act 1880
[537] Boast, *The Native Land Court 1862 – 1887…*, 2013, p. 161
[538] Phillipson, "An Appeal from Fenton to Fenton" …', *NZJH*, vol. 45, No. 2, 2011, p. 173
[539] Section 47, Native Land Court Act 1880
[540] Chief Judge Fenton, Native Land Court, notice of re-hearing, *NZ Gazette,* 22 July 1882, No. 64, p. 64
[541] E. Hammond, Registrar, Native Land Court, notice of re-hearing, *NZ Gazette,* 27 January 1883, No. 10, p. 133

the Government so that you may be free of the matter, and we alone responsible.'[542] T. W. Lewis rejected this offer, saying that the government had no wish to cancel its purchase of Puhipuhi.[543]

In February 1883 three businessmen involved with the Kamo Kawakawa Railway Company, T. Morrin, J. M. Dargaville and J. Clark, asked Bryce to postpone the Puhipuhi rehearing, then scheduled to take place in Kawakawa in March, 'until Govt decides respecting proposed contract Kamo Kawakawa Railway Company now before Cabinet.'[544] All three were prominent land speculators with extensive financial and political connections. Morrin would later give his name to the town of Morrinsville and Dargaville to the Northland town of the same name. James Clark partnered Thomas Russell in the NZ Native Land Settlement Co., and Josiah Firth in the Te Aroha Battery Co., a gold mining venture.

The three businessmen then made Bryce an indirect but unsubtle offer to help with the Crown's purchase of Puhipuhi. In return they expected the promise of a future government contract, presumably one which concerned the railway line which was planned to pass through or adjacent to Puhipuhi:

> We are in no way concerned directly or indirectly in opposition to Government negotiations re Puhipuhi. On the contrary, our interests and those of government are identical. Our effective assistance however depends upon a reasonable prospect of proposed contract being entertained. This would enable us to arrange for present competitors to withdraw.[545]

In his reply, Bryce reminded the three that 'private negotiations for [Puhipuhi] are unlawful', and that their approach to him 'will render it difficult for Cabinet to proceed further with [a railway] contract.'[546] This response appeared to deter the businessmen from pursuing their government contract.

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[542] M. P. Kawiti to J. Bryce, 1 November 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[543] T. W Lewis to M. P. Kawiti, 14 November 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[544] Dargaville et al. to J. Bryce, 17 February 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[545] J. Clark, T. Morrin and J. Dargaville to J. Bryce, 19 February 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[546] J. Bryce to Dargaville and others, 17 February 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

A later newspaper report recalled this attempt to intervene in the Puhipuhi hearing, but placed a commercial rather than legal interpretation on Bryce's opposition to their plans. 'A company of capitalists endeavoured two years ago to acquire this land and construct the railway … but Mr Bryce held the land in such high value that he refused to listen to any proposition of the kind.'[547] Regardless of Bryce's real motives for defending the Crown's interest in Puhipuhi, its strategic location on the northern rail and road corridor, as well as the value of its kauri forest, is apparent from this exchange.

On 5 March 1883 Kawiti advised Bryce that he would be in Whanganui on the date of the proposed Kawakawa rehearing and requested another adjournment, until May.[548] This was evidently granted.

A week before the rehearing began, Gill wrote to Greenway (who, as in 1882, served as clerk of the court), alerting him that:

> it is probable that the Native Land Court sitting at Kawakawa will take the Rehearing case of the block of land known as Puhipuhi. I shall be obliged if you will attend and watch the interests of the Government in the matter. You have a general knowledge of the partition of the land as between the Native owners and the Government, and of the moneys that have been advanced on the purchase of the land. All at present necessary will be to see that should the Court award the land to the hapus to which Eru Nehua, Hoterene Tawatawa and Marsh Brown Kawiti belong, that the names of those who participated in the [advance] payments are registered as owners of the land.[549]

Those names and payments were detailed in a set of accompanying documents.[550]

This letter appears to place Greenway, as at the previous 1882 hearing, in a conflicted role – as a supposedly impartial officer of the court, and also as an agent expected to 'watch the interests' of the Crown, which was determined to purchase Puhipuhi. It also suggests that by paying advances to individuals or groups which the Crown's purchase agents had identified as holding principal interests in this land, those agents were, in effect, shaping who was ultimately included in ownership lists once title was

[547] *Auckland Star* 7 October 1884, p. 2
[548] M. P. Kawiti to J. Bryce, 5 March 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[549] R. Gill to J. Greenway, 3 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[550] Native Land Purchase Treasury vouchers and marginalia, 25 November 1878 -2 March 1881, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

awarded. In combination, these issues raise serious doubts about the independence of the court process.

5.8 The third Native Land Court hearing, 1883

Section 47 of the 1880 Act required a Native Land Court rehearing to be heard by two judges.[551] The Puhipuhi rehearing began on 10 May 1883, again at Kawakawa, under judges Loughlin O'Brien and Major William Mair, together with Native Assessor Hipirini Te Whetu, of Rotorua.[552] He had been appointed a Native Assessor two years earlier, in 1881.[553] The Native Land Court conducted the 1883 rehearing, like the 1882 hearing, under the terms of the Native Land Court Act 1880.

Of the four judges who participated in the 1873-1883 Puhipuhi hearings, only the Irish-born O'Brien held formal legal qualifications. He had trained as a solicitor in Auckland before serving as a Member of the House of Representatives for Auckland in 1853-55. He then held a number of public judicial positions in Auckland province, such as resident magistrate, before being appointed a judge of the Native Land Court in 1880. He thereby became only the third judge of that court, together with Chief Judge F. D. Fenton and J. E. MacDonald, the second Chief Judge, with legal qualifications. In 1889 O'Brien retired from the Native Land Court and lived on Waiheke Island, where he died in 1901.[554]

Major William Mair was born in the Bay of Islands in 1832. A fluent speaker of Māori, he served 'as one of the most successful colonial officers throughout the Waikato, Tauranga, Bay of Plenty, East Coast and Urewera campaigns, becoming a Major in the New Zealand Militia in 1866.'[555] Mair was appointed to the Native Land Court in 1882, the year before his Puhipuhi rehearing. He was dismissed from the Court in 1891 in controversial circumstances, reinstated in 1894, and remained on the bench until 1909.[556]

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[551] Section 47, Native Land Court Act 1880

[552] Report of Commission into Native Land Laws – Minutes of meetings with natives and others, *AJHR* 1891, Sess. 2, G-1, p. 11

[553] *New Zealand Gazette* No. 54, 6 July 1881, p. 883

[554] Bryan Gilling, 'The Nineteenth Century Native Land Court Judges – An Introductory Report', Waitangi Tribunal, 1994, Wai 64 #G5, p. 14; Schofield (ed), *A Dictionary of New Zealand Biography*, 1940, vol. II, p. 131

[555] Gilling, 1994, Wai 64 #G5, p. 15-16

[556] G. C. Peterson, 'MAIR, William Gilbert', from *An Encyclopaedia of New Zealand*, edited by A. H.

As with the 1882 hearing, the clerk of the court provided minutes. Mair also recorded his own notes to supplement the official record, which were later incorporated into the Native Land Court Minute Book series. Both sets of minutes have been consulted for this report.

The Mair-O'Brien court sat for two weeks, from 10 to 26 May 1883. As in 1882, Eru Nehua appeared on behalf of himself and Ngāti Hau. J. M. Fraser represented Ngāti Hine, and Pomare Kingi represented Ngāti Wai, Ngāti Manu and Ngāti Te Ra. Hirini Tamehana represented a fourth claimant group, Te Atihau. The former judge F. E. Maning had by then moved to London, where he died in December 1883.

On the opening day of the re-hearing Greenway asked Gill 'Do you intend to go on with the Govt case after Native case completed [?] If so I will require vouchers of sums paid and other documents in the case.'[557] Gill raised this question with Native Minister Bryce, advising, 'I think the application to determine the Government's interest in this land must for the moment be withdrawn. The first thing is to learn who are the grantees in the land, and then to endeavour to complete the purchase. Failing this the Court to cut out a portion of the block in value of the advances made.' Bryce approved this recommendation.[558]

Two days later Bryce advised Gill, 'After consultation with members of Govt have come to the conclusion that the sum you suggest is an excessive price and cannot be authorised. It is however highly desirable that the land should become the property of Govt. Negotiations for purchase at a moderate price should therefore be kept up and proclamation maintained.'[559] The communication from Gill to which Bryce refers here is not apparently held in the archival record, and the amount of Gill's suggested purchase price is therefore unknown.

One consequence for claimants of the two-week length of the 1883 Puhipuhi re-hearing was the total cost to them in court fees. The 1865 Native Lands Act had set a

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McLintock, originally published in 1966. *Te Ara - the Encyclopedia of New Zealand*, updated 24-Nov-09 at http://www.teara.govt.nz/en/1966/mair-william-gilbert

[557] J. Greenway to R. Gill, 10 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

[558] R. Gill to J. Bryce, memoranda, 10 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

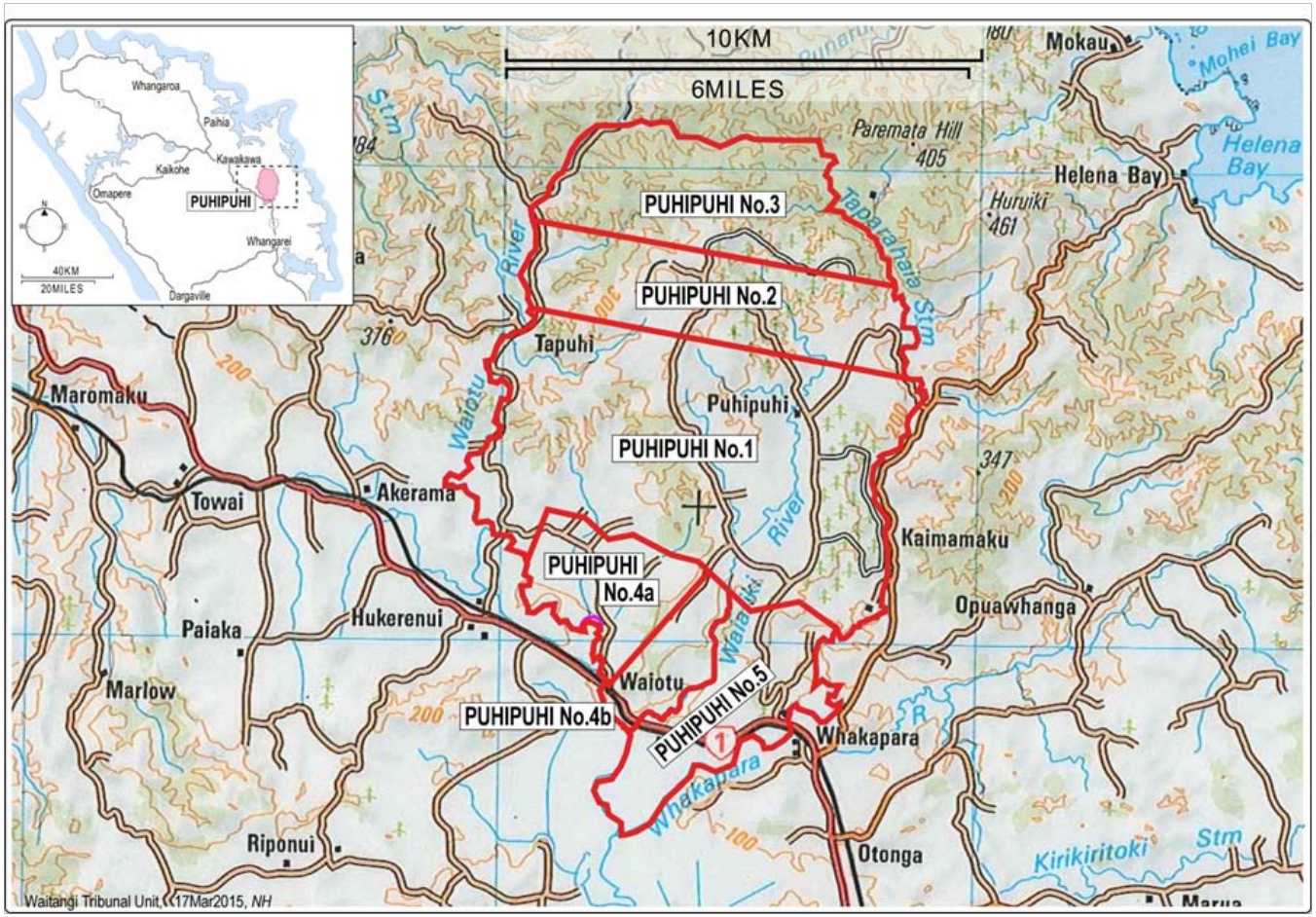
[559] J. Bryce to R. Gill, 12 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

fee of £1 per day for each party to a hearing.[560] That fee was still chargeable by 1883.[561] On the third hearing day, Saturday 12 May 1883, a long discussion took place about the fees charged. The Puhipuhi claimants complained to the court that 'parties were charged for hearing fees on days on which they take no part in the examination or cross-examination.' However, under the 1880 Native Land Court Act, the standard daily fee was apparently chargeable in those circumstances.[562] The Court's response to the complainants was the bland observation that 'difficulty was experienced.'[563] The nature of that difficulty, the parties who experienced it, and any possible solution, were all left unspecified.

As in the earlier hearings, Nehua claimed the whole of Puhipuhi through ancestral descent from the tupuna Kahukuri. He identified Ngāti Hau pā, occupations, traditional sites of cultivation, eel-fishing streams and burial places throughout Puhipuhi.[564] Ngāti Wai, Ngāti Te Rā and Ngāti Manu claimed 'the northern end' of Puhipuhi through ancestry, specifying that each of the three hapū could make a distinct claim, and through occupation of the land.[565] Ngāti Hine claimed the whole of Puhipuhi by right of conquest.[566] Erana Te Iwi claimed the land at Taharoa and Kupapa, at the southern end of Puhipuhi, on behalf of herself and Hirini Tamehana, both of Te Atihau. Their claim was based on ancestry from Te Pokorehu, and on occupation of the land.[567] During the hearing, Greenway kept Gill informed of progress. On 17 May he advised that the 'Rehearing [was] … proceeding slowly. Evidence so far in favour of Eru Nehua.'[568]

[560] Section 62, Native Lands Act 1865
[561] Williams, *'Te Kooti Tango Whenua…',* 1999, p. 190
[562] Section 13, Native Land Court Act 1880
[563] Northern Minute Book No. 6, p. 189
[564] Northern Minute Book No. 6, 1883, p. 173
[565] Northern Minute Book No. 6, 1883, pp. 173-4
[566] Northern Minute Book No. 6, 1883, p. 174
[567] Northern Minute Book No. 6, 1883, p. 174
[568] J. Greenway to R. Gill, 17 April 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Figure 6: Map showing the subdivisions of Puhipuhi created by the Native Land Court in 1883



(Sources: North Auckland ML 4871 (1880) and Crown Purchase Deeds for Puhipuhi No. 1, No. 2 & No. 3 (September 1883))

5.9 The 1883 Native Land Court judgment

In its report on the 1883 hearing the *Herald* commented that, 'in the history of the Native Lands Court there is no case analogous to that of Puhipuhi', a reference to the exceptional number of Puhipuhi hearings.[569] Judges O'Brien and Mair, in their final judgment, described the 1883 hearing as 'a most difficult case.' Their judgment, they said, was only 'arrived at after most careful and anxious consideration.' The two judges noted that 'the peculiar nature of this land, especially of the northern portion of it, did not invite settlement upon it to any great extent.' The rugged and heavily forest-covered areas of Puhipuhi were, they found, only settled periodically over long periods, and evidence of that settlement was therefore slight and contestable. 'This may account to some extent for the very unsatisfactory quality of the evidence adduced.' Evidence included statements from witnesses which the court recognised as false, although the judges acknowledged that this was not uncommon in cases before the Native Land Court. 'It has unfortunately become so common an occurrence to interweave false statements with the truth that the court is often at a loss what to accept and what to reject.' They knew that some, unspecified, statements presented as evidence could not be true because of 'material contradictions in the evidence of certain witnesses.'[570] The judges went on to elaborate in this point:

> We think that Eru Nehua has been consistent throughout in his claim and in his prosecution of it. But we do not find that the other parties have. On the contrary, we find at the former hearing one party abandoning his claim, and another party supporting a claim in the N' Tera, N'Manu and N'Wai which he now disputes, and further waiving any claim to the Northern part of this block.[571]

Faced with this confusing situation, the judges adopted a policy of comparing the evidence presented by rival claimants at each of the Puhipuhi hearings, and testing it for consistency. '… the safest rule to follow is to test the present claims of evidence by those made on previous occasions.' On that basis, the judges found that:

[569] *NZ Herald,* 2 June 1883, p. 5
[570] Judgement, 26 May 1883, Northern Minute Book No. 6, p. 231
[571] Judgement, 26 May 1883, Northern Minute Book No. 6, p. 231

> Te Atihau have failed in establishing any claim, and we think it a pity that they should have incurred the expense of prosecuting at this Court what they had deliberately abandoned and withdrawn on the former hearing.
>
> The admission by Eru Nehua in favour of Maihi Paraone Kawiti, and the evidence of some occupation by N' Hine of this block, we think justify us in admitting them to an interest in it.
>
> Although the evidence on behalf of N' Tera, N' Manu and N' Wai is not so satisfactory as we could wish, we award to them an interest in it on the evidence of occupation of a portion – a small portion of this block.
>
> As to Eru Nehua's claim, it has been uniformly consistent and the evidence is to our minds satisfactory, and to him and to his people we award the block chiefly.[572]

Having established to their reasonable satisfaction the reliability of the evidence offered by each of the claimants, the judges made the following awards:

> To the descendants of Para, Taurere Kautu and Te Pari 2000 acres of the Northern part of this block [later described as Puhipuhi No. 3] contained within a straight line running west from the eastern to the western boundary of this block and enclosing to the northward of it that area of land.
>
> To Maihi Paraone Kawiti and his co-claimants of the N'Hine we adjudge 3000 acres [later described as Puhipuhi No. 2] to the South of and adjoining the last named and bounded by it on the North and extending from the Eastern to the Western boundary of this block. The Southern boundary line is to be parallel with its boundary line.
>
> To Eru Nehua and his co-claimants of the N'Hau, descendants of Kahukuri, we adjudge all the remainder of the block [Puhipuhi No. 1, estimated to be about 20,000 acres].[573]

The two judges made no attempt to explain how their view of the evidence differed so radically from that of the judge at the previous hearing. According to the *Herald* correspondent reported from the 1883 hearing, that 'the universal opinion is that the judgment is just, and strictly in accordance with the evidence, and has consequently given great satisfaction.'[574]

The court then adjourned until the following Monday 'at the request of certain Natives.'[575] It is not clear who requested this adjournment or why, but it may have reflected the very lengthy court process, and allowed the claimants time to draw up a

[572] Judgement, 26 May 1883, Northern Minute Book No. 6, p. 231
[573] Judgement, 26 May 1883, Northern Minute Book No. 6, p. 232
[574] *NZ Herald,* 2 June 1883, p. 5

list of owners' names. These original subdivisions of Puhipuhi are shown in Figure 6 above.

5.10 Nomination of owners

The court resumed on 28 May 1883, when the claimants submitted their respective Registers of Owners. First, Ngāti Hine nominated the owners of Puhipuhi No. 2:

> Maihi Paraone Kawiti
> Tipene Mataroria
> Pokaia
> Wiremu Kape
> Hare Whiro
> Wiki Te Ohu
> Hotere Te Rangaihi[576]

Under the 1880 Native Land Court Act, 'In cases in which a survey has been made prior to the hearing, and a sufficient plan and description are in possession of the Court, a certificate of title shall be issued forthwith.'[577] The Mair-O'Brien court's title determination followed Hirini Taiwhanga's original (1872) Puhipuhi survey. Although the Inspector of Surveys had not approved this plan, which was later found to be inaccurate, Gill authorised it to be traced onto the Crown purchase deeds of conveyance. W. S. Kensington, Auckland's Chief Surveyor, repeatedly objected to this reliance on an unapproved survey but Gill told him that, 'all he cared was to get the title completed as the forest was so valuable.' As a result of this unseemly haste to secure Puhipuhi's timber for the Crown, the deeds were later found to describe an area of 2,000 acres larger than the actual block.[578] The Crown purchased the Puhipuhi No. 2 block on 13 September 1883, as described in the next chapter.

On 28 May 1883 Riwi Taikawa applied for, and was granted, a subdivision of Ngāti Hau's 20,000 acres. That area was subdivided into three blocks of unequal size, to be known as Puhipuhi 1, 4 and 5, whose boundaries Taikawa described to the court.[579] The court was empowered to order such subdivisions under section 34 of the 1880

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[575] 26 May 1883, Mair Minute Minute Book No. 1, p. 278
[576] Register of Owners, Puhipuhi No. 1, 26 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[577] Section 26, Native Land Court Act 1880
[578] Auckland Survey Office memorandum, 22 October 1887, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[579] Northern Minute Book No. 6, pp. 278-279

Native Land Court Act.[580] This extremely important decision gave Ngāti Hau legal title to those areas of their papakainga land which they wished to reserve from sale to the Crown, with restrictions on their alienation.

The court determined the boundaries of the partitions as:

> No. 4 to commence at the junction of the Waiariki Stream to the point on the northern boundary line of Mr Wilson's survey of the 5510 acres of this block following to where it is marked on his map [ML] 4871 with the letter A, then following along that boundary as laid down by him on said map, in a westerly direction as on said map by a line coming on at Te Kohai on the Waiotu Stream, then down that stream to the mouth of the Wairiki Stream at its junction with Waiotu.
>
> No. 5 commencing at the said junction of the Waiariki Stream with the Waiotu, up the Waiariki Stream, to the aforesaid point A on said map [ML] 4871, then Easterly along a line as laid down on said map to the Kaimamaku Stream, then down that stream and by the outside boundary line of this block, round to the commencing point.
>
> No. 1 – all the remaining portion of the block lying to the North of the two last named pieces of land and bounded on the north by Puhipuhi No. 2.[581]

The Mr Wilson referred to above is the surveyor who surveyed the internal partition of Puhipuhi in 1880 to create the 'reserve' insisted upon by Eru Nehua and Ngāti Hau.

The names of the owners of each of these partitions were listed as:

Puhipuhi No. 1:

Whatarau Ruku
Eru Nehua
Haki Whangawhanga
Riwi Taikawa
Pirini Kake
Tawaka Hohaia[582]

Puhipuhi No. 4:

Paraire Kake
Keremerata Kake
Rihi Kake
Marare Kake
Manira Matarau
Mataititi Matarau
Pairama Matarau

[580] Section 34, Native Land Court Act 1880
[581] Northern Minute Book No. 6, pp. 230-234
[582] Register of Owners, Puhipuhi No. 1, 26 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Kateao Te Takupu
Komere Ripiro
Peruwhau
Rukanawhau
Tanatiu Huna
Hare Te Raharaha
Mereana Poia
Makareta Rongo
Tiina Kuini Haia
Petera Te Ranaatua
Eruana Maki
Mereana Hirini Peru
Ani Kaaro
Patu Hohaia
Raupia
Rauna Teri
Patu Hihira
Parata Minarapa
Hetaraka Minarapa[583]

Puhipuhi No. 5:

Tita Nehua
Wiri Nehua
Hone Nehua
Rehutai Nehua
Ani Nehua
Te Paia Nehua
Ataria Nehua
Ihaka Nehua
Piri Nehua
Kaiaho
Toki
Riwi Taikawa

There were no objectors, and the three lists were passed by the court. The Crown purchased the Puhipuhi No. 1 block on 5 September 1883, as described in the next chapter.

Eru Nehua applied to restrict the alienation of blocks 4 and 5.[584] The court had a duty under the 1880 Act to 'inquire into... the propriety of placing any restriction on the inalienability of the land or any part thereof, or of attaching any condition or limitation to the estate of the owners thereof, and to direct that the certificate of title be issued subject thereto.'[585] The court ordered accordingly that these two blocks

[583] Native Land Court Certificate of Title to Puhipuhi No. 4, MLIS records. Note – the spelling of some names on this deed was hard to decipher. Best endeavours were made to transcribe these but some errors may have occurred.
[584] Northern Minute Book No. 6, p. 279
[585] Section 36, Native Land Court Act 1880

would remain 'inalienable, except with the consent of the Governor, by sale or mortgage, or by lease for a longer period than twenty-one years.'[586]

Nehua had made clear since at least November 1878, when he first received Crown advances for Puhipuhi, that he was not willing to sell the land at the southern end of Puhipuhi 'occupied by [him] and his people, numbering fifty or sixty.'[587] He also insisted on reserving an additional 200-acre area specifically for himself. Shortly after receiving the first of his several advances, Nehua, together with Hoterene Tawatawa, wrote a 'letter of explanation' specifying that they were not prepared to sell 'the portion set part for the Ngatihau or that for Eru Nehua.'[588]

In March 1880 Crown purchase agent Charles Nelson had confirmed to his employer, R. Gill that his negotiations excluded the area he described as 'the Native settlements, a swamp of about 500 acres, and about 300 acres of cleared grassland, but no portion of the kauri forest.'[589]

In mid-1880 Nehua had commissioned a survey of the area he was determined to withhold from sale, and shared the cost of this survey equally with the Crown. Crown Surveyor S. Percy Smith described the survey as 'of the Puhipuhi reserve, area 5510 acres.'[590] The use of the term 'reserve' for this area should not mean it is confused with the additional, and adjacent, 200-acre area that Nehua reserved for his own use. The larger area, blocks 4 and 5, were not a reserve in any legal sense, but simply subdivisions of the area awarded to Ngāti Hau. In 1884 the smaller area did become a legally designated reserve, as detailed in the following chapter.

[586] Native Land Court Certificates of Title to Puhipuhi No. 4, CT 3942 and Puhipuhi No. 5, CT 3943, MLIS records
[587] Dignan & Armstrong to Clarke, 17 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[588] 'Letter of explanation' by H. Tawatawa and E. Nehua, Auckland, 25 November 1878, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[589] C. Nelson to R. Gill, 27 March 1880, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[590] Treasury vouchers 68278, 78741 and 14918 for survey payments, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

The nominated owners of Puhipuhi No. 3 were:

Ngāti Manu	Maraea Motu, Harawene Hikuwai
Ngāti Te Rā	Marara Tera Hingahinga
Ngāti Wai	Ene Taiwhatiwhati

Again without objectors, the court accepted this list of owners, 'conditional on plans and surveys being made of the various pieces.'[591] The Crown purchased Puhipuhi No. 3 block on 13 September 1883, as described in the next chapter.

Copies of Sydney Taiwhanga's 1872 survey plan were placed on the certificates of title for Puhipuhi blocks 1, 2, and 3. Notes attached to the later plan ML 4871 state that 'Old plan used & areas taken as ordered at Court by Mr Gills request so as to agree with Deeds.'[592] This somewhat cryptic annotation further suggests that Taiwhanga's plan was accepted and used by successive Native Land Court hearings, and especially the final 1883 hearing, out of a desire by the Crown to streamline the title investigation process so as to progress to the Crown purchase.

The dramatic differences between the judgments of each of the three Native Land Court hearings into Puhipuhi have been noted earlier in this chapter, and elsewhere.[593] By the time of the 1883 judgment, the claimants had evidently grown thoroughly tired of a dispute that had dragged on for more than a decade and several times threatened to result in bloodshed. They may therefore have been willing to accept the court's latest judgment as a legally sanctioned means to capitalise their interests in the land and its resources, in which case the sale price for their interests would have held primary importance for them.

5.11 Conclusion

The subdivision of rights reached by judges O'Brien and Mair's 1883 Native Land Court hearing is described in Figure 6 in this chapter. That decision differed significantly from that reached by Judge Maning's initial 1873 hearing, and even more dramatically from Maning's later informal proposal to Kawiti of an equal three-way division. The decision reached by Judge Symonds in 1882 was quite unlike any

[591] Northern Minute Book No. 6, pp. 230-234
[592] Notes to ML 4871, North Auckland ML Plan Register, Linzone eA127738, LINZ Hamilton
[593] Armstrong and Subasic, #A12, p. 735

of those reached by the other judges, in awarding the majority of the block to Ngāti Wai and related hapū, the rest to Nehua and none to Kawiti.

Judges O'Brien and Mair's 1883 decision, which awarded 80 per cent of the block to Nehua and the remainder to Kawiti and Ngāti Wai and related hapū, followed the longest and most exhaustive of the three court hearings into the block's traditional ownership. Eru Nehua fulfilled his longstanding intention of reserving the southernmost portion of Puhipuhi from sale to the Crown by seeing it subdivided into three blocks, two of which the court was asked to make inalienable.

The 1883 decision was accepted by all three groups of claimants, and was presumably equally acceptable to the Crown since it coincided with its interest in purchasing the entire Puhipuhi block apart from the southernmost 5,000 acres withheld from sale by Ngāti Hau. That decision also had the effect, long hoped for by both the customary owners and by Crown officials, of marking the end of outright disagreement over the traditional rights to Puhipuhi. Although some owners would later complain to the Crown that the balance of their expected sale price for their interests had not been paid, the open conflict between the parties that had flared up repeatedly over the previous 12 years was finally ended.

In the years following the 1883 court decision, there were occasional suggestions that the court had erred in its award of the rights to the block, and that some rights-holders had not been recognised in the decision. These lingering suggestions of injustice would, in future, complicate the processes of subdividing and alienating the various Puhipuhi interests.

The following chapter of this report will deal with the alienation to the Crown of Puhipuhi blocks No.s 1, 2 and 3. A later chapter on partition and alienation will deal with the subsequent history of Puhipuhi blocks No.s 4 and 5, the portion retained by Eru Nehua's whānau and hapū.

Chapter 6 – Crown purchase

6.1 Introduction

Soon after the 1883 Native Land Court hearing which awarded titles to Puhipuhi to three groups of claimants, the landowners began final negotiations to sell their lands to the Crown. Eru Nehua and Ngāti Hau were the only Puhipuhi landowners who insisted on withholding part of their lands from sale. They withheld the 5,000 acres in blocks 4 and 5, and an additional 200-acre reserve within Puhipuhi No. 1.

The Crown purchased Puhipuhi No.1 from Ngāti Hau on 5 September 1883 for £8,574. It purchased Puhipuhi No. 2 from Ngāti Hine on 13 September 1883, for £1,800. It purchased Puhipuhi No. 3 from Ngāti Wai on the same day, for £1,000. Those sums excluded the amount of advance payments already made to individual owners of each of the blocks – Eru Nehua, Maihi Paraone Kawiti and Hoterene Tawatawa respectively (this data is also set out in the table below).

This chapter describes the purchase process and explores its outcomes for owners of Puhipuhi. In particular, it looks closely at the issue of how the purchase price was arrived at by the Crown. This was a central issue in these negotiations. The Crown wished to purchase for the same per-acre price on which it had based its advance payments. The owners hoped to sell for higher per-acre prices, since agents for private buyers were apparently willing to offer such higher prices.

6.2 Crown opens sale negotiations

Following the 1883 title investigation rehearing, the Crown took immediate steps to acquire the owners' remaining interests in what it clearly regarded as a valuable asset. The Crown's haste to complete the purchase of Puhipuhi once title had been awarded to the claimants contrasts sharply with its unhurried attitude over the previous five years. The keen interest shown by private buyers in Puhipuhi's timber resources may explain the Crown's haste to purchase.

The Crown may also have wished to conclude the Puhipuhi purchase before the construction in that district of the main northern highway, which would greatly increase the value of the land. Crown purchase agents were prepared to make

considerable efforts to avoid paying increased prices for Māori land because of proximity to highways and railways. According to Armstrong and Subasic, in 1874 agent H. T. Kemp advised his Native Minister, Donald McLean, that:

> Whenever possible, no roads should be constructed on or near blocks which the government proposed to purchase, to ensure that the price was not thereby increased. As Kemp noted, 'there is nothing more likely to embarrass the Government in extinguishing the native title at *a moderate cost*, than the construction in the first instance of roads, other than mere bridle tracks for the time being.' This policy was subsequently adopted.[594]

The fact that the route, which later became State Highway 1 passed through Puhipuhi soon after its purchase by the Crown suggests its significance.

Crown officials clearly hoped to obtain the Puhipuhi lands for the six shillings per acre price which they used to calculate advances. However, during the 1883 hearing Greenway advised Gill that both Kawiti and Nehua would hold out for a much higher price.[595] On 28 May 1883, five days after Judges Mair and O'Brien delivered their judgment, Greenway advised Gill that 'Eru Nehua and Marsh Brown state that their people will not complete sale of Puhipuhi to the government except at a large advance on price originally fixed.'[596] The following day Greenway added that it was not possible for him to negotiate immediately with Nehua and Kawiti since there was 'No possibility of keeping Eru and Marsh's people together, they were wearied with the long hearing of the case and returned home at once.'[597]

From Auckland, Gill immediately cabled Native Minister Bryce requesting instructions on the Puhipuhi purchase. He told Bryce that:

> If the purchase is to be completed, now is a favourable time, before private persons meddle with the grantees. If I am to meet the natives, will you fix a limit to the price per acre to be paid. I don't think less than fifteen shillings or a pound per acre will satisfy them for the timbered portion – about six thousand acres – and half this money for the open lands. Before agreeing to any payment I would go on the block with the surveyor who surveyed it.[598]

[594] Armstrong and Subasic, #A12, pp. 757-8
[595] J. Greenway to R. Gill, 20 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[596] J. Greenway to R. Gill, 28 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[597] J. Greenway to R. Gill, 29 May 1883 AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[598] R. Gill to Native Minister J. Bryce, 29 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

The Crown clearly intended to complete the Puhipuhi purchase. Gill's message was forwarded to the head of the government, Frederick Whitaker. Whitaker, through his Native Department under-secretary, T. W. Lewis, instructed Gill to consult with S. Percy Smith, the assistant surveyor-general:

> then go to Whangarei. Telegraph your arrival there and instructions as to price will be sent to you. Please request Mr Smith to telegraph to the Minister of Lands his opinion of the value of the land for settlement and the price it is worth, especially the timber.[599]

Bryce agreed with Whitaker and Gill that:

> The present time would be most opportune to buy from the Natives. I am desirous that the purchase should go on and think from what I have heard that the bush land which contains kauri would not be dear at fifteen shillings an acre or in places even more but I have been given to understand that the land is indifferent and poor and would be dear at the original price mentioned – seven shillings an acre. Mr Smith [i.e. the Assistant Surveyor-General, S. Percy Smith] probably knows the quality of the soil and its value.[600]

According to his diaries, S. Percy Smith had worked extensively in the Hokianga and other northern districts in the late 1870s and early 1880s. However, his diaries record no triangulation activity at Puhipuhi in that period, or any visit by Smith to the Puhipuhi area.[601] His knowledge of the topography and forest cover of Puhipuhi therefore appears to be derived from maps and reports, rather than direct observation.

On 30 May 1883 Smith cabled that of Puhipuhi's 25,000 acres, about 5,000 were 'first-class land valued at 15/- the rest at 9/6. The block contains also about 4,000 acres magnificent kauri forest worth about £6 per acre.' He valued the entire block at £35,250, noting that this figure valued the kauri 'at very much less than private individuals do.'[602] Smith's figure of £6 per acre for prime kauri land dwarfed the Crown's 6/- per acre offers, and even his lowest per-acre figure was more than 50 percent above the Crown's offer. On 31 May 1883, Gill informed Bryce that:

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[599] T. W. Lewis, per Premier F. Whittaker, 29 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[600] J. Bryce to R. Gill, 29 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[601] S. Percy Smith Diaries 1878-83, MS-Copy-Micro-0751-04 ATL, Wgtn
[602] S. P. Smith to Surveyor-General, 30 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

> The owners of the two thousand acres piece in the Puhipuhi block [i.e. Ngāti Wai, Ngāti Manu and Ngāti Te Rā] are ready to sell to the govt for one thousand pounds. I think if the whole block can be purchased at a rate equal to ten shillings per acre it should be done.[603]

In the months prior to the Puhipuhi purchase, the Crown's agents had praised the quality of its timber. The Māori owners also praised the extent and quality of its kauri forest when negotiating the purchase. However, since Puhipuhi had no internal road access, was not accessible by sea, and was generally regarded by Europeans as remote, only a few officials such as Smith had, at that time, estimated the value of Puhipuhi's timber resource with any precision. In late 1883, just after the purchase of the forest, Gill wrote that, 'The area bought by the Government is 19,920 acres of first-class virgin kauri bush containing trees varying from 3½ ft to 6½ ft and 7 ft in diameter; much of the bush of a level character.'[604]

The kauri remained of significant value to Māori for gumdigging, as noted in chapter 2. However, once Puhipuhi was opened up to the timber industry the commercial prospects were much greater than from kauri gum, and those prospects had attracted private buyers, as well as the Crown, in the scramble to acquire rights to the forest. Elsewhere in the region, logging and milling native timber for sale to the Auckland building industry and for export, especially to Australia, was a growing and profitable business. Other native forests nearer Auckland, such as those at Mangakahia and Kaipara, were becoming worked out and the companies milling them were looking further north for new timber land.

6.3 Nehua and Kawiti make sale offers

On 30 May 1883, Nehua wrote to Greenway agreeing to a price of £20,000 for the 14,190 acre Ngāti Hau portion of northern Puhipuhi. That area excluded the 5,510-acre papakainga later known as Puhipuhi blocks 4 and 5. It also excluded a further 300 acres (later reduced to 200) which Nehua had since decided he also wished to reserve within the Crown purchase area. Greenway said that Nehua 'hoped the Govt

[603] R. Gill to J. Bryce, 26 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[604] R. Gill, memorandum on Smith's 30 May Puhipuhi valuation, *AJHR* 1885, D-1 p. 43 encl. 5 in Appendix H, No. 1, p. 43

would arrange about purchase quickly as other parties were offering to purchase and he feared his people would sell their interests' [to private buyers].[605]

By 4 June 1883 Gill had seen the Native Land Court Puhipuhi certificates of title, discussed the plans with Smith, and consulted Greenway. He advised Lewis that the 5,510-acre Puhipuhi papakainga 'cannot be purchased – the children and women only are made grantees. By placing so many children (minors) on the owners' list, Ngāti Hau may have been trying to make it more difficult for the land to be alienated. It is open land and kahikatea bush only.' However, he confirmed, 'The balance of the land I think can be purchased, 14,190 acres including the kauri forest land, for twenty thousand pounds.' He asked Lewis to pass this information on to Bryce or, in his absence, to Whitaker.[606] In 1882 Greenway had advised Gill that 'The Kauri forest alone on Puhipuhi No.1 is at a low estimate worth £30,000.'[607]

Gill then asked Smith for a copy of his May 1883 memo giving his £35,250 Puhipuhi valuation. 'I should urge its confidentiality' added Gill.[608] Gill was evidently well aware that the Crown was negotiating to purchase Puhipuhi for well below its market value. Nevertheless, Bryce replied to Gill that, after consulting his colleagues, he felt £20,000 was an excessive price. 'It is however highly desirable that the land should become the property of Government. Negotiations for purchase at a moderate price should therefore be kept up and proclamation maintained.'[609]

Unsurprisingly, Gill did not feel confident of persuading the owners to sell on such terms, while private buyers offered a market value. He told Bryce:

> You may rely on my purchasing as low as possible and not recklessly … My proposal of twenty thousand pounds is certainly ten thousand less than Mr Smith's estimate of the value of the land after excising the 5510 acres reserve. Possible I might purchase for fifteen thousand pounds. What I should like is to be able to agree to a sum when meeting the owners, or to tell them their value is no longer reasonable. Delay is only adding to the price. At present private agents are lukewarm from the fact that it has been stated the Govt will not remove the

[605] J. Greenway to R. Gill, 3 May 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[606] R. Gill to T. W. Lewis, 4 June 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[607] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[608] R. Gill to S. Percy Smith, memoranda, 5 June 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[609] J. Bryce to R. Gill, 6 June 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

> proclamation. If it is known that there is any hitch in the purchase, fresh opposition is certain to spring up and cause trouble.[610]

Kawiti, meanwhile, made his own offer to Bryce, of thirty shillings an acre, equating to £4,500 for his 3,000-acre share. He pointed out that the price of six shillings an acre for the advances had been arranged with Nehua and Tawatawa, and that he did not agree to it, since the area of Puhipuhi awarded to him differed from their portions. 'This land is not at all like the lands that have been sold, none of them had so much valuable kauri timber on the land as on this block.'[611]

Had the Crown accepted the three sellers' original asking prices, it would have paid a total of £25,500, or £10,000 *less* than Smith's conservative valuation. However, the Crown's agents continued to press Nehua and Kawiti to accept their lower price. Gill reminded Bryce that the price originally built into the Puhipuhi advances was:

> Six shillings per acre, plus the survey expenses. But for private persons offering extravagant terms for the growing timber on the land and assuring the native owners that the Government had abandoned the purchase of the land, the transaction would have been completed on the original agreement.[612]

This message indicates a degree of confusion, and perhaps deliberate misinformation, about the status of the Crown's 1878 pre-emption proclamation and the payment of advances. Gill had already advised Bryce that private buyers were 'lukewarm' on account of the Crown's December 1878 pre-emption proclamation. Yet those same private buyers had apparently previously assured Puhipuhi's owners that the Crown would withdraw the proclamation. This uncertainty may well have prompted the Crown to lift its purchase offer well above its six-shillings-an-acre bottom line, while still aiming to pay as little as possible.

Gill urged Bryce to reply to Kawiti that 'the agreement made with Mr Nelson and Mr Sheehan must be adhered to.'[613] Accordingly, Kawiti was told that, 'The amount [of £500] was paid to you after long consideration – it was not a work hurriedly done.'[614]

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[610] R. Gill to J. Bryce, 6 June 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[611] M. P. Kawiti to J. Bryce, 14 June 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[612] R. Gill to J. Bryce, 27 June 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[613] R. Gill memorandum, 26 June 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[614] R. Gill memorandum, 18 July 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

This did not satisfy Kawiti. He reiterated that, 'six shillings will not be accepted because there is so much kauri upon it; more than upon any other block.' He then reminded the government that he and the other owners were endeavoring to negotiate a satisfactory price while holding to their undertaking not to return to dealing with private buyers. He warned the government of the risk that the owners might:

> Incur your displeasure if they are tempted by the higher offer made by the speculators, and I therefore urge you to give the price asked – 30/- per acre. If you do not do so, let me know so that I may accept the offers made by the private speculators in which case you will perhaps be angry and trouble will arise in consequence.[615]

Eru Nehua 'and other owners of this land' sent a similar letter to Ministers Bryce and Rolleston, and Premier Whitaker on 25 July 1883, this time asking for £10,000 in final settlement of the 14,290 acres they were willing to sell.[616] Gill replied:

> The money the Government will pay you to close the Puhipuhi purchase at once is eight thousand pounds [i.e. approximately 12/- per acre]. From this sum must be deducted the moneys you have already received, namely £500 and £120, in all £620. The money paid for the survey £302.0.0, and the cost of the survey of the reserve will not be charged to you.[617]

This reference to survey costs was an additional but modest inducement to Nehua to accept the Crown's price. The £300-odd cost of the 1872 survey of the entire Puhipuhi boundary was a considerable sum, but Nehua had already incurred it when he commissioned that survey, so he was simply being reimbursed as he had a right to expect. The Crown now offered to also meet his share of the cost of surveying the internal boundaries between the two new and smaller blocks at the southern end of Puhipuhi. As a major landowner and vendor who had already commissioned and paid for several surveys himself, Nehua would have been well aware of the approximate sum which the Crown was offering to remit. It is unlikely to have been more than about five percent of its overall purchase offer.

In advising his Minister of an appropriate response to the various owners' sale offers, Gill reminded him of Charles Nelson's negotiations to purchase the land in 1878, and the advances paid at that time. 'These papers show conclusively that Eru Nehua,

[615] M. P. Kawiti to J. Bryce, 9 July 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[616] E. Nehua and others to Bryce, Rolleston and Whittaker, 25 July 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[617] R. Gill to E. Nehua, 10 August 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Marsh Brown Kawiti and Hoterene Tawatawa did sell to the Government their land for six shillings per acre. I recommend that the Native Land Court be asked to enquire into this sale and make an award.' In a revealing closing remark, Gill added, 'At the same time I think the land is worth a much larger sum per acre.'[618]

Greenway advised the Native Lands Purchase Department that he had spoken with Kawiti about his terms for selling his Puhipuhi share, and that Kawiti believed that:

> Puhipuhi No. 2 is equal if not superior in value to Nehua's portion for which you offered twelve shillings per acre. Marsh now asks thirteen. I am led to believe Nehua will sell at same price as Marsh Brown and that the latter is acting as agent for both. Evidently the reason of the anxiety to sell at front [?] is on account of a rumour that Hone Mohi Tawhai MHR is trying to move Parliament to grant a fresh hearing for Puhipuhi on behalf of Ngātimanu.[619]

This new rumour, noted here by Greenway but apparently nowhere else, is an example of a degree of Māori agency over the purchase negotiations. The Māori owners believed that the Crown was offering less for their land than the market price, and hoped to hold out for a better price. However, assuming that Mohi Tawhai indeed hoped to see a 'fresh hearing for Puhipuhi', he may have needed special legislation to do so. Under the 1880 Native Land Court Act, the 1883 Puhipuhi rehearing was 'final and conclusive', and no further appeals against that judgment were possible.[620] Perhaps for this reason, nothing came of the proposed rehearing rumoured by Greenway.

If Greenway was correct in his information that Kawiti and Nehua, after contesting vehemently for at least a decade over their respective rights to Puhipuhi, were now collaborating over the Crown purchase, this represents a significant shift in their attitudes. Yet these two men, plus the third major owner representative, Hoterene Tawatawa, had already jointly approached the government six months earlier, when they all attempted to repay their advances. In both instances, the vendors appear to have tried to secure a better price per acre from the Crown for Puhipuhi than it was offering, especially as they were aware that this price was far less than market value.

[618] R. Gill to J. Bryce, memorandum, 27 July 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[619] J. Greenway to R. Gill, 2 August 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[620] Section 47, Native Land Court Act 1880

However, neither they nor private bidders, it appeared, could succeed in breaching the pre-emption proclamation.

On 8 August 1883 Haki Whangawhanga, a co-owner with Nehua and others of the Ngāti Hau portion of Puhipuhi, again wrote to Rolleston, Whitaker, and Bryce, adding a further reason for seeking an urgent conclusion to the sale of the land. 'I and my daughter Te Tawaka are in ill-health and should we die (soon) there will be a delay in appointing successors' [to their interests in the land].[621]

On 13 August Kawiti wrote to Greenway accepting the government's offer of 13/- per acre for his share of Puhipuhi.[622] Two days later Eru Nehua and others accepted the offer of 12/- per acre for their 14,490-acre portion of the land, and thanked the government for remitting the survey charges.[623] The way was clear for the Crown to close the deal.

6.4 Crown concludes purchase

Greenway advised the Native Minister on 16 August that, 'The purchase of the Puhipuhi block 19,490 acres can now be completed for the sum £12,000 you authorised me paying for it. It is possible that the purchase money will not exceed eleven thousand five hundred pounds.'[624]

Gill minuted Bryce that 'if possible this purchase should be completed at once. I had better see its being done myself.' Bryce agreed, and Gill prepared to leave his Auckland office for Northland.[625] He instructed Greenway and James Clendon to arrange meetings with the various owners in either Whangarei or Kawakawa.[626] Gill also asked Smith to forward the deeds, including plans, for Puhipuhi blocks 1, 2 and 3. (The Crown attached to each of the deeds the respective certificate of title.) The telegram indicating a signature added that 'No. 1 [i.e. the Ngāti Hau area] contains by

[621] H. Whangawhanga to Rolleston, Whittaker and Bryce, 8 August 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[622] M. P. Kawiti to J. Greenway, 13 August 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[623] E. Nehua and others, 15 August 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[624] J. Greenway to J. Bryce, 16 August 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[625] R. Gill and J. Bryce, marginalia to J. Clendon telegram, 16 August 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[626] J. Clendon to R. Gill, 27 August 1883 and R. Gill to J. Greenway, 27 August 1883, both in AECZ 18714, MA-MLP1, 16, 1884/21, ANZ Wgtn

recalculation 13,372 acres, the old original survey (upon which the calculation was made by the Court) being in error.'[627] This refers to the faulty 1872 survey by Hirini Taiwhanga, noted in chapter 2 this report.[628] 'After deducting No. 4 and 5 surveyed by Wilson, then deducting the 2000 and 3000 [acres] in No.s 2 and 3, the balance computes to 13,372 or thereabouts.'[629]

Gill then proceeded to Whangarei and Kawakawa and during 5-14 September he completed the three Puhipuhi purchases. He signed the deed of conveyance for Puhipuhi No. 1, with a stated purchase price of £8,574, in Whangarei on 5 September 1883. Matarau Ruku, Eru Nehua, Haki Whangawhanga, Riwi Taikawa, Pirini Kake and Tawata Hohaia signed as vendors. The deed recorded the area purchased as 14,490 acres.[630]

In a subsequent letter to Smith, Gill referred to the reserve within Puhipuhi No. 1 block, which Nehua had previously insisted to Crown purchase agent Charles Nelson was a condition of his co-operation in the purchase. Nehua originally proposed a 300-acre reserve, but eventually accepted 200 acres. Gill's letter explained that, 'This piece of land is bordered by the Kaimamaku stream on the southern end of the block.' Gill asked that the Crown survey this reserve, 'in order that the promise may be fulfilled and a Crown grant issued to Eru Nehua and his wife.' Nehua, he said, lived near this reserve and could point out its boundaries to the surveyor.[631]

Both Ngāti Hine and Ngāti Wai representatives signed the purchase deeds for the northernmost 5,000 acres of Puhipuhi in Kawakawa on 13 September 1883. The Ngāti Hine deed recorded the area of No. 2 as 3,000 acres and the price as £1,800. M. P. Kawiti, Tipene Mataroria, Pokaia, Wiremu Kapa, Ririmu Kau, Hare Miro, Wiki Te

[627] [Illegible] for S. Percy Smith to R. Gill, 4 September 1883 AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[628] S. Percy Smith to R. Gill, 4 September 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[629] [Illegible] for S. Percy Smith to R. Gill, 4 September 1883 AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[630] Puhipuhi No. 1 Crown purchase deed, ABWN 8102, W5279, box 209, AUC 1406, ANZ Wgtn; Certification of deposition of deeds of conveyance for Puhipuhi blocks 1-3, 9 January 1884, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn; 'Lands Purchased and Leased from Natives in North Island', *AJHR* 1884, C-2, p. 2
[631] R. Gill to S. Percy Smith, 10 September 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

Ohu and Hotere Te Rangaihi signed as vendors.[632] The Ngāti Wai deed for 2,000 acres recorded a purchase price of £1,000. Maraea Motu, Harawene Hikuwai, Eru Taiwhatiwhati and Marara Te Mahingahinga signed as vendors.[633]

That day Gill advised Bryce, his Native Minister, that 'the area acquired by the Government [was] 19,290 acres and the total costs including all advances previously paid £11,374, less survey charges.'[634] That sum equates to about 12 shillings per acre, about one-third of Smith's conservative estimate of four months earlier. The final price paid by the government for each of the portions is shown in Table 2 below.

Table 2: Final price and price per acre paid by the Crown for Puhipuhi No. 1, No. 2 and No. 3

Block	Grantee	Area (acres)	Price	Per-acre price
Puhipuhi No. 1	Eru Nehua	14,490 (approx.)	£8,574	12 shillings (approx.)
Puhipuhi No. 2	M. P. Kawiti	3,000	£1,800	12 shillings
Puhipuhi No. 3	H. Tawatawa	2,000	£1,000	10 shillings

In a further letter to Smith, Gill confirmed the triple purchase and added,

> I suppose therefore that it will not be requisite to cut the division lines for the pieces 2 and 3 [since the Crown now owned both] and that for all practical purposes the Native Land Court can issue final orders. I am anxious to have the land gazetted Waste Lands of the Crown [ie, available for sale or lease to settlers] as early as possible.[635]

About four months later, the Crown gazetted Puhipuhi No. 1-3 as waste lands of the Crown, and therefore 'free from native claims and all difficulties in connection therewith.'[636]

On 23 September 1883, Gill confirmed to Bryce the triple Puhipuhi purchase and specified again that, 'The area acquired by the Government being 19,290 acres and the total cost, including all advances previously paid, £11,374, less survey charges.'

[632] Puhipuhi No. 2 Crown purchase deed, ABWN 8102, W5279, box 209, AUC 1407, ANZ Wgtn
[633] Puhipuhi No. 3 Crown purchase deed, ABWN 8102, W5279, box 209, AUC 1408, ANZ Wgtn
[634] R. Gill to J. Bryce, 13 September 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[635] R. Gill to S. Percy Smith, 22 September 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[636] *NZ Herald,* 20 February 1884, p. 4

Bryce commented 'It is well to see this purchase is closed in so satisfactory a manner.'[637]

Two days later Gill forwarded the Puhipuhi deeds to assistant Surveyor-General S. Percy Smith, noting that, 'it cannot be certain that the area is accurate.'[638] Four years later, in 1887, William Kensington, the Chief Surveyor, Auckland, confirmed that:

> There is no doubt that the correct area is 2000 acres less than Govt deeds, but that is not the fault of this office. The survey was originally made in 1873 [in fact, 1872] by no less a person than the great Sydney Taiwhanga MHR. The survey was known to be so bad that neither Mr Heale (then Inspr. of Surveys), nor Mr Percy Smith at a later period, would approve the plan. In spite of this, the Native Land Court … made a final order, upon an unapproved plan. Mr Gill (then Under Sec.t) got the deeds of conveyance to the Crown made on the spot at Whangarei, before submitting them to this office or getting the original plan checked. Both Mr Smith and myself told him repeatedly that the plan was incorrect and that we were sure that the areas would not come out right but he said that all he cared was to get the title completed as the forest was so valuable. The original plan of Puhipuhi upon which the orders were made is still unapproved and likely to remain so.[639]

Thus Kensington believed that Gill, the chief Crown agent completing the Puhipuhi purchase, wanted the forest and cared little about the acreage. The mocking reference to 'no less a person than the great Sydney Taiwhanga MHR' (Taiwhanga was by that time an elected politician) is an example of the Crown shifting the blame for its own actions.[640] While Taiwhanga's survey was demonstrably inaccurate, this was not all uncommon for northern surveys in the early 1870s. The Crown and its officials required his plan for Native Land Court hearings and purchases, and were therefore willing to accept it as valid for those purposes. Its accuracy was their responsibility, and they had no grounds to later blame the surveyor for the known errors.

The proclamation preventing private purchase of Puhipuhi lands was formally ended on 18 October 1883 by an official notice that the Crown had completed its purchase

[637] R. Gill to J. Bryce, 23 September 1883; Bryce marginalia, 24 September 1883 AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[638] R. Gill to S. Percy Smith, 25 September 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[639] W. Kensington, Auckland Survey Office to A. Barron, 27 October 1887, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[640] Hirini Taiwhanga was elected MHR for Northern Maori in 1887, the same year as Kensington's letter, Claudia Orange, 'Taiwhanga, Hirini Rawiri', *Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand* at http://www.TeAra.govt.nz/en/biographies/2t4/taiwhanga-hirini-rawiri

negotiations.[641] The Crown's frequent references, prior to completion of the purchase, to private competitors obscured the legal position. Private purchasers could not legally compete with the Crown after it proclaimed pre-emption in December 1878.

6.5 The Puhipuhi purchase and the problem of debt

The *Auckland Star* reported a week after the final purchase that some of the purchase money was immediately spent to repay longstanding debts:

> Kawakawa has been rather livelier than of late, owing to a number of natives being in to receive their pay in connection with Puhipuhi … So far, 10,000 pounds has passed from the Government into the hands of the natives, and many of the latter have been known to pay back store accounts that were given up for lost.[642]

This indicates that, in some cases at least, Nehua, Kawiti and/or Tawatawa distributed the proceeds of the purchase to their whanaunga, and those people then used the money to repay debts accrued to storekeepers. Of the three main claimants, both Tawatawa and Kawiti, like their whanaunga, owed money. This indebtedness may have influenced them to co-operate in the Puhipuhi purchase.

The issue of Māori indebtedness to storekeepers was well recognised across the North, especially after 1873 when the government ceased providing food and other stores to claimants attending Native Land Court hearings.[643] Those often-prolonged hearings, sometimes held far from claimants' home communities, might force the claimants to run up considerable debts at stores. Storekeepers could demand promises of repayment once Māori received money for their lands. This situation created difficulty when purchase agents encouraged those debtors to sell their lands to settle outstanding debts. For example, Crown purchase agents knew of and referred to Kawiti's debts during their purchase negotiations with him.

The final purchase price offered to each of the Puhipuhi vendors excluded survey costs (this is discussed in greater detail in the sections that follow). Nevertheless, officials later debated responsibility for payment of survey costs. In November 1883 the Native Land Court Registrar replied to a request to issue certificates of title for the three new Puhipuhi blocks by saying, 'a survey lien for the sum of four hundred and

[641] *NZ Gazette,* 18 October 1883, No. 107, p. 1496
[642] *Auckland Star,* 22 September 1883, p. 2
[643] Armstrong and Subasic, #A12, p. 825

sixty-two pounds ten shillings in favour of the Government has been registered against these blocks … it is necessary that this lien should be released before the Certificates can be enclosed as requested.'[644] However, as noted earlier, having acquired ownership of all the Puhipuhi No. 1-3 area, the government had no need to impose a survey lien. Smith promptly cancelled the liens.[645]

6.6 Eru Nehua's 200-acre reserve

Soon after the final (1883) Native Land Court hearing over Puhipuhi, but before concluding the Crown purchase of the bulk of the lands awarded to Ngāti Hau, Eru Nehua stipulated a further condition of sale. He insisted that a 200-acre area within the Puhipuhi No. 1 block should be withheld from sale. This reserve is shown in Figure 7 below.

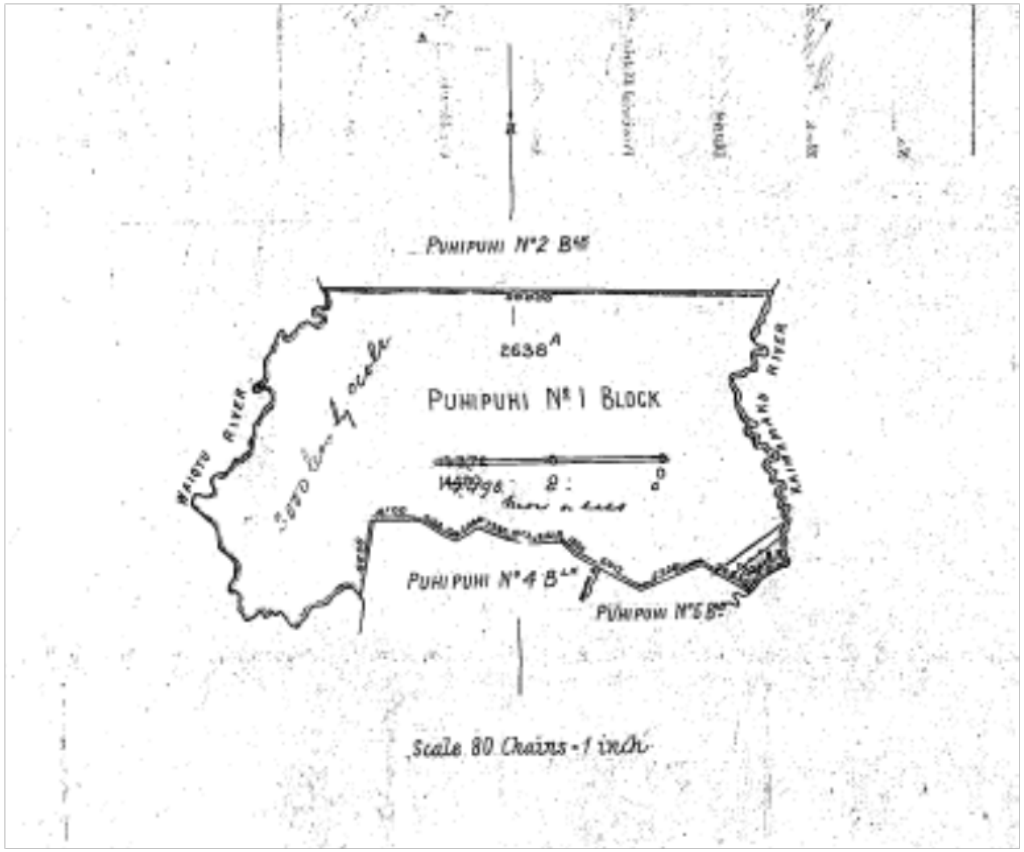
Shortly before completing the Puhipuhi purchase, Gill confirmed the significance of this reserve, and the government's agreement to pay for its survey, in a note to Smith:

> When at Whangarei last week I promised that a small reserve of 200 acres should be excepted from the purchase of the Puhipuhi No. 1 block 14,470 acres … direct the survey of this piece of land from the main block … in order that the promise may be fulfilled, and a Crown grant issued to Eru Nehua and his wife … Eru Nehua is living near the land and will point out to the Surveyor a starting point where the line will require cutting.[646]

The area specified by Nehua as a condition of the Puhipuhi purchase lay at the extreme southeast corner of the purchased area, bounded by the Kaimamaku Stream and the boundary of Puhipuhi 5, and close to his papakainga at Taharoa.

[644] Native Land Court Registrar to R. Gill, 13 November 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[645] S. Percy Smith to R. Gill, 26 November 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[646] R. Gill to S. Percy Smith, Auckland, 10 September 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck

Figure 7: Crown Purchase Deed plan showing the location of the 200 acre reserve excluded from the sale of Puhipuhi No. 1 in 1883



(Source: Puhipuhi No. 1 Crown purchase deed, 5 September 1883, ABWN 8102, W5279, box 209, AUC 1406, ANZ Wgt)

The Crown formally granted this 200-acre reserve to Eru Nehua and Tawata Hohaia on 10 January 1884.[647] The grant was awarded under section 5 of the Volunteers and Others' Lands Act 1877, which empowered the Governor, in the case of any Māori land acquired by the Crown, to:

> give effect to any stipulation made in any instrument of sale or transfer… for the reservation, sale or grant to [the former owners] of any such portions of such land, and for that purpose to reserve or to grant such portions accordingly in any manner required by the aforesaid Natives.[648]

During the second reading of this Act, John Sheehan, on the day he became Native Minister, had explained that:

> large purchases of Native land had been made by the Government within the past five years … One of the conditions had been that when this land was bought certain reserves should be set aside for the Natives. The lands had been purchased, and had been vested in Her Majesty; and this Bill proposed to give power to enable the Government to carry out any promises which had been made in respect of reserves.[649]

This relatively small reserve should not be confused with the much larger 'reserve', or papakainga, which Eru Nehua had insisted upon since at least 1878. That larger 'reserve' became the 5,500-acre Puhipuhi No. 4 and 5 area, to which alienation was restricted in the Native Land Court certificate of title. This restriction stated 'that the land therein shall be inalienable except with the consent of the Governor by sale or mortgage or by lease for… twentyone years.'[650]

6.7 Later protests about the purchases

After Crown purchases of multiply owned Māori lands, individual owners often objected to some aspects of the purchase process. After the triple Puhipuhi purchase, Kawiti, one of the three principal vendors, objected to the payment he had received. The day after signing the deed and receiving payment, he wrote to Bryce stating that Gill had not paid him the correct amount for his share. He had anticipated payment of

[647] Puhipuhi No. 1 Crown purchase deed, ABWN 8102, W5279, box 209, AUC 1406, ANZ, Wgtn; Certification of deposition of deeds of conveyance for Puhipuhi blocks 1-3, 9 January 1884; Lands Purchased and Leased from Natives in North Island, *AJHR* 1884, C-2, p. 2; Memorandum, R. Gill and J. Bryce, 10 January 1884, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[648] Section 5, Volunteers and Others' Lands Act 1877
[649] *NZPD* vol. 26, 1877, p. 293; *New Zealand Parliamentary Record*, (Wellington: Government Printer, 1925), p. 28
[650] Native Land Court Certificate of Title to Puhipuhi No. 5, MLIS records

a further £500 that the former Native Minister John Sheehan had held on his behalf since 1878.[651] The Crown responded that that sum had been lent to him privately for an unrelated matter. Gill minuted this letter that Kawiti 'knew well ... that the money held by Mr Sheehan was a matter the Government would not interfere in' and that Kawiti 'had not the frankness to say that he was not satisfied when the money was paid to him.'[652] After this letter, Kawiti apparently abandoned his efforts to obtain a further £500 from the Crown.

Just months after the government confirmed its purchase of Puhipuhi, Werengitana Hokio of Whangaruru wrote to the Native Lands Purchase Department asking to dig for gum on the land. Hokio had apparently been one of the Ngāti Wai claimants to the northern area of Puhipuhi, and he now resented Eru Nehua's ownership of an area that included:

> All our sacred places and ancestors through the wrongful judgment of the judge and his assessor. We had evidence of the wrong for notwithstanding that Eru Nehua said much that was not correct, it was not taken down by the clerk, the judge or the assessor. Very little indeed was taken down. That is why I urge that I should work the gum on Puhipuhi.[653]

Hokio may not have followed all three Native Land Court Puhipuhi hearings. Nehua gave evidence at all three. Hokio may therefore be referring to the fact that although the 1882 and 1883 minutes amounted to more than 30 pages each, they nevertheless abbreviated and edited the full oral evidence given. They were summary, rather than verbatim, minutes.

Hokio's request was declined, on the grounds that gumdigging would increase the fire risk in the forest and threaten the kauri timber.[654] As described in the following chapters, gumdigging rights within the Puhipuhi kauri forest were strictly controlled once it became Crown property.

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[651] M. P. Kawiti to J. Bryce, 14 September 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[652] R. Gill and J. Greenway marginalia to M.P. Kawiti to J. Bryce, 14 September 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[653] W. Hokio to R. Gill, 12 January 1884, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[654] R. Gill, NLP Department memorandum, 25 January 1884, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck

6.8 Conclusion

A process set in motion in 1871, when Eru Nehua commissioned a survey of the boundaries of the entire Puhipuhi area, was concluded twelve years later, in 1883, when the Crown purchased a total of almost 20,000 acres for a little over £11,000. That sum included the amount already paid to the owners in the form of advances, so the amount the three groups of owners received in 1883 was about £9,000.

The Crown's only valuation of the land plus timber, by Assistant Surveyor-General S. P. Smith, was over three times what the Crown finally paid. Even given the costs the Crown would later incur for rail and road infrastructure to enable the timber to be extracted, this suggests that the Crown benefitted financially from the sale at the expense of Māori, especially since the Crown also received income from timber licences and the eventual sale of the cleared land to settlers.

There seems little room for doubt that as the Crown negotiated with the landowners for a final sale price, it was aware that the market value of the land was very much higher than its best offers. The year before the Crown purchase Greenway had advised Gill that 'The Kauri forest alone on Puhipuhi No.1 is at a low estimate worth £30,000.'[655] SP Smith's subsequent valuation, which he described as conservative, was higher still. Gill stressed that this valuation should be kept confidential, an indication of its commercial sensitivity.[656] Kawiti and the other two main landowners all claimed to have been offered much higher prices for their land than the Crown was prepared to pay.[657]

The three groups identified by the 1883 Native Land Court as Puhipuhi's owners probably accepted the Crown's purchase price for a variety of reasons, including:

- the advances already paid, which established, for Nehua and Tawatawa at least, an exceptionally low starting price. These advances had also bound the three main groups of vendors to complete the Crown purchase. The advances allowed the Crown to proclaim pre-emption, which excluded private buyers from making competing offers.

[655] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[656] R. Gill to S. Percy Smith, memoranda, 5 June 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[657] M. P. Kawiti to J. Bryce, 9 July 1883, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn

- a sense of exhaustion at the long inter-hapū conflict, and a desire to bring it to a speedy end, even if this meant accepting a disappointing sum.
- Ngāti Hau's knowledge that the Crown promised to pay the original survey costs and that Ngāti Hau continued to own a 200-acre reserve within Puhipuhi No. 1 and all of Puhipuhi No. 4 and 5, their papakainga.
- the indebtedness of some owners. Other owners evidently owed money to Kawakawa storekeepers and had become dependent on store-bought goods.

From the Crown's perspective, it acquired a very valuable property, and one which stood to greatly increase in value once it gained road and rail access. Resolving intermittent threats of tribal violence over Puhipuhi's ownership provided further incentive to both Crown and vendors to close the deal. More significantly, however, the Crown had already committed about £2,000 in advances. This effectively bound both parties to complete the purchase.

However, the Māori vendors also had some leverage to demand a higher price from the Crown. Even though pre-emption banned competing offers from private buyers, rumours abounded that changes to the legal status of the land might allow the owners to accept private offers. Eventually, the Crown agreed to a substantial increase on its original 6/- per acre offer. The following chapter will detail the use the Crown made of its newly acquired property, and the implications for local Māori.

Chapter 7 – Crown development of its Puhipuhi lands, 1883 – 1890

7.1 Introduction

Soon after its purchase in 1883 of the majority of the Puhipuhi lands, including the kauri and other forest cover, the Crown began to develop its new acquisition. Some of those developments involved land takings under public works legislation, from the portion of Puhipuhi remaining in Māori ownership. This chapter and the next will consider Crown developments on the northern portion of Puhipuhi, and their impact on Māori living on the Māori-owned southern portion of Puhipuhi (Puhipuhi 4 and 5).

Between 1884 and 1890 the Crown claimed land under public works legislation to construct a road, and prepared to extend the railway network, across Puhipuhi 4 and 5 – the approximately 5,500 acres of land remaining in Māori ownership. Eru Nehua objected to the compulsory land takings, but without success.

The kauri forest to the north of Puhipuhi 4 and 5 was designated a State Forest in 1885. This affected customary Māori use of the forest for activities such as gumdigging. Pākehā settlers began moving onto lands adjacent to Puhipuhi, especially around Hukerenui. They also wished to dig for gum in the State Forest. The forest was vulnerable to bushfires, and much of the timber was lost to fire, especially in the summer of 1887-1888. To reduce the fire risk, the government placed limits on its use by gumdiggers, many of whom were Māori who relied heavily on the cash income from gum.

This chapter examines the impact of these changes on the owners of Puhipuhi 4 and 5, and assesses the extent to which the Crown's ownership and regulation of the kauri forest constrained the ability of Māori at Puhipuhi to benefit from gumdigging on the Crown land immediately north of the papakainga lands they had retained.

7.2 The taking of Puhipuhi land for roading, 1883 – 1884

On 1 May 1884, about 25 acres of Puhipuhi 4 and 5 were taken under warrant by the Governor for the purpose of a road.[658] Even before completing purchase of the larger part of Puhipuhi, the Crown took steps to acquire for roading part of the land withheld from the purchase. By March 1883 the only section of the Great North Road between Auckland's North Shore and Okaihau (northwest of Lake Omapere) which was not a formed road was a 4½ mile (7.2 kilometre) section at Puhipuhi. The 1883 annual report from the Minister for Public Works advised that 'works over this gap may be finished by end of next February and there will then be a fair summer road for wheeled traffic from North Shore to Bay of Islands.'[659] Part of this gap in the formed road included lands which, following the 1883 Native Land Court's Puhipuhi hearing, became the Puhipuhi 4 and 5 blocks. It is unclear whether the owners of these blocks were told of the Crown's intention to put a road through the blocks at the time of the 1883 title investigation.

In July 1883, a month after the Native Land Court determined title to Puhipuhi but before the Crown had purchased any part of it, assistant Surveyor-General S. Percy Smith requested the Surveyor-General to 'cause the usual warrant to issue authorising Edwin Fairburn, Dist. Surveyor, to take road through Puhipuhi No. 4 and 5 under the Native Land Acts. The road required to be taken is the Great North Road.' The letter added 'The Block has not yet been divided but will be before long.'[660] The warrant referred to was issued under section 78 of the Public Works Act 1876, which required a surveyor, before entering Māori land for the purpose of surveying for public works, to have 'a special authority … signed by the Minister [of Public Works].'[661]

The Crown could take Puhipuhi land for roading under section 106 of the Native Land Act 1873, which authorised the taking of up to five percent of any Native land without paying compensation to the landowners (the 'five percent rule'). This power did not normally extend to land 'occupied by pahs, Native villages or cultivations, or

[658] *NZ Gazette*, 1 May 1884, No. 54, p. 735. The plan referred to in this gazette notice shows the exact area taken as 24 acres 3 perches and five roods (SO 3397, dated 1 October 1883)
[659] Report on roads in the North Island, *AJHR* 1883, D-1, Appendix 1, p. 43
[660] S. Percy Smith to Surveyor-General, 30 July 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck
[661] Section 78, Public Works Act 1876

by any buildings gardens orchards plantations burial or ornamental grounds.'[662] Section 106 limited application of the five percent rule to ten years beyond title determination. Section 14 of the Native Land Act Amendment Act 1878 (No 2) extended that term to 15 years.[663] The proposed 1883 land takings within Puhipuhi were, of course, well within both time limits, since the Native Land Court had determined title just two months previously, in May 1883.[664]

The proposed route of the road through Puhipuhi No. 4 and No. 5 was objected to by Eru Nehua, one of the principal owners of those blocks, on the basis that it would make farming the land there more difficult. Nehua may well have appreciated the benefits the road would bring by way of greater access to his land, but he appears to have felt that those benefits could be gained without compromising his farming activities to such an extent. A warrant was issued to Fairburn authorising access to the Puhipuhi lands for the purposes of the road survey on 17 August 1883.[665] He accordingly wrote to Eru Nehua, who lived with his whānau on Puhipuhi No. 5, explaining his intention to survey the road line and enclosing a tracing of the route.[666] In September 1883 Nehua replied, objecting to the proposed road and requesting an alternative fence-line which would not be so disruptive to his grazing property:

> Kua tae mai to pukapuka me to mapi o te huarahi o Taharoa ki Waiariki. E hoa, e kore au e pai kia mahia tenei rori, ko te take, ko te ture o te tau whitu tekau ma toru. E kore hoki au e pai ki te utu ia tau ia tau i taku whenua nei ano, me kaua ana Ture, kua pai ahau me taiepa ano ia nga wahi e rua o te huarahi, timata atu i te piriti o Whakapara ki te awa o Waiariki ko te wahi tenei e taiepa e te Kawanatanga o tetahi o tetahi taha o te huarahi.
>
> *I have received your letter and map of the route from Taharoa to Waiariki. My friend, I am not happy about the making of this road, because of the law of 1873 [the 1873 Native Land Act]. I am also unhappy at the yearly charges on my land [possibly rates charges], and if that law was stopped, I would be happy for both sections of the road to be fenced, from the Whakapara bridge to the Waiariki River. This is the place where the government is fencing each side of the road.* [667]

[662] Section 106, Native Land Act 1873
[663] Section 14, Native Land Act Amendment Act 1878 (No 2)
[664] Native Land Court Certificates of Title to Puhipuhi No. 4 and 5, MLIS records
[665] Annotation on plan SO 3397
[666] E. Fairburn to S. Percy Smith, 28 September 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck
[667] E. Nehua to E. Fairburn, 18 September 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck. Translation – Mark Derby

By this time Nehua's and Ngāti Hau's farming operations were extensive. During the 1882 Native Land Court title investigation for Puhipuhi, he had described to the court the 250 head of cattle, 210 sheep, 2,000 pigs and 20 horses running on his communal property, part of which was leased 'to the Pakeha for running the cattle.'[668]

Fairburn referred Nehua's objection to Smith, who replied, 'I think you had better state shortly whether any cultivations, to what extent are intersected etc. so that matter can be fully reported to government before taking any steps.'[669] Smith presumably intended to check whether the proposed land taking contravened that part of section 106 which prevented takings of land occupied by 'Native villages or cultivations.'

Fairburn sent Smith a preliminary sketch of what became SO 3397, showing the proposed roadline, cultivations and fences. Having inspected the land in question he could understand, although not necessarily agree with, Nehua's objections that the proposed road would affect his farming operations:

> I believe one great reason for Eru Nehua's objection is that by running a line of fence between point A and D (the Whakapara and Waiariki Streams being impassable to cattle) he would have a large block of land cheaply fenced in and that this advantage would be destroyed by the new line of road being taken.[670]

Smith forwarded this correspondence, with the sketch plan, to the Surveyor-General, saying that Nehua's objections 'cannot be maintained at law':

> The road now taken being the Great North Road, and the only unmade part between Whangarei and Kawakawa, it is proposed to make it at once, in which case Eru possibly will oppose us, when an appeal to the law will be necessary. Under these circumstances will the Government consent to us doing so?[671]

Smith also wrote directly to Nehua in Māori, suggesting that if Nehua persisted in opposing the road survey, the Crown would charge £60 for the survey of the boundaries of the Puhipuhi No. 4 and 5 blocks. The Crown had earlier agreed to pay for this survey charge as part of its purchase negotiations. Smith was evidently

[668] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 5, pp. 15-16. Official statistics confirm Nehua's own figures for his sheep flock – Annual sheep returns, *AJHR* 1885, H-11, p. 4
[669] S. Percy Smith to E. Fairburn, 28 September 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck
[670] E. Fairburn to S. Percy Smith, 1 October 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck
[671] S. Percy Smith to Surveyor-General, Welington, 12 October 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck

determined to proceed with the road, and unwilling to entertain Nehua's objections and alter the route.

Indeed, he was willing to use the threat of financial penalty (and to go back upon an undertaking already made to Nehua about the survey cost) to ensure that the road would proceed.

> Mehemea he hiahia ana koutou kia oti te ruri i te ara wewehe o Puhipuhi No. 4, No. 5, me tuku mai ki au e ono tekau pauna ki au takoto mai mo te utu i te ruri. Ka oti tera pea i hoko atu tetehi wahi ki a koe – kahore ranei – kei te utu o te mahi te tikanga. E mea ana ahau kia [illegible] te oti enei ruri ki puta ai nga tiwhikete.
>
> *Should you wish to see the survey of the division between Puhipuhi 4 and 5 completed, you should send me £60 to guarantee the cost of the survey. This may, or may not, also complete the sale of this place to you - the cost of the work will be the issue. I instruct [you?] to complete these surveys to release the certificates [of title?].*[672]

However, the Surveyor-General was inclined to take a more diplomatic approach to persuade Nehua to drop his objections. He hoped that Native Department under-secretary R. Gill, who had recently concluded the Crown's Puhipuhi purchase, could persuade Nehua to agree to the roadline. If this attempt failed, the Surveyor-General suggested that the Crown exercise its compulsory acquisition powers:

> Mr Gill thinks that if the purpose of the road is fully explained to Eru Nehua he will agree to it. Should he however persist in his opposition, you are authorised to put the law in action against him when necessary.[673]

In the margin to the above letter, Fairburn added, with evident impatience, 'The matter has been explained time after time to Nehua – yet still he objects.'[674] Fairburn completed the survey of the Great North Road through Puhipuhi 4 and 5 by 1 October 1883.[675]

In this instance, the government appeared willing to consult repeatedly with Nehua in attempting to overcome his objections to its roading proposals. However, as a last

[672] S. Percy Smith to E. Nehua, 1 November 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck Translation – Mark Derby
[673] Surveyor-General to S. Percy Smith, 21 November 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck
[674] Marginalia, E. Fairburn, General Survey Office memorandum, 21 November 1883, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck
[675] Annotation on plan SO 3397

resort the Crown would proceed with its plans despite his opposition. Nehua was a shrewd businessman and hard bargainer. Faced with the Crown's refusal to alter the proposed route and with the prospect of legal action to compulsorily acquire his land, he then attempted to get the best deal possible out of the Crown by bargaining to have part of his land fenced at no cost to him. Fairburn recognised this, and advised Smith not to accept Nehua's argument.

Nehua eventually submitted to the government's plans for the route of the Great North Road. The Crown gazetted the section of the Great North Road which passed through the Puhipuhi No. 4 and 5 blocks, totaling about 25 acres, on 1 May 1884.[676] However, no compensation was paid to the landowners as the taking fell within the 'five percent rule.' That is, the 25 acres represented less than five percent of the total acreage of Puhipuhi No. 4 and 5 (5,510 acres).

The outcome of the taking is similar to other 'five percent' takings in Northland that McBurney examined in his overview report on public works for the Te Raki inquiry. McBurney concluded that the 'five percent rule' was discriminatory, since by 1880 it applied almost entirely to Māori land, while the Crown compensated owners of general land. He also gives a number of examples where application of the rule disadvantaged Māori landowners. For example, the Crown could take more land than was strictly required for the specified public works, since it could do so at no cost.[677]

7.3 Plans to take Puhipuhi land for railway purposes, 1884 – 1889

Once the final section of the Great North Road was built through Puhipuhi 4 and 5, a rail link was still needed in order to profitably extract both kauri timber on Crown land at Puhipuhi, and coal at Hikurangi. By 1882 the main trunk railway line extended as far north as Kamo. Kawakawa, to the north of Puhipuhi, also had a short section of line. The gap between the two was 21 miles (34 kilometres).[678]

Since the 1870s, successive governments had proposed completing the Main Trunk Line north of Kamo, but no action had been taken. The completion of the Puhipuhi

[676] *NZ Gazette,* 1 May 1884, No. 54, p. 735
[677] Peter McBurney, 'Northland Public Works Report', CFRT, 2007, #A13, pp. 50-52
[678] *NZ Herald,* 7 February 1882, p. 6 and Main Trunk Line, Auckland to Wellington, *AJHR* 1884 Sess. I, D-5, p. 13

Crown purchase raised hopes throughout the Auckland region that the railway line might at last link up Whangarei and Kawakawa, via Puhipuhi.[679]

Just weeks after the Native Land Court's 1883 Puhipuhi title determination, a group of Auckland businessmen proposed to apply for land at Puhipuhi under the District Railways Act 1877 in order to build a railway line to connect Kamo and the Bay of Islands.[680] This Act provided 'for the Construction of District Railways by Joint-Stock Companies formed for the purpose of constructing such Railways.'[681] The financial incentive in this case was clear. As the settler press reported, 'Puhipuhi is a splendid forest of kauri, comprising hundreds of millions of feet, and is the only great kauri forest not yet in private property.'[682]

In addition to this private venture, the government itself investigated a rail link through Puhipuhi after it had purchased the northern portion of the land. During late 1884/early 1885 Sir Julius Vogel, then Colonial Treasurer, the government's Engineer-in-Chief and his staff explored possible routes for the final northern section of the main trunk railway.[683] Assistant Surveyor-General S. Percy Smith's May 1883 memorandum valuing Puhipuhi's kauri at over £30,000 was cited in connection with the economics of this project.[684] Inspecting engineer Knorp advised that:

> the valuable timber of this forest, of which 19,490 acres are Crown lands, can be brought to [the railway] by the creeks draining into the Wairua … No doubt a township would spring up at this terminus, because the cutting-out of the timber would extend over several years and because there is some fair land for settlement in the valleys.[685]

During late 1884 it was reported that 'monster public meetings' were held in Kawakawa, Whangarei, Kamo and Hikurangi to urge the government to proceed with the railway line. Newspaper reports do not indicate whether any Māori attended these meetings. One newspaper claimed that if the Puhipuhi Forest became accessible by

[679] *NZ Herald*, 6 October 1884, p. 6
[680] *NZ Herald*, 6 June 1883, p. 4
[681] Short title, District Railways Act, 1877
[682] *NZ Herald*, 6 June 1883, p. 4
[683] Correspondence relating to Whangarei to Kawakawa railway, *AJHR* 1885, D-1, Appendix H, encl. 5, Nos. 1-5, pp. 43-46
[684] S. Percy Smith memorandum, 30 May 1883, *AJHR* 1885, D-1, Appendix H, encl. 5, No. 1, p. 43
[685] C. B. Knorpp to Engineer-in-Chief, 28 February 1885, *AJHR* 1885, D-1, Appendix H, encl. 5, No. 1, p. 44

rail, it would be worth '£4 to £5 an acre, and more than realise enough money to pay for the railway.'[686] However, other lobbyists, including the MP for Marsden, Edwin Mitchelson, favoured taking the Northland railway along the west coast through Helensville.[687] The considerable cost of a Kamo-Kawakawa rail link, and disputes between rival groups of settlers, caused the Stout-Vogel government to defer any further action.

The great bushfire of 1887 destroyed a large proportion of Puhipuhi's kauri timber and left the remainder at risk of rot and further fires if it was not quickly milled and transported. This situation gave fresh impetus to the stalled plans to extend the railway north from Kamo. Public Works Minister Edwin Mitchelson's report for 1889 described the state of Puhipuhi's kauri resource as 'a matter which is great importance to the Auckland district especially, but also more or less to the whole of New Zealand … The Government has therefore come to the conclusion that steps should be taken to provide access to the forest by tramway, in order that it may be utilised.'[688] However, the economic depression then affecting the country meant that no public funds could be found to build the tramway. As a result, the railway line did not reach Puhipuhi until the mid-1890s, as detailed in the following chapter.

7.4 The impact of loss of ownership of kauri forest land on Māori at Puhipuhi, 1883 – 1890

7.4.1 Introduction

Puhipuhi Māori may have expected the development of a local timber industry soon after the Crown purchase. Although some local Māori undoubtedly regretted the subsequent loss of the ancient forest, they probably looked forward to the opportunities created by forestry employment, and improved facilities such as transport. Later, once the land was cleared of timber, it could be made available to settlers for farming. Māori, too, could expect further opportunities from this subsequent development. In practice, a commercially viable timber industry was not established on the kauri forest lands purchased by the Crown at Puhipuhi until at least seven years after the Crown purchase, once road access to the forest was improved.

[686] *Auckland Star,* 7 October 1884, p. 2
[687] *Auckland Star,* 29 January 1885, p. 2
[688] Public Works Statement, *AJHR* 1889, D-1, pp. 8-9

However, any advantages that Māori expected to gain through kauri logging and milling had to be balanced against their loss of ownership of the forest. The Crown could restrict access for gumdigging and food resources such as eels and birds. In this respect, the sale of the kauri-covered areas of Puhipuhi signified the beginning of a transition from a largely subsistence economy to a cash economy. Puhipuhi Māori could no longer expect to remain largely self-sufficient on their own land.

7.4.2 Impact on farming practices

Prior to the development, from 1890, of commercial timber milling on the Crown-owned portion of Puhipuhi, most of the Māori living on Puhipuhi 4 and 5 remained there and continued the pattern of cultivation and livestock farming that Eru Nehua had begun in the 1860s. As we have seen, Nehua and Ngāti Hau had developed extensive livestock farming by the early 1880s. Aside from the cattle and sheep, Nehua informed the Native Land Court in 1882 that he was raising about 2,000 pigs.[689]

The large number of pigs among Nehua's livestock indicates that they were farmed by free-range grazing. This suggests that some of the bush-covered land in what soon became the Puhipuhi No. 1 block was used for this purpose, as well as the cleared land to the south that became Puhipuhi 4 and 5 and remained Māori-owned. Once Puhipuhi 1 was purchased by the Crown, Ngāti Hau's access to the forest for raising pigs would have been restricted, and Nehua may no longer have been able to carry anything like this number of pigs on his own land.

7.4.3 Increased regulation of the forest and the impact on gumdigging

Within a few years of the purchase of Puhipuhi 1 – 3, with their stands of kauri and other timber, the Crown began to develop policies and regulations for the preservation and management of the forest. These had an impact on the ability of Māori and others to continue to extract kauri gum from the forest as a means of income.

The Crown recognised that the kauri and other timber on the land it had purchased at Puhipuhi was of an extremely high quality. The few published descriptions of the Puhipuhi forest in its virgin state make it clear that, at the time of the 1883 purchase,

[689] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 5, pp. 15-16

Puhipuhi was perhaps the finest remaining kauri forest in New Zealand. Other large stands of kauri, such as those at Waipoua on Northland's west coast, may have had some larger individual trees, but none had such a vast area of closely packed trees of consistently massive height and breadth, and symmetrical form. British forestry expert Sir David Hutchins described Puhipuhi's dense stands of very uniform kauri, whose trunks showed barely any taper, as resembling 'a string of candles side by side.'[690]

Although the forest had been damaged by a bush fire in 1881,[691] the Crown's Chief Conservator of Forests, Professor Thomas Kirk wrote in 1886 that the trees:

> Afford one of the grandest sights in the vegetable world. Magnificent columns, from 50ft. to 60 ft. to the first branch, and from 4ft. to 8ft. in diameter, rise in rank after rank, the bold, glossy foliage being altogether unlike that of any other tree in the forest. The timber is, perhaps, the most valuable of all the pines, combining great strength and durability with a texture at once compact and silky.[692]

Kirk found that the Puhipuhi kauri resource was not as large as he had been led to expect, at 12,000 acres, but the quality of its trees was unsurpassed. One enormous trunk could be squared to 97 inches (2.5 metres). Kirk found that 'although these giants are numerous in some places, the bulk of the forest … consisted of trees of smaller dimensions, say, from 30 ft. to 50 ft. in length and 36 in. by 36 in. [square]. It is certainly the finest forest in the hands of the government.'[693]

Crown regulation and protection of Puhipuhi forest, 1885 – 1887

Two years after the Crown purchased Puhipuhi, Parliament passed the State Forests Act 1885, whose purpose was to 'provide for the Reservation of State Forests in New Zealand, and for the Control and Management thereof.'[694] This Act signaled the Crown's recognition that the extremely wasteful depletion of New Zealand's native forests, mainly by private and largely unregulated companies, over the past 50 years

[690] David Ernest Hutchins, N*ew Zealand Forestry Part 1, Kauri Forests and Forests of the North and Forest Management,* (Wellington: Government Printer, 1919), p. 55
[691] Puhipuhi's first recorded major bushfire occurred in 1881, after the Crown's initial advance payments to the owners, and during negotiations over the location for the 1882 Puhipuhi hearing. This fire appears to have swept through southwest Puhipuhi, and to have destroyed about a tenth of the total kauri resource (T. Kirk, Chief Conservator, progress report, State Forest Department, *AJHR* 1887 Sess. II, C-4, p. 3).
[692] T. Kirk Native Forests and the state of the timber trade, *AJHR* 1886, C-3, p. 20-21
[693] T. Kirk, Chief Conservator, progress report, State Forest Department *AJHR* 1887 Sess. II, C-4, p. 21
[694] Title, State Forests Act 1885

was no longer publicly acceptable. The Crown was finally admitting that the forests were not a limitless resource, and acknowledged its conservation obligations.[695]

The State Forests Act was largely the initiative of Julius Vogel, who had promoted a farsighted but short-lived and largely ineffective Forests Act in 1874.[696] During the Parliamentary debate on that Act, John Sheehan conflated the 'inevitable' demise of New Zealand's native forests with the fate of Māori themselves:

> any attempt to preserve native timber in New Zealand will result in failure … the same mysterious law which appears to operate when the white and brown races come into contact – and by which the brown race sooner or later passes from the face of the earth – applies to native timber. Wherever grass, clover and European plants and animals find their way into the bush, the forest begins to decay away, and soon assumes a ragged and desolate condition.[697]

Vogel did not share this philosophy of biological determinism, and he returned to New Zealand from the UK in 1884 with a renewed enthusiasm for state forestry. He convinced his Parliamentary colleagues that a well-managed state-owned forest resource would be both sustainable and lucrative, and would provide funds for national development projects.[698]

The Act created a State Forests Branch within the Department of Crown Lands, led by Chief Conservator Thomas Kirk. The English-born Kirk was a self-taught botanist with a wide knowledge of New Zealand native plants, and became a university lecturer in Wellington and Canterbury. He produced a report on the country's indigenous forests in 1884 and was appointed the first Chief Conservator of Forests the following year.[699] His staff eventually included a team of forest rangers whose duties were 'to protect the forests from depredation and fire, and who must be continually in the forests.'[700]

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[695] Michael Roche, *History of New Zealand Forestry,* (Wellington: NZ Forestry Corporation/GP Books, 1990), pp. 92-93
[696] G. Wynn, 'Pioneers, politicians and the conservation of forests in early New Zealand', *Journal of Historical Geography,* vol. 5, No. 2 (1979), pp. 182-185
[697] *NZPD,* 1874, vol. 16, p. 351
[698] Roche, *History of New Zealand Forestry*, 1990, pp. 94-95
[699] Angus MacLeod, 'Kirk, Thomas', from the *Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand*, updated 30-Oct-2013 at http://www.TeAra.govt.nz/en/biographies/2k10/kirk-thomas
[700] T. Kirk, Chief Conservator, progress report, State Forest Department, *AJHR* 1886, C-3d, p. 2

Chief Conservator Kirk began his duties by conducting a nationwide survey of the country's native timber resource and its commercial prospects. That 1885 survey included the first systematic and professional assessment of the true extent of the Puhipuhi forest. As noted above, Kirk found the kauri on Crown land to be of very high quality and considered that it could be commercially exploited if sufficient infrastructure was built. He reported that:

> The greater portion of the forest is tolerably level, so that tramways will be of easy construction, where required. Most of the timber can, however, be got out by the creeks which, although rough in some places, can be rendered suitable for driving at a small outlay. The distance between the forest and the present terminus of the railway at Kamo is about ten miles, so that the timber will have to be carried about seventeen miles by rail before shipment [from Whangarei].

Kirk estimated the total available timber as '30,000,000 superficial feet. At the low royalty of 3d. per 100 ft. paid by the Southland sawmillers, this would give £45,000 as the value of the standing timber.'[701] That estimate, which Kirk acknowledged as conservative, provides a further indication of the fourfold disparity between the price paid for Puhipuhi and its commercial value to the Crown.

Kirk noted the vulnerability of this magnificent forest to destruction by fire, as witnessed by the devastating bushfire that had struck it in 1881. He also noted smaller but much more recent fires:

> In one instance, a section comprising from 150 to 180 acres has been cleared by fire maliciously kindled, as I was informed, by a Native, who considered that his personal interest had not received sufficient attention in the division of the purchase-money …. No gumdiggers were observed during my visit, although I came across several deserted huts.[702]

Kirk's comment that a former owner who resented the distribution of the purchase money for his land had committed arson was based on hearsay and has not been independently verified. It nevertheless suggests continuing dissatisfaction over the purchase, and indicates that at least some of Puhipuhi's former owners may no longer have felt they had a stake in sustaining the health of the forest.

[701] T. Kirk, Chief Conservator, progress report, State Forest Department, *AJHR* 1887, C-4, pp. 21-22
[702] T. Kirk, Chief Conservator, progress report, State Forest Department, *AJHR* 1887, C-4, p. 3

In December 1885 the Crown officially gazetted Puhipuhi as a State Forest under the State Forests Act 1885.[703] The following year Kirk reported that 'The most important work to be taken in hand during the present season is the classification of forest reserves.'[704] This work meant classifying selected forests according to qualities such as their environmental significance, for example as water catchment areas, and also their prospects for commercial milling on a regulated and sustainable basis. In the case of Puhipuhi, Kirk proposed to protect the forest against further bushfires by clearing scrub from its margins and 'surrounding the whole with a protective belt of fire-resisting trees.'[705]

As an interim step towards protection of the forest, the State Forests Branch gave Eru Nehua what amounted to honorary forest ranger responsibilities. The Crown Lands Department paid him a small stipend and he monitored requests by Māori to dig for gum on Puhipuhi. This was not always an easy task, since without fenced forest boundaries it was clearly impossible to prevent determined gumdiggers from entering and working where they chose. However, Chief Conservator Kirk found that Nehua 'performs his duty faithfully.'[706] Kirk advised the government that, 'For the present [the forest] should be strictly preserved, and the service of E. Erunehua [sic] might be advantageously retained for this purpose.'[707]

The progressive and ambitious programme of native forest conservation and managed use envisioned by the 1885 State Forests Act was short-lived. By 1887 government policies of financial retrenchment had put paid to most of its objectives and the State Forest Department set up by Thomas Kirk just two years earlier was 'effectively disestablished.'[708] Puhipuhi remained a State Forest, but the resources earlier applied to its protection were drastically reduced. Kirk's plans to protect Puhipuhi from further forest fires therefore did not proceed beyond the earliest stages.

[703] *NZ Gazette,* 17 December 1885, No. 71, p. 1441
[704] T. Kirk, Chief Conservator, progress report, State Forest Department, *AJHR* 1886, C-3d, p. 3
[705] T. Kirk, Chief Conservator, progress report, State Forest Department, *AJHR* 1886, C-3d, p. 4
[706] T. Kirk, report on Native Forests and the state of the timber trade, *AJHR* 1886, C-3, p. 21
[707] T. Kirk, report on Native Forests and the state of the timber trade, *AJHR* 1886, C-3, pp. 21-22
[708] Roche, *History of New Zealand Forestry*, 1990, p. 96

Impact of forest management on gumdigging, 1885 – 1887

The kauri forest continued to be an important source of kauri gum even after it passed into Crown ownership. The gum industry had several significant consequences for Māori. It provided immediate cash income, especially in the winter months when food supplies were short, without the need for expensive equipment or other start-up costs. However, it was also damp and demanding work that took a toll on the health of Māori communities.

For Māori, gumdigging was a collective activity, carried out by extended families. Children as young as six worked alongside older family members in the gumfields. They were particularly susceptible to respiratory diseases, and also frequently failed to attend school because of their work obligations.[709] The remoteness of Puhipuhi's gumfields meant that diggers were reliant on the local stores for food and other supplies. Since the storekeepers doubled as gum-buyers, gum often became a medium of exchange, at rates and credit terms controlled by the storekeepers.[710]

J. Greenway, the clerk of the Russell Magistrate's Court who had played a prominent role in the Puhipuhi purchase, reported in 1885 on the condition of the Māori in the Bay of Islands:

> Many still continue to work on the gumfields and do fairly well; the yield of these fields is, however, steadily decreasing, entailing much more labour to produce a given quantity, the price of the kauri gum obtained is also lower than of late years ... The Native inhabitants of this district are, in my opinion, slowly but surely decreasing, the deaths exceed the births in number, the majority of Native women have but few children, many none at all, a large percentage of those born die before reaching the age of puberty. Doubtless much of this is owing to their mode of living … Gum-digging is a great source of disease, living as they do, when at that employment, without sufficient shelter or means of drying their wet clothing during the winter, brings on severe colds and coughs, these often end in consumption [tuberculosis] and death.[711]

In spite of these unhealthy conditions, Māori pressed the government to permit continued access to the Puhipuhi gumfields after the forest became Crown-owned.

[709] Claudia Geiringer, 'Historical Background to the Muriwhenua Land Claimm 1865 – 1950', 1992, Wai 45, # F10, pp. 29-30
[710] Geiringer, 1992, Wai 45, # F10, p. 25
[711] J. Greenway, Reports of Officers in Native Districts, *AJHR* 1885, G-2, pp 5-6

The government, however, was reluctant to grant these requests because of the risk that gumdiggers would spark devastating bushfires. Just months after the Crown confirmed its purchase of the block, Werengitana Hokio of Whangaruru wrote to the Native Lands Purchase Department asking to work the gum on Puhipuhi.[712] Gill declined, noting that, 'If one or two people gain work for gum on this block others will follow, and then there is danger of fire in the Bush.'[713]

The Crown had to consider fire risks in the virgin kauri forest, especially at the end of long, dry summers, before it could exploit its newly acquired asset.[714] Allowing gumdiggers to live temporarily in the forest increased this risk. The *New Zealand Herald* described how 'the travelling gumdigger … after boiling his solitary billy, leaves the embers alight to be fanned into flame and ignite the fern, when he has had his feed, and goes on his way with a light heart.'[715] Gumdiggers also used fire deliberately to clear fern and under-scrub, and these fires could easily spread out of control.[716]

Nehua's role as honorary forest ranger was short-lived and by late 1885 the Crown appointed a full-time ranger, Hugh McIlhone, to prevent fires in the Puhipuhi bush at a modest salary of £150 per year.[717] His appointment was not a success. His employer expected forest rangers to spend their working hours, at least, in the forests under their care, and McIlhone failed to comply with this expectation. By January 1886, just two months after his appointment, a letter to the *New Zealand Herald* by 'Northerner' claimed that:

> The Whangarei County Council are already asking the Government awkward questions re the appointment of Mr. Mcllhone to the rangership of the Puhipuhi forest, and have intimated that

[712] Werengitana Hokio at Whangaruru to R. Gill, 12 January 1884, AECZ 18714, MA-MLP1, 16/h, 1884/21, ANZ Wgtn
[713] R. Gill, Native Land Purchase Department memorandum, 25 January 1884, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck
[714] Notable Northland author and gumdigger A. H. Reed believed that, 'In pre-European times the risk of accidental fire was comparatively small, for to a large extent the forest was protected by its floor of moist ferns and mosses' (A.H. Reed, *The New Story of the Kauri,* (Wellington: A.H. & A.W. Reed, 1964), pp. 58-59).
[715] *NZ Herald,* 19 January 1888, p. 5
[716] T. Kirk, Chief Conservator, progress report, State Forest Department, *AJHR* 1887 Sess. II, C-4, p. 3
[717] *NZ Herald,* 20 November 1885, p. 3

> someone living on the spot, and having a knowledge of such matters, would be more likely to be of service than a gentleman perambulating Queen-street.[718]

Even in his brief and non-residential tenure in the position, Ranger McIlhone had been called upon at least once to enforce the State Forests Act in Puhipuhi. He asked for a police escort during a visit to the forest in March 1886, probably to eject illegal gumdiggers.[719]

In April 1886 Chief Conservator Kirk advised the Secretary of the Forest Department by telegram that he was, 'Unable to find [the] ranger, but am assured that he lives in Auckland, and has only visited Puhipuhi three or four times since his appointment. Has he been authorised to reside away from the forest? The matter is causing unpleasant comment.'[720] The following month McIlhone resigned as Puhipuhi's ranger.[721]

In the following months several other groups of would-be gumdiggers, including '36 Natives from the Bay of Islands district' unsuccessfully applied for legal access to the Puhipuhi gumfields.[722] These refusals did not prevent others, both Māori and European, from continuing to press for access to the gum. Before his sudden departure, even Ranger McIlhone had stated that he believed gumdigging should be permitted during the low-risk winter months.[723] Others went even further. 'A gentleman who is thoroughly acquainted with the gum trade' informed the *New Zealand Herald* that, 'it is the gumdigger who saves forests here from devastation, by clearing off carefully the dry scrub which adjoins most forests, and would grow up and dry, and spread fire through the whole North with a careless match.'[724]

From 1885 the government promoted the Hukerenui district adjoining the Puhipuhi forest to the west for its 'village homestead special settlement scheme.' Under such a scheme, approved settlers leased up to 50 acres each under perpetual lease, and

[718] *NZ Herald,* 1 January 1886, p. 3; *NZ Herald,* 5 June 1886, p. 5
[719] *NZ Herald,* 19 March 1886, p. 5
[720] Quoted in *NZ Herald,* 2 July 1886, p. 5
[721] *NZ Herald,* 25 June 1886, p. 5
[722] *NZ Herald,* 2 June 1886, p. 5; *NZ Herald,* 5 June 1886, p. 5
[723] *NZ Herald,* 5 June 1886, p. 5
[724] *NZ Herald,* 28 February 1887, p. 4

received advances for buildings and improvements.[725] An official notice announced, 'There is room for a large accession of settlers in this district, which is particularly well adapted for fruit-growing.' This notice added that 'Gum-digging is a principal industry', an important incentive since new settlers could hope to make a quick cash income from gum while their farming ventures were still embryonic and unprofitable.[726]

On 11 February 1887 the Crown opened the Hukerenui Village and Homestead Special Settlement.[727] As the former ranger Hugh McIlhone had recommended, it granted village settlers 'the exclusive right of digging gum in the Puhipuhi bush during the four months of winter every year.' The Crown appointed gumdigging licence-holders as 'forest rangers and conservators', with an obligation to 'prevent all occasions likely to cause fire, and to aid in extinguishing fires when called upon.' Other settlers who did not qualify for these limited gumdigging permits campaigned vigorously to obtain them.[728] As early as October 1886 the *Otago Daily Times* had reported that:

> in the vicinity of the celebrated Puhipuhi forest, [Lands Minister] Mr Ballance proposes to found one or two special settlements which he thinks would have every prospect of thriving. Even the gumdiggers, who have generally been regarded as nomadic in their habits, are clubbing together to get land for special settlement …[729]

By 1892 some 80 settlers had applied for land under this scheme, and more than half of them had done so purely 'to give them the right to dig for gum in Puhipuhi.'[730]

In May 1887, as growing numbers of licensed gumdiggers entered the forest for the winter season, the Crown appointed a new fulltime ranger, Joshua Garsed. He was paid the same £150 salary as his predecessor, but with explicit instructions to live nearby and patrol the forest daily.[731]

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[725] Village Homestead Special Settlements, *AJHR* 1889, C-5, p. 1
[726] Crown Lands Available for Settlement, *AJHR* 1885, C-5, p. 2
[727] Diana Menefy and Lynne Cunningham, *Hukerenui – In the Beginning*, (Whangarei: Capricorn Communications, c.1988), p. 5
[728] *NZ Herald,* 16 February 1887, p. 5; *NZ Herald,* 26 March 1887, p. 4; *NZ Herald,* 26 May 1887, p. 4; *NZ Herald,* 4 June 1887, p. 5
[729] *Otago Daily Times*, 2 October 1886, p. 1
[730] Department of Lands and Survey annual report, *AJHR* 1892, C-1, p. 18
[731] *NZ Herald,* 7 May 1887, p. 5

Blame and prosecution of gumdiggers after 'the great bush fire', 1887 –1888

Gumdiggers (many of whom were Māori), and sometimes Māori in the vicinity of Puhipuhi who practised traditional 'slash and burn' cultivation methods, were blamed by Crown officials for a major bush fire in the Crown-owned forest on Puhipuhi No. 1 – 3 in the summer of 1887-88. In early January 1888 Kirk learned that a fire in the Puhipuhi forest had started at 'a Māori cultivation', and spread to an area of dead forest burned by gumdiggers the previous year.[732] The weather remained dry and windy, and the fire was still raging a month later, by then across much of the forest. A second smaller fire had entered the forest from the northern end, next to Ruapekapeka.[733] 'Both fires,' said the *New Zealand Herald,* 'are supposed to have started from settlers' clearings a long way off.'[734]

The local newspaper reported that similar bushfires were blazing all over the north, and the situation was worse than at any time in the memory of the oldest settlers. 'From all quarters the most calamitous reports are reaching us of valuable kauri forests on fire, and thousands of pounds worth of gum destroyed, of settlers' grass, crops and fences and stock destroyed, and homesteads in peril. From coast to coast, and for 100 miles in length north and south, the whole country is ablaze.' Through the whole of the Puhipuhi forest, 'the fire is still spreading with terrible rapidity, killing the trees and destroying the gum.'[735] The fire was so massive, and its effects so widely evident, that it was falsely reported as a volcanic eruption.[736]

News reports speculated wildly on the value of the timber destroyed in the great fire. The *Northern Advocate* thought that across the north 'the wealth which has already been swept away represents millions of pounds', while the *Herald* estimated the value of Puhipuhi's timber, even in a depressed market, at one million pounds.[737]

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[732] *Evening Post,* 5 January 1888, p. 2
[733] A. H. Reed was then a twelve-year-old boy living in Whāngarei, 30 miles to the south, where 'the glare of this conflagration was plainly visible, night after night … Of this noble forest, with green floor of ferns and mosses, and myriads of birds, not a living thing remained' (Reed, *The New Story of the Kauri*, 1964, p. 59). Reed later established a public kauri park near Whangarei Falls. Today it is called the A.H. Reed Memorial Park.
[734] *NZ Herald,* 6 February 1888, p. 5
[735] *Northern Advocate,* 18 February 1888, p. 2
[736] *Evening Post,* 14 April 1888, p. 2
[737] *NZ Herald,* 19 January 1888, p. 5

By mid-February 1888 the fire was burning out, and scapegoats for the forest's tragic and costly destruction were sought. Although the government had recently slashed expenditure on areas that included forest conservation, Prof. Kirk and his local staff at Puhipuhi escaped any censure for the blaze.[738] Ranger Joshua Garsed informed the police that shortly before the fire broke out, he had seen several men in the region with gum in their possession. Four men were promptly arrested on suspicion of deliberately setting fire to the forest to gain easier access to gum. The men held licences to dig for gum in the winter months, but had illegally entered the forest for this purpose in midsummer.[739] They faced several charges under the 1885 State Forests Act, including a charge of destroying trees. The law in this area, however, was untested and all but one of those charges, for stealing gum, collapsed during their trial.[740] This verdict, thought Lands Minister G. F. Richardson, 'points to the urgent need of an amendment in the State Forest Regulations.'[741]

Whether or not these four gumdiggers were directly responsible for sparking the 1887-88 bushfire, they are highly unlikely to have been alone in this activity. According to another research report produced for this inquiry, 'By 1888 … illegal fires were being deliberately lit [at Puhipuhi] to force the Government to free the land up for settlement.'[742]

Impact of forest management on gumdigging, 1888 – 1890

From the late 1880s the Crown's concern to protect Puhipuhi's timber resources increasingly conflicted with gumdiggers' demands. Restrictions on gumdigging at Puhipuhi adversely affected the livelihoods of many Māori who had come to rely on working in the forest in this way. By the late 1880s gumdigging had become less lucrative due to price fluctuations and the disappearance of the easily available surface gum, but was more vital than ever to Māori faced with worsening economic conditions.

As the country entered a prolonged economic depression, it was not only Māori who relied on Puhipuhi's gum for a livelihood. A growing number of Pākehā settlers were

[738] *Evening Post,* 15 February 1888, p. 2
[739] *NZ Herald,* 23 February 1888, p. 5
[740] *NZ Herald,* 16 March 1888, p. 3; 26 April 1888, p. 3
[741] *NZ Herald,* 26 April 1888, p. 3
[742] McBurney, 2007, #A13, p. 416

moving into the district to establish farms on the cut-over forest, and they also expected to make use of its reserves of kauri gum to provide cash income in the winter months. Tensions arose between Māori and Pākehā diggers as the gum resource became more limited and more highly prized. Pākehā were inclined to accuse Māori gumdiggers of recklessly causing forest fires, thus damaging the forest for the future. This reinforced the Crown's attitude that all gumdigging should be banned, or at least restricted, to prevent such fires.

In June 1886 'Hari Paraha and others' petitioned Parliament requesting that 'Puhipuhi may be granted to them for three or four months for gumdigging purposes.'[743] Armstrong and Subasic assume Parliament took no action, 'given the Government's strong desire to protect its valuable and cheaply-acquired kauri timber from its former owners.'[744]

At a 'grievance meeting' in Hukerenui in April 1888, the settlers resolved to demand that in future gumdigging should be permitted in Puhipuhi not only during winter but in early spring as well.[745] A petition to the Minister of Lands bearing 195 signatures stated in part, 'It is a well-known fact that the [1887-88] fire spread from an adjoining Maori clearing, with which gumdiggers had nothing whatever to do.' The petition claimed that the forest was safe from accidental bushfires between May and October, and that since the state-owned forest was public property, they should be allowed to dig for gum there as long as those activities posed no threat to the standing timber. 'This seems all the more reasonable in view of the universal depression, and the long and continued low price obtainable for gum - our one and only source of income.' The petitioners concluded that the Puhipuhi forest's reserves of valuable gum should be harvested before the trees were lost through fire or milling. 'We believe that the destruction of the bush is inevitable, and therefore we recommend that it be utilised as soon as possible.'[746]

It seems likely that few, if any, Māori gumdiggers signed this petition, but Māori also suffered economically from the closure of the forest to gumdigging, and from the

[743] Petition No. 117, Reports of the Native Affairs Committee, *AJHR* 1886, I-2, p. 15
[744] Armstrong and Subasic, #A12, p. 735
[745] *NZ Herald,* 9 April 1888, p. 6
[746] *NZ Herald,* 25 April 1888, p. 5

slump in the gum market. Undoubtedly the petitioners hoped for renewed access to Puhipuhi's gumfields. The petitioners' arguments, and the importance of gum as an export industry during a time of widespread unemployment, persuaded the government to lift the ban it had so recently imposed. In May 1888 Minister of Lands Richardson agreed to open all Crown forests to gumdigging, including Puhipuhi, from May to October inclusive.[747]

The following month Hukerenui settlers had new ground for concern, this time an anticipated:

> Maori invasion of the Puhipuhi Bush, for the purpose of gumdigging. It is reported that the Maoris are hastening from Waikato and other places in large numbers, and unless prompt measures are taken to dispel their illusion that the bush is to be open for their benefit, some awkward complications may arise.[748]

These complications were not specified, and did not eventuate, as hundreds of eager diggers converged on the forest. In June 1888 the *Auckland Star*'s Whangarei correspondent reported that up to 1,000 men were expected at Puhipuhi, and that local storekeepers were establishing branch stores on the gumfields. '… the difficulty will be to get them out again when the dry weather comes.'[749]

However, Puhipuhi's 'gum-rush' did not prove as profitable as diggers hoped, and by August 1888 a *Northern Advocate* correspondent found that:

> Out of 800 or 1,000 men who went there, only about 200 remain, and these are principally Maoris, who obtain a large proportion of their gum by climbing the trees. The white men who have left are dispersed all over the country, and find that, taking into consideration the high price of provisions and the hardships to be endured in the bush, they can do better in the open country.[750]

This report indicates that Māori gumdiggers were obliged to continue searching for gum in the Puhipuhi forest after most Pākehā had given up the attempt as too demanding and unprofitable. In fact, Māori economic reliance on gumdigging in this

[747] *Auckland Star,* 18 May 1888, p. 3
[748] *NZ Herald,* 8 June 1888, p. 3
[749] *Auckland Star,* 19 June 1888, p. 4
[750] *Northern Advocate,* 18 August 1888, p. 5

period was so great that Pākehā observers noted their absence from community social activities. 'Māori were now almost always to be found on the gumfields.'[751]

7.5 Plans to recover the timber after the great bushfire, 1888 – 1889

The nature and extent of the timber industry on the Crown-owned portion of the Puhipuhi block from 1890 was heavily influenced by the amount of damage done to the kauri forest by the 'great bush fire' of 1887-1888. In the immediate aftermath of the fires, Chief Conservator Thomas Kirk travelled to Puhipuhi to assess the damage. He movingly conveyed the scene of destruction in a government report the following year:

> The sight of this noble forest burnt, charred, and blackened, and utterly deprived of any green leaf, is one of the most melancholy possible to the lover of sylvan scenes. The ground is strewn thickly with a mass of fallen branches, with here and there a prostrate stem, over which the eye wanders through vistas of magnificent columns in countless numbers, whose beautiful symmetry cannot but strike the most unobservant.[752]

Two years after the fire, a visitor described the remains of Puhipuhi forest in the *NZ Herald*:

> It was lamentable to see the splendid kauri trees standing desolate, shedding their bark, which formed in heaps around them, furnishing the material for another conflagration, which will probably destroy the whole bush unless remedial measures are taken by the removal of the dead timber.[753]

The distinguished British forester Dr David Hutchins, whose experience of state forests spanned several countries, added in a 1919 report to the New Zealand government that, 'it was a black page in the history of the British Empire when the Puhipuhi Forest was burnt!'[754]

Kirk found that although the fire killed a large proportion of the trees, their blackened trunks could still be profitably logged and milled. Nevertheless, he calculated that the fire destroyed more than £10,000 worth of timber from a total value of £300,000.[755] A correspondent to the *Auckland Star* found that Kirk's calculation revealed, 'a swindle,

[751] Armstrong and Subasic, #A12, p. 1135
[752] Crown Lands Department annual report, *AJHR* 1889, C-1, p. 7
[753] *NZ Herald*, 6 June 1890, p. 6
[754] Hutchins, *NZ Forestry Pt 1 – Kauri forests …,* 1919, p. 55
[755] T. Kirk, report on Native Forests and the state of the timber trade, *AJHR* 1886, C-3, p. 21-22

as far as the Maoris are concerned, when we recall the fact that the Government four years ago only paid £12,000 for the whole block.'[756]

By 1889 the Minister of Lands was foreshadowing the logging operations to recover the remaining timber at Puhipuhi:

> The speedy utilisation of the Puhipuhi Forest seems to be desirable on all accounts, for, notwithstanding the constant watchfulness of the Ranger, it is ever open to danger from fire whilst, at the same time, the burnt portion is rapidly deteriorating in value through the action of the worm. Its sale would also enable the Government to redeem the eight thousand pounds' worth of debentures issued under the State Forests Act.

The report suggested that portions of the forest not suitable for milling might be used for farm settlement.[757] The development of the timber industry on Crown land at Puhipuhi, and its impact on Māori communities there, will be discussed in the next chapter.

7.6 Conclusion

The Crown's 1883 purchase of the majority of the Puhipuhi lands and the entirety of its kauri forest brought immediate changes to the way of life of Māori who lived on and near these lands. Some of those changes were largely beneficial, while others must have seemed very unwelcome.

The compulsory taking of land in Puhipuhi 4 and 5 for roading may have eventually proved generally advantageous to Māori such as Eru Nehua, who lived and farmed on those blocks. Better road access would have made travel beyond Puhipuhi easier, especially in winter, and therefore improved the farming prospects for the landowners. Nehua objected to the discriminatory provisions of the public works legislation under which the land was claimed, and in enterprising fashion attempted to secure compensation in the form of new fencing, but he was unable to prevail when the Crown stood firm in its plans.

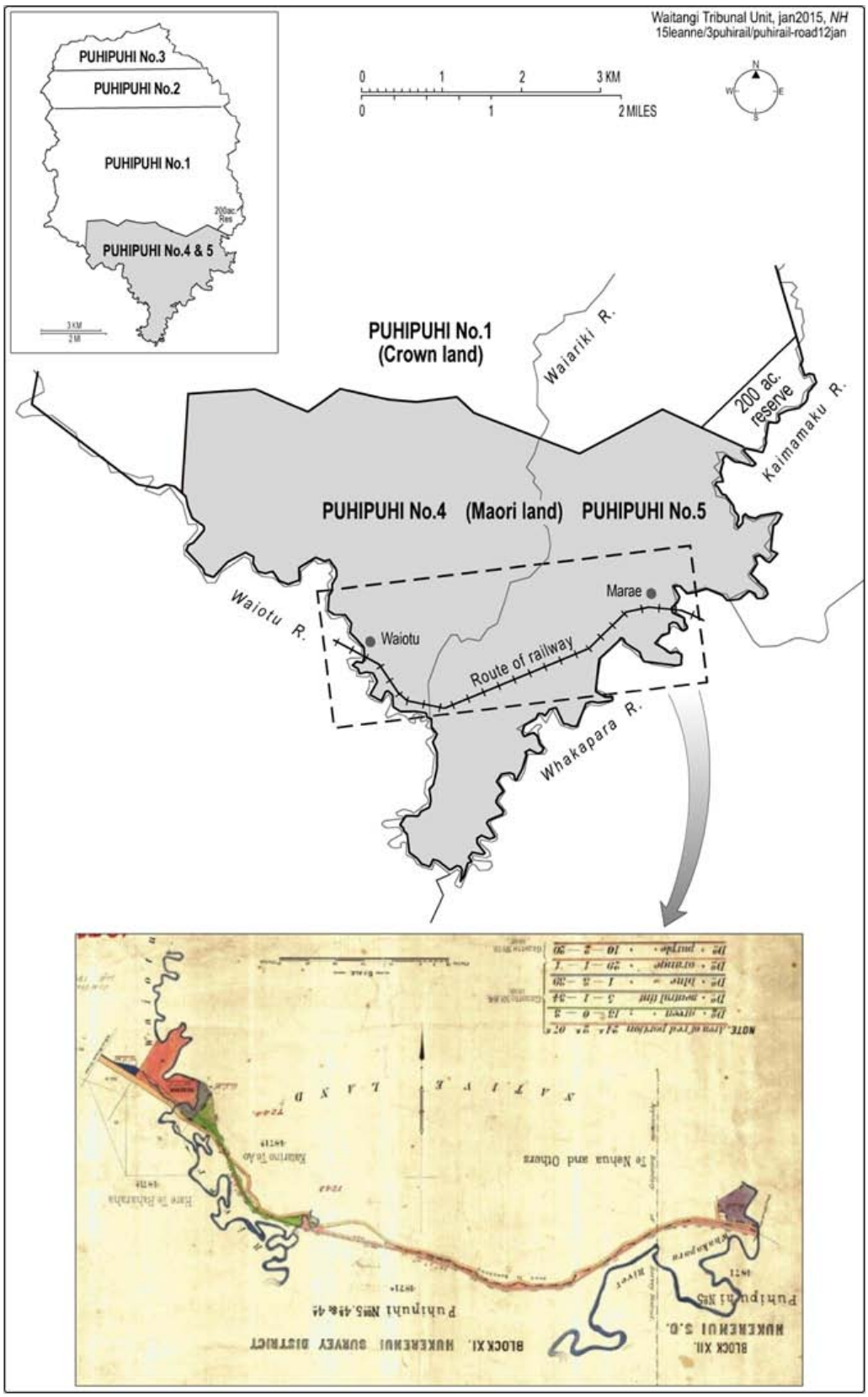
Limitations on access to the Puhipuhi forest for rough grazing, gumdigging, hunting and other traditional uses are likely to have seemed much more problematic to Māori

[756] *Auckland Star,* 4 April 1888, p. 2
[757] Crown Lands Department annual report, *AJHR* 1889, C-1, p. 7

living on or in the vicinity of Puhipuhi 4 and 5. The limitations on gumdigging were perhaps the most economically significant of these changes. Although income from the sale of their Puhipuhi interests meant that many Māori were temporarily in a relatively comfortable financial position, gumdigging was still seen as a useful source of cash in hard times. The kauri forest had always been prone to bushfires in the summer months, but the Crown sought to reduce the fire risk once it acquired ownership of the forest and gazetted it a State Forest under a new policy of preserving the country's remaining native forest cover. The needs of gumdiggers, both Māori and Pākehā, conflicted with these plans, and the Crown was forced to try to balance this conflict.

Economic pressure on Māori to dig for gum in the forest harmed the health of their communities, and compounded the fire risk. Only the fire risk appeared to concern the Crown, which introduced legislation to limit access to the forest. This legislation may have helped to a limited extent to protect the forest from fire, but was inadequate for the purpose, as evidenced by the devastating fire of 1887-88. The Crown failed to introduce any other measures to compensate Māori for the loss of income from their gumdigging activities.

Figure 8: Map showing the location of land taken from Puhipuhi for railway purpose, 1890 –1894



(Source: ML 4871A, North Auckland)

Chapter 8 – Crown development of its Puhipuhi lands, 1890 – 1912

8.1 Introduction

The period 1890 – 1912 was very eventful for Māori living in and near Puhipuhi, and saw many lasting changes to the district. The Crown took land under public works legislation within Puhipuhi 4 and 5 for railway purposes, in most cases without paying compensation to the landowners. The arrival of the railway to Whakapara transformed the economy and population of the area, since it became economically feasible to log and mill the kauri timber. Several companies leased logging rights in the State Forest, and several timber mills were established nearby, including Foote's mill at Whakapara. Some local Māori found employment in these industries, and opportunities for business ventures, until the timber was exhausted in about 1912.

In addition, in 1890 a silver rush broke out on land in the northern part of the State Forest. Many claims were established, including at least two with Māori shareholding. The silver boom was short-lived, but it resulted in improved roading and other services, and made Puhipuhi nationally known. This period also saw the beginning of a transition from sheep farming to dairying with the opening of a dairy factory at nearby Hikurangi in 1904.

This chapter examines the taking of Puhipuhi lands for railway purposes and discusses the extent to which Māori owners were able to obtain the compensation they sought for this loss. It also explores the Crown's development and regulation of the timber industry on the northern portion of the block and evaluates the impact of these activities on Māori living on and near Puhipuhi. In particular, the chapter examines measures taken by the Crown to protect Māori against the harmful impacts of these economic activities, for example, the environmental effects of silver mining, and ask whether those measures were appropriate and effective.

By 1890 the Crown had proclaimed the kauri forest on the Crown-owned portion of Puhipuhi as a State Forest and plans were underway to extract its timber, much of which had been damaged by bush fires in 1887 – 1888. By the mid-1890s the Crown

had extended the North Auckland railway from Kamo (just north of Whangarei) to Whakapara, just outside the southern boundary of Puhipuhi, with the intention of servicing a timber industry on Puhipuhi 1 – 3. The railway line passed through the Māori land in Puhipuhi 4 and 5, and land in those blocks was compulsorily acquired under public works legislation.

8.2 The Railway extension at Puhipuhi

8.2.1 The planning and construction of the rail extension through Puhipuhi

As noted in the previous chapter, by the end of the 1880s the government proposed to build a tramway from Kamo to Puhipuhi, with the large reserves of kauri in the State Forest providing the economic justification for this expensive public works project, estimated to cost £30,000. In 1890 a trial survey was carried out for the tramway 'with a view of bringing to market the kauri timber.' The route skirted or crossed several rivers and streams, which 'will be useful for bringing timber out of the forest to the tramway.'[758] The discovery of silver in late 1889 provided further incentive to improve access to Puhipuhi.

Public Works Minister Richard Seddon's report for 1891 indicated a readiness to build a state-funded railway line rather than a tramway, and to extend it from Kamo to Kawakawa, skirting the Puhipuhi Forest. Seddon argued that this needed to be done without delay so that milling could proceed before fire damaged the forest further:

> To see a valuable asset like this remaining … at such imminent risk amounts almost to a criminality. To attempt to dispose of the timber before the line is extended would be a serious blunder, as speculators would buy [the timber] up on the prospect of the railway being constructed.

Seddon's report recommended instead that the railway should be constructed first 'and then the land upon which the timber stands … cut up into blocks of 300 to 400 acres, and the right to cut the timber thereon submitted to public competition.'[759] Unlike the earlier tramway proposal, this scheme was accepted by Seddon's Parliamentary colleagues, even as New Zealand emerged from the global economic depression. Gangs of men, who almost certainly included local Māori, began digging cuttings and embankments for the new railway line before the end of 1891.

[758] Public Works statement, *AJHR* 1890, D-1, Appendix G, p. 25
[759] Public Works Statement, *AJHR* 1891 Sess. II, D-1, pp. 7-8

Seddon alluded to the very real danger that further bushfires could destroy even more of the timber that was expected to pay for the new line. In January 1892, as the railway line crept towards Puhipuhi from the south, a number of relatively small fires destroyed gumdiggers' whares and mining camps as well as the bush. 'On the tableland it spread right across the forest from side to side of the plateau.' The initial fire was blamed on 'some idiotic settler … burning off some bush that he had fallen.'[760]

The Chief Crown Lands Ranger afterwards reported:

> The green portion of the forest must have been damaged by the burning of the undergrowth, and the trees would of a certainty be killed. If this is so, it will make it all the more necessary for the Government to devise means at the earliest possible moment for getting the timber out before it is totally consumed by fire or goes rotten.[761]

Four years later the bush was burning again over ten miles of country.[762]

In 1894 Seddon agreed that the railway advancing northward from Kamo should be extended to Whakapara, to service the large-scale exploitation of Puhipuhi's threatened timber resource. The Minister of Public Works proclaimed that after the completion of the railway extension to Whakapara:

> We shall be able to realise this valuable asset, which has remained unutilised so long, and the destruction of which by fire has several times seemed to be imminent. The prospect of an early completion of this section of the railway, coupled with a large demand now existing for kauri timber, renders it desirable that the timber in this forest should be sold at an early date.[763]

In early 1897 the Crown acquired about 10 acres of Māori land in Puhipuhi 5 under section 167 of the Public Works Act 1894 for the extension of the railway.[764] That section specified the terms under which the Crown could take land for railway purposes.

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[760] *Thames Star,* 6 January 1892, p. 4
[761] *Northern Advocate,* 6 January 1892, p. 2
[762] *Auckland Star,* 29 January 1896, p. 5
[763] Quoted in *Auckland Star,* 30 January 1896, p. 2
[764] Section 167(1)d, Public Works Act 1894; *NZ Gazette,* 24 November 1897, No. 84, p. 1887

In September 1898 the railway line was extended beyond Whakapara to the Waiotu Stream which ran along the western edge of the Puhipuhi Forest. The Crown then leased the milling rights in this area to Mitchelson Brothers, a milling firm headed by the former Native Minister Edwin Mitchelson. For some months they refused to pay to have their logs carried to the mill by rail, but continued floating them down the stream. This practice threatened the economics of the railway, and Parliament enacted new regulation preventing logs being floated within a mile of a railway.[765] In late 1898 the Crown acquired a further 42 acres of Puhipuhi Māori land under section 167 of the Public Works Act 1894 for railway purposes.[766] These takings are set out in Table 3 and shown in Figure 7.

8.2.2 The adequacy of compensation for owners of Puhipuhi No. 4 and No. 5

The Crown provided monetary compensation to the owners of Puhipuhi for only a fraction of the land taken for railway purposes in 1894, 1897 and 1898. It took the majority under the 5 percent provisions of the public works legislation and paid compensation for just 17 ½ acres of the total 52 acres taken. The Crown also refused Eru Nehua's request for the return of a piece of Crown land as compensation instead of cash.

In July 1894 the Crown applied to the Native Land Court under section 90 of the 1894 Public Works Act for an assessment of the compensation to be paid for the railway takings.[767] That section specified that the Native Land Court would determine compensation for takings of all classes of Māori land for railway.

In November 1898 the Crown again applied to the Native Land Court under section 90 for assessment of the compensation payable.[768] Eru Nehua told the court that at the time of the original taking he had informed officials that he, 'would like a piece of Puhipuhi Crown land in compensation. The Crown was not willing to give 130 acres for the total area of 35 acres taken out of Puhipuhi No. 5 by the railway.'[769]

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[765] Bill Haigh, *Foote Prints among the Kauri: The Lives and Times of Seven Brothers and Six Sisters in the Kauri Timber Days,* (Kerikeri: Haigh, 1991), pp. 92-101; Evidence of Hon. Edwin Mitchelson in Report of the commission on timber and timber-building industries, *AJHR* 1909 Sess. II, H-24, p. 583
[766] *NZ Gazette,* 24 November 1898, No. 84, p. 1887
[767] *NZ Gazette,* 27 July 1899, No. 64, p. 1397; Section 90(1), Public Works Act, 1894
[768] *NZ Gazette,* 27 July 1898, No. 64, p. 1397
[769] Evidence 30 August 1899, Whangarei Minute Book No. 7, pp 133-137

Nehua sought £100 an acre in compensation for 10 acres 2 roods 20 perches taken by proclamation in 1897 and £10 an acre for 24 acres 2 roods 7 perches of Puhipuhi No. 5 taken by proclamation in 1898.[770] The Crown's solicitor opposed Nehua's claim. He pointed out that, 'under the 5% rule (s. 91 and 92 of the Public Works Act 1894), we are entitled to take the land without compensation.' He clarified that the Crown's powers of compulsory acquisition applied to the 24-odd acres taken for the railway in 1898, but not to the remaining 10 acres taken in 1897 'as this is not taken exclusively for the railway.' For that land, the Crown offered compensation of £6 an acre. The solicitor added the important detail that, as of the 1899 hearing date, a total of 40½ acres of Puhipuhi 5 had been taken for roads, and that five per cent of the total area of that block amounted to 125 acres. 'There is thus an ample margin.'[771]

Table 3: Puhipuhi land taken for public works purposes, 1892 – 1901

NZ Gazette	Taking date	Land taken (a:r:p)	Purpose	Legislation
20 Oct 1892, No. 83, p. 1395	15 Oct 1892	18:0:18	road	Public Works Act 1882
1 July 1897, No. 59, p 1266	13 June 1897	10:2:20	railway	s. 167 Public Works act 1894
24 Nov 1898, No. 84, p. 1887	18 Nov 1898	24:2:07 (pt No. 5) 13:3:0 (pt 4B) 5:1:34 (pt 4A)	railway	s. 167 Public Works Act 1894
10 Jan 1901, No. 4, p. 91	21 Dec 1900	3:0:10 (pt No. 5)	road	s. 92 Public Works Act 1894

In a poignant speech to the court, Nehua maintained that the special circumstances under which the Crown had purchased the majority of Puhipuhi warranted special treatment in the matter of his compensation claim:

> The laws seem to justify the taking of land if … dealing with someone else, but not when dealing with me. Because a private company was willing to pay us £50,000 for the whole Puhipuhi block. Government interfered and we agreed to sell the bulk of it to Government for £10,000. This small piece was left for us, and I have never offered any opposition whatever, nor caused any trouble. The line has changed our land, by causing it to be flooded. Our sheep have been drowned etc and I do not know what to do. I submit that Government should have special consideration for me.[772]

[770] *NZ Gazette,* 1 July 1897, No. 59, p 1266, and *NZ Gazette*, 24 November 1898, No. 84, p 1887 respectively.
[771] Evidence 30 August 1899, Whangarei Minute Book No. 7, pp. 133-137
[772] Evidence 30 August 1899, Whangarei Minute Book No. 7, pp. 133-137

However, after an adjournment Nehua concluded, 'it is of no use to fight against the law. I therefore accept the offers made.' He reluctantly accepted the Crown offer of £6 per acre for seven acres of the land it had compulsorily acquired.[773]

In his 2013 responses to questions of clarification on his Northland public works report, Peter McBurney stated that part of the 10a 2r 20p area of land taken for railway purposes in 1897 included a 'boom site.' The Great North Road, Puhipuhi Road and the Whakapara River bounded this site. Prior to the railways taking, the local sawmill, on Tutu Nehua's land, probably used the boom site as a storage area for timber. McBurney wrote:

> Sometime later, the area taken for the railway was subdivided by a line running roughly north-south … It may be that this subdivision was created when the taken area was 'leased to individuals' by the government … On the basis of this evidence, the former boom site taken for the North Auckland Main Trunk railway in 1897 was not returned to the original Māori owners or their descendants.[774]

At the same 1899 hearing, the Native Land Court considered compensation for 13 acres of land taken from Puhipuhi 4B and five acres from Puhipuhi 4A. The Crown repeated its contention that it had the legal right to take this land for the railway without paying compensation but that 'six acres of [Puhipuhi 4B] were taken for timber. For these six acres, we offer £3 an acre.' The Crown, by this statement, appears to admit that it compulsorily acquired land for a purpose other than public works, in this case for timber. It then retrospectively negotiated compensation. Eru Nehua again reluctantly accepted the Crown's compensation offer on behalf of Puhipuhi 4B owners.[775]

In the case of the five acres taken from Puhipuhi 4A, the Crown offered £3 an acre compensation for 4½ acres, apparently without specifying why it considered this compensation to be payable. 'The rest we claim to take without payment.' The five owners of this block – Pirini Kake, Manira Whatarau, Makereta Rongo, Rihi Kake

[773] Evidence 30 August 1899, Whangarei Minute Book No. 7, pp. 133-137
[774] Responses of Peter James McBurney to Questions of Clarification from Claimant Counsel Relating to Public Works and Other Takings, 25 November 2013, Wai 1040, #A13(d), pp. 5-6
[775] Evidence 30 August 1899, Whangarei Minute Book No. 7, p. 135

and Mereana Himi Peru – again accepted the Crown's offer and agreed that 'the whole of the money – £13/10 – [is] to be paid to Makareta Rongo.'[776]

McBurney states that:

> Given the difficult and complicated nature of the law [concerning takings of Māori land for railway purposes] … Māori invariably engaged legal counsel to represent their interests when attempting to challenge what they perceived as grossly unfair compensation assessments. This must have been a significant cost on top of having their land taken.[777]

He adds that 'direct Māori involvement in the taking process was almost nil.'[778]

McBurney's report does not refer directly to the Puhipuhi takings for the Northland Main Trunk Line, but he considers a number of takings of Māori lands to build the Kamo-Hikurangi stretch of the railway line, to the south of Puhipuhi, and later of the Okaihau-Rangiahua stretch, to the north. These latter takings included land in the Whakanekeneke A and E blocks taken in 1929, whose owners included Eru Nehua (presumably a relative of the earlier Eru Nehua of Taharoa, who had died in 1916.)[779] Nehua claimed compensation for loss of valuable crop lands, and since by that time the 'five percent rule' no longer applied to Māori land, was able negotiate a settlement more easily than in the past. 'Even so,' says McBurney, 'it seems that Māori were compensated at a lower rate than that for Pākehā.'[780]

In his conclusion on railway takings, McBurney stated:

> The land-taking process was far more user-friendly to people who held land under individual Crown title than it was to people who held land under multiple ownership. While the Native Land Court was supposedly there to protect Māori interests … it added a significant layer of bureaucracy to an already heavily bureaucratic process.[781]

The pattern of Māori land takings for public works in these blocks appears to have broadly followed that found by McBurney elsewhere in the north:

- public works brought disproportionate benefits to non-Māori, rather than the block's Māori landowners;

[776] Evidence 30 August 1899, Whangarei Minute Book No. 7, p. 135
[777] McBurney, 2007, #A13, p. 283
[778] McBurney, 2007, #A13, pp. 283-284
[779] McBurney, 2007, #A13, pp. 297-299
[780] McBurney, 2007, #A13, p. 323-324
[781] McBurney, 2007, #A13, p. 321

- compensation, if any, was meagre, and invariably monetary even if landowners requested otherwise, and;
- land was sometimes taken for inappropriate purposes and sometimes more land was taken than required for its stated purpose.

8.3 The impact of mining on Māori at Puhipuhi

8.3.1 Introduction

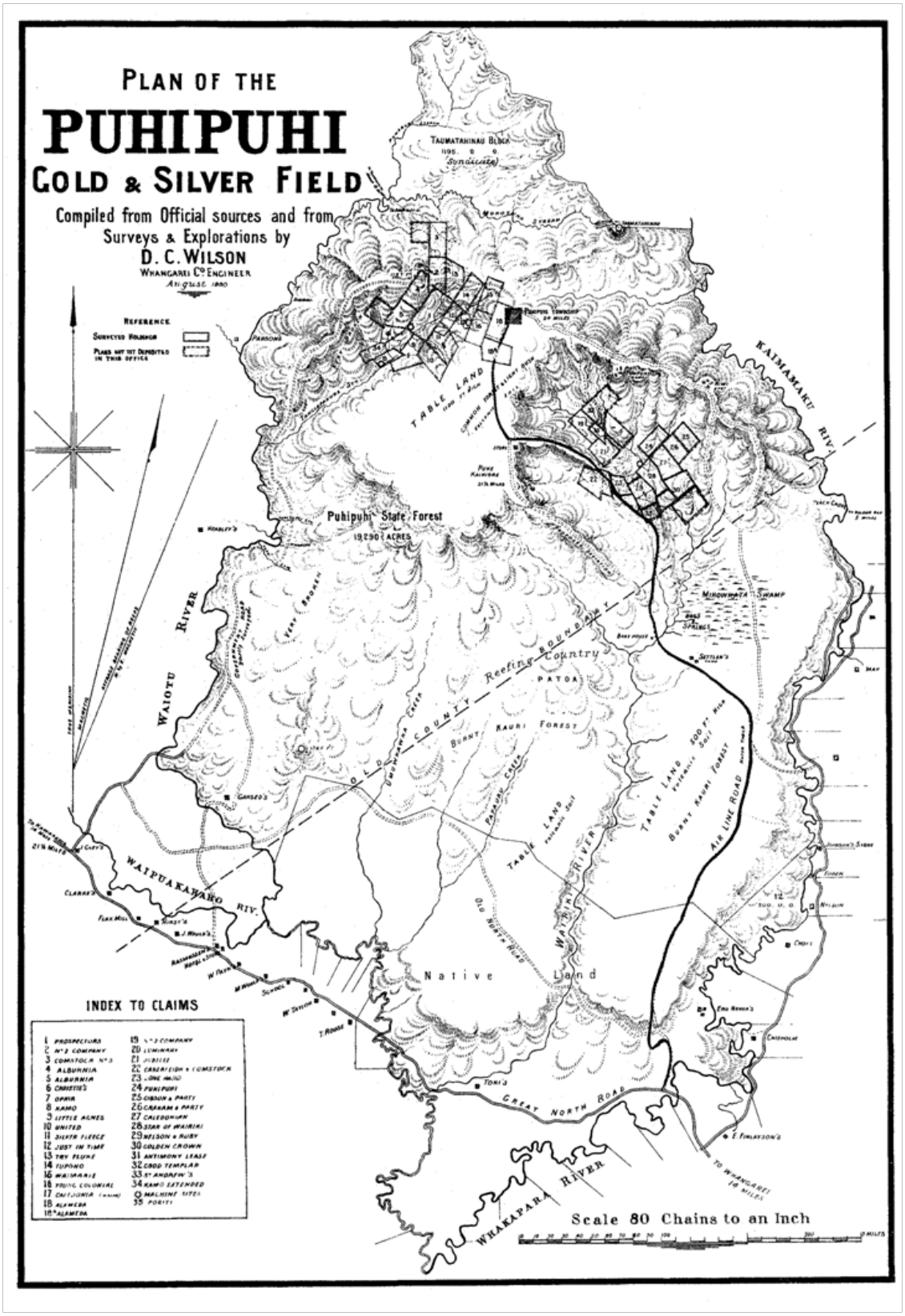
At the same time as the railway was being constructed through Puhipuhi 4 and 5, and before timber milling on Crown-owned Puhipuhi 1 – 3 began in 1896, deposits of silver were discovered on the northern portion of the lands. The short-lived silver mining boom on Crown land at Puhipuhi, and the settlement and infrastructure that supported it, brought some disadvantages but also some limited opportunities and benefits for Māori owners of the remaining portion of Puhipuhi.

In August 1890 the Whangarei County engineer produced a 'Plan of the Puhipuhi gold and silver field', recording not only the mining activity but also associated developments.[782] This plan is reproduced as Figure 9 below. It shows the route of the 'Airline Road', from the Great North Road at Whakapara to the silver field. In addition to the 'Puhipuhi township' at the north end of the Airline Road, the map shows a flaxmill and Rasmussen's hotel and store on the Great North Road, and Johnson's store on the eastern boundary. In addition to Eru Nehua's property at Taharoa, it also shows at least 15 predominantly Pākehā residences around the Puhipuhi boundaries.

This map indicates that the silver rush helped transform Puhipuhi by encouraging settlement around the boundaries of the State Forest. The silver rush encouraged improved roading, and hastened construction of a rail link from Whangarei. For miners, settlers and local Māori, the gumfields remained a source of cash income. The increased population included a growing number of children who, after 1889, could attend Hukerenui South School on the Great North Road, north of Whakapara, although it meant a long daily trip for children from Taharoa.

[782] Plan of the Puhipuhi gold and silver field, *AJHR* 1891 Sess. I, C-4, p. 24

Figure 9: Plan showing silver mine claims, roads, settlement and Native land, Puhipuhi, 1890



(Source: AJHR 1890 Sess. II, C-4, between pages 22 and 23)

By late 1890, therefore, Puhipuhi had become very different from the small and isolated, predominantly Māori community at the time of the 1883 Crown purchase. It was now nationally known for its kauri timber as well as its silver mines, and newspapers spoke confidently of the development of a sizeable permanent settlement around the mines. These changes were significantly altering the way of life of local Māori such as Eru Nehua and his whānau. Puhipuhi Māori appear to have welcomed many of the changes and actively participated in them.

8.3.2 Background: First gold and silver strikes at Puhipuhi

Puhipuhi's geological formation resembles that of the Ngāwhā geothermal area near Kaikohe. This is often found to contain gold, silver and other valuable minerals. Early references to Puhipuhi's mineral resources appear in the Native Land Court minutes. In his 1883 evidence, Eru Nehua stated that during the 1872 boundary traverse, 'The survey party reported gold on the block.'[783] News of this alleged discovery spread to other claimants. The 1882 Puhipuhi minutes record that Maihi Kawiti told Nehua the night before the first (1873) hearing began that, 'I know there is gold on that block.'[784] The Crown confirmed these rumours some 20 years later, after it purchased the land.

According to Northland historian Florence Keene, in 1878 Whangarei-based prospectors discovered some intriguing quartz rocks in the depths of the Puhipuhi kauri forest. George Clark-Walker, a retired Whangarei chemist, found that they showed rich traces of gold and silver.[785] Eru Nehua gave Clark-Walker's son, also named George, permission to continue the search for precious metals:

> [George junior] asked the local Maoris to show him any gold- or silver-bearing quartz they might find, and some time later one handed him a sample in which gold was clearly visible to the naked eye. When asked to lead Mr Clark-Walker to the spot where he found it, the Maori demanded to be given £1,000 first, but this Mr Clark-Walker refused to do.[786]

Madge Malcolm's 1994 local history claims that both of these finds revealed the presence of silver, but not of gold.[787] Thus, even before the 1883 Crown purchase, a number of local Māori and Pākehā were aware that Puhipuhi contained valuable

[783] Evidence of E. Nehua, 24 May 1883, Northern Minute Book No. 6, p. 216
[784] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 6, pp. 14-15
[785] Keene, *Between Two Mountains…*,1966, p. 146-7
[786] Keene, *Between Two Mountains…*, 1966, p. 147
[787] Malcolm, *Tales of Yesteryear,* 1994, p. 168

minerals. The search for Puhipuhi's mineral wealth then lapsed for the next decade. As far as can be determined from the incomplete archival record, minerals did not feature in the 1883 purchase negotiations. The Crown was attracted instead primarily by Puhipuhi's timber resource.

The gleam of precious metal reappeared in the late 1880s when Ngāti Kahukuri sold Taumatahinau, a 1,200-acre area adjoining Puhipuhi to the north, to John Conyngham of Whangarei:[788]

> He found that there were reefs running through the creeks, and thinking there might be gold-bearing ones amongst them, he made up his mind to prospect the ground. Upon his return he induced Mr G. Clark-Walker [junior] to go out with a party of natives … who, after spending some time collecting specimens of the different reefs, returned and reported that there were some men of the name of Wilson and Collins who knew the country all round (and, according to the ranger, inside) the Puhipuhi State Forest, who were willing to join in the prospecting venture.[789]

Tribal historian Dr Benjamin Pittman has described Ngāti Kahukuri as 'a subset of Ngāti Hau.'[790] Kahukuri was the son of the tīpuna Hautakowera, from whom Ngāti Hau takes its name. The Native Land Court described Eru Nehua and the other Ngāti Hau applicants as 'descendants of Kahukuri' in its final Puhipuhi hearing.[791]

According to Malcolm, Wilson and Collins were gumdiggers who asked for permission to camp on Taumatahinau to avoid the Puhipuhi ranger, and in return offered to prospect for quartz. They periodically brought rock samples in to Whāngarei for inspection, eluding the ranger by a route known as the Thieves' Track. Results were so promising that Conyngham, Wilson, Collins, Clark-Walker and others formed the Puhipuhi Prospectors Association, with a licence to explore the State Forest land. In October 1889 they found silver-bearing quartz in the valley of Tangiapakura Creek in the northwest quadrant of the Crown purchase. The men claimed a 60-acre site which they named the Prospectors' No. 1 claim.[792] In November 1889 a *Northern Advocate* correspondent reported:

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[788] Berghan, 'Taumatahinau' in 'Northland Block Research Narratives', vol. VIII, #A39(g), p. 277-278
[789] *Te Aroha News,* 20 November 1889, p. 3
[790] Email communication Dr. B. Pittman to M. Derby, 23 April 2015
[791] Whangarei Minute Book No. 6, pp. 230-234
[792] Malcolm, *Tales of Yesteryear,* 1994, p. 168

> The mine is about 30 miles from Whangarei, in the thickest and roughest part of the forest. The present track is a very circuitous one and takes many hours in covering owing to its roughness, but a much shorter and better road could easily be made. The stuff is being brought out on packhorses, and the work is both tedious, slow, and expensive.[793]

Later that month the *Te Aroha News* reported the testing of three tons of Puhipuhi quartz, provoking great excitement among the public and the press.[794]

In early December 1889 the Crown's Inspector of Mines, Mr Gordon, arrived at Puhipuhi to test samples and report on the value of the field.[795] He found that, 'Though nearly all [samples] carry traces of gold and a little silver, they are practically worthless.'[796] Nevertheless, promoted by newspaper predictions of a Puhipuhi mining boom, prospectors continued to stake out further claims. In January 1890 the *Herald* reported 'a number of people prospecting by stealth', i.e. without a permit to enter the State Forest. The newspaper called for the Crown to, 'either close the Puhipuhi or open it for mining purposes.' The latter step would, however, require special regulations since Puhipuhi was Crown land covered in valuable timber, 'a peculiarity … for working minerals which has not yet occurred on any field as yet opened in the colony.'[797]

In January 1890 Gordon reported more favourably on Puhipuhi's prospects, and recommended that the State Forest be opened for mining. He acknowledged that this step might increase the risk of forest fires, and considered that prospectors' licences and mining leases issued under the 1886 Mining Act should be amended to protect the kauri.[798] By February 1890 more than 200 men were reported to be living in the forest, 'waiting for the field to be opened.'[799] The *New Zealand Observer* noted derisively that:

> For the past year or so, a solemn farce has been enacted in the shape of a ranger having a shanty erected in the entrance to the forest, with about an acre of land fenced in, and a wicket gate guarding the background. There stood Ranger Garsed, and turned back all people who

[793] *Northern Advocate,* 2 November 1889, p. 2
[794] *Te Aroha News,* 20 November 1889, p. 3
[795] *Northern Advocate*, 14 December 1899, p. 2
[796] *NZ Herald*, 23 December 1899, p. 5
[797] *NZ Herald*, 25 January 1890, p. 5
[798] *NZ Herald*, 31 January 1890, p. 8
[799] *Auckland Star*, 20 February 1890, p. 5

> sought to enter the forest, but as the forest is open all around, his vigil has not kept out gumdiggers or prospectors who entered at any other point.[800]

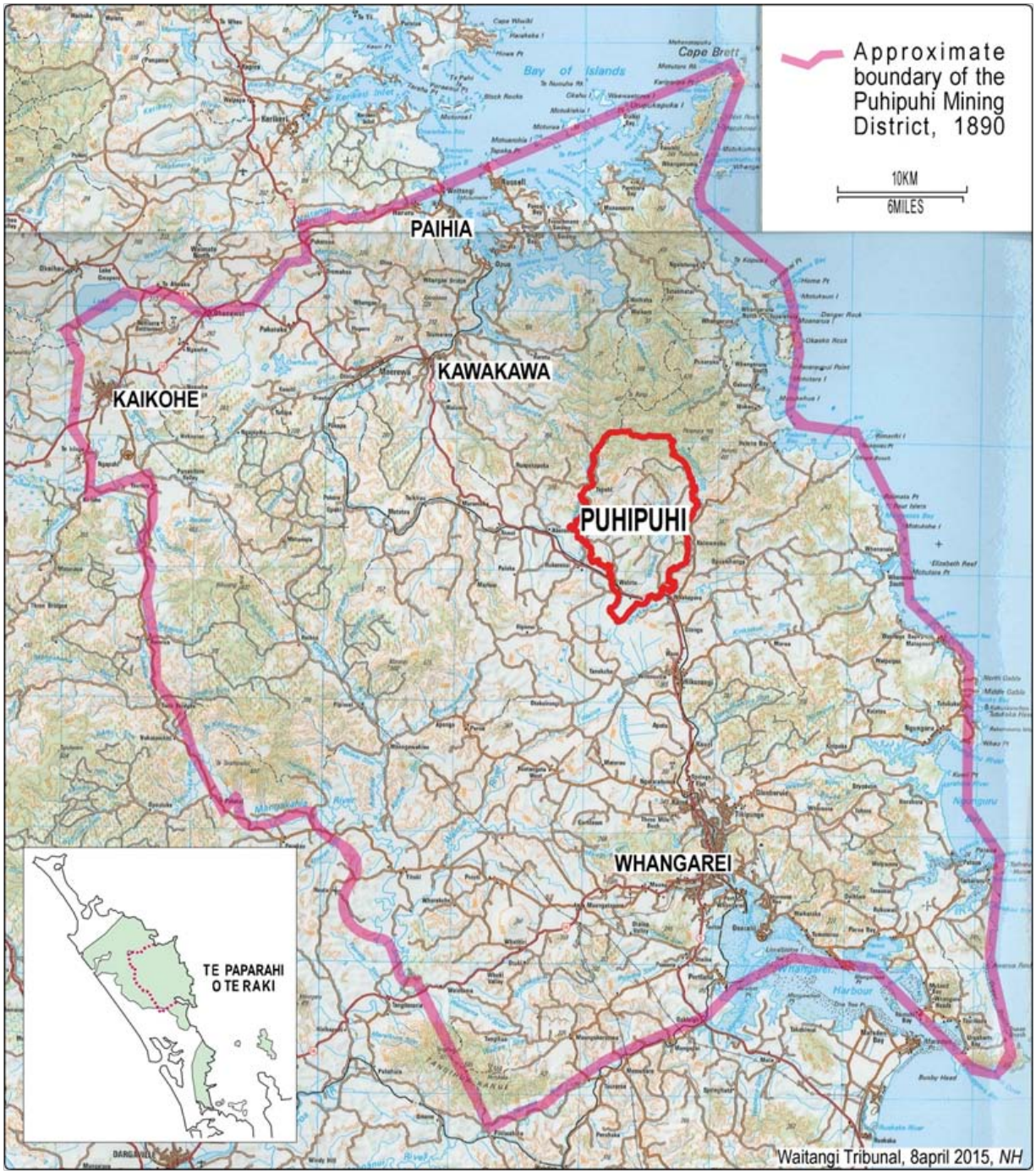
Local authorities were preparing to install 'finger posts on the road from Kawakawa to Puhipuhi, each being a mile apart, so as to prevent parties going to the field from wandering off the road into Maories [sic] and gumdiggers' tracks.'[801]

On 6 March 1890 the Crown proclaimed a large area of both the Whangarei and Bay of Islands counties, including all of Puhipuhi, a Mining District under the 1886 Mining Act. The mining district extended from Lake Omapere in the north to the Whangarei Harbour in the south, and from the east coast at Cape Brett to the boundary of Hobson County in the west (see Figure 10 below).[802] The large size of this district allowed for the possibility that further gold and silver strikes might be made beyond Puhipuhi, on land that was geologically similar. Figure 10 shows the boundaries of this mining district in relation to Puhipuhi itself. The Crown appointed J. S. Clendon RM, who had played an important part in its Puhipuhi purchase, Warden of the mining district, based at Whangarei.[803]

The very brief regulations specific to this mining district attempted to balance the conflicting uses of the land for mining and forestry. Within the mining district, licensed miners were entitled to free use of the timber within their claims, apart from kauri and totara. Those species could also be cut and milled, but only by paying a set fee to the Crown. The Crown held the miners responsible for damaging kauri and totara within their claims, including by causing bushfires.[804] These regulations evidently proved impracticable, and a subsequent proclamation revoked them within a month.[805]

[800] *NZ Observer and Freelance,* 8 February 1890, p. 4
[801] *NZ Herald*, 21 February 1890, p. 4
[802] *NZ Gazette,* 6 March 1890, No. 11, p. 248
[803] *NZ Herald*, 7 March 1890, p. 5
[804] *NZ Gazette,* 6 March 1890, No. 11, p. 249
[805] *NZ Gazette*, 3 April 1890, No. 18, p. 366

Figure 10: Plan showing the boundaries of the Puhipuhi Mining District, 1890



(Source: Boundaries drawn from description in *NZ Gazette,* 3 April 1890, No. 18, p. 366)

8.3.3 Māori investment in gold and silver mining at Puhipuhi

The day after the mining district proclamation, Māori and Pākehā rushed for their chosen sites:

> Mr O'Brien, of Kamo … put on a fierce spurt for the field, and it is said after crossing a bridge covered with unfastened rails, he removed a number of these, thus cutting off the communication for a band of Maoris, who were compelled to make a detour of about five miles to cross a ford, and join the track again.[806]

The *Herald* reported that 'Eru Nehua, with a company of white men and Maoris mixed, had struck silver ore, beating the prospectors hollow. Edward is well liked, and we all hope it is true.'[807] The Crown granted Nehua's Tupono claim in May 1890.[808] Other, unidentified, Māori predominated in the ownership of the adjacent Waimarie claim.[809]

Eventually, the rush generated more than 40 claims near the head of the Tangiapakura Creek and on the banks of the Pukekaikiore Creek on the northeast side of the Crown purchase.[810] Under the Mining Act 1886 prospectors were charged a fee of five shillings for a one-year right to prospect on Crown lands, and to register a mining claim within those lands.[811] Figure 9 reproduces an 1891 plan of the Puhipuhi gold and silver field showing the location of these claims. The 'native land' in the bottom portion of the plan is the Puhipuhi papakainga.

Māori, including members of the Nehua whānau, part-owned the Tupono mine. Reportedly, in March 1890 they had discovered a 'big seven foot reef' of silver adjacent to the original No. 1 Prospectors claim at Tangiapakura Creek. John Fraser began working the new claim with two assistants in April 1890.[812] The Puhipuhi Warden's Court licensed the 30-acre Tupono claim in June 1890.[813] In November 1890 the Tupono owners registered their silver-mining company under the Mining

[806] *NZ Herald*, 10 March 1890, p. 5
[807] *NZ Herald*, 10 March 1890, p. 5
[808] *NZ Herald*, 9 June 1890, p. 6
[809] *Auckland Star,* 28 July 1890, p. 3
[810] H. T. Ferrar et. al., *The Geology of the Whangarei-Bay of Islands Subdivision, Kaipara Division,* Bulletin No. 27, (Wellington: Geological Survey Branch, Department of Mines/Government Printer, 1925), p. 79
[811] Sections 79, 95 and 98, Mining Act 1886
[812] *Northern Advocate*, 5 April 1890, p. 3
[813] *New Zealand Herald*, 9 June 1890, p. 2

Companies Act 1886. Of its 21 shareholders, at least 10 were Māori (see Table 4 below). Two of those shareholders, Eru Nehua and his son Wi, plus a third, a Whāngarei interpreter named Frederick Marriner (500 shares), were the directors of the company.[814]

Table 4: Māori shareholders in the Tupono silver claim, 1890

Name of shareholder	Number of shares held
Aterea Te Arahi	1,000
Hone Heke	1,000
Himi Matiu	1,000
Manihera	1,000
Eru Nehua	2,000
Wiri Nehua	1,000
Toki Anini	1,000
Riwi Taikawa	1,000
Tanatiu Huna	750

However, the early enthusiasm and high hopes of Puhipuhi's silver rush soon faded and were replaced by grim determination, as miners battled the hard quartz in harsh winter conditions, with little capital to develop the mines. In August 1890 George Clark-Walker junior, whose discovery the previous year precipitated the rush, pleaded with Sir George Grey, then an opposition MP, for financial support to develop the mines: 'We are all poor men here, and have risked our last shilling upon the field,' said Clark-Walker. He informed Grey that he and his partners had formed a limited liability company to raise capital for quartz-crushing machinery for silver extraction, and asked Grey to encourage his acquaintances to invest in this venture. With development capital, wrote Clark-Walker, 'I hope to be able to look northward from Whangarei in a few years and see "a big smoke", not "the bush on fire" but the smoke from smelting works, (for we have plenty of ironstone here), coal mine chimneys, lime kilns etc.'[815] Grey apparently did not reply.

8.3.4 The 1890s taking of Puhipuhi land for the Airline Road

In order to make the mines on the Crown-owned portion of Puhipuhi accessible, further Māori-owned land at Puhipuhi was taken for roading under public works

[814] *NZ Gazette,* 13 November 1890, No. 65, p. 1336
[815] G. Clark-Walker to George Grey, 8 August 1890, GL-NZ W10, Grey Collection, Auckland Public Library

legislation. Public road access built through the Puhipuhi papakainga in 1884 did not extend to the Puhipuhi Crown land. There, miners could only travel along rough tracks. Steep, bushclad hills surrounded the silver mines and the tracks leading to it soon became impassable from the large numbers of men and horses using them. Māori often compelled miners to pay for crossing the papakainga.[816] An access road was clearly vital to enable the field to be fully developed.

The construction of the Airline Road

Puhipuhi's location along the boundary between the Whangarei and Bay of Islands counties complicated local authority provision of improved roading. During 1890 Whangarei County petitioned the central government to alter the county boundary so that the silver field was entirely within its domain. Bay of Islands County understandably resented this attempt to claim the potentially rich resources of the field.[817] The petition was unsuccessful, but rivalry between the two local authorities delayed construction of an access road.

Early in 1890 the Whangarei County Council engineer, Mr DC Wilson, surveyed the access route. Miners and local settlers, both Māori and Pākehā, voluntarily began roadbuilding work.[818] In April 1890 the *Auckland Star* reported that:

> … the work of cutting the road is progressing very satisfactorily indeed, and both European and Maori settlers and miners are cheerfully helping it on. Four miles of it have already been cut, and a further extent of two miles has been explored and blazed ready for cutting… a party of eight Maoris started cutting the road from the turnoff at Eru Nehua's, and in 2 ½ days cut two miles of it. The distance [to the silver mines] is shortened by fully six miles, and the road will remain as one of the most important public works done in the county for many years past.[819]

The road commenced at Nehua's Taharoa farm. In reporting this, the *Auckland Star* described him as 'a gentleman of Maori race well known and universally respected in the district.'[820]

[816] Alexander, 2006, #A7, pp. 121-122
[817] *NZ Herald,* 11 August 1890, p. 6
[818] *NZ Herald,* 6 June 1890, p. 6
[819] *Auckland Star,* 19 April 1890, p. 2
[820] *Auckland Star*, 12 June 1890 p. 5

Clearly, Puhipuhi Māori, including Eru Nehua and his whānau, sought to benefit from the silver boom. They co-owned a mining claim, and presumably helped build the road through their papakainga. An all-weather road into Puhipuhi Crown land would improve the value of adjoining Māori land.

Even before the access road reached the silver mines, a publican opened a hotel named for Nevada's famous Comstock silver mine at the highest part of Puhipuhi in June 1890. A butchery and post office were also established, with mail transported on horseback via the port near Opuawhango to the east.[821] These facilities comprised the core of the 'Puhipuhi township' shown on Figure 9. By August 1890 the upper end of the track between Whakapara and the silver mines was still 'beyond description, the water and mud for miles being up to the horses' bellies.'[822] Eventually, however, contract workers completed what became known as the Airline Road to connect the silver mines to Whangarei.[823]

The adequacy of compensation for owners of Puhipuhi 4 and 5

In October 1892 the Crown compulsorily acquired over 18 acres of Puhipuhi Māori land for the Airline Road under the Public Works Act 1882.[824] Section 19 of this Act authorised this acquisition after the public work had been completed.[825] Section 23 of the Act extended the compulsory acquisition powers of the Native Land Act 1873 (which authorised the taking of Māori land for roading purposes) to Māori land owned under certificate of title or memorial of ownership, such as Puhipuhi 5.[826]

Under section 26 of the 1882 Act, a Compensation Court determined compensation for takings of Māori freehold land such as Puhipuhi in the same way as for general land.[827] However, an 1889 amendment confirmed that the Native Land Court determined compensation for public works takings of all classes of Māori land.[828] McBurney's Te Raki public works report notes that 'the fact there was one forum for assessing compensation for public works takings for European land and another for

[821] Menefy and Cunningham, *Hukerenui – In the Beginning*, c.1988, p. 94
[822] *NZ Herald,* 18 August 1890, p. 3
[823] *NZ Herald,* 6 June 1890, p. 6
[824] *NZ Gazette,* 20 October 1892, No. 83, p. 1395
[825] Section 19, Public Works Act 1882
[826] Section 23, Public Works Act 1882
[827] Section 26, Public Works Act 1882
[828] Section 14, Public Works Amendment Act 1887

takings of Māori land supported the perception that Māori land was compensated for at a lower rate than comparable European land.'[829]

Nehua, on behalf of his children, named on the Puhipuhi title, sought compensation of £200 for their land acquired for the Airline Road.[830] At a Native Land Court hearing in July 1893, the government refused to pay the £200 requested. Nehua agreed to accept £160, which the Crown paid to him and Riwi Taikawa on behalf of the beneficial owners.[831]

Regarding Crown takings of Māori land for roading in Northland, McBurney concludes that, 'certainly up until the First World War, the priority was to provide roading and railway infrastructure to serve European settlers.'[832] Such an order of priority was likely to have contributed to the disadvantage of Puhipuhi Māori when their land was claimed for roading purposes under public works legislation. In addition, according to McBurney, 'Maori have also struggled to have their voices heard when they have raised objections to routes mapped out by engineers and surveyors, where these cut up their properties, damaged wahi tapu or cultivations, or took more land from their interests than from their Pakeha neighbours.' It also seems that, as a general rule, Maori were compensated at a lower rate than Pakeha in equivalent situations', largely because of the 'five percent rule.'[833]

These disadvantages for Māori should be weighed against the corresponding advantages from improved access. In general, McBurney has found, 'Māori were just as enthusiastic about gaining road access to their land as were Pākehā.'[834] Puhipuhi Māori certainly wanted the Airline Road, and probably other roads for which their land was claimed.

Nevertheless, in Puhipuhi, as elsewhere in the north, 'the issues that arise… are not so much about Maori objecting to having their land taken for public works purposes; rather, they are about a lack of political power that left Maori with precious little

[829] McBurney, 2007, #A13, p. 66
[830] *NZ Gazette*, 8 June 1893, No. 45, p. 871
[831] Evidence 7 July 1893,Whangarei Minute Book No. 3, p. 238
[832] McBurney, 2007, #A13, p. 200
[833] McBurney, 2007, #A13, pp. 198-199
[834] McBurney, 2007, #A13, p. 198

influence over decision-making with respect to when and where roads would be built.'[835]

8.3.5 The impact of silver mining on gumdigging at Puhipuhi

For many local Māori (especially those without a stake in the mines themselves), the most evident initial effect of Puhipuhi's short-lived silver rush was its interference with their gumdigging activities on Crown-owned areas of Puhipuhi. By the late 1880s gumdigging provided income for both Māori and Pākehā. The Crown restricted gumdigging during dry summer months to decrease the risk of bushfires. Māori and Pākehā gumdiggers resented these restrictions, especially since prospectors and miners within the forest presumably posed the same risk of starting bushfires.

Furthermore, while gumdiggers often preferred to work in the winter months when the ground was wet and easier to dig, miners and prospectors preferred warm and dry weather, so that they could work for longer hours in more comfortable conditions. At that time of year the fire risk was far greater. The government therefore faced a new dilemma – how to encourage Puhipuhi's silver mining while safeguarding its remaining timber.

In November 1889 the *Northern Advocate* newspaper pointed out that:

> The land is part of a State Forest, and to protect the timber from fire no persons are allowed within the prescribed boundaries from October to April. The Mining Act could be made to take precedence, but if it were proclaimed everyone would have the right to apply for and get a lease of 30 acres. Then the forest would disappear before the fire fiend, and until it is proved that a second comstock [a famously productive Nevada silver mine] exists inside the timber belt, we think the Government are not only justified but in all reason bound to take every precaution to protect the timber. In the meantime the prospectors [on the Prospectors No. 1 claim] have been given protection over 60 acres of land.[836]

The Crown altered the regulations which restricted gumdigging to the winter months by giving miners (i.e. those holding a valid miners' licence) the right to work year-round within the boundary of a State Forest. The Crown regulations over the State Forest were therefore eased to permit mining in the forest. The lure of gold and silver trumped the worth of the giant trees.

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[835] McBurney, 2007, #A13, p. 200
[836] *Northern Advocate,* 2 November 1889, p. 2

During this period Puhipuhi's ranger, Joshua Garsed, regularly enforced the regulations against gumdigging out of season.[837] Russell's resident magistrate H. W. Bishop stated in 1891 that, 'the whole Native population of the north rely upon [gum-digging] as a means of subsistence.' Bishop considered that gumdigging harmed the region's Māori because 'they lack the main incentive to downright industry, i.e. poverty, for they can always command a fair amount of money by spasmodic gum-digging.' Nevertheless, he acknowledged that, 'it will be a bad day for the natives when they can no longer rely upon this very profitable industry.'[838]

However, as diggers began to deplete the Puhipuhi gumfields, they repeatedly pressed for changes to the regulations to make their work more profitable. In November 1892 they again met to ask the government to permit summer digging, offering in return to act as 'voluntary constables to protect the forest against fire.' The Forest Department responded by extending the season until the end of November for that year only, noting that 'when they previously allowed diggers to go into State forests in summer, men who promised to guard the bush against fire were known to deliberately start fires.'[839]

The following year the government forest ranger responsible for collecting the ten-shilling licence fee from the Puhipuhi diggers described the task as '"like looking for needles in a haystack." Whenever the diggers saw him approaching, a signal went round and the diggers immediately planted themselves in the fern or behind trees.'[840] Many of them could not afford the licence fee. 'The present system of collecting the fees is very unsatisfactory,' reported Percy Smith, the Surveyor-General.[841]

A Puhipuhi Gumdiggers Association, formed to press for better working conditions, met at the Comstock Hotel in November 1893. It called on the government to take control of the whole gum industry and set a standard price for all qualities of gum. It also demanded the abolition of the 'truck' system, by which storekeepers paid for gum in goods or credit rather than cash. The association felt that only 'naturalised British subjects' should be allowed to dig gum, in an attempt to exclude 'Dalmatians', or

[837] *NZ Herald,* 9 September 1890, p. 3
[838] Reports from officers in Native districts, *AJHR* 1891 Sess. II, G-5, p. 1
[839] *Thames Advertiser,* 2 November 1892, p. 3
[840] *Northern Advocate,* 12 August 1893, p. 7
[841] Department of Lands and Survey annual report, *AJHR* 1893, C-1, p. 6

diggers of Serbo-Croatian origin. The association included Māori in the term 'British subjects.'[842]

The government ignored these demands. Later that year Harry Long, a Baptist missionary working among the gumdiggers, wrote that they were suffering severe hardship. Some, 'mostly married men, travel many miles daily or else camp away by the week from their home in order to eke out a bare subsistence.' Rev. Long blamed the low price of gum, its scarcity on the old fields, the reluctance of leaseholders to open up new fields, and the weather, which was too wet for the men to work in the swamps.[843]

Liberal Member of the House of Representatives, Thomas Thompson raised the condition of 'destitute' Northland gumdiggers in Parliament in 1894. He revealed that when the government offered a limited number of relief work jobs in bushfelling and road and railway work, an overwhelming number of applicants responded, but very few needy gumdiggers could be employed. The Gumdiggers' Union, which had a branch at Puhipuhi, announced that gumdiggers 'are reduced to distress in this district.'[844]

The Crown restricted the work of both miners and gumdiggers in the state-owned forest, with a licence specific to each activity. As noted earlier, gumdiggers sometimes avoided paying a licence fee, while miners were inclined to opportunistically dig for gum and if challenged by authorities, claim that a licence for one activity also permitted the other. This complex, evolving and erratically enforced system of multiple licences resulted in a dramatic large-scale confrontation in the winter of 1900.

The raid was apparently provoked because many diggers did not hold the appropriate licence. However, it appeared that during 1899, the Crown Lands Board had failed to collect the licence fee, so the diggers felt no obligation to pay it. In addition, both the Whangarei and Bay of Islands County Councils (whose joint boundary ran through the forest) had imposed a parallel system of local licence fees. Many diggers held

[842] *Northern Advocate,* 25 November 1893, p. 7
[843] *Auckland Star,* 12 December 1893, p. 2
[844] *NZPD* vol. 83, 4 July 1894, p. 228

county licences, believing these gave them the same rights as the former Crown licence.

A force of police constables and bailiffs (volunteer temporary police) spent two days in the Puhipuhi forest in June 1900, issuing summonses to a large number of gumdiggers and to the three storekeepers based there. The officers seized a large quantity of gum, estimated to be worth about £800, and placed it under guard at the Whakapara railway station. All gumdigging and gum-buying activities came to a sudden halt, causing distress to many diggers denied income.[845]

This chaotic and clearly unjust situation persisted for some weeks, amid claims that the police raid was intended to trap a relatively small number of 'bad characters' who repeatedly avoided paying any licence fees for their gum, and counter-claims that the police targeted the 40-odd 'Austrian' (Dalmatian, or Serbo-Croatian) gumdiggers at work in Puhipuhi.[846] The police appear to have later quietly dropped the case.[847] Four years later the Crown reimbursed Wilbert Cleary, the main Puhipuhi storekeeper and gum-buyer, £200 for gum seized in the raid.[848]

By 1901, magistrate E. C. Blomfield (a recently appointed Papatupu Commissioner) reported:

> gum has become so scarce that many of the Natives have given up gum-digging as a following, and have paid more attention to the cultivation and improvement of their own lands and other agricultural pursuits. Much of the kauri and other timber has been worked out from this district, especially from the lands of the natives ... No benefit was ever derived from the gumfields by the Maori. Even when gum was plentiful, the money earned was squandered, and the digger nearly always left the field in debt to the storekeeper.[849]

As the silver rush evaporated and the supply of gum from Puhipuhi declined, the timber industry correspondingly increased in importance. The Crown became more determined to restrict diggers, including Māori, from working in this Crown-owned forest. Although it may have unfairly scapegoated Māori for causing fires in the

[845] *NZ Herald,* 16 June 1900, p. 3; 26 July 1900, p. 6
[846] *NZ Herald,* 20 June 1900, p. 6
[847] *NZ Herald,* 15 October 1900, p. 5
[848] Under-secretary for Lands to W. Cleary, 28 November 1904, ABWN 6095, W5021, box 288, 10/91/47 Pt 1, ANZ Wgtn
[849] E. C. Blomfield to Justice Secretary, *AJHR* 1901, H-26b, pp. 6-7

forest, the risk of such fires was undoubtedly greater when numbers of people were camped in the heavy bush. In addition, as gum became harder to dig, many Māori began to 'bleed' live kauri trees. This damaged potentially valuable timber which the Crown wished to protect for harvesting. Finally, prolonged gumdigging depleted the soil and damaged the landscape, and this made the land less attractive for farming once the trees were removed.

A 1905 Chief Forest Ranger's report listed the forms of damage to kauri forests from the actions of gumdiggers, including ring-barking, scarfing [cutting a deep notch into the trunk], trimming the roots and starting fires. 'Gumdiggers and others must be rigidly excluded from all Kauri Forests, otherwise the saw milling industry will suffer and the end of the Kauri Forest will be rapidly hastened.'[850]

Despite the Commisioner's recommendation, gumdigging continued for several more years, even though it became increasingly uneconomic. By 1913 diggers were openly entering the Puhipuhi forest illegally. In August that year ranger Campbell, accompanied by a policeman, caught 14 diggers at work, confiscated their gum and charged them with trespass and possession of kauri gum, in contravention of the State Forest Act. A magistrate fined each man the maximum penalty of £1, noting that he considered this sum insufficient to deter other trespassing gumdiggers.[851]

Gumdigging remained an occasional source of supplementary income in Northland as late as the 1950s. After World War I it became a minor element in the economy of the local Māori, who turned instead to working in the timber industry, and to developing their remaining lands for dairy farming.

8.3.6 Failure of silver field and its impact on economic opportunities, 1891 – 1900

The Puhipuhi gold and silver rush was a failure, and professional mining in the area ceased within the next two years. The difficulty of extracting payable quantities of precious metal from the hard quartz rock, which required high levels of professional expertise and of capital investment, caused this failure. Local newspaper proprietor G. Alderton wrote of 'almost farcical fiascos which marked the attempts to mill the

[850] Commissioner of Crown Lands to Under-Secretary for Lands, 28 December 1905, ABWN 6095, W5021, box 288, 10/91/47 Pt 2, ANZ Wgtn
[851] *Northern Advocate*, 22 October 1913, p. 4

ore.'[852] He gave examples of a blacksmith and boilermaker, each claiming to be mining engineers, who tried and failed to extract payable quantities of silver from several tons of ore, until the original investors abandoned their claims.[853]

In 1893 the Mines Department reported that:

> Numbers of people rushed to the place, many of whom had no mining experience whatever, and they embarked in mining returns in the anticipation that a new Eldorado was about to be opened, where everyone would make his fortune with very little work, and that the mere fact of being fortunate to secure ground on the field gave them a property that would realise sufficient money to give them a good start in life.[854]

'The whole thing proved an utter failure, and not only injured those who were interested in the venture, but it put such a damper on the field as will take some years to remove.'[855]

By 1894 the Puhipuhi post office had closed, the Comstock Hotel no longer held a liquor licence, and the embryonic township of Puhipuhi virtually shut down.[856] In November 1894 the Mines Department reduced the designated mining area by an amending proclamation issued under the 1891 Mining Act.[857] In 1900 the mining operation closed down completely.[858]

These realities may have been behind the early decision of Eru Nehua and other Puhipuhi Māori to sell their silver claim at Tupono. In January 1891 the Auckland Star described the Tupono mine as:

> A grand property, and some splendid silver ore has been taken out, and 20cwt is now bagged awaiting treatment. This mine was originally a Maori proprietary; but 'the dusky sons of the soil' are gradually giving way to Europeans. Yet they part with Tupono stock reluctantly, as it is their favourite.[859]

Yet those Māori who sold their silver shares at this stage proved prescient, for like every other silver mine at Puhipuhi, the Tupono proved a loss-making venture. It

[852] Alderton, *The Resources of New Zealand, Part 1 - North Auckland district,* 1897, p. 24
[853] Alderton, *The Resources of New Zealand, Part 1 - North Auckland district,* 1897, p. 11
[854] The Gold-Fields of New Zealand, *AJHR* 1893, C-3, p. 38
[855] Report on goldfields, roads, water-races and other works in connection with mining, *AJHR* 1893, C-4, p. 39
[856] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 94
[857] *NZ Gazette,* 8 November 1894, No. 80, p. 1639
[858] Ferrar et. al., *The Geology of the Whangarei-Bay of Islands…,* 1925, p. 79
[859] *Auckland Star*, 20 January 1891, p. 2

ceased operations before the end of 1891, and 23 years later the Mines Department listed Wiri Nehua among a number of mining claim owners who owed rent on their claims. In 1914 he owed the Department £255 15/- in unpaid rent. This debt, along with all others owed on Puhipuhi claims, was written off by the Mines Department as unrecoverable.[860]

Experienced Pākehā miners employed by the shareholders worked at Tupono. However, it is evident that Eru Nehua, members of his family, other Ngāti Hau and perhaps other members of Puhipuhi's Māori community participated in these early mining activities.[861] All Puhipuhi Māori benefited, directly or indirectly, from the newly established community facilities such as a post office, butcher's shop and hotel. No evidence has been found that Puhipuhi Māori openly objected to the mining activities.

There is little doubt that the removal and processing of many tons of quartz from an elevated part of the Puhipuhi Forest resulted in the removal of large areas of standing timber, and the pollution of streams. The sudden arrival of dozens of miners, and the social infrastructure to support them, caused further environmental damage, since no systematic planning or civic facilities was provided for them. The mining camps, and the new Puhipuhi township, simply sprang up in a matter of months in an area that had previously had no permanent residents.

However, no evidence has been found that Māori complained of the environmental damage that resulted from mining. Local Māori appeared to share the hope of the miners and other Pākehā taking part in the silver rush that mineral wealth would permanently transform Puhipuhi for the better.

8.3.7 Mercury mining at Puhipuhi, 1910 – 1945

In the early twentieth century a number of attempts were made to mine and process cinnabar, an ore containing mercury, on the former Puhipuhi blocks 1-3, purchased by the Crown in 1883 and later sold or leased in smaller sections. Mercury mining at

[860] *Northern Advocate,* 9 May 1914, p. 2

[861] Māori sometimes gained other employment among miners, eg in 1890 'Mr Gallagher of the Alameda claim' severely sprained his ankle and 'a little Maori boy whom he has taken into his service speedily solved the problem' by preparing and applying 'a decoction' of miro bark to 'his master's wounded ankle' (*Northern Advocate,* 18 October 1890, p. 3).

Puhipuhi was subject to little state regulation, and local iwi were apparently not consulted at any point. No Māori are known to have owned mercury mining claims, and much of the land on which the mining took place had been sold or leased to individuals to develop for grazing properties. The Crown therefore had a smaller role to play in regulating Puhipuhi's mining operations than with silver mining on State Forest land in the nineteenth century.

In 1910 a small mercury treatment plant was built at the head of Waikiore Creek by the Whangarei Cinnabar Co. From 1916 a larger plant was built by the Auckland Cinnabar Mining Company, and mercury was first produced in small quantities. In 1917 the operation was taken over by New Zealand Quicksilver Mines (NZQM) Ltd, which continued to produce mercury until 1921.[862] In the five years to 1921, 1,500 tons of ore were treated, and about £7,500 worth of mercury produced.[863]

A second mercury deposit was discovered in 1910 by Thomas Mitchell on his land near the junction of Whenuaroa and Waiariki Streams. The Mount Mitchell claim was later taken over by a syndicate which built a simple treatment plant, opened in 1922.[864] The Rising Sun, a further mercury claim at the eastern end of the Puhipuhi plateau, was commercially exploited from 1921. By 1925 a total of 1,558 tons of ore had been processed, yielding more than 15.5 tons of mercury.[865]

In 1926 the Great British Mine took over the NZQM workings, extracted ore by opencast mining, and treated 400 tons for a yield of 14 hundredweight of mercury, valued at £462.[866] In January 1934 the company's buildings and processing plant were destroyed by one of Puhipuhi's periodic bushfires, and operations again ceased.[867]

[862] Ferrar et. al., *The Geology of the Whangarei-Bay of Islands…*, 1925, p. 82
[863] Ferrar et. al., *The Geology of the Whangarei-Bay of Islands…*, 1925, p. 81
[864] Ferrar et. al., *The Geology of the Whangarei-Bay of Islands…*, 1925, pp. 86-89
[865] Maria Butcher, The Puhipuhi Mercury Mine – history and site description', (Whangarei: Department of Conservation, Whangarei Area Office, 2010), p. 3 at http://www.doc.govt.nz/Documents/conservation/historic/by-region/northland/puhipuhi-mercury-mines-description-and-history.pdf
[866] Mines Deprtment Report, *AJHR* 1928, C-2, p. 21
[867] Butcher, 'The Puhipuhi Mercury Mine …', 2010, p. 4

Later in 1934 Mercury Mines (NZ) invested £5,000 in a new treatment plant on a site later known as the Waikiore Conservation Area.[868] The following year its workers reported symptoms of gum and dental disease thought to be caused by mercury fumes. In 1939 a syndicate expanded operations, building an opencast mine and treatment plant including roads, tramlines and a dam to ensure water supply. By 1945, 15 tons of mercury had been produced, worth about £32,000. By the end of World War II the global price of mercury dropped sharply and the company folded, leaving much of its processing plant to decay onsite, where it remains today. According to the Department of Conservation, within whose national estate the former Mercury Mines (NZ) site is now situated, Mercury Mines (NZ) 'did a poor job of cleaning up the site when it was finally abandoned.'[869] The Department of Conservation appears to consult regularly with representatives of Ngāti Hau over access to that site and related issues.[870]

Some of the activities of Mercury Mines (NZ) were witnessed by George Davies and his sister Vilma Sutherland (Ngāti Hau), who grew up on their tribally owned land near the Whakapara Marae. In their evidence before the Tribunal's Te Paparahi o te Raki inquiry, they stated that:

> At no point did [the mining company] involve us in the decision making, even though it would have been clear to them that the mining would have an impact on the surrounding area, whenua, awa and people, both physically and in their wairua.[871]

Davies and Sutherland testified that their father and other local Māori had been employed by this mining operation, and at various times by other mercury mines at Puhipuhi.[872] They described unsafe and unhealthy working conditions, and damaging environmental impacts from the mining activities.[873]

Unlike the silver rush, the smaller-scale mercury mining operations did not deliver any lasting benefits in the form of roading or other facilities and may instead have left a lasting legacy of environmental damage, an issue that is beyond the scope of this

[868] Butcher, 'The Puhipuhi Mercury Mine …', 2010, p. 3
[869] Butcher, 'The Puhipuhi Mercury Mine …', 2010, p. 17
[870] Personal communications, Allan Halliday, Te Raa Nehua, 24 January 2015
[871] Joint brief of evidence, George Davies and Vilma Sutherland, #I18, p. 2
[872] Joint brief of evidence, George Davies and Vilma Sutherland, #I18, pp. 3-5
[873] Joint brief of evidence of George Davies and Vilma Sutherland, #I8, paras. 16-36

report. There appears to be have been no attempt made by either mining companies or the government to consult and engage with local iwi and hapū over the mercury mining activities. This was typical of commercial activities elsewhere in the country in this period, especially those which, like the mercury mining, were conducted primarily on privately owned land.

8.3.8 Epilogue - mining impacts, 1945 – present

In the decades following World War II periodic and, to date, unproductive efforts have been made to economically exploit Puhipuhi's mineral resources. Those efforts have generally taken the form of acquiring rights from the government to explore or prospect within Puhipuhi, apparently on privately owned land. Some limited prospecting activities have then been carried out with the permission of landowners. Little, if any, formal consultation appears to have been carried out with local hapū and iwi by either the government of the day or the holders of these prospecting rights.

In 1969 the Nelson-based Lime and Marble Ltd prospected for mercury on behalf of a US company. In 1977 Strategic Exploration was granted a licence to prospect for mercury or silver, 'most likely by open cast method.'[874] From the early 1980s gold and silver prospecting was undertaken by or on behalf of multi-national mining companies. Homestake NZ Exploration held an agreement with Australian Marine Resources and Element Research and was granted a prospecting licence from 31 January 1984.[875]

The Australian-based mining giant Broken Hill Proprietary (BHP) applied for an exploration licence from August 1984. The US-based mining company Macraes (at that time the owner of the Waihī goldmine), made further exploratory boreholes, but the findings did not result in further mining activity.[876]

[874] Privileges in state forests - strategic exploration, AANS W5491, 828, box 646, 20/1/16/270/1, ANZ Wgtn
[875] Reports on mining and prospecting NZ Mercury Mines Ltd, AATJ W5152, 6090, box 131, 12/46/1124, Pt 1, ANZ Wgtn
[876] 'Puhipuhi permit transfer approved', De Gray Mining Ltd media release, 15 January 2013, http://www.miningweekly.com/article/company-announcement-puhipuhi-permit-transfer-approved-2013-01-15

In 2004 the Ministry for Economic Development defined an area of Northland, including Puhipuhi, as open for mineral exploration. In 2009 the Waihi Gold Company, a subsidiary of US multinational Newmont Mining, was granted a five-year exploration licence, with a five-year right of renewal, to 6,000 hectares on the Puhipuhi plateau.[877] Four years later the company sold its exploration permit to De Grey Mining (DGM) Ltd, an Australian company with silver mining interests in Argentina. Later in 2013 DGM acquired further exploration permits to adjacent areas totalling 14,500 hectares.[878] Local people, including Māori, objected to De Grey Mining's proposed activities, citing the risk of pollution to waterways and farmland after heavy rain, and other environmental and social impacts.[879] In August 2015 Australian-based Evolution Mining took over De Gray's exploration permits.[880]

The prospect of mining by large-scale, opencast methods has aroused considerable anxiety and opposition, especially but not exclusively from local Māori.[881] Māori, and especially Ngāti Hau, now expect to exercise their role as kaitiaki of Puhipuhi's natural environment, over both the lands they retain in Māori ownership and the adjacent lands that continue to form part of their rohe. Some Puhipuhi Māori, including some of those spoken to for this report, have been working with Evolution Mining as part of that kaitiaki role. This has caused ill-feeling and division in the community, as others continue to oppose the company's activities.[882]

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[877] 'Puhipuhi permit transfer approved', De Gray Mining Ltd media release, 15 January 2013, http://www.miningweekly.com/article/company-announcement-puhipuhi-permit-transfer-approved-2013-01-15

[878] 'Puhipuhi permit transfer approved', De Gray Mining Ltd media release, 15 January 2013, http://www.miningweekly.com/article/company-announcement-puhipuhi-permit-transfer-approved-2013-01-15

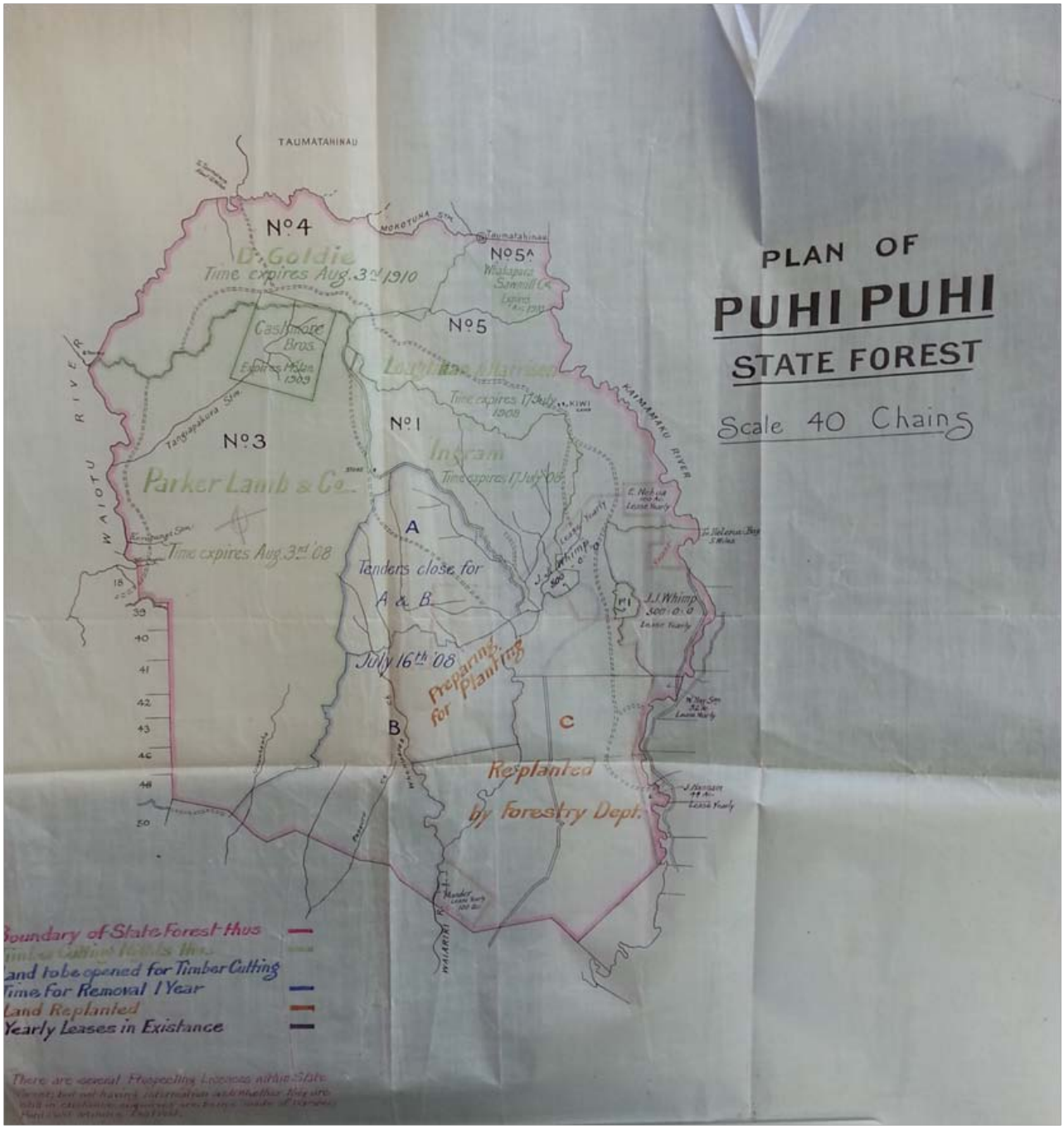
[879] 'Gold mining critics ramp up opposition' http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10875126

[880] 4-traders – equities trading information website (Australia) http://www.4-traders.com/EVOLUTION-MINING-LTD-9394612/news/Evolution-Mining--to-Acquire-Puhipuhi-Project-in-New-Zealand-from-De-Grey-Mining-for-USD03-Million-20251384/

[881] Puhipuhi mining Action Group website http://puhipuhi.co.nz/evolution-mining-applies-for-an-exploration-permit-over-a-wider-area/

[882] 'No mercury in Puhipuhi waterways but Iwi still concerned' Maori TV, 5 May 2016 http://www.maoritelevision.com/news/regional/no-mercury-puhipuhi-waterways-iwi-still-concerned

Figure 11: Plan of Puhipuhi State Forest showing areas leased for timber cutting



(Source: ABWN 6095, W5021, box 288, 10/91/47 Pt 2 – Puhipuhi State Forest (1905 – 1913), ANZ Wgtn)

8.4 The impact of timber felling and milling on Māori at Puhipuhi, 1896 – 1912

The opening up of the Crown-owned kauri forest on the northern portion of Puhipuhi, and the leasing of burnt and cleared parts of that land, increased settlement in the area in and around Puhipuhi. This provided limited opportunities for employment and commerce for the owners of Puhipuhi 4 and 5. The increased population in the district was also a factor in having their desire for a school and church realised.

8.4.1 Background: The development of timber milling and settlement at Puhipuhi

Even before the railway line between Whāngarei and Whakapara (the station serving Puhipuhi) was opened in 1897, the prospect of improved access attracted farmer-settlers to take up grazing leases on cleared areas of the Crown-owned land at Puhipuhi. Under a subsidy scheme introduced by the government in 1892, these settlers could claim subsidies towards fencing and building on their leased lands.

After 'the great bush fire' of 1887, areas of Puhipuhi 1 – 3 that had been entirely burnt off were sown with grass seed. The Crown then surveyed these areas and subdivided them into 500-acre sections. The Crown offered seven-year pastoral leases of the sections for between £5 and £10 annually. Lessees had the right to take any remaining timber on the land for fencing or other purposes, or to sell it for milling.[883] The Crown auctioned the first of these leases in Whangarei in January 1893, most for their 'upset' or reserve, price. In the following century, it converted almost all of these leases to freehold title.

In 1896, three years after the auctioning of the first pastoral leases, the Crown leased milling rights to Puhipuhi timber to private companies. The Crown supported the exploitation of Puhipuhi's standing kauri and other millable trees for the Auckland building industry and for export. The timber exploitation also cleared land for later pastoral production. The low royalty payable by holders of these timber leases reflected the expense and risk involved in extracting the timber, and the fact that much of it was fire-damaged.

[883] *NZ Herald,* 18 June 1892, p. 3

The first 12 lots to be auctioned, in April 1896, were in the area which had been worst affected by fire and contained only dead, but still millable, trees.[884] The Melbourne-based Kauri Timber Company (KTC) bought most of the rights, for a total of a little over £3,000. The KTC, formed in 1888, was the largest miller of kauri in the southern hemisphere, with 28 sawmills located throughout the north. In several of those locations, such as at Kohukohu, 'the village or township is virtually the Kauri Company's, who own not only the stores, but perhaps the majority of houses, which are let to the workmen and others employed in getting the timber.'[885]

By June 1896 the Crown also auctioned rights to mill green timber, and other timber companies, including Mitchelson Bros and Foote Bros, were preparing to start operations. Foote Bros, which built a large mill at Whakapara, started largescale operations in early September 1897.[886] The company built at least 20 houses and other buildings around the mill, creating a community known as Foote-town.[887]

Foote Bros felled and hauled trees day and night during the summer, with lanterns hung in the branches for night work. They milled in winter when the tracks were no longer passable. By the end of 1897 hundreds of men with teams of horses and bullocks were at work in the forest. Logs that could not be hauled out directly by traction engine lay in the creeks waiting for the first winter floods that would drive them down to lower ground. The mills were soon surrounded by a sea of logs, many of them six feet or more in diameter.

After October 1899 Mander and Bradley built its sawmill straddling the Waiariki Stream, about three miles beyond the Whakapara railhead. It built a horse-drawn tramway to carry logs to the mill, and sawn timber from there to the railway. Figure 11 above shows timber leases as they stood in the early twentieth century.

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[884] *NZ Gazette,* 11 May 1896, No. 33, p. 34
[885] *West Coast Times*, 19 December 1895, [no page No. provided] quoted in Rowan Tautari, 'Attachment and Belonging: Nineteenth Century Whananaki', MA History thesis, Massey University New Zealand, 2009, #I32(d), fn 265, p. 113
[886] *Auckland Star*, 7 September 1897, p. 8
[887] *Northern Advocate*, 24 September 1898, p. 5

8.4.2 Opportunities for employment and commerce for Puhipuhi Māori

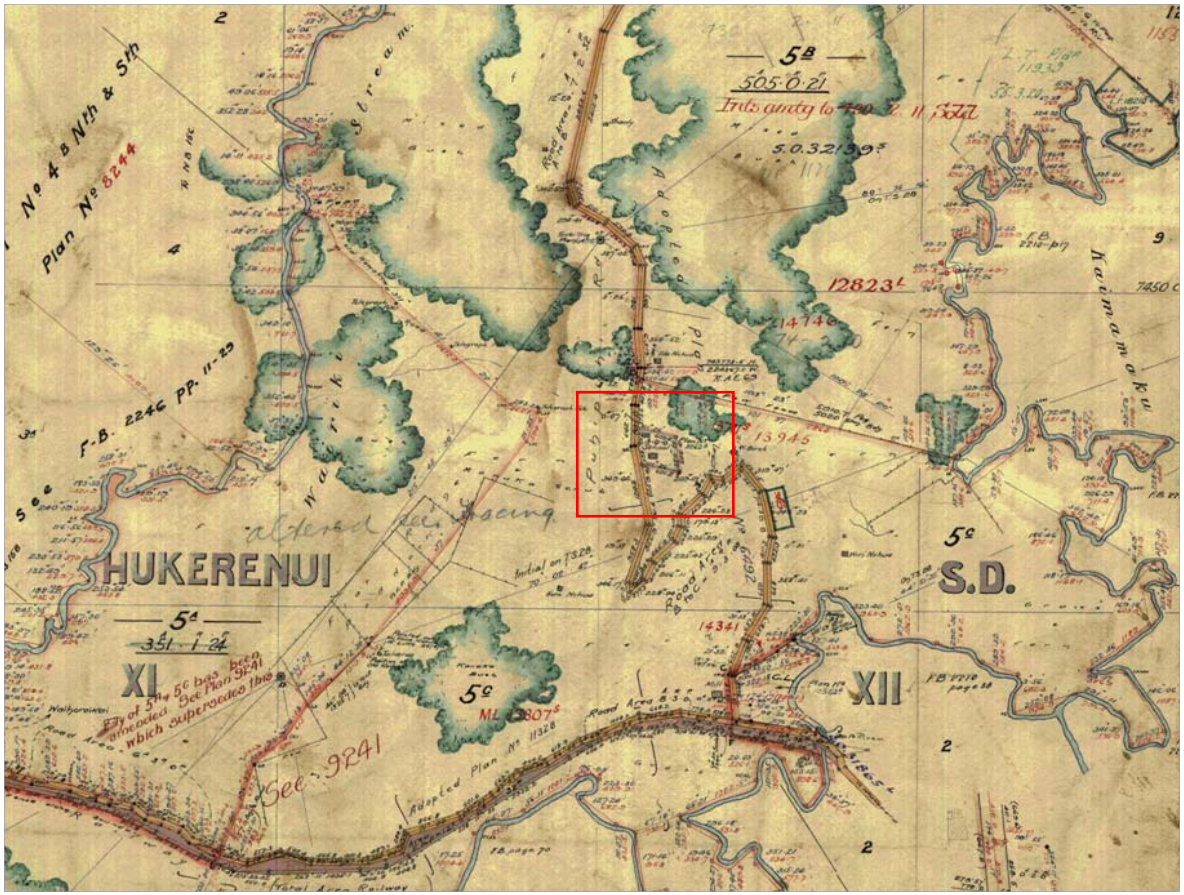
Puhipuhi's kauri timber industry was capital-intensive and dominated by a small number of large companies. Apart from two hostels owned by Eru Nehua, described below, local Māori participated in the industry as labourers in the bush, and the sawmills. Sometimes this involved other work that drew on traditional skills, such as weaving a nikau roof for a new camp shanty which served as cookhouse, dining room and sleeping quarters.[888] The kauri industry offered regular and fairly well paid employment, especially in the mills where the workforce was unionised. Māori must have greatly welcomed timber work, since it came at a time of severe economic hardship.

The resulting influx of timber and mill-workers, and the infrastructure needed to support them, transformed the social as well as the physical landscape of this formerly small, isolated and largely Māori community. The entrepreneurial Eru Nehua took further advantage of the new opportunities presented by opening up Puhipuhi's timber for exploitation. By 1898 a railway station stood at Whakapara, on the edge of the forest. Nehua recognised a demand for temporary accommodation for travelers. In May 1898 he built a 12-room boardinghouse opposite the railway station.[889] A few months later he built a second, smaller, boarding-house on his own property facing the main road to Puhipuhi.[890] He opened this 'fine dwelling-house containing eight rooms, with stables and outbuildings attached,' in September. The local newspaper found that 'the premises present quite an ornamental appearance, and are a great improvement to the township.'[891] It is not clear how long these businesses survived or whether they were commercially viable.

[888] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 26
[889] *Northern Advocate*, 14 May 1898, p. 6
[890] *Northern Advocate*, 30 July 1898, p. 4
[891] *Northern Advocate*, 24 September 1898, p. 5

Figure 12: Close up of plan showing the location of Whakapara School (inside red box)

(The school is adjacent to the Airline Road, with Foote Bros mill just above the intersection of the Airline Road and the road and railway that ran through Puhipuhi No. 4 and No. 5)



(Source: ML 8243, dated October 1911)

8.4.3 The gifting of land for the Whakapara School

Sawmills dominated bush communities such as Whakapara. Timber work brought significant numbers of new, semi-permanent residents, with a consequent increase in demand for community facilities such as hotels, stores, churches and schools. This assisted Eru Nehua and other owners of Puhipuhi 4 and 5 to realise their long-held ambition of obtaining a local school to provide an education for their children.

The decision to gift land for a school, 1885-1898

From as early as 1885, two years after they obtained clear title to the Puhipuhi papakainga, Eru Nehua and Ngāti Hau hoped to establish a school for their children. They approached Northern Maori MP Hone Heke Ngapua with this request, but made no progress for several years.[892] Meanwhile Puhipuhi children had to attend Hukerenui South School, which opened in 1889 on the main road about three miles north of Whakapara, although they had to travel a considerable distance to do so.

By 1897 developments such as the completion of the rail link to Whangarei, the formation of the Hukerenui farm settlement area, the establishment of several sawmills in the district, and the Puhipuhi silver boom had dramatically increased Whakapara's population. Eru Nehua wrote to the Minister of Education in July 1897 stating that some of Puhipuhi's children 'were getting beyond school age and have never had the facilities of obtaining any education.' He pointed out that, 'we have no school within five miles of this district and we have got 30 children to educate … We are willing to give a piece of land for a school site, as much as is required for that purpose', and emphasised that local Māori were 'very anxious' to have their children educated.[893] Later that month a further letter signed by 20 families, the 'Native Settlers of Taharoa', advised the Minister that the land the community had allocated for a new school was 'close to the [Whakapara] mill site … we could spare one acre and a half if it will be sufficient, if not of course we must choose a piece further back, only it might not be so convenient.'[894]

[892] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 83
[893] Eru Nehua to Minister of Education, 9 July 1897, BAAA 1001, 727c 44/4, ANZ Auck, quoted in Mary Gillingham and Suzanne Woodley, 'Northland: Gifting of Lands', CFRT, 2007, #A8, p. 165
[894] Native Settlers of Taharoa to Minister of Education, 9 July 1897, BAAA 1001 727c, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 59

In August 1897 the Ministry replied advising that a school site required at least three acres. A further application was sent, detailing such a site.[895] In April 1898 the Inspector of Native Schools, James Pope, visited the area and reported:

> I saw Mr John [i.e. Hone] Nehua and other Natives of standing. On making myself known to some Maori children who had been at Hukerenui School that day they all shouted with seeming delight, crying out to one another, "He has come. The man that will give us a school." This shows I think that the Natives are thoroughly interested in the matter of obtaining a school.
>
> I was shown the site offered by the Natives: it is some 250 or 300 yards from [Eru] Nehua's house, and about a mile to the west of the Whakapara station: it is on the Puhipuhi Road. At present ten children go to the Hikurangi School by train free: Hikurangi is five miles away. Four go to the Kaimamaku School: this is practically three miles off in fine weather, and five miles in wet.

If a school was established at Whakapara, said Pope, 'the Maori average would probably be, at the least, twenty, besides there would be about twenty Pakehas. Without any hesitation the people declared in favour of a Native School.' He recommended establishing such a school, while pointing out that there were serious objections to building a Native School in the Whakapara area, since the growing Pākehā population was likely to demand their own school in the near future. This prediction proved accurate.[896]

The Auckland Education Board apparently rejected the proposal to establish a Native School at Whakapara on the grounds that there were almost as many non-Māori children planning to attend the school as Māori. Instead the Board approved construction of a public school on the site offered by Eru Nehua, part of the Puhipuhi papakainga.[897] Figure 12 above shows the location of the school site. The Secretary for Education noted in December 1898 that, 'the fact that the Maoris give land proves their interest.'[898]

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[895] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 83
[896] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 83
[897] Secretary, Auckland Education Board to Secretary for Education, 8 November 1898, BAAA 1001 727c 44/4, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 165
[898] Minute by 'W. J. H.' [Habens], 14 December 1898, BAAA 1001 727c 44/4, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 165

The transfer of the site to the Crown, March 1899

Eru Nehua and his whanaunga owned the school site, but the title specified that the land was 'inalienable by sale or mortgage or by lease for a longer period than 21 years', except by special consent.[899] In March 1899 the owners transferred the three-acre site to the Auckland Education Board 'for ever', by means of a deed of conveyance.[900] Section 53 of the Native Land Court Act 1894 allowed for alienation if 'each Native alienating, other than a half-caste, has sufficient land left for his support, and that each half-caste alienating has sufficient means of support derivable from land or otherwise.'[901] The Governor retrospectively granted the required consent for the restrictions on alienation in the title to be lifted.[902] Neither party appears to have considered the option of leasing, rather than selling, land to the Crown for a school site. Apparently, the Crown expected Māori to alienate their land by gift for school purposes.

Gillingham and Woodley, in their report on gifted lands, find that, 'The Auckland Education Board's receiving of the Whakapara site by conveyance in 1899 was the same method employed by the Crown to acquire land held in individualised title and gifted for Native school purposes before the general adoption of public works legislation for this purpose in 1905.'[903] The transfer deed for the Whakapara School site specified that the land was 'a gift free of all cost to or of payment by the [Auckland Education] Board.'[904] At the time of this transfer, Government Land Purchase Officer Christopher Maxwell, who was also a licensed interpreter of Māori, explained to the landowners that 'it was an absolute gift and the land would not revert to them ... All the natives who signed have to my own knowledge ample land for their support.'[905]

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[899] Acting Secretary, Auckland Education Board to Secretary of Education, 8 September 1899, BAAA 1001 727c 44/4 pt 1, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 506
[900] Acting Secretary, Auckland Education Board to Secretary of Education, 8 September 1899, BAAA 1001 727c 44/4 pt 1, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 505; Transfer No. 24675, LINZ Auckland, quoted in Gillingham and Woodley, 2007, #A8, p. 88
[901] Section 53, Native Land Court Act 1894; *NZ Gazette*, 1 February 1900, No. 8, p. 247
[902] Transfer No. 24674, LINZ, Auckland, quoted in Gillingham and Woodley, 2007, #A8, p. 506; *NZ Gazette,* 1 February 1900, No. 8, p. 247
[903] Gillingham and Woodley, 2007, #A8, p. 170
[904] Deed, 19 December 1899, in Transfer No. 24674, LINZ, Auckland, quoted in Gillingham and Woodley, 2007, #A8, p. 170
[905] Auckland Minute Book No. 7, p. 116

The deed of gift was, however, rejected by the Registrar of Deeds on the grounds that, since no money or other consideration had been paid to the landowners, the transaction was not legally a sale. A repacement deed was drawn up to 'remove all such doubts.'[906] This new deed recorded that a token 4/- had been paid to Eru Nehua, representing one shilling for each of the four underage landowners he represented – Apetera Eru, Te Ruhi Nehua, Tutu Nehua and Maraea Nehua.[907] The Native Land Court confirmed the alienation of the three-acre school site on 12 February 1900.[908]

The Auckland Education Board covered half the cost of school buildings and fencing amounting to £500.[909] Whakapara School opened in July 1899, with 27 pupils under teacher Sidney Gubb. The *Northern Advocate* said Mr Gubb was 'an able musician, and should prove a great acquisition to the district.' John (Hone) Nehua, a son of Eru Nehua, was one of the five members of the inaugural school committee.[910] By 1905, 55 children attended the school, and the Board appointed an assistant teacher.[911]

Gillingham and Woodley's report finds that 'Māori gifting for [Auckland Education] Board schools [appears] to have been motivated by the desire to improve local services.'[912] Nehua's gift of land for Whakapara School expressed this desire. In a departure from the norm, the local people, rather than the Education Board, made the initial approach. Gillingham and Woodley find that in all comparable cases, the Board approached local Māori to provide land for a new school. The Māori initiative at Puhipuhi contributed to the generally good-natured dealings between the school's community and the Education Board and other authorities.

The Board's decision to pay only a nominal sum for the gifted land (and then only for the interests of the owners of minor age, to avoid possible legal complications) was consistent with common practice regarding Native schools in the late nineteenth and early twentieth centuries, although that practice changed later.[913] The terms of the gift

[906] Deed, 19 December 1899, in Transfer No. 24674, LINZ, Auckland, quoted in Gillingham and Woodley, 2007, #A8, p. 170
[907] Auckland Minute Book No. 7, p. 120
[908] *NZ Gazette*, 1 February 1900, No. 8, p. 247
[909] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 84
[910] *Northern Advocate*, 22 July 1899, p. 5
[911] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 84
[912] Gillingham and Woodley, 2007, #A8, p. 164
[913] Gillingham and Woodley, 2007, #A8, p. 169

were consistent with the 1897 Native Schools Code, which required 'at least three acres' of suitable land, and stipulated that there must no other Native school 'within a convenient distance of the proposed new school.[914]

At the time of the conveyance to the Auckland Education Board, neither the Puhipuhi community nor the Board appears to have made any provision for returning or otherwise disposing of the land once it was no longer required for a school. The gift was specified as 'for ever', an indication, perhaps, of the enthusiasm of the Puhipuhi community to see a school established in their district.

8.4.4 The rise and decline of Whakapara School, 1899 – 1965

Problems, and conflict between families, later arose due to the school's site. When the river rose, children could only reach the school by using the railway bridge – a very dangerous procedure which concerned their parents. In 1912 the school chairman proposed to move the school to a new site nearer to the Whakapara township, which would be more convenient in case of flooding. However some parents objected and petitioned the Education Board to remain at the original site since:

> There are a greater number of children … to the north of the school than there are children towards the south, that is, the direction of Whakapara township, and it would be a hardship to compel such children … to attend a school at Whakapara.[915]

No action was taken and in 1918 the chairman of the school board wrote again, asking whether it was possible to establish a school in the Whakapara public hall during the winter months.[916] Several more letters and petitions were sent in the following years, showing that on this issue the school community was fiercely divided between the northern and southern residents.

By 1919 the condition of the school building was so poor as to shock the advisory inspector of the Auckland Education Board. The school then had 14 children on the roll, with an average attendance of 11. The inspector described the schoolhouse as 'a very poor specimen of bush 'shanty' about ten feet by ten, consisting of a main portion used as a school, and a miserable lean-to where the teacher and her three children lived.' The inspector found he could not stand upright in this lean-to. The

[914] Gillingham and Woodley, 2007, #A8, p. 42
[915] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 84
[916] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 85

Board decided to send a tent to Puhipuhi for use as a school, and to approach the Education Department for authority to erect a shelter-shed school.[917]

The community remained bitterly divided over the question of a new school site. In May 1922 Education Minister S. Parr visited the district. He advised the Director of Education that he had met with 'the two contending parties, who … exhibited very violent antagonism and feeling. The question of the removal of the school had degenerated into a racial issue.' Parr concluded that 'The present school building is too old to make removal an economic proposal', and that a new school should be built on the same site 'when finance permits; in the mean time the new Soldiers' Hall to be rented and a Board School established there.' The original school building, with all its disadvantages of access and physical deterioration, was to be 'retained for the native children under the [Education] Department as a Native School.'[918] The site remained vested in the Auckland Education Board.[919] In 1931 two acres of the school site were permanently declared a reserve under sections 359 and 360 of the Land Act 1924 and section 71 of the Land for Settlements Act 1925.[920]

Now renamed Whakapara Native (and later Māori) School, the school continued to teach some 30-plus pupils. By 1940 the water supply, based on rainwater tanks, was quite outdated and the school ran out of water in dry weather.[921] In 1943 the lack of a qualified teacher caused the school to close for over a month, while the pupils attended the new public school. The roll declined in the postwar years and in 1964 the families of pupils at the Māori school voted to lose the school and transfer its pupils to the district high school at Hukerenui.[922] Whakapara Māori School was formally consolidated with Hukerenui District High School from February 1965.[923]

8.4.5 The re-vesting of the site and buildings in Māori owners, 1965 – 1992

The closure of the school raised the question of what would become of the buildings remaining on the school site. Both the buildings and the site were legally the property

[917] *Auckland Star,* 11 June 1919, p. 5
[918] Quoted in Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 86
[919] Transfer No. 24674, LINZ, Auckland, quoted in Gillingham and Woodley, 2007, #A8, p. 506
[920] *NZ Gazette,* 21 May 1931, No. 40, p. 1547
[921] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 87
[922] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 88
[923] Superintendent of Education to District Commissioner of Works, 4 March 1966, BAAA 1001 729a 44/4 pt 5, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 507

of the Auckland Education Board. In March 1966 the acting Superintendent of Education advised the District Commissioner of Works that the school site comprised a

> classroom erected in 1921 and extended in 1954. This room is substandard and not suitable for transfer for use in another school. Also old residence built in 1889 in poor condition.
>
> At a public meeting held in the district in early Oct. 1964, a school committee passed on to the [Auckland Education Board] a recommendation that the present school building be left on the site for use as future district hall and nursery play centre. Ministerial approval is held for disposal of the school site and buildings thereon, and approval of above recommendation.[924]

Eru Nehua's children asked Northern Māori MP Matiu Rata if the schoolhouse could be put out to tender, and the remainder of the school left for 'the general purpose of the Whakapara Community.'[925] The former school committee, the Ngātihau Marae Board and two individuals all expressed interest in acquiring the former school buildings for their own use. The Ministry of Works noted that the situation would 'need sorting out by the Maori Affairs Department or Maori Land Court.'[926]

The several Crown agencies involved in the process of winding up the assets of the former Whakapara School faced a requirement to dispose responsibly of the taxpayer-funded school buildings, while respecting the generous spirit in which the land for the school site had been offered in 1897. Whakapara School was consolidated and closed during a period when a number of other Māori schools were either closed or transferred to the mainstream Education Board system. Between 1960 and 1968, six other Māori schools in Northland closed in this way.[927] Many of them had been built on land gifted by local Māori, and a general policy was developed for disposing of these sites in an appropriate manner. That policy was outlined in 1955 by a Committee on Māori Education, which recommended that 'where the Maori people have given the land on which the Maori school is situated and … when the land is no longer required, it will be handed back to the Maori people.'[928] No legislation was

[924] Superintendent of Education to District Commissioner of Works, 4 March 1966, BAAA 1001 729a 44/4 pt 5, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 507
[925] Shelford to Rata, 12 June 1966, AAQB W4073 259 31/345, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 507
[926] Ministry of Works Auckland to Ministry of Works, Head Office, 30 June 1966, AAQB W4073 259 31/345, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 507
[927] Gillingham and Woodley, 2007, #A8, p. 142
[928] Senior Inspector of Maori Schools to Director of Education, 16 April 1958, AAMK 869 734a 21/4a pt 2, ANZ Auck, quoted in Gillingham and Woodley, 2007, #A8, p. 139

passed to enact such a policy, so the Crown was not under a legal obligation to return the land it had been given for a school once the land was no longer required for that purpose. However, under its policy to do so, the Education Board found it easy to identify descendants of the original donors, in the persons of the children of Eru Nehua.

In consultation with the Nehua family, the Commissioner of Crown Lands reached an agreement to offer the land and buildings for sale by tender, with preference given to descendants of the original owners. The proceeds of the sale, less the Crown's compensation, would be paid to the Ngātihau Marae Board. This proposal, stated the Commissioner, 'respects the tenor and spirit expressed by the original owners in their gift of the land for public purposes.'[929]

In 1967 the Māori Land Court vested ownership of the three-acre school site with the Commissioner of Crown Lands, North Auckland District, under section 436 of the Māori Affairs Act 1953. Under this section the Crown could revest land in Māori ownership that was no longer required for public works, and determine the people in whom it should be revested.[930] Subsection 5 specified that, unless the Court ordered otherwise, land vested in a Māori under this section would become Māori freehold land.[931]

The first to acquire ownership of the school buildings, in December 1975, were Poro and Constance Kake. They obtained title to the property from the Crown under sections 52 and 53 of the Land Act 1948, which specify how Crown land may be alienated.[932] Later that year, after several other transfers of ownership, a new certificate of title for the site was issued to Royce and Raywen Anderson.[933] In 1992 the Māori Land Court issued an order determining the school site to be Māori freehold land, under Section 34(10) of the Maori Affairs Act 1953.[934] Today the 1921

[929] Whangarei Minute Book No. 43, pp. 330, quoted in Gillingham and Woodley, 2007, #A8, p. 508
[930] Gillingham and Woodley, 2007, #A8, pp. 115-116; *NZ Gazette,* 9 June 1966, No. 34, p. 921
[931] Section 436, Maori Affairs Act 1953
[932] Certificate of title NA33A/340, LINZ, Auckland
[933] Certificate of Title NA33A/340, LINZ, Auckland
[934] Order for Determination of Status of Land, part Puhipuhi No 5, 25 May 1992, Maori Land Court Whangarei

schoolhouse still stands on this site and is used for storage by the family of Royce Anderson, which is related to the Nehua family and occupies the land.[935]

According to present-day Puhipuhi residents and landowners, Māori involved in the transfer of the school site appeared satisfied with the eventual outcome of the transfer process.[936] However, the lengthy delay in completing the process indicated that there were no easy ways of returning Māori land from Crown to Māori ownership. This was a problem of equity.

8.4.6 The gifting of land for St Isaac's Church

Eru Nehua and his wife Te Tawaka, who had been raised as an Anglican, wished to provide a local church, as well as a school, for their community. Nehua offered a raised Puhipuhi site, and when Foote Bros erected their Whakapara mill on his land, one of Nehua's stipulations was that the first timber cut should be donated for the building of the church. Nehua donated the logs, which Foote Bros milled at no charge. The church, named St Isaac's after one of Nehua's sons, opened on 11 August 1898, a year after the opening of Whakapara School.

A newspaper report of the opening ceremony noted that:

> The building, which will comfortably accommodate a hundred persons, was built by the highly respected chief Eru Nehua, known in the district as Mr Edwards, and his family, aided by a few Pakeha friends …
>
> The church will be available for English services for the settlers in the neighbourhood, as well as for the people employed in the timber trade. The Maori population within a radius of six miles does not exceed 70. There is not a more difficult district to work in the North of Auckland, as the Maoris are so scattered, there being not a single kainga with more than 20 people in it. The consequence is that the Native minister in charge has a very arduous duty, satisfactory to neither himself nor the people.[937]

[935] Personal communication, Royce Anderson
[936] Personal communication, Benjamin Pittman, Royce Anderson
[937] Unreferenced and undated newspaper report, quoted in Menefy and Cunningham, *Hukerenui – In the Beginning*, c.1988, p. 80

In 1934 members of the Nehua family vested the church site with the General Trust Board of the Anglican Diocese of Auckland, without power of sale, under section 31 of the Native Land Act 1931.[938]

Unlike the gifting of land for the Whakapara School, the gifting of land for St Isaac's Church did not involve any Crown agencies. This was consistent with all such giftings for religious purposes examined by Gillingham and Woodley.[939] The primary purpose behind the gift appears to have been to expand the religious services available to local people, both Māori and Pākehā.

The Anglican Diocese retains 'spiritual oversight' of St Isaacs Church to the present day, although its administration, including maintenance of the buildings and cemetery, was handed back to the Whakapara whānau in the 1980s. This is consistent with Anglican policy in respect of other Northland Māori churches.[940] The church committee includes descendants of Eru and Te Tawaka Nehua. In 2014 the Anglican Kamo-Hikurangi Parish ceased operating and St Isaacs Church came under the spiritual guidance of the Māori Anglican Church.[941]

8.4.7 Epilogue: The decline of the timber industry at Puhipuhi

By about 1912 the kauri timber on the Crown-owned portion of Puhipuhi was largely exhausted. A March 1912 report to the Commissioner of Crown Lands advised that 'very large areas of the Puhipuhi State Forest have been abandoned by sawmill proprietors, and the forest is now almost deserted chiefly owing to the exodus of mill hands.' The report proposed lifting the State Forest designation over much of the former forest. 'The land can afterwards be dealt with as ordinary Crown land and subdivided into suitable areas of say 200 acres each.'[942]

According to Terry Hearn, for Te Raki Māori, 'bush felling (mahi puhi) and timber mill work had provided important sources of employment, so that the decline of

[938] Whangarei Minute Book vol. 17, p. 206, 25 May 1934. Section 31 of the Native Land Act 1931 empowered the Native Land Court to vest Māori land in a trust for church purposes.
[939] Gillingham and Woodley, 2007, #A8, p. 182
[940] Gillingham and Woodley, 2007, #A8, p. 195
[941] Personal communication, Dale van Engelen, Whakapara Marae Committee, 21 June 2015
[942] Under-Secretary for Lands to Commissioner of Crown Lands, 16 March 1912, ABWN 6095, W5021, box 288, 10/91/47 Pt 2, ANZ Wgtn

timber milling had serious implications for many Maori communities.'[943] The rapid growth and decline of timber milling had particularly serious implications for the small and remote bush communities in and around Puhipuhi, where few, if any, alternative employment opportunities existed. The Crown made no provision for those thrown out of work by the removal of Puhipuhi's last millable timber, Māori or Pākehā, apart from very general incentives to develop the cleared land for farming. From 1903 large areas of land formerly covered in virgin forest were progressively planted with exotic species by the forestry section of the Department of Lands and Survey, making Puhipuhi the first exotic forest in Northland. It seems probable that some of those employed in these pioneering reafforestation projects were local Māori, and such employment must have served to compensate to a certain extent for the loss of work in the native timber industry.

Other research produced for this inquiry indicates that the eradication of Puhipuhi's kauri forest between 1896 and 1912 was the result of Crown policies and actions which were known at the time to damage the local environment and result in a range of longterm problems for landowners in the vicinity of the forest. Garth Cant has examined the clear-felling of native forests in the Hokianga and Whangaroa districts, and concludes that, from as early as 1874, the Crown was aware that such activity would, in the future, accelerate soil erosion and flooding, and harm water quality. These problems were especially acute in the case of forests which protected the headwaters of waterways, and on hill country and gumland soils. Much of Puhipuhi's kauri stood on land of this type.[944] The further loss of native forest through burning, either accidental or deliberate, such as the massive bushfires in the Puhipuhi forest in the 1880s, contributed to these environmental impacts.[945]

The removal of all of Puhipuhi's kauri, including from steep hill country, within a 20-year period brought to an end much of the logging and milling activity which contributed to the economy and community of the district. As this clear-felling was taking place, some commentators considered it a shortsighted policy, and wished to see the kauri forest preserved or sustainably managed. In 1896 the *Evening Post*

[943] Hearn, 2006, #A3, p. 60
[944] Garth Cant, 'Crown Sponsorship of Mass Deforestation in Whangaroa and Hokianga 1840 – 1990', CFRT, 2015, #A52, p. 127
[945] Cant, 2015, #A52, p. 14

observed that, 'the last State forest of kauri that remains to the country is to be destroyed', and thought the sale of logging rights at Puhipuhi was an example of:

> The reckless manner in which future gain is discounted, regardless of the true interests of the colony, in order that the Government of the day may be enabled to finance its present requirements … There is no public demand for its wealth of timber, and there are unassailable reasons why it should remain untouched, the property of the State, for many years to come.[946]

The 'unassailable reasons' for preserving Puhipuhi's timber resource had resulted ten years earlier in the passage of the 1885 State Forests Act, under which Puhipuhi was declared a State Forest, subject to special protection and management by the Crown. As noted earlier in this report, the conservation principles of that Act soon became a victim of government cost-cutting measures as a worldwide economic downturn reached New Zealand. The result was a policy by successive governments to open up the forest to the timber industry, convert all of Puhipuhi's kauri into milled timber, and then offer the deforested areas to settlers for conversion to grazing land. Cant's research reveals that this policy was known, even before it was implemented, to have destructive environmental impacts on the former kauri lands, and also on lands adjacent to and downstream of the forest, such as Puhipuhi 4 and 5.

About 1910, as Puhipuhi kauri timber became worked out, the logging and milling companies wound down their operations in the 20,000-acre Puhipuhi Crown land purchased in 1883. This may have contributed to the first major wave of alienations in the 5,000-acre Puhipuhi papakainga, much of which was then covered in valuable kahikatea forest. Fragmentary alienation records are generally silent on the reasons that prompted landowners to sell or lease their interests at this time, but the rapid decline in felling on Crown land encouraged timber companies to begin new felling activity in the adjacent Māori-owned land. The loss of Puhipuhi's kauri may therefore have prompted or accelerated the alienation of the papakainga that Nehua reserved from sale, and may have increased pressure on the Māori landowners to alienate their interests in those lands.[947] This is discussed further in the next chapter.

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[946] *Evening Post,* 27 January 1896, p. 2

[947] As early as 1906 the Commissoner of Crown Lands was exploring how former forest land in Puhipuhi 1–3 could be used for farming and settlement (Surveyor's report to Commissioner of Crown Lands, 5 September 1906). In 1912 the Under-secretary for Lands suggested that the land could be put on the market in 200-acre sections (Under-Secretary for Lands to Commissioner of Crown Lands, 16 March 1912) both in ABWN 6095, W5021, box 288, 10/91/47 Pt 2, ANZ Wgtn.

The subdivision and sale of Crown-owned land now stripped of timber created a market for land for settlement. In 1913 almost 12,000 acres of burnt-over forest was removed from its earlier 'forest reserve' status, and opened up for farm settlement.[948] During World War I more of the former forest land was cut up into farm blocks. However, the generally poor quality of the underlying soil, and the erosion resulting from the loss of the forest covering, meant that grazing produced only poor returns.[949]

In 1975 the remaining Puhipuhi Forest, by then wholly replanted with exotic species, was managed as part of the Glenbervie State Forest to the south.[950] Des Ogle recalled that:

> Most of the labour in the northern forests was Maori, with only a few Europeans. Many managers had little knowledge of Maori cultural customs, and these matters were never included in the management courses run by the Department. Forest managers often found the high level of Maori absenteeism hard to cope with; the manager didn't like his planning upset and the Maori didn't think time mattered.[951]

From 1979 a major change took place in the administration and management of state forestry assets, as the government turned to the use of contract gangs rather than salaried staff, and to other forms of public-private partnership. Ogle, who worked for the Forest Service throughout this period, believes that the change of strategy:

> drew the Government away from the socio-economic direction that forestry had taken over earlier decades, particularly so in the engagement of labour from communities adjacent to the forests. Forest managers could now look at engaging contractors from outside sources. This action caused much concern among workers as their job security was being rapidly undermined and their ability to return to their jobs was now seriously threatened. Their ability to retain their jobs and meet their financial and family commitments became an underlying cause of worry and concern …
>
> Staff members who had trained for a lifelong occupation in forestry, and labourers who regarded forest work as a means of permanent employment, were suddenly made redundant. The effects on these persons with high mortgage payments, other financial commitments and

[948] Forest and scenic reserves from which reservation has been removed, *AJHR* 1913, C–1j, p. 1
[949] Hutchins, *NZ Forestry Pt 1 – Kauri forests* …, 1919, p. 57
[950] Des Ogle, *Beyond the Twenty-foot Stump: A Forest Service Experience in the Far North* (Russell: Northland Historical Publications Society Inc., 1998) p. 45
[951] Ogle, *Beyond the Twenty-foot Stump* …, 1998, p. 110

marital responsibilities was traumatic to say the least. Unemployment was increasing and the outlook for future employment for forest workers was grim indeed.[952]

8.5 Conclusion

In the 1890s the economic exploitation of the Crown-owned portion of Puhipuhi, which had been a primary driver in the Crown's decision to purchase the majority of Puhipuhi, began in earnest. The completion of the state rail link from Kamo to Whakapara, and later to Waiotū, finally enabled Puhipuhi's kauri to be profitably logged and milled, since the sawn timber could be cheaply transported to the port of Whāngarei.

As with earlier land takings for the national highway, Eru Nehua and other owners of Puhipuhi 4 and 5 saw some 90 acres of their land compulsorily taken to build the railway. Although they may have seen the advantages in having a major railway line built through their lands, they also sought compensation for the takings, claiming that their land had become more flood-prone as a result. The Crown opposed these compensation claims, and when it admitted taking more land than was required for railway purposes, it offered meagre compensation which the landowners apparently accepted only reluctantly.

The silver rush on the Crown-owned Puhipuhi lands in the 1890s was exceptional in that it took place within a valuable State Forest, and one which had suffered devastating bushfires. In attempting to balance the competing interests of gumdiggers, timber millers and miners to this Crown-owned resource, the government chose to give priority to mining, since it showed the greatest promise of large and swift financial returns.

The silver rush brought further development opportunities to the owners of Puhipuhi 4 and 5, who evidently participated enthusiastically in both mining and roadbuilding activities, but these were short-lived and likely provided little overall financial gain. The collapse of the rush resulted in the withdrawal of almost all the associated developments (the hotel, post office, butcher's shop etc) apart from the Airline Road, built to provide access to the diggings and passing through Puhipuhi 5.

[952] Ogle, *Beyond the Twenty-foot Stump …*, 1998, pp. 125-126

Periodically throughout the twentieth century and up to the present, other mining activity has been carried out or proposed on the formerly Crown-owned portion of the Puhipuhi lands. Local Māori do not appear to have been consulted over any of these activities. In some cases, they have left a legacy of environmental damage and alleged health impacts. The potential environmental and social impacts of mining remain of considerable concern for Puhipuhi Māori today.

Logging and milling activity at Puhipuhi overlapped with the silver boom and outlasted it by some 15 years, until ended by the total removal of the forest cover. This activity provided income for a number of local Māori directly, and others indirectly, for example through the two hostels built by Eru Nehua. It also caused a loss of income from other sources, especially gumdigging. A consensus of expert opinion shows that the income Māori earned from working in the bush or the nearby sawmills represented only a small fraction of the potential economic value of the timber resource they had recently sold to the Crown.

Lasting results of the logging and milling activity at Puhipuhi include the school and church built on land donated by Eru Nehua. The school's land and buildings were later returned to Nehua's descendants, an example of the Crown acting to return Māori land to Māori ownership. The removal, over less than 20 years, of Puhipuhi's kauri forest resulted in further possible long-term outcomes, such as soil erosion and water quality deterioration on adjacent lands such as the former Puhipuhi 4 and 5 blocks. Those outcomes are beyond the scope of this report, but are noted since the Crown was evidently aware, at the time of the clear-felling, that these eventual impacts were likely. They were therefore a result of Crown policy.

The Puhipuhi kauri forest shared the fate of most of New Zealand's native forest cover, but Puhipuhi's kauri stands were apparently unique in their quality. The loss of the forest was due principally to the longterm view by successive governments that converting native forest into grazing land for farm settlement was the most appropriate use for the forest.

Chapter 9 – Use, development and alienation of Māori-owned land at Puhipuhi (Puhipuhi 4 and 5), 1883 – present

9.1 Introduction

In 2015 only about nine per cent (approximately 470 acres) of the original area of Puhipuhi blocks 4 and 5, remained in Māori ownership. That remnant area represents about two percent of Puhipuhi's original 25,000 acres. The alienation of such a large proportion of lands once held in tribal ownership had significant consequences for the economic and social wellbeing of the Puhipuhi community. From about 1910 the Puhipuhi Forest's resources of both kauri and gum were largely exhausted, and retaining enough suitable land to sustain themselves through farming was of great importance if the people were to remain living in their community.

Until his death in 1914, Eru Nehua apparently intended that the whole of Puhipuhi 5 should remain in his whānau's ownership permanently. He had less authority over the future of Puhipuhi 4, whose initial owners were mainly not members of his immediate family. However, as owners of both blocks acquired individual titles to their shares in the land, many chose to sell or lease those shares. The first formal lease agreement was made in 1907, and the first sale in 1910.

In Puhipuhi 4 and 5, as in Tai Tokerau generally, shareholders in multiply owned Māori land faced a range of difficulties in supporting themselves from their lands, and accumulating debt often gave them little choice but to alienate those lands. For much of the twentieth century Māori landowners were also faced with a system of land tenure and management that was primarily designed to facilitate access to their land by Pākehā settlers, either through purchase or leasing. When Māori land was not sold or leased outright, it was often placed under various forms of statutory management. These forms of vesting may have improved productivity and economic viability, but frequently deprived the landowners of legal and financial control, and reduced the owners' sense of connection with their lands.

This chapter will examine the legal and political environment which governed the administration of Māori land in the twentieth century, and its relevance for the

outcome of the Puhipuhi lands. It draws on Tokerau District Maori Land Board and other archival records to examine the impact on Puhipuhi's Māori landowners of access to development finance, rating, surveys, land takings for public works, and gifting of their lands. In the late twentieth century a further significant proportion of Māori land in Puhipuhi was converted to general land, and the reasons for this are also examined to the extent that available archival sources allow. Because of the long time period it covers, the chapter is subdivided into three chronological sections – 1883-1905, 1906-1945 and 1945-present. Each of the above issues is considered successively within each of those sections.

9.2 Use, development and alienation 1883 – 1905

9.2.1 Introduction

As described in Chapter 5 of this report, on 28 May 1883 the Native Land Court awarded title to Puhipuhi blocks 1 to 5. Soon afterwards, blocks 1, 2 and 3 were sold to the Crown, leaving two smaller blocks, Puhipuhi 4 (2,860 acres) and 5 (2,522 acres), located in the southern part of the parent block, in Māori ownership. Together these two blocks, with a total area of about 5,400 acres, represented approximately 21 per cent of the original 25,000-acre area. When they were created, legal restrictions were placed on their alienation by sale or lease. No such alienations took place until 1906. However, as described in the previous chapters, in the late nineteenth century some 120 acres were taken for public works and the Nehua family had gifted two further small areas for a school and church.

Eru Nehua, and probably other co-owners of Puhipuhi 4 and 5, also held interests in other lands beyond Puhipuhi. However, Puhipuhi 4 and 5 were the core of Ngāti Hau's remaining holdings of tribal land. The purchase by the Crown of 80 percent of Puhipuhi meant that the remaining 5,400 acres afterwards held even greater cultural and economic significance to Ngāti Hau. This section of the chapter examines a number of reasons why no sales of land in these two blocks occurred between 1883 and 1905, when the first lease was entered into.

9.2.2 Administration of Māori land 1883 – 1905: An overview

In the two decades following the Crown purchase of the majority of Puhipuhi, several developments in legislation and policy significantly affected use and ownership of the

remaining lands. Those developments are dealt with in detail in Hearn's report for this inquiry on 'Social and economic change in Northland c. 1900 to c. 1945.'[953] The issues of most significance for the Puhipuhi blocks and their landowners are briefly summarised below.

The 1888 Native Land Act re-established trade in Maori land by private, as well as Crown, purchasers. The government believed this measure was necessary because Maori were reluctant to make their lands available for sale under the earlier legislation, and the government lacked the funds to buy sufficient land for settlement.[954] This Act also enabled the owners of Māori land covered by restrictions on alienation, such as the Puhipuhi 4 and 5 blocks, to remove those restrictions, by application to the Governor of the majority of owners.[955]

The Liberal government which took office in 1891 under Premier Seddon pursued a programme of 'rapid and extensive land purchase' for Pākehā 'close settlement' (ie by small farmers rather than large estates). Land in customary Māori ownership in the Te Raki district was seen as particularly suitable for this purpose.[956]

The Native Land Purchase Act 1892 gave the Crown wide powers to remove restrictions on alienation of Māori land for the purposes of sale to the Crown.[957] This Act also reasserted the Crown's monopoly right of land purchases, by notification in the *NZ Gazette*.[958]

The Native Land Court Act 1894 transferred the power to remove restrictions on alienation of lands, such as Puhipuhi 4 and 5, from the Governor to the Native Land Court. Removal now required the consent of only one-third of the owners, with no provision for partitioning out the interests of those who did not consent.[959]

The Native Land Court Act 1894 also fully restored to the Crown the right of pre-emption for purchases of Māori land, which had been removed by the Native Land

[953] Hearn, 2006, #A3
[954] Bassett et al, *The Māori Land Legislation Manual,* CFRT 1994, p. 159
[955] Section 5, Native Land Act 1888
[956] Armstrong and Subasic, 2007, #A12, p. 1145
[957] Section 14, Native Land Purchase Act 1892
[958] Section 16, Native Land Purchase Act 1892
[959] Section 52, Native Land Court Act 1894

Acts of 1862 and 1865.[960] The removal of Crown pre-emption had been only partially qualified by the Government Native Land Purchases Act 1877, which banned competition from private buyers after advances had been paid, an important factor in the 1883 Puhipuhi purchase. According to Armstrong and Subasic, with its full monopoly purchasing rights restored, the Crown was able to accelerate its land-buying programme in the north, 'with apparently little regard for wider Maori economic aspirations, or the extent of land which remained in Maori ownership.'[961]

In 1899, under pressure from Māori, the government agreed to stop all new land purchases and to focus instead on leasing. The government also introduced a new system of administration with the objective of ensuring that Māori retained enough land for their ongoing support while making large areas of their remaining lands available to European settlers, mainly by lease. The 1900 Maori Lands Administration Act created six Maori Land Councils, including several members elected by local Māori, and with a total membership that was at least half Māori. The role of these Councils was to ensure that:

> Maori were not rendered landless, to encourage and assist Maori to develop their lands, to facilitate (through leasing rather than sale) the settlement and utilisation of such lands as Maori did not require, and to give Maori a voice in the administration of lands remaining in Maori ownership.[962]

That role included identifying lands for the occupation and support of Māori, known as papakainga lands, which would be 'absolutely inalienable.'[963] Remaining areas of Māori land could be alienated, mainly by lease, although the Councils' consent was needed before any such land could be leased. In the case of lands legally protected from alienation, such as Puhipuhi blocks 4 and 5, the Councils could recommend to the Governor that those restrictions be lifted. The Councils were also empowered to administer areas of Māori land on behalf of the owners, who could transfer to the Councils the authority to lease, partition, raise finance for and develop their lands. In effect, lands could be vested in the Land Councils. The Councils also took over much of the responsibilities of Native Land Courts, especially with regard to confirming

[960] Section 117, Native Land Court Act 1894
[961] Armstrong and Subasic, 2007, #A12, p. 1147
[962] Hearn, 2006, #A3, p. 176
[963] Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–52*, Waitangi Tribunal Rangahaua Whanui Series, (Wellington: Waitangi Tribunal, 1996), #E29, p. 22

alienations of Māori land. The Maori Lands Administration Act 1900 has been described as 'a compromise between conflicting Maori and Pakeha interests.'[964]

The relevant Council for Puhipuhi was the Tokerau Maori Land Council, appointed in December 1901. As with all other such Councils, its president, the magistrate EC Blomfield, was European and appointed by the Crown. Two other members, one Māori and one European, were also Crown appointees. The final three members of the Tokerau Council were elected by Māori from each of the main northern districts.

In theory at least, northern Māori now held a clear majority on a body which aimed to balance settler demand for access to Māori land with the landowners' needs to retain enough land for their own support. In cases where it agreed to alienate land, the Land Council was at first required to focus on leasing rather than outright sale. The Council also provided a means for groups of Māori owners to sidestep problems with managing multiply owned land by vesting areas in the Council to develop and manage for the owners' eventual benefit.

In practice, however, the original Land Council system has been criticised as largely unable to fulfill its stated objectives. Loveride, in a report on the Maori Land Boards and Land Councils nationally, has concluded that 'this promising experiment failed' and the system 'supervised and facilitated "the ultimate Maori land grab" of the 1910s and 1920s.'[965] Hearn concludes that by removing lands from the control of their owners and vesting them in a statutory body, the Tokerau District Maori Land Board rendered many northern landowners dependent on the Board for:

> the efficient administration and profitable management of their lands… it left them without a voice in either the administration or the management of their lands and without a voice in their ultimate disposal; it left the owners, where the board failed in its duties as a trustee, having to accept the opportunity costs involved; and it left the owners vulnerable to subsequent changes in the law relating to the administration and disposal of vested lands.[966]

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[964] John A. Williams, *Politics of the New Zealand Maori Protest and Cooperation, 1891– 1909,* Auckland, 1969, pp.117-118, quoted in Hearn, *Taupo-Kaingaroa Twentieth Century Overview: Land Alienation and Administration, 1900 – 1993*, CFRT, 2004, Wai 1200, #A68, p. 26
[965] Loveridge, 1996, # E29, p. 153
[966] Hearn, 2006, #A3, p. 207

The Councils were seriously under-funded for the scale of their task, and landowners were often unwilling to entrust authority over their lands to an unfamiliar body. According to the 1907 Stout-Ngata Commission, landowners 'suspected that the new policy was only another attempt to sweep into the maw of the State large areas of their rapidly dwindling ancestral lands.'[967]

9.2.3 The impact of restrictions on alienation

To ensure that Puhipuhi 4 and 5 remained as a papakainga for the whānau and hapū of Ngāti Hau, at the time that titles were issued for these blocks in 1883, they were made 'inalienable by sale or mortgage except by consent of the Governor, or by lease for longer than 21 years' under section 36 of the Native Land Court Act 1880.[968] These restrictions seem to have played a role in protecting the land from sale until 1910, when the first portion of Puhipuhi 4 was sold to a private buyer. The Crown's temporary halt on the purchase of land, and greater focus on leasing from 1899 may also have contributed to this outcome.

However, as noted above, under the Native Land Act 1888 and the Native Land Court Act 1894 the restrictions on alienation could be lifted, if a sufficient proportion of the landowners applied to do this.[969] There was at least one attempt to sell a portion of Puhipuhi 4 to the Crown in this period, and it seems to have been directly motivated by the need to generate cash to meet legal costs. The correspondence between the owner wishing to sell their interests in the block and various Crown officials does not mention that a restriction on alienation was in place.

On 31 December 1894 Eru Nehua's daughter Maraea Kake and several co-owners of Puhipuhi 4 wrote to the Government Land Purchase Officer offering to sell their shares in the block. Maraea described the extent of her own interest as 'a little over 100 acres', and added that, 'There are other owners who will sell if the block is cut up [i.e. subdivided by the Native Land Court].'[970] This information refers to the majority decision of owners required to action the lifting of alienations. Subdivided blocks

[967] General Report on the Lands Already Dealt with and covered by the Interim Reports, *AJHR* 1907 G-1c, p. 6
[968] Native Land Court Certificate of Title to Puhipuhi No. 4 block, MLIS records
[969] Section 5, Native Land Act 1888
[970] Maraea Kake and others to Government Land Purchase Officer, 31 December 1894, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn

would have fewer owners, so obtaining their majority decision to sell was likely to prove easier.

In a further letter two weeks later, she reiterated her interest in selling her share in Puhipuhi 4, which she said was traditionally named Pukeahuahu. 'Eru Nehua and Reiri [presumably Riwi] Taikawa were trustees at our time – all owners are now over 21 years old. I should like £25 on it … Please let me know as soon as you can as I have to get money for the Law Court.'[971] No additional information has been found, including in Māori-language periodicals or in the archival record, to explain Maraea Kake's need to pay legal expenses. In stating that all owners of Puhipuhi 4 were by then aged over 21, Ms Kake was suggesting that while they remained minors, their trustees would not agree to any alienations of the land.

In 1895, Government Land Purchase officer C. Halswell told the Chief Land Purchase Officer. P. Sheridan, that 'the block is covered with forest and I understand is fairly good land.'[972] Crown Land ranger Henry Wilson submitted a report on the block, noting that 'from 6 to 10 natives' were currently living on the land, although the owners numbered 34 in total. Wilson suspected that 'those natives wishing to sell their shares do not live on this land as a good many of the claimants live at Hokianga, Waimate and Whangarei.' Wilson valued the block at from 5/ - to 7/6 an acre.[973]

The Chief Surveyor's office disputed Halswell's description of No. 4 block as 'good land', and thought the government should offer no more than 2/- an acre for it. The adjacent Puhipuhi 5 block, this letter noted, was, by contrast, 'really good land', but was not at that time on offer for sale to the Crown.[974] Therefore, both Maraea Kake and other Puhipuhi 4 owners, and Halswell and his colleagues, were evidently considering the Crown purchase of part of Puhipuhi 4 despite the restrictions on

[971] Maraea Kake and others to Government Land Purchase Officer, 15 January 1895, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn
[972] C. Haswell, Land Purchase Office, Auckland, to Mr Sheridan, Native Department, 11 January 1895, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn
[973] H. Wilson to C. Kensington, Survey Office, Auckland, 29 January 1895, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn
[974] Memo from C. Kensington for Chief Surveyor to Surveyor General, 27 February 1895, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn

alienation placed on the block's title deed. Such a purchase would require those restrictions to be lifted, by application of the majority of the owners.

A subsequent letter from the Chief Surveyor's office recommended a price of 3/6 an acre for Puhipuhi 4.[975] On 16 July 1895, Puhipuhi 4 was gazetted as entered into 'negotiations for acquisition of Native Lands.'[976] That notice was issued under the Native Land Purchase Act 1892 to pre-empt private purchasing even though, under the subsequent Native Land Court Act 1894, the Crown held a general right of pre-emption.[977] In March 1896 the Chief Surveyor's recommended purchase price of 3/6 an acre for the whole of Puhipuhi 4 was accepted by the Minister of Lands.[978] However, the government did not then proceed to purchase any part of the block.

In 1899 the Crown introduced a temporary moratorium on the purchase of further Māori land, partly in response to organised Māori resistance to the wave of earlier purchases, but also because the Crown had bought so much Māori land that it had no immediate need to acquire more.[979]

9.2.4 Income from farming and other sources

The relative success of sheep farming on Māori-owned land at Puhipuhi before 1905, and the availability of other income from timber milling, gumdigging and road and rail construction may also have decreased pressure on Māori to sell or lease their interests in Puhipuhi 4 and 5 in this period. Both blocks were extensively farmed by their Māori owners. Puhipuhi 4 and 5 included some of the best land in the wider Puhipuhi district - relatively flat, partly cleared for grazing, and already provided with houses, fencing and basic access routes. Much of it was also covered in valuable kahikatea forest, and therefore offered other potential means for its Ngāti Hau owners to support themselves.

[975] Memo from C. Kensington for Chief Surveyor to Surveyor General 4 March 1895, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn
[976] *NZ Gazette*, 18 July 1895, No. 54, p. 1100
[977] Section 16, Native Land Purchase Act 1892
[978] Memo from C. Kensington for Chief Surveyor to Surveyor General 7 March 1895, to Minister of Lands, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn
[979] Loveridge, 1996, #E29, p. 6

As discussed in the previous two chapters, wage labour on roads and railway construction, income from the short-lived silver boom and from the more sustained cutting and milling of kauri, and gumdigging on the Crown-owned portion of Puhipuhi, also contributed to relative economic prosperity for at least some of the owners. It is likely that this income, and the money from the sale of Puhipuhi 1 and from two boardinghouses built by Eru Nehua in the 1890s, relieved the pressure to raise further income from either selling or leasing land for several decades.

Information on Māori farming patterns at Puhipuhi in the period 1883-1905 is sparse, and largely limited to the Nehua family, the best-known farmers in the local area. That information makes clear that in this period Eru Nehua and his family, based at Taharoa near the southeastern boundary of Puhipuhi 5, was acknowledged as successful and innovative farmers. As noted in chapter 7, at the time of the 1882 Native Land Court Puhipuhi title investigation, Eru Nehua and his whānau were raising a significant number of sheep and pigs, while Ngāti Hau was informally leasing the land to Pākehā farmers as grazing for cattle. In addition, Nehua and Ngāti Hau jointly owned 20 horses.[980]

A Pākehā observer reported in 1890 that Nehua 'lives in European style and is much respected by the settlers for his many good qualities. The sheep on his place were in splendid condition.'[981] In that year Nehua's sheep numbered around 200, a figure largely unchanged since 1883, when the Crown purchased the Puhipuhi lands to the north of him. In the following years, Nehua increased his sheep-farming activities until his flock numbered 900 in 1895-96. By 1905 the flock had reduced somewhat but still numbered more than 500. Over the 15 years 1890-1905, Nehua remained one of the largest sheep farmers in the Whangarei County.[982]

The Nehua whānau also owned or had use of lands outside Puhipuhi, which provided further income. Eru Nehua owned land called Huruiki, possibly through his wife Te Tawaka. Huruiki is within the Paremata Mokau block, to the east of Puhipuhi 4 in the hills above Helena Bay. About 200 acres were cleared by their son Hone Edwards in

[980] Evidence of E. Nehua, 22 April 1882, Northern Minute Book No. 5, pp. 15-16
[981] *Northern Advocate*, 6 June 1890, p. 6
[982] Annual sheep returns, *AJHR*, 1890-1905, H-23

the first years of the twentieth century. 'He did all the bush felling with Oakura gangs of up to 20 men.' At this time Hone also owned a butcher's shop in Whakapara.[983]

9.2.5 Eru Nehua's control

Within this broader context of legislative protection and economic success, Eru Nehua's personal influence and opposition to selling land shaped how the owners managed and utilised their land at Puhipuhi. In particular Nehua was able to exert some control over the allocation and management of land within Puhipuhi 4 and 5, although his strongest influence was over Puhipuhi 5, which he owned with his immediate family. That influence declined after his death in 1914, and the majority of both blocks was eventually sold or leased. Puhipuhi 5 remained as a single lot until 1900, when it was partitioned into three portions. The first portion was sold to a private buyer in 1914, the year Nehua died. In contrast, Puhipuhi 4 was heavily partitioned into separate titles from 1896 onwards, with the first lease issued in 1905 and the first sale to a private buyer in 1910.

At the time of the 1883 Crown purchase of the remainder of Puhipuhi, Eru Nehua apparently intended that the whole of Puhipuhi 5 should remain in his whānau's ownership permanently. Eru Nehua, his wife Te Tawaka and their immediate family were all listed as owners of either Puhipuhi 4 or 5. The couple had ten children although one, Isaac, died as a child. The others were Tita, Wiri, Hone, Rehutai, Ani, Te Ruhi, Tutu, Tepa and Maraea. Some of these children were minors in 1883, and their father was appointed their trustee. Eru Nehua's brother-in-law Toki Hoani, another shareholder in Puhipuhi 5, later told the Native Land Court that, 'On the partition of Puhipuhi [in 1883], an arrangement was made. No. 5 was for the family. It was never to be partitioned. Shares were to be equal among the children.'[984]

Throughout his life, Eru Nehua maintained a policy of not leasing or selling any of his own interests within Puhipuhi 4 and 5. He maintained careful control over which relatives and other members of Ngāti Hau could inherit interests in the two Puhipuhi papakainga blocks. This control was most direct and effective amongst his immediate family and their interests in Puhipuhi 5. For example, in 1897 the Whāngarei Native

[983] Malcolm, *Where it all Began…*, 1982, pp 71-74
[984] Whangarei Minute Book No. 7, 14 September 1900, p. 240

Land Court heard an application for succession to the interests of Ataria Nehua, who had died in 1893 without leaving a will. She had one child, Apetera Eru (a minor), who inherited her interest in Puhipuhi 5. When the boy's father applied to the court to become the trustee of his son's interest, Eru Nehua objected, saying, 'I gave this land to my children. The father is not an owner in the block.' The court upheld Nehua's objection, and he was appointed trustee of Apetere Eru's interest in Puhipuhi 5.[985]

In 1907 the court also heard an application for succession to the interests of Kapiri Mana (also known as Piri Nehua) in Puhipuhi 5. She had also died without a will and her husband, a Pākehā, applied to inherit her interest in the block. The court decided that, although according to European law, he was entitled to inherit her property after her death, 'the law of New Zealand is to be applied only when there is no Native law available.' In this case, the court found, 'the Native custom is that the husband has no right of succession and if there are no children, as in this case, the next of kin to the deceased wife are the proper successors.' Again, Eru Nehua was appointed the successor to Kapiri Mana's interest in Puhipuhi No. 5.[986]

The 2,700-acre Puhipuhi 5 first came before the Native Land Court for partitioning on 16 August 1899, when Whakawehi, Eru Nehua, Rehutai Nehua, Ani Torongomana, Paea Netana and others applied for partition orders.[987] This partition was evidently to distinguish the interests of Eru Nehua's own children from the several other owners of the block. At the partition hearing, Eru Nehua explained how he wished to see the block divided among the individual owners:

> I want Hone Nehua to have a larger share because he is the one who improved the land. I want a part cut off for Kaiako and Toki…. As to the rest of the land, I want Hone Nehua to have 500 acres, and Rehutai Nehua to have about 300 acres in respect of both her original interest and the interest she gets from Riwi Taikawa. The rest of the original owners to take equally … And I want the part fenced in by my eldest daughter Tita Nehua to go to her. It is to contain 400 acres more or less to contain her home, the boundary to follow the fences as now erected.[988]

[985] Whangarei Minute Book No. 6, 17 June 1897, p. 121
[986] Whangarei Minute Book No. 6, 22 April 1907, p. 380
[987] *NZ Gazette*, 27 July 1899, No. 64, p. 1396
[988] Whangarei Minute Book No. 6, 19 September 1900, p. 26; p. 229

On 19 September 1900 the court partitioned Puhipuhi No. 5 into three portions. The details are set out in Table 5 below.

Table 5: Partition of Puhipuhi No. 5, September 1900

Block	Area (a:r:p)	Owners
5A	214:0:00	Toki Hoani and wife Kaiaho (equal shares)
5B	505:0:21	Tita Nehua
5C	1,922:2:00	9 children of Eru Nehua, plus Riwi Taikawa

Almost 80 percent of the Puhipuhi 5 block remained in Puhipuhi 5C, with acreage for each of the remaining children specified in accordance with Eru Nehua's wishes. These details are shown in Table 6 below. [989]

Table 6: Division of part of Puhipuhi 5C amongst the children of Eru Nehua, September 1900

Name of owners	Area (acres) allocated
Wiri Nehua	187
Hone Nehua	500
Rehutai Nehua	300
Te Paea Nehua	187
Apetera Nehua (age 8)	187
Te Ruhi Nehua (age 17)	62
Tutu Nehua (age 15)	62
Maraea Nehua (age 11)	62
Piri Nehua	187

Therefore, at the turn of the twentieth century the immediate Nehua family continued to collectively own almost 2,000 acres of the best of the Puhipuhi lands, with their own allocated areas within that block. This indicates how one family with an influential head could arrange matters informally to commercially use its lands.

Eru Nehua apparently had less authority over Puhipuhi 4, whose initial owners were of his hapū, Ngāti Hau, but mainly not members of his immediate family. In 1886 Puhipuhi 4 block appeared in a schedule of 'Lands held by Maoris as inalienable.'

[989] 'Puhipuhi' in Berghan, 2006, #A39(f), p. 559; Registrar, NLC Auckland, to Under-Secretary, Native Department, 3 May 1911, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn

The block then had 26 owners.[990] Later, probably through marriage, Nehua's children acquired shares in this block as well as Puhipuhi 5. Within a few years of being awarded interests in Puhipuhi by the Native Land Court, some shareholders in Puhipuhi 4 began to investigate how they could make further use of those interests, possibly by selling or leasing them. In 1887 Patu Hohaia and three other shareholders in Puhipuhi 4 applied (apparently unsuccessfully) for a survey of the block 'to ascertain the title of each shareholder.'[991] It is possible that they wished to obtain a title for each family, which would allow the families to make decisions independently. There is also some evidence of financial pressures. Eru Nehua himself was a successful farmer and major landowner, with interests in several other blocks beyond Puhipuhi. Other owners of Puhipuhi blocks 4 and 5, however, including some of Nehua's own children, may have been under greater financial pressure and hoped to raise loans against their interests in their shares, and perhaps to consider selling them. Individual owners of Māori land could not borrow money using their land as security, or sell or lease their interests in the land, unless they first obtained a legal title to their specific share in it.

On 19 November 1896 Puhipuhi 4 was partitioned by the Native Land Court into block 4A (1,760 acres, 15 owners) and 4B (1,100 acres, 10 owners).[992] It is unclear from the minutes of the court why this decision was made. It may reflect the problem supporting a growing number of people on the block. There is also some evidence that suggests that at least some owners may have wanted to sell their interests. As noted earlier in this chapter, by 1894 a number of owners in Puhipuhi 4 had reached their majority (21 years) and had control of their interests for the first time. Previously Eru Nehua had acted as their trustee, and he was not inclined to sell or lease land. At least a few of these owners evidently wished to sell their interests to the Crown. It is therefore likely that this partition was at least partly motivated by the hope of being able to sell some portion of the block. However, because the restrictions on alienation had been placed on the block prior to 30 August 1888, any such alienation would still need approval from the Governor on the recommendation of the Native Land Court (section 52, Native Land Court Act 1894).

[990] Lands held by Maoris as inalienable, *AJHR* 1886, G-15, p. 14
[991] Patu Hohaia et al., to Thurlow Field (solicitor), 15 February 1897, authorisation to act as solicitor in respect of a survey application, BoI 318 applications, Whangarei Maori Land Court
[992] 'Puhipuhi' in Berghan, 2006, #A39(f), p. 284

This initial partition was soon followed by further partitions into individual shareholdings. On 1 June 1897, four owners of Puhipuhi 4B – Rauna Teri Hohaia, Patu Hohaia, Ripia Hohepa and Hoana Okeroa – applied to the Native Land Court to partition their individual interests in the block. Another applicant, Kateao Te Kupu, applied separately to partition her own interests at Pukeahuahu, within Puhipuhi 4A.[993]

On 24 June 1897, Puhipuhi 4B was further partitioned into five blocks as shown in Table 7 below. As with the original 1883 certificates of title for Puhipuhi 4 and 5, restrictions on alienation were placed on the five 4B blocks.[994]

Table 7: Partitions of Puhipihi 4B, 24 June 1897

Block Name	Area (a:r:p)	No. of owners (where known)
4B North	550:0:00	4
4B South	536.3.37	5
4B North 1	127.3.24	-
4B North 2	127.3.24	-
4B North 3	14.3.30	-

In September 1897, Kaa Te Ao Takapu and other owners of Puhipuhi 4B lodged an appeal against this partition, under the Native Land Court Act 1894.[995] The following month they wrote to the Native Land Court advising that timber was being logged on their land against their wishes. Two men, Manira Whatarau and Norman Campbell, with about 30 employees, were cutting timber and making a tramway to extract the logs. The landowners applied under section 14 (9) of the Native Land Court Act 1894 for an injunction to stop the logging.[996] Section 14 empowered the Native Land Court 'to restrain any person from injuring or damaging or dealing with any property the subject-matter of any application to the Court.'[997]

Native Land Court Judge Wilson noted that 'No. 4A [in fact, 4B] is the site of a large timber business that has been disturbed by the application for injunction upon No. 4

[993] *NZ Gazette*, 10 June 1897, No. 52, p. 1172
[994] Partition orders, Puhipuhi 4B N, 4BN1-3, 4BS, 24 June 1897, Puhipuhi BOI 318 applications 1875-1940, Maori Land Court, Whangarei
[995] Notice of appeal, Kaa Te Ao Takapu and others, 16 September 1897, Puhipuhi BOI 318 applications 1875-1940, Maori Land Court, Whangarei
[996] Kaa Te Ao Takapu, Ani Ngakati, Patu Hihira and others to Native Land Court, Auckland, 20 October 1897, Puhipuhi BOI 318 applications 1875-1940, Maori Land Court, Whangarei; Northern Minute Book No. 23, p. 175
[997] Section 14 (9), Native Land Court Act 1894

by a section of the owners.'[998] Forcing a stoppage to this work would cause 'a serious loss to many persons concerned', the judge decided, and no injunction was issued.[999]

Early in 1898 the same group of Puhipuhi 4 landowners wrote to the Native Minister to ask for a rehearing into the partition of Puhipuhi 4B:

> Because by an error the kaingas and cultivations of Kaa Te Ao Takapu have been taken from her … All the rights of the people in the said block are based on 'aroha.' Kaa Te Ao Takapu is the person to whom, together with her children, the land really belongs.[1000]

The term 'based on aroha' was generally used by Māori in the Native Land Court to include on the ownership list of blocks the names of those who had no whakapapa to the land, but whose circumstance were such that the other owners allowed them to use or reside on the land out of love and compassion. A marginal note to this letter advises 'Tell them it is too late for a re-hearing and that their only course is to petition Parliament next session.'[1001] The June 1897 Native Land Court partition order was therefore upheld because the objectors had failed to seek a rehearing within the specified time limit.

Over the next decade most other owners in Puhipuhi 4 also applied successfully to have their individual interests in the block partitioned out.[1002] By 1908 the 550-acre Puhipuhi 4B North had four owners.[1003] Two years later each of them partitioned out their own share.[1004] It is unclear why the owners of Puhipuhi No. 4 favoured partitioning rather than the more informal division of the land amongst themselves that can be seen in the case of Puhipuhi No. 5. There is some evidence to suggest that the owners did not form such a close community, with many of the owners were living elsewhere (see account of the first offer to sell part of Puhipuhi No. 4 in 1896 earlier in this chapter). That may have contributed to the decision to manage the block

[998] Judge Wilson to NLC Registrar J. W. Browne, 25 October 1897, Puhipuhi BOI 318 applications 1875-1940, Maori Land Court, Whangarei
[999] Northern Minute Book No. 23, p. 175
[1000] Kaa Te Ao Takapu and others to Native Minister, 14 January 1898, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn
[1001] Marginalia to Kaa Te Ao Takapu and others to Native Minister, 4 February 1898, ACIH 16036, MA1, 1048, 1911/165, ANZ Wgtn
[1002] *NZ Gazette*, 17 February 1898, No. 11, p. 333; *NZ Gazette*, 27 July 1899, No. 64, p. 1396
[1003] Native Lands and Native Land Tenure: Interim report of Native land Commission, on Native Lands in the counties of Whangarei, Hokianga, Bay of Islands, Whangaroa and Mangonui – Whangarei Country. Schedule 1: Lands under lease or negotiation for lease, *AJHR* 1908 Sess. I, G-1j, p. 9
[1004] 'Puhipuhi' in Berghan, 2006, #A39(f), p. 560

by partition, rather than coping with the difficulty of bringing everyone together for a meeting of assembled owners or sitting of the District Maori Land Board.

9.3 Use, development and alienation of Puhipuhi lands, 1906 – 1945

9.3.1 Introduction

By the time of Eru Nehua's death in 1914, his immediate family was less able to maintain their former pattern of productive and self-supporting agriculture and as with other Māori farmers at Puhipuhi and elsewhere in Tai Tokerau, they later fell into debt, their properties deteriorated, and areas of their farmland were offered for sale or lease. By 1926 approximately 3,000 acres of the two blocks, or about 56 per cent of their total area, had been sold, and a further 1,800 acres, or a further 33 per cent, had been leased. The large, unified and collectively owned and managed property which Eru Nehua and his whānau had developed at Taharoa during the late nineteenth century was fragmented and individualised during the following 50 years. The consequences were damaging to the cohesion of the community, and its ability to sustain itself from pastoral farming. The loss of Nehua's leadership, the need for the land to support a much larger number of shareholders and their dependents, and changing economic circumstances and farming methods with greater development costs all played a role in these changes

This section of the chapter will examine some of the complex reasons for the dramatic transformation in the Nehua family's fortunes, and in the wider tribal estate between about 1905 and the end of World War II. It discusses the ways in which the owners of Puhipuhi 4 and 5 sought to retain and develop their land, to generate an income through leasing and why some of the owners sold their interests in these blocks for reasons as varied as the need to clear debts, raise capital for farming or relocation to towns and cities. It also examines the role that the nature of land title and Crown policies and administrative regimes for Māori land played in these decisions and outcomes.

9.3.2 Administration of Māori lands, 1905 – 1945: An overview

To accelerate the process of freeing up 'idle and unproductive' Māori lands for settlement, the Maori Land Settlement Act 1905 replaced the Maori Land Councils with District Maori Land Boards. Unlike the earlier Land Councils, the Boards did not

need the approval of the Native Land Court to lift restrictions on alienation, but could lease those lands at their discretion. From 1905 the Crown also reverted to purchasing Māori land again, in theory guided by the recommendations of the Stout-Ngata Commission as to which land should be retained for Māori use, leased or sold. These recommendations for Puhipuhi are discussed in the next section of the chapter.

The Maori Land Boards' decisions were subject to provisions designed to ensure that the landowners retained sufficient land for their own support.[1005] The minutes of the Tokerau District Maori Land Board indicate that it took a broad attitude to these provisions, and sometimes approved applications for alienation without fully investigating whether the owners retained sufficient lands of their own. In May 1905 Peru Whau and other owners of the 497-acre Puhipuhi 4B South applied to remove the restrictions preventing them from leasing the land. Whau told the Board that he owned other lands at Ruapekapeka, Maruta and Kupapa. Of the other owners, he said that Eruana Maki 'has a lot of land, Patu Hohaia has land at Popoia.' For Ani Kaaro, 'I cannot speak as to her lands.' On the basis of that information, the Board approved the lifting of restrictions.[1006] 4B South was leased in 1907 to Thomas Seymour, the first alienation by sale or lease of lands with Puhipuhi 4 and 5.

The powers of the Land Boards were reinforced by a succession of other legislative measures that enabled it, or other designated authorities, to compulsorily acquire Māori land without the owners' consent. The Maori Land Laws Amendment Act 1903 allowed Māori land to be compulsorily sold to pay outstanding survey costs or mortgage arrears.[1007] Under section 8 of the Maori Land Settlement Act 1906, Māori land 'not required for occupation by owners, and available for sale or leasing' was automatically vested in the Land Boards. Such lands were often those considered 'idle' or not properly cleared of 'noxious weeds' and therefore, in the eyes of much of the population, better handed over to European settlers to develop.

Under section 4 of the Native Land Settlement Act 1907, 'any Native land not required for occupation by the Maori owners, and available for sale or leasing' could

[1005] Section 22, Maori Land Settlement Act 1905
[1006] Tokerau Maori Land Council Minute Book No. 1, p. 301
[1007] Loveridge, 1996, #E29, p. 42

be vested in the local Maori Land Board subject to certain conditions.[1008] By this time the Stout-Ngata commission was beginning to report its findings, so these provisions potentially cut across their audit of Māori land and how it should be utilitied. The Board was then required to sell half of each such property and lease the other half. The 220-acre Puhipuhi 4A1 and the 656-acre Puhipuhi 4A4B blocks were vested with the Tokerau District Maori Land Board under this section of the 1907 Act in June 1909.[1009]

The Native Land Act 1909 repealed each of the above Acts and related legislation, but retained their essential features. The process of alienating Māori land by sale or lease, whether directly by the owners or by Land Boards on the owners' behalf, was greatly simplified and sped up, and its cost reduced.[1010] According to Hearn, 'Within less than a decade, legislation intended to secure Maori in possession of their remaining land had been transformed into legislation intended to provide for its rapid and easy alienation.'[1011]

In addition, from 1905, under certain circumstances land could be vested in the Land Boards without the owners' consent. The Boards then administered and developed these lands on their owners' behalf, paying them a return after deducting costs and fees. However, Hearn has concluded that, once vested, such lands became more liable to permanent alienation to the Crown, since it needed to deal only with a single administrative body rather than a profusion of owners.[1012] The benefits to Māori landowners were therefore limited and carried significant associated risks.

In 1909 the 220-acre Puhipuhi 4A1 was vested in the Tokerau District Maori Land Board under section 233 of the Native Land Act 1909, which administered lands previously vested with the Board under the 1907 Native Land Settlement Act. Six years later, in January 1915, 4A1 was declared no longer subject to the above Act, and returned to its owners' control.[1013]

[1008] Section 4, Native Land Settlement Act 1907
[1009] *NZ Gazette*, 17 June 1909, No. 49, pp. 1603-1604
[1010] Hearn, 2006, #A3, p. 159
[1011] Hearn, 2006, #A3, p. 159
[1012] Hearn, 2006, #A3, p. 207
[1013] *NZ Gazette,* 14 January 1915, No. 3, p. 151

9.3.3 The recommendations of the Stout-Ngata Commision, 1908

In 1905 the Opposition spokesman on Māori affairs, William Herries, told the House that the Maori Land Administration Act 1900, which created the Maori Land Councils, had had the unintended effect of 'transforming Maori into rent-receivers lacking any incentive to work.' What was now required, he said, was 'a record detailing all the land which Maori owned … Each Maori could then choose to partition out that land required as a papakainga and dispose of the rest as he saw fit.'[1014]

Two years later that proposal was realised in the form of the Stout-Ngata Commission, chaired by Apirana Ngata and Sir Robert Stout. Its objective was to determine;

> the areas of Native lands which were unoccupied or not profitably occupied; how such lands can best be utilised and settled in the interests of the Native owners and the public good; and what areas (if any) could or should be set apart for the individual occupation of the Native owners, for communal purposes, for descendants, and for other Maori; and the area which should be set apart for European settlement and by what modes of disposition.[1015]

The Commission held two meetings in the region of Puhipuhi in March-April 1908. In Whangarei on 31 March 1908, Sir Robert Stout noted that Puhipuhi 5 was 'to be reserved for M.O.' (i.e. 'Māori occupation' as a papakainga under the Native Land Settlement Act 1907). At this meeting Eru Nehua pointed out that Puhipuhi 4A4A and 4A2 were already leased through the Tokerau District Maori Land Board. He also asked that, 'my interests in Paremata Mokau be reserved.'[1016] Those interests were the 200-acre Huruiki block, above Helena Bay, which had been cleared of bush by his son Hone.[1017] This block remained in Māori ownership until 1961.

In its recommendations concerning Whangarei county, the Commission confirmed that Puhipuhi 4A2 (14 acres 2 roods 6 perches), 4A4A (703 acres) and 4B South (550

[1014] Hearn, 2004, Wai 1200 #A68, p. 32
[1015] Hearn, 2004, Wai 1200 #A68, pp. 35-36
[1016] Minute book containing notes on proceedings and evidence by Sir Robert Stout - 23 March - 30 April 1908, p. 30, ACIH 16085, MA 78, box 2/2, ANZ Wgtn
[1017] Malcolm, *Where it all Began…,* 1986, pp 71-74

acres) were already leased or under negotiation for lease.[1018] It recommended that 4B north (550 acres) should be 'reserved for Māori occupation' as a farm.[1019] The Commission recommended leasing Puhipuhi 4A1 (220 acres), 4A3 (161 acres) and 4A4B (656 acres) for settlement.[1020] Puhipuhi 5 was by then partitioned into 5A (157 acres), 5B (400 acres) and 5C (1922 acres), and those blocks were classified as 'Lands not dealt with' by the Commission, although as noted earlier, Stout had indicated that they should be reserved for Māori occupation.[1021] In general, therefore, although a search of the records found little information on the wishes of the landowners in respect of the Puhipuhi lands, the Stout-Ngata Commission appears to have dealt with those lands in accordance with the owners' wishes.

For the Whangarei county overall, the Commission recommended that about 22 percent of the total Māori-owned land should be sold or leased for settlement, and a further 25 percent reserved for papakainga, lease to Māori, or incorporation. The balance was either already leased, not dealt with by the Commission, or of unascertained title.[1022] For Puhipuhi 4 and 5 collectively, the Commission's equivalent recommendations were about 20 percent leased for settlement, 10 percent reserved for Māori occupation, and the balance (including all of Puhipuhi 5) either already leased or not dealt with. That allocation, the commissioners evidently believed, represented the proportions of Puhipuhi 4 and 5 which the Māori owners needed to retain for their ongoing support. Their report specifically singled out the Nehua family's farming activities as significant to the Whangarei County.[1023]

A comparison for the Stout-Ngata recommendations and Berghan's account of the administration and alienation of the block is shown in Table 8. This indicates that a number of blocks that the commissioners considered should be leased were sold

[1018] Interim report of Native land Commission, on native lands in the counties of Whangarei, Hokianga, Bay of Islands, Whangaroa and Mangonui – Whangarei Country schedule 1: Lands under lease or negotiation for lease, *AJHR* 1908, G-1j, p. 9
[1019] In above, Whangarei Country schedule 2: Lands recommended to be reserved for Maori occupation under Part II of the Native Land Settlement Act 1907 - Papakainga, Burial reserves, Land places, and Family farms, *AJHR* 1908, G-1j, p. 10
[1020] In above, Whangarei Country schedule 3: Lands recommended for general settlement, *AJHR* 1908, G-1j, p. 12
[1021] In above, Whangarei Country schedule 5: Lands not dealt with, *AJHR* 1908, G-1j, p. 14
[1022] In above, calculated from general summary table at *AJHR* 1908, G-1j, p. 7
[1023] Interim report of Native Land Commission on Native Lands in the Counties of Whangarei, Hokianga, Bay of Islands, Whangaroa and Mangonui, *AJHR* 1908, G-1j, p. 1

within a decade of their inquiry. Likewise, a number of blocks they recommended should be retained for Māori occupation were also sold by 1912 (although a few of these leases and sales were to Māori with interests in Puhipuhi). More land was retained in Puhipuhi No. 5 but here too several portions were alienated by sale in Puhipuhi 5A, 5B and 5C by 1930. This suggests that Stout-Ngata's recommendations were not closely followed by the Crown in the decades after their inquiry.

Table 8: Table showing Stout-Ngata recommendations for the Pupipuhi blocks and the subsequent fate of that land

Parcel name	Parcel alienated	Type of alienation	Year of alienation
Land under lease or negotiation for lease			
Puhipuhi 4A2	4A2	Purchase	1917
Puhipuhi 4A4A	4A4A1	Lease	1912
	4A4A1	Purchase	1916
	4A4A2	Lease	1913
	4A4A2	Purchase	1917
	4A4A2A	Purchase	1918
Puhipuhi 4B South	4B South	Lease	1908
	4B South 2A	Purchase	1915
	4B South 2B	Purchase	1918
	4B South 3A	Purchase	1912
	4B South 3B	Purchase	1910
Land recommended for Māori occupation			
Puhipuhi 4B North	4B North 1	Purchase	1911
	4B North 2	Purchase	1912
	4B North 3A	Purchase	1912
	4B North 3B	Lease	1960
	4B North 4	Purchase (later repurchased by Māori)	1911
	4B North 4	Lease	1960
Land recommended for general settlement			
Puhipuhi 4A1	4A1	Purchase (pt only)	1915
	4A1	Purchase (pt only)	1916
Puhipuhi 4A3	4A3	Purchase	1917
Puhipuhi 4A4B	4A4B	Purchase	1926
Land not dealt with/further information required			
Puhipuhi 5A	5A	Purchase (pt only)	1914
	5A	Purchase (remainder)	1915

Parcel name	Parcel alienated	Type of alienation	Year of alienation
Puhipuhi 5B	5B	Lease	1917
	5B	Purchase (pt only)	1924
	5B1A (pt)	Lease	1967
	5B1B (pt)	Lease	1967
	5B5	Lease	1966
	5B6(pt)	Lease	1966
Puhipuhi 5C	5C1(pt)	Lease	1953
	5C1A	Purchase	1977
	5C1B	Purchase	1977
	5C1C	Purchase	1977
	5C2	Purchase	1916
	5C2(pt)	Purchase	1919
	5C4	Lease	1950
	5C4 (pt)	Lease	1968
	5C7 (pt)	Purchase	1918
	5C7A	Purchase	1965
	5C9	Purchase	1915
	5C9A2	Purchase	1956
	5C9A2	Purchase	1959
	5C10A, 5C12 & 5C13	Lease	1954
	5C10A & 5C12A	Purchase	1968
	5C10B	Purchase	1962
	5C10B	Lease	1969
	5C10C & 5C12C	Purchase	1966
	5C10H	Lease	1968
	5C11	Lease (pt)	1920
	5C11 (pt) & 5C11B	Purchse	1965
	5C11A	Purchase	1977
	5C12B	Purchase	1962
	5C12B	Lease	1969
	5C13	Purchase	1916
	5C14	Purchase	1914
	5C15	Purchase	1962
	5C16	Purchase	1920

(Sources: Interim report of Native land Commission, on native lands in the counties of Whangarei, Hokianga, Bay of Islands, Whangaroa and Mangonui, *AJHR* 1908, G-1j, pp 9 -15 and Berghan, 2006, #A39(f), pp 286 and 289-291)

9.3.4 Lifting restrictions on alienation, 1909

The Native Land Act 1909 made provision for lifting restrictions on alienation such as those imposed on the title deeds to Puhipuhi 4 and 5. Native Minister James Carroll explained to the House that 'the Bill proposes to remove all exisiting restrictions against the alienation of Native land, whether imposed by statute or by any instrument of title.'[1024] Presumably this included restrictions on leasing or obtaining royalities from leasing of timber cutting rights. Carroll admitted that this was 'a sweeping proposal' but argued that it was 'necessary in order that the Courts, the Boards, and the Governor in Council may not in the future concern themselves to search the titles or to interpret the various Acts.'[1025]

Section 207(1) of the Native Land Act 1909 removed all previous restrictions on the alienation of Māori land, while section 207(2) allowed Māori to alienate their land in the same way as Europeans. Under section 209(1), however, land owned by more then ten owners could only be alienated by agreement of the assembled owners or with the prior consent of the local Maori Land Board.[1026] Both Puhipuhi 4 and 5 had more than ten owners on their title deeds, so they were bound by this requirement unless they could obtain new smaller or individual titles. The unilateral lifting of these restrictions by legislation removed the protection that Nehua and others had placed on Puhipuhi 4 and 5 as a papakainga and opened the way for the leasing and selling their land.

9.3.5 The work of the Tokerau District Maori Land Councils and Boards

The lifting of restrictions on the alienation of Puhipuhi 4 and 5 was rapidly followed by the first sale of a portion of Puhipuhi in 1910. Between 1917 and 1926 the Tokerau Maori Land Board oversaw the leasing of more than 2,000 acres of land, enabling the owners to retain the land and receive some income from it that could potentially be used to acquire investment capital and farming expertise. However, this chapter makes it clear that this income was not always enough to keep pace with the need and desire of the owners to develop their land. The Board also approved the sale of more than 3,000 acres in Puhipuhi 4 and 5 between 1917 and 1926.

[1024] *NZPD,* 1909, Vol. 146, p 1101
[1025] *NZPD,* 1909, Vol. 146, p 1101
[1026] Hearn, 2006, #A3, p. 431

There were some checks and balances in the way the boards approved owners' requests to lease or sell land, offering some protection for land. As noted above, the Tokerau District Maori Land Board was apparently generally willing to consent to alienations proposed by owners so long as the appropriate legal process was complied with. According to Hearn, for the Board to approve alienation applications, 'documentation had to be correct, vendors were not to be left landless, payment had to be "adequate", and alienations generally could not be "contrary to equity or good faith or to the interests of the natives alienating".'[1027] However, these safeguards were diluted over time and existing Te Raki research suggests that they were not always adhered to. How those safeguards operated in relation to Puhipuhi is discussed in more detail later in this chapter.

9.3.6 Pressure of decreasing income and rising farming costs

In the decade before World War I, farming continued to provide an important means of generating income and retaining a large measure of economic autonomy for rural Māori communities such as those at Puhipuhi. As successful farmers on Puhipuhi 4 and 5 since at least 1882, Eru Nehua's descendants and Ngāti Hau generally were likely to have been keen to continue developing their land. However, as the twentieth century progressed, a number of pressures made land retention and development more difficult, and the alienation of land through selling and leasing became more frequent.

From around the beginning of the twentieth century, New Zealand pastoral farming generally showed a transition from sheep to dairy farming. As Boast has observed, as an intensive form of land use dairying required comparatively high levels of start up capital, was more complex in terms of organisation and technology than sheep farming, and required input from a number of ancillary experts including advisors, agents and suppliers.[1028] It is unclear to what extent Māori farmers were 'wired in' to these complex networks, nor is it clear how often they were able to form and/or participate in farmer-owned dairy co-operatives.[1029] The costs involved in dairying were likely to have been a barrier for many Māori seeking to develop their land into

[1027] Hearn, 2006, #A3, p. 427
[1028] Richard Boast, *Buying the Land, Selling the Land: Government and Maori Land in the North Island 1865 – 1921,* (Wellington: Victoria University Press/Victoria University of Wellington Law review, 2008), p 289
[1029] Boast, *Buying the Land, Selling the Land …,* 2008, p 288-289

dairy farms in this period. The need to 'establish a family-based dairy farm' involved obtaining:

> a clear title to a family farm, only achievable after considerable effort and expense, given the tenurial complexities of the Māori land system and the constant pressure of the Crown purchasing system. State assistance in the form of cheap credit was only available once all these hurdles had been overcome.[1030]

In his history of the Ahuwhenua Māori farming awards, Danny Keenan concluded that for all these reasons, Māori farmers were generally slower to make the transition to dairying than Pākehā, and there were few successful Māori dairy farms before World War I.[1031]

There is considerable circumstantial evidence to suggest that the Nehua family were exceptions to this national pattern, and transitioned from sheep to dairy farming before most other Māori farmers. Eru Nehua and his family were well known since the late 19th century as innovative and successful farmers. From 1890-1905, he was one of the largest sheep farmers in the Whangarei county. However, between 1905 and 1906, Nehua's sheep flock dropped from 546 to none.[1032] By far the most likely explanation for this change is a switch to dairying, especially since the Hikurangi Co-operative Dairy Company opened adairy factory at nearby Hikurangi in 1905.[1033] The co-operative ran the processing factory and a fleet of trucks to collect cream and deliver fertiliser and general goods to farmers. This certainly made dairy farming in and around Puhipuhi more economically feasible.

This interpretation seems to be supported by a comment in the Stout-Ngata Commission in 1907 that reported that there were 960 Māori living in Whangarei county, 'A considerable number of them, chiefly members of the Nehua family, were engaged in farming, and some in dairying.'[1034] The following year Mete Kake of Ruapekapeka told Apirana Ngata that Nehua had been advising him and his fellow landowners about forming an incorporation to begin dairy farming 'which is

[1030] Boast, *Buying the Land, Selling the Land …*, 2008, p 290
[1031] Danny Keenan, *Ahuwhenua – Celebrating 80 years of Maori Farming,* (Wellington: Huia Publishers, 2013), p. 35
[1032] Annual sheep returns, *AJHR* 1905, H-23, p. 18; *AJHR* 1906, H-23, p. 17
[1033] This factory operated until the 1980s, when it was replaced by the current Fonterra plant, Kauri (Malcolm, *Hikurangi…,* 1997, pp. 152-7)
[1034] Interim report of Native Land Commission on Native Lands in the Counties of Whangarei…' AJHR 1908, G-1j, p. l

just being introduced to our district.'[1035] Mention of forming an incorporation suggests that owners of the Puhipuhi and Ruapekapeka blocks were looking for ways to overcome some of the difficulties that multi-owner Māori freehold title posed for Māori wishing to develop and run their remaining land as dairy units. An incorporation would allow the titles of several blocks to be administered as if they were a single title.[1036] Although nothing came of the proposal for an incorporation, by 1913 the *Northern Advocate* referred to 'The three dairy farms in the [Puhipuhi] district…'[1037]

The shift from sheep farming to dairying increased the cost of developing and sustaining viable farming ventures. Dairy land needed regular applications of fertiliser, and expensive procedures such as fencing, ploughing and grass-sowing, and milking and separation machinery, to become productive.[1038]

By the early decades of the twentieth century the rural Māori economy was a mixture of subsistence, wage labouring and cash income from farming. The first leases and sale of parts of the Puhipuhi No. 4 and 5 blocks from 1905 and 1910 respectively coincided broadly with the removal of the last of the kauri on the Crown-owned lands to the north of Puhipuhi 4 and 5 and the loss of income from employment in the logging and milling industries and this also meant eventual loss of the gumfields as a source of cash income.

During the economic depression of the early 1930s, the Māori dairy farms created in the previous decades (including those on Puhipuhi No. 4 and 5 discussed later in this chapter) often proved unable to provide sufficient income to support the families which ran them. Hearn has identified the primary reasons for this low productivity as:

> small [land] areas and small herds, low levels of land and stock productivity, low levels of butterfat production, and an inability to finance the purchase of inputs required to raise productivity. Incomes accruing to Maori dairy farmers, who almost invariably supported a

[1035] Minute book of evidence, by A.T. Ngata - 23 March - 23 October 1908, ACIH 16085, MA 78, 4/5, ANZ Wgtn, p. 54
[1036] See sections 122-130, Native Land Court Act 1894
[1037] *Northern Advocate*, 5 April 1913, p. 3
[1038] Nicholas Bayley, 'Aspects of Maori Economic Development and Capability in the Te Paparahi o Te Raki Inquiry Region (Wai 1040) from 1840 to c.2000', Waitangi Tribunal, 2013, #E41, p. 114

> larger number of dependents than their Pakeha counterparts, were significantly lower than those which Pakeha dairy farmers were able to generate.[1039]

The result of this cycle of low investment, low production, and low incomes was a further loss of Māori land, 'large-scale unemployment, widespread dependency, and, eventually, the protracted out-migration of Maori.'[1040]

The above pattern appears to broadly describe the typical Puhipuhi dairy farms in the 1930s. Although productivity figures for individual farms have not been located, the Hikurangi Co-operative Dairy Co., which processed the cream from those farms, provides a general indication of their productivity. The co-operative had 151 Māori suppliers in 1933, who averaged about 1750 lbs of butterfat that year. By comparison, suppliers in the Southern North Auckland region averaged seven times as much butterfat.[1041]

9.3.7 Partitioning as a means of managing land

There were a number of options open to Māori owners in their quest to retain and develop their land at Puhipuhi in the first half of the twentieth century. Most obviously, Māori shareholders in multiply owned land could partition (legally designate their individual interests in) their land to enable leasing or selling of particular owners' interests (discussed below), or to make it easier to borrow capital to retain and develop the land. The process of partitioning gave each shareholder a greater right over their own portion, including increased opportunity to support themselves economically from their land. Yet it also had a range of negative consequences, particularly debt from the cost of survey and court costs and the fragmentation of land into small and uneconomic parcels. This was exacerbated by the process of succession in equal shares to the children of original owners, exponentially expanding the number of shareholders, who each tended to hold ever-smaller shares as time went on.

In 1913, as the move into dairy farming intensified, the Nehua family decided to partition out their individual interests in Puhipuhi 5C (the initial partitioning of Puhipuhi 4 and 5 took place before 1905 and is discussed earlier in this chapter). The

[1039] Hearn, 2006, #A3, p. 735
[1040] Hearn, 2006, #A3, p. 735
[1041] Hearn, 2006, #A3, p. 749

block was divided into 16 smaller blocks, including small areas that had earlier been set aside for a marae, and a church and cemetery (see Table 9 below).[1042] Those gifted areas will be considered in detail later in this chapter.

Table 9: Partition of Puhipuhi 5C, 1913[1043]

Block name	Area (a:r:p)	Name of owner
5C1	Approx. 106:0:00	Rehutai Nehua
5C2	Approx. 106:0:00	Eru Nehua
5C3	Approx. 36:0:00	Ani Nehua
5C4	Approx. 174:0:00	Wiri Nehua
5C5	5:0:00	for a whare hui in name of all owners of block
5C6	1:0:00	for church site and cemetery, for whole of owners, road frontage if necessary
5C7	58:0:00	Maraea Nehua *in 3 pieces*
5C8	0:2:00	Te Ruhi Nehua *opposite mill site*
5C9	41:0:00	Tutu Nehua
5C9	36:0:00	Te Ruhi Nehua
5C10	176:0:00	Hone Nehua
5C11	174:0:00	Te Paea Nehua*
5C12	282:0:00	Hone Nehua
5C13	89:0:00	Eru Nehua (69a.) Te Ruhi Nehua (20a.)
5C14	174:0:00	Apetera Eru
5C15	138:0:00	Ani Nehua
5C16	17:0:00	Tutu Nehua

**Two pieces separated by road and railway*

200-acre reserve

As described in chapter 6 of this report, during the 1882-83 negotiations for the Crown purchase of most of the Puhipuhi lands, Eru Nehua insisted on excluding from sale a 200-acre portion within Puhipuhi No. 1 block near his homestead, Taharoa. In 1914, following Eru Nehua's death, Ihaka Strongman (aged 18) and his brother George Strongman (aged 10), acquired equal shares in Eru Nehua's 50 percent interest in this reserve by inheritance.[1044]

[1042] 'Puhipuhi', Berghan, 2006, #A39(f), p. 560
[1043] Northern Minute Book No. 52, 5 June 1913, pp. 274-279
[1044] Title deed, Puhipuhi Pt. 12 block, NAPR21-122

Four years later, in 1918, following the death of Eru Nehua's wife Tawaka Hohaia, her son Wiri Nehua inherited her 50 percent interest in the reserve. In 1919 the reserve was partitioned into two 100-acre sections representing the interests of Wiri Nehua (12A – the southern portion) and the Strongman brothers (12B – northern portion).[1045] In 1920 Wiri Nehua was granted the right to alienate his interest in 12A to Hannah Croft. She in turn transferred her interest to George Hodgson (presumably her husband) in 1923, and they were able to raise a mortgage on the property.[1046]

9.3.6 Difficulties resulting from surveying land blocks

Owners wishing to partition or alienate their lands were first faced with the requirement to survey them, at their own expense. The records of Puhipuhi land blocks indicate that surveys were not only an expensive obligation, but at times unsatisfactory and unfair to owners, who found that errors were extremely difficult to correct. Surveying Puhipuhi 5 into three partitions in 1911 was presumably made easier since the owner of one of those partitions, Mr G. H. Woods, was a licensed interpreter and could negotiate between the other owners and the Chief Surveyor. Mr Woods advised the Survey Office that he guaranteed to pay his own portion of the boundary survey and that the other owners, represented by Tita and Hone Nehua, were 'well known and wealthy natives who … will pay the survey costs when the work is completed.'[1047] In fact, the Nehuas took over a year to pay the entire bill, including the interest charges that had accumulated in the meantime.[1048]

The cost of the process was not the only survey issue facing Māori owners. The survey of Puhipuhi 5A to 5C caused Eru Nehua to advise Native Minister James Carroll that a serious error had been made. Mr Woods, who had recently bought Puhipuhi 5A from Nehua's friend Toki Hoani and his wife Kaiaho, had apparently benefited from the survey by the addition of 87 acres wrongly taken from the adjoining 5B, owned by Tita Nehua. 'I now want that error rectified' insisted Eru Nehua, her father.[1049] In May 1911 the Auckland Native Land Court registrar advised

[1045] Title deed, Puhipuhi Pt. 12 block, NAPR21-122
[1046] Certificate of title under Land Transfer Act, 11 December 1920, NA330-60, Land Online
[1047] Chief Surveyor to Under-Secretary for Lands, 12 July 1911, 20/429 BAAZ 1109, A557, box 1463b, 13443, ANZ Auck
[1048] Cost of survey for Puhipuhi 5A-C, 2 April 1912, 20/429 BAAZ 1109, A557, box 1463b, 13443, ANZ Auck
[1049] E. Nehua to J. Carroll, 8 February 1911, 20/429 BAAZ 1109, A557, box 1463, 13443, ANZ Auck

that the surveyor, Mr Cooke, had no authority to carry out this subdivision 'and the Survey Department refused to accept the plan.'[1050] The situation remained unresolved in September that year. 'There is great trouble', Nehua told the Minister later in 1911. 'Some of my children's houses have gone owing to this survey. Let the matter be rectified at once.'[1051] This situation appears to be an echo of the 1872 survey of the entire Puhipuhi lands, commissioned by Eru Nehua, carried out by Sydney Taiwhanga, and also subsequently rejected by the Survey Department. The archival record does not reveal the outcome of this unfortunate situation.

In August 1914 Ani Birch (formerly Ani Nehua), one of the owners in the newly partitioned Puhipuhi 5C, applied for an 'advance to settlers' loan on her lands in that block. With suitable title she was then in a position to apply for finance. However, she was told that her proportion of the survey fees must be paid first. The amount owing, including interest, totaled £24, which Mrs Birch felt was unreasonably high.[1052] Almost 30 years later, in 1941, the Department of Lands and Survey discovered that Mrs Birch's objection to her survey charges was entirely justified. It is unclear why it took so long for Mrs Birch's concerns over the survey fees took so long to be addressed. After her original complaint was received, Judge Wilson of the Native Land Court had re-examined the survey and found that she had been over-charged by £13. By then, however, her lawyers had already paid off the full sum. The amount of £13 was therefore added as a credit to the Department's ledgers. This sum was finally refunded 27 years after it was incurred, in August 1941, apparently with no interest added.[1053]

One of the reasons given for the added cost of surveying Māori-owned land was the extra time required to negotiate with its multiple owners, who did not all share a common language with the surveyor. In 1932 the surveyor of the partitions for Puhipuhi 5B1 to 5B8 explained to his superior that 'conversing with Natives as well

[1050] Registrar, Native Land Court, Auckland, to Under-Secretary, Native Department, 3 May 1911, 20/429 BAAZ 1109, A557, box 1463, 13443, ANZ Auck
[1051] E. Nehua to Native Office Wellington, 27 September 1911, 20/429 BAAZ 1109, A557, box 1463, 13443, ANZ Auck
[1052] Mrs Walter Birch (Ani Nehua) to Chief Surveyor, 20 August 1914, 20/429 BAAZ 1109, A557, box 1463, 13443, ANZ Auck
[1053] Registrar, Native Land Court, Auckland to Chief Surveyor, 14 August 1941, 20/429 BAAZ 1109, A557, box 1463, 13443,ANZ Auck

as with the officers of the Native Dept involved of course some additional time, care and cost.'[1054] Māori landowners in Puhipuhi appear to have seldom been consulted in any depth by Crown or local authority officials in this period, and in this instance they seem to have been financially penalised for this consultation.

9.3.8 Difficulties obtaining finance for development

Borrowing money against Māori land titles was notoriously more difficult, and often more expensive, than in the case of general title. Yet the need for owners to raise cash, whether for farm development or to meet accumulated debts, was often acute, especially during times of economic downturn. Loan finance might be essential to develop Māori land blocks to a state where they could support the occupants and their families. As they tried to develop their smaller individual properties into viable farm units, Eru Nehua's children and other Puhipuhi landowners were obliged to use the value of their properties as equity to borrow finance for essential developments such as fencing, grass-seed, buildings and farm equipment.

Hearn points out that in the early twentieth century, even those Māori fortunate enough to own sufficient land for their economic support (and Puhipuhi 4 and 5 owners generally fell within this category), could usually only raise development finance by using their lands as security. Few could call upon other forms of equity, yet as noted above, Māori landowners faced major and intractable problems in using their land to raise finance at reasonable rates:

> It was the inability to gain access to the cheaper sources of credit offered by the various lending agencies of the state that hampered efforts by Maori to turn their lands to productive account. Despite repeated representations, successive governments only reluctantly and belatedly widened the opportunities for borrowing, although even then relatively few Maori benefited. The outcome for much Maori farming was undercapitalisation, low productivity, and low returns for the capital and labour employed.[1055]

Another way Māori landowners could raise money using their lands was by leasing them to others to farm, and many owners appear to have entered into lease agreements out of financial need. The Under Secretary of the Native Department reported in 1913 that:

[1054] Surveyor to Chief Surveyor, 16 August 1932, 20/429 BAAZ 1109, A557, box 1463, ANZ Auck
[1055] Hearn, 2006, #A3, p. 734

> A number of alienations are made by way of lease, for the reason that the Native owners, although desirous of working their land, find that, after attempting this course, difficulties arise in the way of finance, which is necessary to assist them in working the land. Therefore they accept the rental as a means towards their subsistence. This is owing to the want of capital, as it is a fact that very few Natives are able to raise a loan or mortgage on their land except at over the average rate of interest, except in the case of State loan Departments, where there must be collateral security in the way of other lands under lease, rentals for which have to be assigned.[1056]

Hearn adds that some Māori landowners regarded alienation of their lands by lease as a relatively convenient way to raise capital, meet rates demands, ensure that their land was put to productive use, and retain ownership of it. Settlers also favoured this means of acquiring land, 'at least in the first instance as they concentrated on applying limited resources to improving the land and acquiring stock… many settlers also viewed leasing as the first step towards the eventual acquisition of the freehold.'[1057] Leasing of Puhipuhi 4 and 5 before 1945 is explored in greater detail later in this chapter.

For those Māori landowners attempting to raise loan finance to develop their lands, Crown agencies were preferable to private commercial sources since the cost of finance was cheaper. Further, the Native Land Act 1909 regarded mortgages as alienations, which therefore required confirmation from the local Maori land board. Under section 230 of the Act, the board could only grant such confirmation with the consent of the Governor, but section 231 exempted state loan departments such as the Public Trust Office from this requirement.[1058]

In the 1920s a new state agency was created specifically to advance loans against Māori land. Following the passage of the Native Trustee Act 1920, the Native Trustee was empowered to advance finance up to 60 per cent of the value of the land to Māori landowners. Even with this agency, Puhipuhi landowners frequently found it difficult to raise finance on their generally small and marginal rural properties. In some instances those difficulties were overcome and the landowners were able to borrow

[1056] Report from the Under-Secretary, Native Affairs, on the Working of the Native Land Court and Maori Land Boards, *AJHR* 1913, G-9, p. 4, quoted in Hearn, 2006, #A3, p. 515
[1057] Hearn, 2006, Wai 1040, #A3, p. 515
[1058] Sections 230-231, Native Land Act 1909

sufficiently to retain and develop their properties. One example is the 41-acre Puhipuhi 5C9 block, valued in 1928 at £460.

In April 1928 Tutu Nehua, alias Tutu Wi Hongi, the sole owner of Puhipuhi 5C9, applied to the Tokerau District Māori Land Board for a loan of £100. The Board's agricultural advisor found that, 'The section was at one time in good grass but has rapidly deteriorated while leased, and is practically all now covered in thick fern.' He believed the property 'is capable of rapid improvement to enable it to carry 15 to 20 cows in a few years time. Mrs Wi Hongi and her children have a nice little house and have cleared and cultivated about an acre of land for vegetables etc.' He advised clearing, fencing, topdressing and sowing, and recommended a loan of £100 to develop the land and buy dairy stock. Once Mrs Wi Hongi started milking, she would deduct a portion of her cream cheques in repayment of the loan. The loan was approved by Native Minister Gordon Coates on 23 May 1928.[1059] The fact that the land was owned by one individual rather than in multiple title no doubt contributed to a favourable outcome for the applicant. This relatively modest sum was apparently sufficient to enable Mrs Nehua and her family to remain in their home.

Another of Eru Nehua's children who succeeded in accessing state finance for farm development was his son Hone, who was the sole owner of the flat and valuable 282-acre 5C12. He too was successful in obtaining finance, being granted a State Advances mortgage of £500 in the early 1920s. He made regular repayments but fell ill with rheumatism and was unable to work for some years. By 1927 the State Advances Department was threatening to foreclose on his property, although the sum owing was far less than the farm's market value. Nehua applied for a further State Advances loan to pay rates arrears, but was declined.

Hone Nehua then wrote to his MP, Tau Henare, saying that, 'this is a mortgage by a Maori. I did not understand the whole of its purport at the time it was made.' He asked that his State Advances mortgage be transferred to the Native Trust Board [presumably the Tokerau District Maori Land Board] which, 'being a Department

[1059] C. Hamblyn, Dept of Agriculture, to Tokerau Native Land Board, 9 April 1928, ACIH 16036, MA1, 1444, 1928/196, ANZ Wgtn

dealing with Native matters, would understand the position better.'[1060] This suggests that he, or others he knew, had felt that other parts of the State did not understand them or treat them equally. The Native Department accordingly intervened with the State Advances Office, and in December 1927 advised the Native Land Court that the mortgagor held over £2,000-worth of security over Nehua's property, which might be taken over by the Tokerau District Maori Land Board 'to save the property from being sacrificed as a forced sale.'[1061] Nehua's lawyer added the information that 'Nehua is averse to selling. To my knowledge he has never sold any land – the desire is to keep it and leave it to his people.'[1062]

The threatened foreclosure was deferred while the Tokerau District Maori Land Board investigated taking over Mr Nehua's mortgage. The Board's president inspected the property in March 1928 and found the land to be 'in bad order, but to be really valuable flats that should respond readily to proper treatment.' The official advised subdividing the farm into three dairy farms, each to be worked by one of Hone Nehua's sons.[1063] On the basis of this report, and a valuation of £2,820 for Mr Nehua's properties (5C12 and part 5C13), the Board agreed to loan £500 to clear earlier mortgages and debts and to provide development finance.[1064]

In 1930 a Maori Land Board farm advisor found that Puhipuhi 5C12 was 'first class dairying land but inclined to flood.' Mihaka Nehua, Tari Reweti and Te Hoia Peneti had each taken over a third of the block and assumed responsibility for that portion of the mortgage, 'provided they are given assistance and placed on a proper footing to commence dairying.'[1065] The 5C12 block was formally partitioned into three smaller blocks, each with one owner, in 1945.

[1060] H. Nehua to T. Henare MP (Native Department translation), 8 November 1927, ACIH 16036, MA1, 1444, 1928/196, ANZ Wgtn
[1061] Under-Secretary, Native Department, to Registrar, Native Land Court, Auckland, 2 December 1927, ACIH 16036, MA1, 1444, 1928/196, ANZ Wgtn
[1062] J. Harrison to W. Jones, MP, 8 November 1927, ACIH 16036, MA1, 1444, 1928/196, ANZ Wgtn
[1063] President, Tokerau District Maori Land Board to Under-Secretary, Native Department, 29 March 1928, ACIH 16036, MA1, 1444, 1928/196, ANZ Wgtn
[1064] Memo, Native Minister, 11 April 1928, ACIH 16036, MA1, 1444, 1928/196, ANZ Wgtn
[1065] M. R. Findlay, farm director to Registrar, Tokerau District Maori Land Board, 18 November 1930, ACIH 16036, MA1, 1444, 1928/196, ANZ Wgtn

In his study of social and economic change in Northland in the early twentieth century, Hearn examines the sources of finance, both public and private, available to Māori landowners. He concludes that,

> successive governments only reluctantly and belatedly widened the opportunities for borrowing, although even then relatively few Maori benefited. The outcome for much Maori farming was undercapitalisation, low productivity, and low returns for the capital and labour employed.[1066]

That conclusion, albeit brief and general, sums up the circumstances of Puhipuhi landowners attempting to raise development finance on their lands.

9.3.9 Pressure of rating debts

As noted above, several Puhipuhi shareholders, including some of Eru Nehua's children, faced economic hardship during the worldwide economic downturn that began in the late 1920s. At times they were unable to pay the Whangarei County rates owing on their properties, a situation compounded by the difficulty of raising finance on Māori land, and by a county council which made little effort to address the specific needs of its Māori ratepayers. For many years, Puhipuhi landowners, like other owners of Māori land, lived under the threat of having their lands compulsorily seized and sold for non-payment of rates, or because their land was officially regarded as weed-infested or 'idle' (i.e. not adequately productive).

The difficulties Puhipuhi landowners faced in meeting their rate demands were common to other owners of Māori land in Tai Tokerau and elsewhere. Local authorities were faced with notifying multiple, and often absentee, owners of their rates demands, and then of collecting payment from them. Some land blocks provided only a barely adequate income for their owners, and rates therefore proved a heavy financial burden. Puhipuhi's Māori ratepayers, like those elsewhere, may also have resented paying rates when they remained largely unrepresented on local authorities and appeared to receive few services in return.[1067]

As a result of all these factors, overdue rates, and the threat of foreclosure in lieu of payment, is a running theme in the official records of Puhipuhi Māori land blocks

[1066] Hearn, 2006, #A3, p. 754
[1067] Stirling, 2008, #A15, p. 301

from the early twentieth century. It was particularly common during the late 1920s and early 30s when landowners on Puhipuhi 4 and 5 struggled to survive on the income from small herds of milking cows.

A succession of provisions gave local authorities the power to sell Māori land to recover unpaid rates.[1068] The many reasons why Northland Māori landowners were more likely than non-Māori to fall into arrears with rates payments have been fully explored in a report for this inquiry by Bruce Stirling.[1069] Those reasons include the chronic lack of representation by Māori on local authorities, which led to land being subject to rates although its owners received little benefit from local authority services, and may not even have been aware that rates on their lands were overdue. The extra difficulties of raising finance on multiply owned land made payment of rates more demanding for Māori than for Europeans. Each of these reasons emerges from the records of Puhipuhi owners in default of their rates.

In 1914 Wiri Nehua, one of Eru Nehua's sons, told a political meeting in Whangarei that forced sales of Māori land for non-payment of rates were unreasonable since so much of their land had originally been sold to the Crown, often at artificially low prices during the nineteenth century. With great indignation, and struggling to express himself in English rather than Māori, he gave the example of the original Puhipuhi lands:

> Some years ago Europeans offered £5 an acre for it, but the Government stepped in and bought it for 12s an acre. The Puhipuhi instance was not an isolated one, as Native land had been acquired all over North Auckland at an unfair value. [Wiri Nehua] claimed that in these cases the Natives had already been indirectly but sufficiently taxed, and that it would be unfair for local bodies to expect any further contributions from them.[1070]

The Rating Act Amendment Act 1913 made the owners of more than one block of Māori land within the same rating district collectively liable for all their lands' rates. This provision encouraged owners to partition out their individual interests, which many local authorities saw as a desirable outcome.

[1068] Report of the Under-Secretary on the Native Land Court and other matters under the control of the Native Department, *AJHR* 1928, G-9, p. 2
[1069] Stirling, 2008, #A15 and Hearn, 2006, #A3, p. 559
[1070] *Evening Post*, 9 April 1914, p. 7

The Rating Act 1925, which remained in force until 1967, gave the Native Land Court responsibility for enforcing payment of rates by appointing a receiver to recover the outstanding sums. If they remained unpaid, the court could order all or part of a block to be sold to recover the money. Much Māori land passed out of Māori ownership in this way although none, as far as can be determined, within Puhipuhi 4 or 5.

Apirana Ngata, as Minister of Native Affairs from 1928-1934, was deeply concerned with the issue on rates on Māori land, and the ongoing alienations of Māori land to recover unpaid rates. He believed that Māori landowners should not have to face the same system of rates demands as owners of general land, because of the earlier history of land purchasing. In 1928 he opined to his friend Te Rangi Hiroa that 'Charging orders had been obtained against poor lands quite unfit for settlement, because the Pakeha had picked the eyes out of the country, leaving much of the rubbish, which should be in the hands of the Crown & therefore not rateable, in Maori hands.'[1071]

During the Depression of the late 1920s and 1930s, the small-scale Māori dairy farmers at Puhipuhi found their modest incomes from cream and butter sales further reduced, and the number of overdue rates demands mounted. In 1925 Tita Luke owed general rates of £20.19.10 on her 448-acre portion of Puhipuhi 5B, a similar amount of overdue rates, and a 10 percent penalty for late payment – a total of £44.1.8.[1072] The following year Hone Nehua faced a £62.19 rates demand, and in 1927 his brother William Nehua owed £65.19.6 in overdue rates on his 175-acre block.

At this time Hone Nehua was severely ill with rheumatism and unable to keep up the work on his dairy farm on the large 5C12 block. In April 1928 the Maori Land Board learned that the State Advances Department had insisted on using a large portion of Hone Nehua's mortgage to repay his outstanding county rates. However, the rates on this and many other Northland Māori land blocks had already been remitted under the

[1071] A. T. Ngata to Te Rangi Hiroa 9 February 1928, in M. P. K. Sorrenson, editor, *Na To Hoa Aroha - From your dear friend: the correspondence between Sir Apirana Ngata and Sir Peter Buck.* (Auckland, 1987), Volume I, p. 66, quoted in Hearn, 2006, #A3, p. 564

[1072] Rates demands from Whangarei County – Otonga Riding to Tita Luke, 29 August 1925; and to Hone Nehua, William Nehua, both in BoI 318 applications 1875-1940, Maori Land Court, Whangarei

above arrangement reached between the Tokerau District Maori Land Board and Whangarei County Council. The Tokerau Maori Land Board President regretted:

> That the State Advances Department has taken it upon itself to pay a large sum in rates on behalf of Hone Nehua [from his new mortgage], thereby severely penalising the Native in view of the recent wiping out of all back rates due to the County Council.[1073]

This payment appeared to be legally questionable, but unrecoverable. 'Probably in strict law', wrote the Native Department's Under-Secretary:

> The Mortgage should not have paid the rates until they were properly demanded from the owner or occupier but now that the amount has been paid, I see no help. It cannot be recovered from the local body, as … no court would compel the State Advances Dept to pay out of its own pocket.[1074]

Since several other such instances of duplicate rates payments on Māori land had been noted, Hone Nehua's case was referred to Native Minister Sir Apirana Ngata, who requested a report from a Departmental welfare officer. This officer interviewed Nehua and recommended that, 'extra relief be given to him regarding the present amount of overdue rates.'[1075] That step appeared to resolve the immediate difficulty, although the Tokerau District Maori Land Board warned that:

> If further rates are paid by the State Advances Office on Native lands in the Tokerau District, the Tokerau Board will recommend the Native Minister to authorise legal action to test State Advances' rights in the matter.[1076]

Errors in rates demands also affected Ani Birch (formerly Ani Nehua) and her husband Walter who lived on the 136-acre Puhipuhi 5C15. In October 1929 the Maori Land Board wrote to the Native Department concerning Mrs Birch's arrears of payments on her State Advances mortgage:

> The real difficulty in meeting payments is due to the heavy liability upon Ani Nehua by the payment of a huge sum in rates. It is claimed that the State Advances Office paid the rates without authority from Ani Nehua, and not by any compulsion of law.

[1073] President, Tokerau Maori Land Board to Under-Secretary, Native Department, 11 June 1928, BoI correspondence 1911-1956, Maori Land Court, Whangarei
[1074] Under-Secretary, Native Department to Registrar, Native Land Court, 1 June 1928, BoI correspondence 1911-1956, Maori Land Court, Whangarei
[1075] William Cooper, Welfare Officer, Native Department, to Registrar, Native Land Court, Auckland, 14 September 1928, BoI correspondence 1911-1956, Maori Land Court, Whangarei
[1076] Registrar, Tokerau District Maori Land Board to Under-Secretary, Native Department, 25 September 1928, BoI correspondence 1911-1956, Maori Land Court, Whangarei

The Birches had apparently been accused of failing to meet scheduled mortgage repayments, because those payments had been wrongly assigned by State Advances to pay rates.[1077]

In 1931 Ani Birch wrote directly to the Native Minister to explain her financial difficulties:

> we thought we were included in the Maori rates, which were paid to the Whangarei County Council somewhere about 1927, until State Advances got judgment against us for £100 back rates … to pay the rates we must milk more cows but we were not successful.

She was already paying one-third of her cream cheque to the Whangarei company which had supplied her milking herd and plant, and another third to State Advances in repayment of the mortgage. The balance, she found, 'will not pay our keep' and, as her brother Hone had done, she requested that the Maori Land Commissioner assume the property's financial liability.[1078]

Ngata replied that the low price of butterfat meant that his department's development schemes could not afford to take over her State Advances mortgage.[1079] Compound interest and arrears had caused that mortgage to increase from £600 in 1929 to £750 in 1933, when a Native Land Development officer inspected the property. He described it as 'a really good property' with a 'two-roomed shanty, and cowshed with milking machine installed.' The Birches ran about 100 head of cattle, including 60 dairy cows, and owed a total of £70 to various creditors, in addition to their mortgage. The advisor found that 'security is quite sufficient to cover what is owing', but that the farm could not return enough to cover its outgoings. 'I am unable to recommend that [they] be assisted by the Department.'[1080]

In the absence of such financial assistance, the Birch family managed to avoid foreclosure, although the issue of payment of rates remained contentious. In 1940 Ani

[1077] Registrar, Tokerau District Maori Land Board, to Under-Secretary, Native Department, 19 October 1929, BoI correspondence 1911-1956, Maori Land Court, Whangarei
[1078] A. Birch to Native Minister, 5 March 1931, MA 1/404/20/1/1, ANZ, Wellington
[1079] A. Ngata, Native Minister to Ani Birch, 28 March 1931 MA 1/404/20/1/1, ANZ, Wellington
[1080] J. H. Byers, farm supervisor, Native Land Development Branch, memo to Under-Secretary, Native Department, 5 June 1933, ACIH 16036, MA 1/404/20/1/1, ANZ Wgtn

Nehua wrote again to the Native Minister objecting to a rates demand for Puhipuhi 5C3 (36 acres) and Puhipuhi 5C15 (136 acres), on the grounds that:

> I am a full-blooded Maori, and my land has been handed down from my ancestors to me. My ancestors are the Maori who signed the Treaty of Waitangi … and our Gracious Majesty Queen Victoria of Great Britain guaranteed to the Maori race of New Zealand absolutely and without reservation the undisturbed possession of their lands. We ask the Minister of Native Affairs and our present Government, will they uphold the guarantee of our Gracious Majesty the then Queen of Great Britain, or was it only a trick to fool the Maori people.[1081]

Native Minister Langstone was unsympathetic. He noted that she was the sole owner of the two blocks referred to, 'which are apparently farmed by you.' He said the government 'desired to observe the spirit of the Treaty of Waitangi,' and assured her that 'as far as papakainga areas or homes of the people are concerned,' local bodies did not prosecute for rates. But where land was being farmed, 'it is considered that Maori as well as Pakeha should share the burden of rates which are levied to pay for the good roads and other benefits provided.' As she was earning money from her land, 'your name should be placed on the rate roll.'[1082]

In his comprehensive report on rating of Māori land in Northland, Stirling identifies a long list of factors that, in various combinations, caused Māori land to be 'eaten away' through local authority rating laws and practices. In a number of cases, Māori land blocks were compulsorily sold or otherwise alienated due to rates arrears.[1083] No Puhipuhi blocks appear to have passed out of Māori ownership in this way. However, other outcomes of twentieth century rating policies identified by Stirling, such as encouraging owners to partition out their individual interests, rather than relying on a body of (often absentee or uncontactable) owners to pay rates, are evident in the records concerning rating of Māori lands in Puhipuhi 4 and 5.

Several of the rates relief measures described by Stirling, such as rates compromises administered through the Tokerau District Maori Land Board, and levying butterfat cheques, were applied to Puhipuhi owners in arrears with their rates. These measures enabled several of those owners to eventually discharge their rating debts.

[1081] Ani Nehua, Whakapara, to Native Minister, 20 May 1940, ACIH 16036, MA 1/404/20/1/1, ANZ, Wellington
[1082] Native Minister to Ani Nehua, 12 June 1940, ACIH 16036, MA 1/404/20/1/1, Part 4, ANZ Wgtn
[1083] Stirling, 2008, #A15, p. 15

Stirling concludes that, into the 1960s, 'Despite all the legal processes being utilised, the most effective way of improving the Maori rates take remained … actually communicating and working with Northland Maori.'[1084] Some of the correspondence quoted in this report represents efforts by local authorities and other Crown agencies to communicate with individual Puhipuhi landowners on rating issues, but there is little evidence of sustained and sincere communication with Northland Māori landowners as a body.

9.3.10 Alienation of land by leasing

Another avenue open to owners who wanted to generate income from the land they retained was to lease it to settlers. The rentals could then be used to supplement household incomes, pay debt or develop their own farming operations. There was also the hope that at the end of the leases' term, the land could revert to the owners' control. Nine Puhipuhi land blocks were leased between 1907 and 1920, most prior to World War I. From the 1920s, no further leases appeared to have been approved for 30 years, as the Tokerau Maori Land Board instead worked actively to place lands under its jurisdiction in land development schemes.

The first formal leases of the Puhipuhi No. 4 and No. 5 blocks coincided with the development of the District Maori Land Councils in 1900 and their replacement by District Maori Land Boards in 1905. The 1900 Maori Land Administration Act, which created the first Land Boards with a majority Māori membership, encouraged leasing as the main form of land alienation. This form of alienation was favoured by the government at this time, since it feared that Māori might become entirely landless and therefore state-dependent. Leasing generally ensured that the land would eventually return to the owners' control, and provided an income in the form of rents in the mean time.

[1084] Stirling, 2008, #A15, p. 38

Under the Maori Land Administration Act 1900, Māori land could only be leased after vesting with the local Land Council. That restriction was removed by the Maori Land Settlement Act 1905, which enabled Māori to enter into their own negotiations to lease lands, although such leases still had to be approved by the local Land Board. Lease terms could not exceed 50 years, and the annual rent could not be less than five percent of the land's capital value.

As noted above, Māori were initially reluctant to vest their lands in unfamiliar bodies such as the Land Councils or Boards, but later found that vesting offered many advantages for owners bedeviled by the problems of mounting rates and other expenses, and by the great difficulties associated with multiple and often absentee land ownership. From 1909 several Puhipuhi landowners chose to offer their lands for vesting with the Tokerau Land Board.

The 1909 Native Land Act required Maori land boards to approve the lease of any area of land not vested with them. In 1920 the Act was amended to give the boards further powers to sue the leaseholder for unpaid rents and enforce any covenants placed on the lease.[1085] Before the Board granted approval to landowners to lease their lands, lessees were often required to make improvements on the leased land, such as destroying noxious weeds and sowing grass. At the end of the lease term (often 21 years) lessees were generally required to leave the land in good condition. In some cases the owners were required to pay compensation for such general improvements.[1086]

[1085] Hearn, 2006, #A3, p. 517
[1086] Armstrong and Subasic, 2007, #A12, p. 1452

In addition to the regular sums they received in the form of rents for their lands, Māori who leased their land through the land board became eligible to borrow money from a Crown agency, using as security either their interest in the lease or the amount of rent they were due to receive. Any funds borrowed in this way could only be used 'for the purpose of farming, stocking, and improving the land.'[1087]

The case of one lease for land within Puhipuhi suggests that, at least in its early years, the Tokerau Maori Land Board acted inappropriately in approving the lease. The Board appears to have acted in the interests of the non-Māori lessees of the land, who were logging its standing timber, and failed to uphold the interests of the owners, who eventually saw their land stripped of timber, and for many years received a minimal rental income in return.

The land in this case, within Puhipuhi 4A4, was initially leased before the passage of the Maori Land Settlement Act 1905, and therefore before the Tokerau Māori Land Board had jurisdiction over the lease. In March 1901 some owners of Puhipuhi 4A4 sold the rights to its timber, excluding the kauri, to Joseph Hankin. Two years later the block was partitioned into 4A4A and 4A4B. The latter block, of 666 acres, contained the timber assigned to Hankin. Of its six owners, two had apparently not signed the agreement to award cutting rights over the block, meaning that the lease was of doubtful legality.

In June 1909 Puhipuhi 4A4B was vested in the Tokerau District Maori Land Board, under section 14 of the Native Land Act 1909. In 1912 these owners, including Hare Te Raharaha, applied for a further lease to Maurice Casey. This lease was confirmed in 1914 and Casey proceeded to log the timber on behalf of the Parker Lamb Timber Company. In 1921 the landowners made a list of complaints to the Land Board – they had not received all the rent due to them although the company had 'stripped the land of very valuable timber', and they wished the Land Board to resume control of the block.[1088]

[1087] Hearn, 2006, #A3, p. 205
[1088] Hearn, 2006, #A3, p. 324

No further action was apparently taken until 1923 when the owners petitioned Parliament to intervene in their case. A subsequent Native Land Court inquiry found that the lease agreement with Casey was technically invalid and should never have been approved by the Land Board: 'the Licensed Interpreter concerned was grossly negligent' and 'the interests of the Natives were not properly considered by the Board.' The timber on the block was valued at £1,250 and the inquiry found that Casey 'was made practically a present of this.'

By 1924 the owners had apparently decided to sell the block to the Parker Lamb Timber Co. However, several further meetings of owners were necessary before an agreement was reached, in 1926, to sell the block for £3,960. Native Land Court judge Acheson noted subsequently that the owners 'are using the proceeds of the sale upon worthy objects [including construction of houses].'[1089]

A second early lease of Puhipuhi land was taken out in 1907, when the Tokerau District Maori Land Board approved Ani Kaaro's application to lease a 497-acre section within 4B South to William Hawken. He agreed to fence the area and build a four-roomed weatherboard house, and these improvements would become the property of the landowners at the end of the lease. The land was leased to Hawken for 21 years for an annual rent of £25 for the first 15 years and £35 for remaining six years, with the first five years' rent to be paid in advance. The terms of the lease specified that 'three kauri trees to be reserved for native owners', who included Patu Hihira and Hirini Peru Whau.[1090] As far as can be determined from the written record, the terms of this lease were discharged to the satisfaction of the landowners. A number of other Puhipuhi blocks were leased over the following 13 years, as summarised in Table 10 below.[1091]

[1089] Hearn, 2006, #A3, pp. 466-470
[1090] Application to lease Puhipuhi 4B, 11 July 907, BOI 318 applications 1875-1940, Maori Land Court Whangarei
[1091] 'Puhipuhi', Berghan, 2006, #A39(f), p. 286 and Walzl, 2009, #A38, pp. 2100-2101

Table 10: Puhipuhi land alienated by leases, 1907 – 1920

Block	Date	Leased to	Area (a:r:p)	Term of lease
4B South	1907	T. Seymour	497:0:0	£25 for first 15 years and £35 for remaining 6 years.
4A3	1910	J. & J. Dobbs	161:0:0	21 years, £15 p.a.
4B north	13 Apr1911	Wilbert Cleary	550:0:0	
4A4B	27 Feb 1912	M. Casey		
4A4A1	17 Dec 1912	Michael Brown	269:0:0	40 years, 3/- p.a.
4A4A No. 2	26 Mar 1913	J. A. Lamb	434:0:0	5/5 per acre for first 20 years and 5/10 for next 20 years
5B	13 Feb 1917	F. Mander	430:2:11	15 years, £90 p.a.
4A2	17 Dec 1917	W. J. Parker		40 years, 5/- per acre
Pt. 5C11	1920	R. S. Edwards	45:2:6	20 years, £25 p.a.

Leasing of land stopped for several decades after 1920, as the Maori Land Boards instead tried to use vested lands for consolidation and farm development projects. The only other lease of Puhipuhi lands known in this period was of the 5C4 block, leased in 1941 on a year-by-year tenancy to Hepe Croft of Whakapara.[1092]

Hearn has concluded that the Tokerau District Maori Land Board was 'slow to act and reluctant to secure re-entry' when problems arose between lessees and landowners.[1093] That conclusion undoubtedly holds true in the case of the Puhipuhi block 4A4B, whose owners faced several years of low returns and other unsatisfactory lease conditions, during which the Board declined to intervene on their behalf. Other early leases do not appear to have resulted in difficulties for the lessors.

9.3.11 Alienation of land by sale

With significant pressures from falling incomes, rising costs of retaining and farming land, and the burden of rating and survey debt, the individual returns from leases often proved insufficient to sustain the leaseholders and their families, especially as the number of owners on the titles continued to increase. Accordingly, alienating interests in Puhipuhi lands by sale became frequent between 1905 and 1945. The first confirmed sale of Māori-owned land within Puhipuhi occurred in 1910, when Thomas Seymour bought part of the land he had under lease in Puhipuhi 4B South block from Eruana Maki. Between this first sale in 1910 and 1926, 29 part and full purchases occurred, totaling about 25,000 acres, or almost half of the original area of Puhipuhi

[1092] Walzl, 2009, #A38, p. 2102
[1093] Hearn, 2006, #A3, p. 518

blocks 4 and 5 (this was significantly more than was alienated by lease during this period). Almost all of these sales occurred before or during World War I. According to Loveridge, after the war land boards attempted to manage lands on behalf of their owners without alienation by sale.[1094]

The Native Land Act 1909 made the sale of Māori land quicker and easier by, for example, empowering a minority of owners in a block to agree to its sale. In considering applications by Māori landowners to sell their interests, Maori Land Boards were required by section 220(1)(c) of the Act to ensure that those landowners would retain sufficient land for their 'adequate maintenance.' The Tokerau District Maori Land Board defined this amount as 30 and later as 20 acres per person, without regard to the location or quality of the land involved, or whether that minimum comprised several even smaller areas of land in different locations.[1095]

In certain cases the Tokerau Maori Land Board declined applications by Puhipuhi owners to sell their interests, under section 220(1)(c), on the grounds that they would be left with insufficient land for their support. In 1912 Eru Nehua wrote to the Board objecting to the application by his daughter, Tita Nehua, to sell her interest in Puhipuhi 5B, because:

> There is an Appeal which will be heard about August next to decide upon the subdivision of this block. There was 400 acres granted to Tita Nehua and her descendants (which are about 20 at present) and as this is the last and only portion of the land which I have apportioned to her, I would humbly entreat you not to grant this sale until the Appeal case for partition has been decided.[1096]

The Board appears to have upheld Mr Nehua's request, and deferred the sale application. Tita Nehua received individual title to her share in Puhipuhi 5C the following year. In 1917 the Tokerau Maori Land Board approved her sale of that interest.[1097]

[1094] Loveridge, 1996, #E29, p. 109
[1095] Hearn, 2006, #A3, p. 535
[1096] E. Nehua to President, Tokerau Maori Land Board, 21 August 1912, BOI 318 correspondence 1911– 1956, Maori Land Court Whangarei
[1097] Secretary, Tokerau Maori Land Board, to Tita Nehua, 19 November 1917, BOI 318 correspondence 1911 – 1956, Maori Land Court, Whangarei

However, section 220(1)(c) of the Native Land Act 1909 was amended by section 91 of the Native Land Act Amendment Act 1913 which, in certain circumstances, permitted alienation of lands even when their owners did not own enough other lands for their support. This exception, according to Hearn, proved useful in Northland where 'a growing Maori population and a contracting area of land in Maori ownership combined to render individual interests progressively smaller, and where, some alternative means of livelihood were available in some places and at some times.'[1098]

In 1917 the Tokerau District Maori Land Board approved the sale of the 120-acre Puhipuhi 4A2 block under section 91 of the 1913 Act. Of the block's 13 owners, only two, Manira Whatarau and Rihi Kake, owned sufficient land elsewhere to consider supporting themselves from it. What 'alternative means of livelihood' were available to the other 11 owners of this block are not known.[1099]

Between 1910 and 1926, 24 part and full purchases occurred. These are shown in Table 11 below.[1100]

[1098] Hearn, 2006, #A3, p. 457
[1099] Hearn, 2006, #A3, p. 457-458
[1100] 'Puhipuhi', Berghan, 2006 , #A39(f), p. 286 and Walzl, 2009, #A38, pp. 2100-2101

Table 11: Puhipuhi land alienated by sales, 1910 – 1926

Block	Date	Sold to	Area (a:r:p)	Price
4B South 3B	30 Aug 1910	T. Seymour	107:1:23	£300
4B North1	19 Sept 1911	Rowland Harrison	128:1:1	£200
4B North4	19 Sept 1911	George Reed	146:2:27	£330
4B South3A	13 Feb 1912	T. Seymour	107:1:23	£300
4B North3A	10 Apr 1912	R. Harrison	36:2:27	£82
4B North2	10 Dec 1912	H. Gibbs	127: 3:24	£447
Part 5A	26 Mar 1914	T. Seymour	178:0:0	£534
5C14	1 Jul 1914	W. & C. Russek	175:0:0	
remainder 5A	16 Feb 1915	E. Allison	34:3:36	£120
5C9	16 Feb 1915	O. Cheesman	10:0:0	£80
Part 4A1	27 Feb 1915	R. Harrison	227:2:16	£217
5C13	15 Feb 1916	F. Mander	89:2:16	£713
5C2	3 Mar 1916	Tutu Nehua	106:2:32	£200
5C9	26 Jun 1916	A. Finlayson	72:0:0	£720
Part 4A1	26 Jun 1916	Wm. Johnson	82:3:38	£123
4A4A1	4 Dec 1916	M. Browne	276:1:34	£738
4A2	23 Jan 1917	W.J. Parker	13:1:6	£161
4A3	8 Oct 1917	J.A. Lamb	161:0:0	£410
4A4A2A	24 Apr 1918	J.A. Lamb	246:2:0	£1,450
4B South 2B	25 Sept 1918	Thomas Seymour	109:0:4	£270
Part 5C7	16 Dec 1918	O. Cheesman	50:2:0	£1,010
Part 5C2	19 Sept 1919	Maraea Nehua	5:0:16	£213.8
Part 5B	8 Jul 1924	George Hodgson	55:3:20	£1,047
4A4B	31 Aug 1926	Parker Lamb Timber Co.	666:0:0	£3,960

As with the leasing of Puhipuhi blocks, sales of Puhipuhi lands halted for several decades from the 1920s as the Native Affairs (and later Maori Affairs) Department pursued a policy of land development schemes for Māori-owned land.

9.3.12 Consolidation and development of Māori lands

From the late 1920s, the Crown acknowledged that, as a result of continuing alienations, many Māori no longer owned enough suitable land to support themselves at even a bare subsistence level, and that new measures were required to overcome the difficulties of the land tenure system and improve farm production on the remaining lands in Māori hands. Two main policy initiatives were developed. One was a reform of Māori land titles through large-scale consolidation programmes. The second aimed to provide Māori with the financial resources to develop these lands. According to

Hearn, 'The new policies of land title reform and development financing marked a significant departure in the Crown's longstanding approach to Maori and their land in which the sole emphasis had been on the acquisition of as much land as possible and its transfer into the hands of settlers.'[1101]

Through a process of title amalgamation and exchange, the consolidation schemes redistributed the scattered land interests of individual families or related groups into one or more consolidated areas. Aroha Harris says that:

> Consolidation aimed to give each individual owner, or manageable group of owners such as a family, a subdivision suitable for use as an economic farm unit. The process might require the use of exchanges, partitions, amalgamations, purchases and any other available title improvement methods… Finally, the blocks were repartitioned into residential sections or economic farm units.[1102]

Bayley adds that, 'the turn to consolidation and development schemes was in part driven by the inability of Maori to access finance without a substantial reform of the Maori land tenure system, especially the succession laws, which was not under consideration.'[1103]

The impetus for the formation of consolidation schemes in the North came in part from Māori landowners struggling to survive economically on their reduced remaining acreages. In 1927 the president of the Tokerau District Maori Land Board wrote that his Board was deluged with loan applications from Māori hoping to convert to dairying. The answer, he believed, lay with consolidating land titles originally granted through the Native Land Court:

> The Court … is satisfied that Consolidation Schemes are the essential preliminary to setting the Natives upon their feet. The Board on its part is satisfied that the Natives have still left to them very considerable areas of good dairying country, much of it already partly cleared and fenced and grassed, land which, if held in suitable areas under separate titles and improved, would give ample support for hundreds of families, and would give ample security for small Board loans averaging about £200.[1104]

[1101] Hearn, 2006, #A3, p. 538
[1102] Aroha Harris, 'Maori Land Title Improvement from 1945 – Communal Ownership and Economic Use', *New Zealand Journal of History*, April 1997, vol. 31, No. 1, p. 135 - 138
[1103] Bayley, 2013, #E41, p. 139
[1104] President, Tokerau District Maori Land Board to Native Minister 14 November 1927, in Archives New Zealand, Wellington, MA1, 29/2, Part 1, ANZ Wgtn, quoted in Hearn, 2006, #A3, p. 565

Consolidation was also seen as a solution to the perennial and worsening problem of unpaid rates on Māori land, and was therefore actively promoted by county councils in the North. Tokerau District Maori Land Board president Acheson believed that 'the converting of these lands into small dairy farms would solve the 'rating problem' in the North Auckland district within a very short time, as the Board would see that rates as well as Board interest were paid out of cream cheques.'[1105]

Under the consolidation programme, the state gave lump sum part-payments to county councils in lieu of unpaid rates, provided the counties ceased to rate Māori lands for the several years required to consolidate titles and allow the land development schemes time to produce an adequate income for the landowners. In 1928 the Whangarei County Council, whose region included Puhipuhi 4 and 5, was paid £1,750 under this scheme in settlement of outstanding rates amounting to £8,100, and withdrew 80 charging orders for unpaid rates. Several Puhipuhi blocks used their cream cheques to meet demands on their income, such as rates, as detailed above.

The first step towards consolidation was to secure clear titles to the land under development, through systematic amalgamation of titles. Under a blanket proclamation, all remaining Māori land not leased to Pākehā was automatically included in one of five regional development schemes. Although Puhipuhi 4 and 5 lay within the boundaries of Whangarei County, all Māori land in this county was included by proclamation within the Bay of Islands Development Scheme.[1106] Under the Native Land Amendment and Native Land Claims Adjustment Act 1929, once the blocks were gazetted under the scheme, their owners lost the right to make decisions about 'leasing, reserving, selling timber rights, occupying, building houses, selling, mortgaging (or obtaining credit from the dairy company) without the approval of the Native Affairs Department.'[1107] However, the landowners also became eligible to apply for funds for equipment, fencing materials, seed, manure and dairy stock, and would repay the cost of these through deductions from their cream cheques.

[1105] President, Tokerau District Maori Land Board to Native Minister 14 November 1927, in Archives New Zealand, Wellington, MA1, 29/2, Part 1, ANZ Wgtn, quoted in Hearn, 2006, #A3, p. 565
[1106] *NZ Gazette*, 19 June 1930, No. 45, p, 2054
[1107] Heather Bassett and Richard Kay, 'Tai Tokerau Maori Land Development Schemes 1930 – 1990', CFRT, 2006, #A10, p. 40

According to Walzl:

> The rationale behind the blanket proclamation was simply administrative convenience. Rather than gaining legal authority for each block that had the potential for development, (which would have taken some time), the blanket authority provided the officials with the opportunity to work fast to get financial assistance to those farmers who needed it most.[1108]

In practice, Puhipuhi lands were only slightly and peripherally affected by the Bay of Islands Development Scheme. The blocks identified as most actively developed through the scheme were the 63-acre 5B3, 18-acre 5C10B and 175-acre 5C4.[1109]

Land development, says Walzl, was 'not simply about developing the land, but was also about achieving community cohesion the object of which, according to Ngata, was "to correct the malign influences of certain elements in European culture".'[1110] Unfortunately for these objectives, the development schemes began during a time of worldwide economic downturn. Small-scale Māori farmers and itinerant Māori farm labourers were some of the worst affected by the Depression. As a result, the Crown's Māori land development schemes were used for short-term employment creation, rather than for longterm agricultural production.

After Ngata's resignation as Native Affairs Minister in 1934, the schemes were removed from the direct control of his Department and a Board of Native Affairs was established to administer them, with input from other state agencies. Bassett and Kay suggest that from this period, Crown policy shifted from assisting Māori owners and their communities towards a sole focus on the development of the land.[1111] However, the government's resources were not equal to the scale of the task in Northland, and by 1939 the consolidation programme was said to be at a standstill.[1112]

9.3.13 Alienation of land by reserving and gifting

Māori communities could also choose to retain land and set it aside for various communal and community purposes. In 1913, at the request of Eru Nehua and other owners, Puhipuhi 5C was partitioned and individual areas within it allocated, both for his children and for common purposes such as a marae on the five-acre 5C5. On

[1108] Walzl, 2009, #A38, p. 306
[1109] *NZ Gazette*, 12 June 1947, No. 32, p. 735
[1110] Walzl, 2009, #A38, p. 304
[1111] Bassett and Kay, 2006, A#10, p. 570
[1112] Walzl, 2009, #A38, p. 304

several later occasions, the marae was the site of confusion and disagreement, as a result both of Crown actions and the actions of the community served by the marae.

In August 1913, after the boundaries of the 5C5 block were surveyed, Eru Nehua, his wife Tawaka and their children Hone and Te Ruhi wrote to Native Land Court Judge Henry Wilson objecting that 'Ko te wahi i hee ko te 5 eka mo te kainga hui.' ('The 5-acre area for the meeting house has been wrongly surveyed').[1113] (It seems somewhat ironic, given the errors in this survey, that Taiwhanga's 1872 survey of the Puhipuhi boundary was vigorously criticised by Crown officials.)

Judge Wilson, whose court had ordered the original partitions, agreed that there was a mistake in the plan:

> Showing the position of the site set apart for the 'Hui House 5 acres.' [The Nehua family] now find that the site will deprive the owner of 5C No. 4 of his access, and at the same time will not enclose portion of buildings belonging to the hui house. It is suggested that the 5 acres could be located as shown on the accompanying sketch, by shifting the northern and eastern sides. Shown to surveyor by Wiri and Hone Nehua.

The judge directed the survey plan to be altered as the owners suggested.[1114]

In the following years a large meetinghouse named Hukarere was built on this marae site. Beside it stood a dining hall capable of seating 150 people, a storeroom, slaughterhouse, shed for tools and buggy, and two cottages. In the 1920s this marae was one of the biggest in the north and became a popular stopping place for Māori passing through the district.[1115]

Dissension later arose within the Nehua family, and this resulted in disputes between members of the family concerning their use and maintenance of the marae and the nearby St Isaac's Church. In 1928 Native Land Court Judge Acheson came to Whakapara 'to fix up matters between the family of Eru Nehua (dec.)' However,

[1113] Eru, Hone, Te Tawaka and Te Ruhi Nehua to Judge Wilson, Native Land Court, 18 August 1913, BAAZ 1109, A557, box 1463/b, 13443, ANZ Auck
[1114] Judge Wilson, Native Land Court, to Chief Surveyor, Auckland 5 September 1913, BAAZ 1109, A557, box 1463/b, 13443, ANZ Auck
[1115] Menefy and Cunningham, *Hukerenui – In the Beginning,* c.1988, p. 80

owing to the death of Mrs W. Birch, (Ani Nehua), the scheduled court hearing did not take place.[1116]

Five years later Hone Nehua wrote to the judge to inform him that the trouble within the family:

> Has come to a very serious standing at the present time … come at an early date and look into the trouble and have it fix [sic] indefinitely between the majority of the family, the church and the community of the people … One of the family especially is causing the whole trouble only for calling the police at times when the people come to the marae and the church. I am crippled with rheumatic. [1117]

Judge Acheson replied that it was not possible to arrange a new Native Land Court sitting at Whakapara for this purpose. He advised Hone Nehua that the matter 'should be dealt with by the [Māori Land Board] Consolidation officer at a meeting of the people on the spot.' If such a meeting failed to resolve the dispute, then it would need to hear at a regular Native Land Court sitting in Whangarei.[1118]

That hearing took place on 20 March 1934, with most members of the Nehua family present. The court heard that Eru Nehua had directed that a meeting house should be erected on Puhipuhi 5C5 'and directed that the land be vested in the whole tribe.' However, 'Prior to his death, no proper transfer of said land was executed.' His children asked the court 'for an order vesting 5C5 in the whole tribe, and that trustees be appointed for purpose of looking after said meeting house.' Judge Acheson ordered that 5C5 and 5C6 (the church site), should be declared native reserves under section 232 of the Native Land Act 1909.[1119]

[1116] Evidence of H. Nehua, 9 November 1933, Whangarei Minute Book No. 16, pp. 119-120
[1117] Evidence of H. Nehua, 9 November 1933, Whangarei Minute Book No. 16, pp. 119-120
[1118] Whangarei Minute Book No. 16, pp. 119-120
[1119] Decision of Judge Acheson, 20 March 1934, Whangarei Minute Book No. 16, pp. 119-120; *NZ Gazette,* 1934,5 April 1934, No. 22, p. 921

Section 232 determined how specified areas of multiply owned Māori land may be declared Native reservations, or reserves, 'for the common use of the owners thereof.' Among the purposes for which a Native reservation may be created under this section of the Act is as a 'meeting place.' Subsection 6 specifies that land included in a Native reservation 'shall be inalienable, whether to the Crown or to any other person.' Subsection 9 states that a Native reservation may, however, be vested in an institution such as a Maori Land Board, body corporate or trustees, 'to hold and administer the same for the benefit of the beneficial owners.'[1120] By creating two Native reserves under this Act, the judge was ensuring that 5C5 and 5C6 could not later be sold, but that the original owners, their descendants and/or any other body they appointed would retain control of the lands.

9.3.14 Compulsory acquisition of land for public works

In the 1905 to 1945 period, compulsory acquisition of portions of Puhipuhi No. 4 and No. 5 under public works legislation further eroded the land-base of the community. These takings are shown in Table 12 below.

Table 12: Puhipuhi land taken for public works, 1905 – 1945

NZ Gazette	Date taken	Area taken (a:r:p)	Purpose	Legislation	Compensation
1911	Jul 1911	4A	Road		
1928		5C2, 5C10	Road		£25 plus fencing costs
25 July 1929, No. 52, p. 1895		4B South 1	Road	s. 13, Native Land Amendment and Native Land Claims Adjustment Act 1922	£3
25 Jul 1929, No. 52, p. 1895	24 Jul 1929	2:0:00 (pt. 5C16) 2:2:00 (pts 4B South 3B, 2B)	Road	Public Works Act 1928	
6 Feb1930, No. 9, p. 335	31 Jan 1930	1:3:5.5 (pt. 4B South 1)	Road	s. 14 Native Land Amendment and Native Land Claims Adjustment Act 1927	
20 Feb 1930, No. 13, p. 438	14 Feb 1930	0:2: 4.3 (pt. 4B South 2B)	Road	s. 12 Land Act 1924	
12 Feb 1931, No. 10, p. 261	4 Feb 1931	0:1:18 (pt. 4B South 1)	Waiotu stream diversion	s. 207, Public Works Act 1928	£2

[1120] Section 232, Native Land Act 1909

NZ Gazette	Date taken	Area taken (a:r:p)	Purpose	Legislation	Compensation
21 May 1931,No. 40, p. 1547	15 May 1931	2:0:00 2 (pt 5C5)	public school site	s. 359, Land Act 1924	
27 Aug 1931, No. 63, p. 2475	25 Aug1931	0:1: 28.6 (pt. 5C16)	Road	Public Works Act 1928	
7 Aug 1941, No. 65, p. 2474	4 Aug 1941	3:0:16 (pt. 5B6) 1;1:13 (5B5) 0:2:35 (pt 5B6)	quarry; easement	Public Works Act 1928; s. 62, Statutes Amendment Act 1939	£30
14 Oct 1943, No. 89, p. 1204	7 Oct 1943	5:0:30 (pt 5B) 0:3:14 (pt. 5C4) 0:0:15.16 (pt. 5C4)	Road	s. 487, Native Land Act 1931	None
1945		4:0:4 (pt 5C12)	Road		

Almost all public works takings in the period 1905 – 1945 were for roading, as successively smaller areas of both Puhipuhi 4 and 5 required access for development. In most of these cases, roading was provided to land which had been alienated, and the roads crossed Māori land. The areas involved were generally very small. As described in more detail below, Puhipuhi land in Māori ownership was also compulsorily taken for flood control of the Waiotu Stream, and for a gravel quarry. In both cases compensation was paid after a Native Land Court judicial process.

During Eru Nehua's lifetime, his dominance within the Puhipuhi Māori community, and his reputation among Pākehā as an obliging and reasonable leader, meant he appears to have been frequently consulted over public works takings. However, there is little evidence that that consultation resulted in improved outcomes for Māori, and when Nehua objected to public works takings, or appealed for more compensation, he was generally unsuccessful.

The overall impression gained from the records of Puhipuhi public works projects is that although Māori often registered objections to the land-taking process, they eventually accepted the Crown's actions and compensation (where it was provided). Puhipuhi Māori appear to have regarded public works legislation, and land-taking agencies such as the Public Works Department, as all-powerful, and therefore resigned themselves to the Crown's actions, occasionally attempting to moderate them.

Puhipuhi Māori, along with the district's Pākehā, gained as well as lost when their lands were taken for public works such as railways and roads. However, as Māori grew increasingly economically marginalised during the early twentieth century, and as their remaining lands shrank through alienation and other processes, the benefits they derived from local public works projects are likely to have diminished accordingly. In McBurney's words, 'when Northland Maori had already lost much of their land to the raft of nineteenth century mechanisms … Public Works takings in the twentieth century would nibble away at the margins of what was left.'[1121]

Roading

In 1911, as the stands of kauri on the portion of Puhipuhi acquired by the government were steadily diminishing, the government decided to put a road through Puhipuhi No. 4A 'to give access to that portion of the State Forest upon which it has been decided to uplift the [logging] reservation in order that it may be opened for selection [by timber millers].'[1122] This road was proclaimed in July 1911. No compensation was apparently paid.[1123]

From the 1920s Puhipuhi 4A and 4B were increasingly subject to partitioning among an increasing number of owners, some of whom leased or sold their interests in them. The subdivision of these blocks into ever-smaller lots required further roading to give access to them. In 1928 the European owners of parts of Puhipuhi 5A, who had bought the land in 1912 and 1914, applied through the Native Land Court for a roadline through the adjoining Māori-owned blocks 5C10 and 5C2, to give better access to their properties. Hone Nehua, Eru Nehua's son, objected to this application, and the court ordered a surveyor to view the property and advise on the best solution. At a hearing on 4 August 1928 Judge Acheson ordered that one of the European landowners should bear the cost of the fencing the entire roadline, and that Hone Nehua should be paid £25 in compensation.[1124]

In 1929 a roadline one chain wide, amounting to a little more than an acre, was laid off next to the railway reserve in the southwestern boundary of Puhipuhi 4B South 1

[1121] McBurney, 2007, #A13, p. 666
[1122] Chief Surveyor to Under-Secretary for Lands, 16 June 1911, BAAZ, 1108, A25, box 3/b, 102, ANZ Auck
[1123] *NZ Gazette*, 6 July 1911, No. 56, p. 2159
[1124] Whangarei Minute Book No. 10, pp. 166-67

block, (at that time in Māori ownership but leased to Thomas Seymour) was claimed to give access to Puhipuhi 4A2, which had been purchased by the Parker and Lamb Timber Co. in 1926. The Whangarei County Clerk advised the Native Land Court that this taking would 'give access to Seymour's lease and will greatly enhance the value of the property.'[1125] The land was claimed under section 13, Native Land Amendment and Native Land Claims Adjustment Act 1922. The roadline was surveyed and fenced at no cost to the two owners of Puhipuhi 4B South 1, and compensation of £3 was paid to them.[1126] The County Clerk asked the Tokerau District Maori Land Board to distribute this money 'among the native owners.' The Tokerau District Maori Land Board charged the County 5/- for this service.[1127] The new roadway over Puhipuhi 4B South 1 was proclaimed in 1930.[1128]

In 1932 the Tokerau Maori Land Board advised owners of two blocks within Puhipuhi 5 that parts of their land would be needed for a new road. Ani Birch, a daughter of Eru Nehua, and her husband Walter Birch, who owned and lived on Puhipuhi 5C, objected to the loss of part of their land for this road. On 12 March 1932 they wrote to Northern Māori MP Tau Henare, asking him to intercede on their behalf. Ani Birch said the Maori Land Board was 'taking away from us the place where we were going to plant next season, a small flat alongside of our little creek, in fact we have started a small garden already and was just waiting until winter time to plow an acre or two.' She confronted the surveyors as they were marking out the proposed road and was told that they were acting under orders from the Land Court. 'If this is the law for Maori land', she wrote to Henare, 'the Maoris is [sic] only living on sufferance.' [1129]

The following month the Native Land Court Registrar gave an explanation of the road taking to the Under-Secretary of the Native Department:

> The Puhipuhi 5B Part block, an area of approximately 450 acres, is owned solely by Tita Nehua (Mrs Luke) who is now an old lady. In consolidation proceedings she expressed a

[1125] Whangarei Minute Book No. 16, p. 6
[1126] This section empowered the Native Land Court to claim Māori land to give better access to European land, and vice versa, and to determine what compensation, if any, was payable.
[1127] Judge F. Acheson to Registrar, Native Land Court, 16 May 1929, Puhipuhi BOI 318 correspondence, Maori Land Court, Whangarei
[1128] *NZ Gazette*, 6 February 1930, No. 9, p. 335
[1129] A. Birch to T. Henare MP, 12 March 1932, ACIH 16036, MA1, box 472, 22/01/2015, ANZ Wgtn

> desire that the block be partitioned into holdings for her family (all grown up) so that they could now settle and make use of the land (a separate holding each).
>
> An access road for the subdivisions was necessary … one side of the block has access to a public road, but the eight divisions into which the place was partitioned could not all face that road, while the road is not the best of access even for some of the subdivisions that adjoin it. [The chosen route] is the only natural route for access and no other suitable one could be found.
>
> Two other blocks are a little affected – Puhipuhi 5C3 (Ani Birch) and Puhipuhi 5C4 (Wiri Nehua) – although not to any great extent. It is considered that any damage or disturbance suffered by 5C3 and 5C4 (which would not be great) would be adjusted later when the matter came before the Court for compensation.[1130]

It was not until eight years later, in 1940, that the Tokerau District Native Land Court, under Judge Acheson, ruled that, 'it is in the public interest that such a road-line should be proclaimed as a public road.' The judgment stated that the owners of both blocks had consented to the roadline 'without claiming compensation.' Accordingly, one acre of 5C4 and five acres of pt. 5B were claimed for the road, to be known as Tita Road, without compensation.[1131] This road was gazetted in 1943.[1132]

In 1942 the Tokerau District Native Land Court ordered that small areas of Puhipuhi 5C2 and 5C10 be declared a public road, since 'the road traversing the Native Land … has been used by the public as a public road and has been formed, improved and maintained out of funds of the Whangarei County Council.' A total of just over an acre of 5C10 were claimed in this way. No compensation was paid.[1133] The new road was gazetted in 1944.[1134] In 1945 Puhipuhi 5C12 was partitioned, and a roadline was laid out to give access to the partitioned blocks. Four acres 4 perches of the block was set apart for this purpose.[1135]

[1130] Registrar, Native Land Court, to Under-Secretary, Native Department., 22 April 1932, ACIH 19036, MA1, box 472, 22/01/2015, ANZ Wgtn
[1131] Order for road line, Native Land Court, ACIH 19036, MA1, box 472, 22/01/2015, ANZ Wgtn; Berghan, supporting docs, #A39(n) p. 8818, plus sketch map, p. 8819
[1132] *NZ Gazette*, 14 October 1943, No. 89, p. 1204
[1133] Judge E. Beechey to Minister of Lands, Native Land Court, Whangarei, 2 October 1942 in Berghan, supporting docs, #A39(n), p. 8816
[1134] *NZ Gazette*, 1 June 1944, No. 44, p. 628
[1135] Native Land Court order, 26 July 1945 in Berghan, supporting docs, #A39(n), p. 8812; 8825; plus sketch map, p. 8826

Waterways

The first public works taking from a waterway within the Puhipuhi block appears to have been the 1931 taking of 1 rood 18p from Puhipuhi 4B1 under section 207 of the Public Works Act 1928 for 'diversion of the Waiotu Stream … for the safety and proper maintenance of the Whangarei-Kawakawa main highway.'[1136] This land was at the extreme western edge of the Puhipuhi block, alongside and immediately west of State Highway 1 and the railway line. Following the taking, a meandering section of the Waiotu Stream was straightened to reduce the risk of seasonal flooding.

On the basis of a government valuation for 4B1 of an average £2 per acre, the sum of £1 was offered in compensation. Hoana Pittman, a co-owner of the block who was then living at Waiotu, rejected this offer. Arthur White, writing on her behalf to the Native Land Court, claimed that £1 was not sufficient compensation for the damage done by the drainage canal 'which has cut the best part of the land (valuable river flat) in half.' He proposed instead compensation of not less than £10, or alternatively ownership of two small whares left on the block by the Public Works Department, presumably to accommodate workers carrying out the drainage project.[1137]

On 2 November 1931, Native Land Court Judge Acheson advised the Public Works Department that, 'The Court has seen the land in question and does not consider the £1 compensation to be in any way adequate for the damage done.' He instructed the Department to come to a mutual arrangement with 'the native' [i.e. Hoana Pitman] and if this was not possible, that the compensation case would be reheard. On 24 August 1932, £2 was paid in compensation for the diversion of the Waihou Stream.[1138] This may signal that Judge Acheson took a more pro-active stance with regard to Māori interests, whereas previous administrations had accepted whatever the Public Works Department had deemed to be fair.

Quarry

Quarries and ballast pits were a key requirement for road and railway building projects in the Northland region. McBurney noted that:

[1136] *NZ Gazette,* 12 February 1931, No. 10, p. 261
[1137] A. White to Registrar, Native Land Court, 26 October 1931, Puhipuhi BOI 318 correspondence, Maori Land Court, Whangarei
[1138] Whangarei Minute Book No. 17, p. 41

> The Public Works Department preferred to access metal, shale, shingle or ballast from sources as near as possible to the point at which it was required. Small quarries were therefore opened up throughout the North and shingle was habitually taken from stream beds for roadmaking purposes.[1139]

In 1941 approximately five acres of land in Puhipuhi 5B5 and 5B6 were compulsorily acquired under the 1928 Public Works Act as a quarry reserve.[1140] This area, known as the Whakapara Quarry, included an access easement to give access to the site. Three sums totaling £30 were paid in compensation to Tita Nehua, the sole owner of the land. After her death in 1949, her lands passed by succession order dated 24 January 1950 to 12 descendants with varying numbers of shares. Maori Land Court titles were created for Puhipuhi 5B5 and 5B6 on 25 January 1950.

9.4 Use, development and alienation 1945 – present

9.4.1 Introduction

Over the period 1905-1945, of the original 5,400-acre extent of Puhipuhi 4 and 5, some 3,200 acres had been sold and approximately a further 200 acres had been claimed for public works. As Puhipuhi's population entered the period following World War II, about 2,000 acres in total remained in Māori ownership.

After 1945 a further 930-odd acres were sold, and a further 100-odd acres were taken for public works, mostly for flood and river control. Around 400 acres were converted from Māori to general land under pt. 1 of the Maori Affairs Amendment Act 1967. This has left a balance of about 470 acres, or just under 200 hectares remaining in Māori ownership today.

As in other rural Māori communities, the main pressures on Puhipuhi owners to alienate their lands after 1945 were economic. When they no longer lived on or made their living from tribal lands, the incentive to convert it into cash for an urban existence could be irresistible. Small-scale dairying was no longer considered economically feasible on Puhipuhi lands, and larger farmers increasingly absorbed smaller neighbouring properties. To the difficulties already facing multiply-owned

[1139] McBurney, 2007, #A13, p. 378
[1140] *NZ Gazette*, 7 August 1941, No. 63, p. 2474

land, described above, were added the further disadvantages of absentee ownership, such as neglect of buildings, fences and pastures.

To retain land in Māori ownership, attempts were made to rationalise titles and consolidate holdings into more economic units. However this was under-resourced and slow, and tended to be undone by the ongoing fragmentation of interests caused by succession.[1141] In the face of a more general national policy of encouraging rural Māori to enter the urban workforce, these efforts made little difference to the pattern of land alienation. The urbanisation policy was developed from, for example, the September 1946 report of the National Employment Service, which favoured 're-distribution of the Maori population by gradually absorbing large numbers in employment in centres of European population.'[1142]

Finding detailed information on the administration of Puhipuhi lands in this period through consolidation, amalgamation and Maori Affairs development scheme farms has proved more difficult than for earlier periods, since most of the files consulted hold little specific material after the 1950s. Since this period is within the memory of older Puhipuhi landowners, it is hoped that claimant evidence can supplement that given here.

This section of the chapter will examine the multiple factors that contributed to urbanisation and rural depopulation in the post-World War II period. It will detail the title transfers due to sales, public works takings and conversion to general land, and account for these as far as possible by reference to available archival sources.

9.4.2 Administration of Māori lands, 1945-present: An overview

The Native Affairs Act 1934-35 created a Native (later Maori) Affairs Board which continued to govern Māori land development schemes for a further 50 years. Most of that period, according to Walzl, was dominated by policies on Māori land use that differed sharply from the pre-World War II land development and consolidation programmes drawn up by Ngata and his staff:

[1141] Hearn, 2006, #A3, pp 683-685
[1142] Quoted in Walzl, 2009 #A38 p. 349

> Whereas land development as devised by Ngata was community-based and aimed at wider community involvement, the post-Depression and postwar environment brought changes in thinking. The small, often dairy-based Maori units were reassessed in an environment where maximum efficiency was demanded from farming as being in the national interest. In the postwar period, therefore, officials came to strongly believe that economic development of Maori land was being severely hampered by the state of land titles.[1143]

Belgrave adds that in the postwar economy many Māori found other sources of income, such as social security and employment in manufacturing and service industries, easier to obtain than subsisting on their tribal lands:

> The land was not required to sustain Maori communities … The government saw its responsibility as bringing land into production, not simply for the benefits of Maori communities, but as part of a national imperative to gain the most from the agricultural resources for the country … Unproductive Maori land was an evil to be eradicated by all means possible. Reforming the title system, by assimilating it into the European title system as much as possible, became the prime objective.[1144]

After World War II, the Maori Land Court had a greater role in enforcing the payment of rates on Māori land. Under the Maori Purposes Act 1950, the Court could appoint the Maori Trustee as agent for the owners of Māori land in order to lease, and later to sell, 'idle' land that was either unoccupied, not cleared of noxious weeds, or had not paid rates. In April 1951 the Whangarei County Council acted to impose charging orders under this Act against Hone Nehua, Wiri Nehua and other Puhipuhi landowners in 5C12B and 5C12C. The amount of overdue rates on their land was about £72.[1145] The 1988 Rating Powers Act finally saw the power to compel the sale of Māori land to recover unpaid rates removed from the statute books.

Periodic efforts were made by agencies of government to promote small manufacturing industries and other forms of local employment in the Te Raki district. However, Walzl found that these agencies eventually favoured the urbanization of

[1143] Walzl, 2009, #A38, p. 50
[1144] Michael Belgrave, Anna Deason and Grant Young, 'Crown Policy with Respect to Maori Land 1953 – 1999', CFRT, 2004, #E30, p. 8
[1145] Rates charging order, Puhipuhi 5C12B and C, 13 April 1951, Whangarei County Council, BOI 318 applications, Maori Land Court, Whangarei

rural northern Māori as the most effective response to the problems of rural unemployment and underemployment.[1146]

This change of emphasis towards greater economic efficiency was accelerated by the wool price collapse of 1966 and Britain's 1973 entry to the EU. This ended New Zealand's near-guaranteed UK market for its agricultural exports, and forced the farming sector to adopt a more competitive international outlook, without reliance on state subsidies.

The Maori Land Amendment Act 1952 replaced the Land Boards with a single Maori Trustee whose fund bought up interests in blocks valued at less than £25, and considered too small to be economically useful to their owners. The stated objectives of this programme of title reform were:

> To preserve Maori land for the Maori people and to rationalise its ownership by preventing succession to useless and uneconomic interests and by encouraging individuals and family groups to acquire proper titles to useful areas by succession, partition, purchase, exchange, and the devices of consolidation and conversion.[1147]

The Maori Trustee could then sell the accumulated uneconomic interests to Māori incorporations or individuals, usually those who were building up their interests in order to gain economic and productive holdings. However, according to Walzl, 'the reality was, that for many schemes settlement was delayed over many years or even decades, and consequently the Crown came to own a considerable and valuable interest in a number of schemes.'[1148]

Since the mid-1950s, Maōri land development projects in Tai Tokerau were primarily carried out through the use of trusts and incorporations administered under section 438 of the Maori Affairs Act 1953. That section enabled multiply owned land blocks to be administered as if owned by a single corporate body or trust. According to Bayley, in this period, 'While incorporations and trusts may have begun to provide more economic development opportunities, they are likely to generate some tension

[1146] Walzl, 2009, #A38, p. 241and pp. 358-362
[1147] Annual report of Board of Maori Affairs and Secretary, Dept of Maori Affairs, *AJHR*, 1954, G-9, p.5
[1148] Walzl, 2009, #A38, p. 544

among Maori owners.'[1149] Through the formation of a 'Section 438 Trust', Māori land could be managed without the need to take account of difficulties customarily associated with multiply owned and fragmented land titles. Other problems might arise, however, since 'the cultural values and concerns of the Maori owners have [not] automatically been reconciled with economic imperatives.'[1150]

By about 1960, the programme of consolidation was regarded as too expensive to justify its modest results. The lands under consolidation were gradually returned to the control of the original landowners, although in many cases improvements such as buildings and fences had to be paid for, which placed owners under a heavy debt burden. In their report on land development schemes, Bassett and Kay found that:

> Despite early promises, they did not create the anticipated number of farms which would be available for Maori occupation. Furthermore … hundreds of Northland Maori lost their ownership of scheme land through the compulsory acquisition of uneconomic interests, and through the Crown purchasing programme.[1151]

On 7 June 1960, the investigation into abandoned Maori farms in Northland commenced at Kaikohe led by the Acting-Secretary of Maori Affairs J.K. Hunn.[1152] He found that many Māori farms in the Bay of Islands were too small and had too many beneficial owners to be economic. As a result, large numbers of Māori had abandoned their ancestral lands for life in the cities. The 1964 Prichard-Waetford report on Māori land legislation reinforced the finding that 'Fragmentation and unsatisfactory partitions' continued to 'hinder or prevent absolutely the proper use of Maori lands.'[1153] This report led directly to the Maori Affairs Amendment Act 1967 which enabled the amalgamation of multiple blocks under a single new title.

The Maori Affairs Amendment Act 1967 also empowered the Maori Land Court to declare any Māori land block with four or fewer owners to be general land. Between

[1149] Bayley, 2013, #E41, p. 168
[1150] Nicolas Bayley, Leanne Boulton and Adam Heinz, 'Maori Land Trusts and Incorporations in the Twentieth Century in the Central North Island Inquiry District, Summary', Waitangi Tribunal, 13 June 2005, Wai 1200, #G4(b), p. 22, quoted in Bayley, 2013, #E41, p. 168
[1151] Bassett and Kay, 2006, A#10, p. 577
[1152] Walzl, 2009, #A38, p 1273
[1153] Ivor Prichard and Hemi Waetford, *Report of Committee of Enquiry into the Laws Affecting Maori Land and the Jurisdiction and Powers of the Maori Land Court*, (Wellington: Department of Maori Affairs, 1965), p. 6, quoted in Bassett and Kay, 2006, A#10, p. 191

1969 and 1976, the owners of more than 20 Puhipuhi blocks applied to have their blocks declared general land under this Act.

The Maori Affairs Amendment Act 1974 repealed the Māori Trustee's power to compulsorily acquire uneconomic interests in Māori land. This Act also enabled Māori owners of land which had been reclassified as general land to change the status of the land back to Māori land. At least one Puhipuhi block, 5C11, was reclassified in this way.

The amalgamation system slowed but failed to stem the drift of Māori landowners from rural communities such as Puhipuhi into larger centres. There is some evidence that Te Raki Māori considered that the failings of the consolidation scheme had contributed to people leaving rural areas and to the alienation of land. A 1988 report from the Tai Tokerau office of the Maori Affairs Department found that Māori owners complained of:

> The inequitable treatment of them over the period of development … The policy involved amalgamation of titles. Owners contend that this destroyed their turangawaewae and consequently their mana … Because the people had to move they become more susceptible to selling their shares in order to have funds to help in their new locations. It is argued that many shares would never have been sold if the original titles had still been available for use and occupation by the owners.[1154]

This pattern, of absentee shareholders choosing to sell their interests as their original connections with their landholdings declined through efforts at consolidation and amalgamation is familiar to many of the shareholders in the few remaining blocks of Māori land at Puhipuhi.

The Te Ture Whenua Maori Act 1993 was designed to ensure that remaining blocks of Māori land remained in Māori hands. 'The trusts represent a shift from owning a share in a piece of land to owning a right to derive benefits from it.'[1155]

[1154] Acting Director, Maori Affairs Whangarei to Maori Land Board, 19 February 1988, BBDL 1030/2105a 21/21 pt 13, ANZ Auck, quoted in Bassett and Kay, 2006, A#10, p. 241
[1155] Harris, 'Maori land title improvement from 1945…', *NZJH*, April 1997, vol. 31, No. 1, p. 151

9.4.3 Development of Māori land

By 1950 it was apparent that the state-assisted development projects on Northland Māori land, which had superseded the consolidation programmes, had failed to deliver longlasting benefits for the landowners. The development schemes continued to struggle under debt burdens, a lack of technical expertise and land blocks that were often too small for efficient farming.[1156] At the same time, the Māori population was increasing rapidly and each farm property was expected to support a growing number of people.

However, according to Walzl, 'successive governments remained strongly in favour of land development for Maori.'[1157] The 1950s was a boom period for New Zealand agriculture in general, with high export prices, and productivity improvements through aerial topdressing. Belgrave found that 'Bringing all land in New Zealand into production, during a period of good agricultural prices, was almost a moral imperative. In particular, for the National Government that came into power in 1949, bringing idle Maori land into production was an act of patriotic duty.'[1158]

In this period, says Walzl, Crown policy on Māori economic development changed decisively from Ngata's original concept of a community orientated development scheme to 'bureaucratic management of individualised commercial farming ventures in which the success of individual units was the main focus of officials and the fortunes or future of the wider community was not a matter for their concern.'[1159] A central element of this new policy was the assumption that 'possibly only a quarter of the rural Maori population would ever be directly supported by the full development of all remaining Maori land.'[1160]

By 1955 the largest block within the original Puhipuhi No. 5 was 128 acres, and several were less than an acre in size. In an effort to make Northland Māori farms more economic, Maori Affairs farm supervisors arranged amalgamations of smaller blocks to establish largescale development schemes. The 63-acre Puhipuhi 5B3 block

[1156] Bassett and Kay, 2006, #A10, pp 564-565
[1157] Walzl, 2009, #A38, p. 305
[1158] Michael Belgrave, Anna Deason and Grant Young, 'Crown Policy with respect to Maori Land, 1953-1999', CFRT, 2004, Wai 1200, #A66, p. 61
[1159] Walzl, 2009, #A38, p. 309
[1160] Walzl, 2009, #A38, p. 309

was placed under the Bay of Islands Development Scheme in February 1951, and the 66-acre 5B2 block in March 1955.[1161] In the same period other Puhipuhi blocks were released from the Development Scheme as part of land exchange arrangements. The 5-acre 5C11A block and the 16-acre 5C9A2 block were released in 1956, and the 5C7A, 5C10A, 5C12A and 5C13 blocks in the early 1960s.[1162]

However, problems of economic viability persisted. The small size of many of the units and the poor quality of the soil were recognised as major factors in the difficulties the unit farmers faced in meeting their expenses and providing a reasonable standard of living for their families.[1163] By the 1960s it was clear that some of the land was more suited to sheepfarming than dairying, which led to pressure from Maori Affairs for further amalgamations. According to Walzl, 'Many Maori owners were resistant to the amalgamation proposals as they indicated they wished to keep their land for themselves, their whanau and their descendants. By this time the department's focus appears to be on land utilisation rather than the advancement of Maori.'[1164]

9.4.4 Pressures for land fragmentation and title fractionation

Despite official efforts at land reform, among Puhipuhi landowners the pattern of title partitions and succession described in the period 1905-1945 continued after World War II. Many rural Māori families were relatively large in this period, and this increased pressure for title fragmentation through succession. Between 1945 and 1955 there were at least 20 block partitions of Puhipuhi 4 and 5, and the majority of the resulting parcels were between 30 and 90 acres. The largest was 128 acres and several were less than an acre in size. When ownership in Puhipuhi land parcels was transferred, rather than passing by succession, it became more common for interests to be transferred with no monetary payment. In 1951, for example, the eight owners of the 4BS1, 4BN3B and 4BN4 blocks transferred all their interest in those blocks,

[1161] *NZ Gazette,* 22 February 1955, No. 11, p. 243 and *NZ Gazette,* 17 March 1955, No. 20, p. 408
[1162] *NZ Gazette,* 1 March 1956, No. 12, p. 279; *NZ Gazette*, 12 March 1956, No. 14, p. 294; *NZ Gazette*, 14 March 1963, No. 16, p. 350 and *NZ Gazette*, 18 March 1965, No. 13, p. 352
[1163] Walzl, 2009, #A38, p. 963
[1164] Walzl, 2009, #A38, p. 964

under section 163(9) of the Maori Land Act 1931, to Hoana Pitman in return for 'natural love and affection.'[1165]

Those partitions included part of the 200-acre reserve granted to Hone Nehua in 1913, as described above. This reserve was later amalgamated within the adjacent Puhipuhi 5C10 block. In 1965 seven co-owners – Tari Hone Nehua, Eru Patuone Hone Nehua, Mihaka Tupanapana Hone Nehua, Ani Hone Nehua, Te Otaota Hone Nehua, Hoia Hone Nehua, and Hinewhare Hone Nehua – were awarded equal shares in a portion of that block, totaling 16 acres, 1 rood 16 perches, by then known as Puhipuhi 5C10G. Each of the seven was entitled to an equal share, so their individual shares amounted to a little over two acres each.[1166] Puhipuhi 5C10G, totaling just over 16 acres in extent, is today the only part of the original 200-acre reserve which remains as Māori land.

This fragmenting of titles and land parcels took place during a period of rapid and extreme urbanisation by rural Māori. Increasingly, shareholders in Puhipuhi lands no longer lived on those lands, or depended on them for ongoing support. As a result, those absentee shareholders often had little interest in retaining their modest shares in diminishing land blocks, and were inclined to alienate those remaining lands through sales or leasing.

In post-World War II New Zealand society, a range of state policies encouraged rural Māori to relocate to urban areas for employment opportunities and better housing. In the mid-1950s there was very little employment in rural areas of the Whangarei district, and Māori drifted into the towns where they could find work on port development and construction, in factories, and with the City Council.[1167] The population of the Puhipuhi community fell sharply in this period, and, as noted earlier, Puhipuhi School closed in 1964 due to its falling roll.

[1165] Application for vesting order, Puhipuhi 4BS1, 4BN3B and 4BN4, 21 August 1951, BOI 3168 Puhipuhi applications, Maori Land Court, Whangarei
[1166] Certificate of title under Land Transfer Act, NA 5D/503, 6 May 1965, Land Online
[1167] Walzl, 2009, #A38, p. 651

Māori living in an urban, and largely non-Māori, environment faced multiple pressures to sell their remaining interests in ancestral lands, as acknowledged by the 1965 Prichard-Waetford Māori land report:

> The Maori is left a lonely man in new surroundings and in new strange employment. He is short of money even to pay the deposit on the furniture and equipment which the new house renders necessary, to keep up the installments, to dress the children for the town school, to pay bus fares and to meet the many expenses that accompany the move from country to town. His wife is equally lonely and miserable, and it is not surprising if, when one or other hears that a block of the home area in which a minute share is held has a proposal to sell, the thoughts are not that it is sacred ancestral soil but that there will never be a going back to the home area, and now is the time when the £60 or so share of purchase money will give the utmost benefit.[1168]

As a result of amalgamation, a new title order was issued in 1965 to replace Puhipuhi blocks 5B2, 5B7A, 5B7B and 5B8. The new block, 5D, was 140 acres in size and had one owner.[1169]

Fragmentation of titles was frequently followed by conversion of title from Māori to general land, under part 1 of the Maori Affairs Amendment Act 1967. Under this Act, Māori land blocks owned by no more than four people could, subject to the approval of the Maori Land Court Registrar, be declared general land.[1170] It then became easier for the landowners to borrow against or otherwise manage their land. In a few cases, that transfer was later reversed. Between 1969 and 1976 the owners of the following Puhipuhi blocks applied to have them declared general land under pt. 1 of the Maori Affairs Amendment Act 1967: This shown in Table 13 below.[1171]

[1168] Ivor Prichard and Hemi Waetford, *Report of Committee of Enquiry into the Laws Affecting Maori Land and the Jurisdiction and Powers of the Maori Land Court,* (Wellington: Department of Maori Affairs, 1965), pp. 77
[1169] *NZ Gazette*, 19 August 1965, No. 45, p. 1337
[1170] Section 6, Maori Affairs Amendment Act 1967
[1171] 'Puhipuhi' Berghan, 2006, #A39(f), pp. 290-291

Table 13: Puhipuhi land Europeanised, 1969 – 1976

Block	Date Europeanised	Details
5C10B	6 Aug 1969	
5C10C	26 Aug 1969	
5C10E	26 Aug 1969	
5C12B	26 Aug 1969	
5C10F	19 Aug 1969	
5C12C	22 Sept 1969	
5C3C	3 Nov 1969	
5C3D	3 Nov 1969	
5C3B	3 Nov 1969	
5B4	4 Mar 1970	
5C2A	23 Nov 1970	
5C9	11 Mar 1970	
5C10H	13 Oct 1970	
5C11 pt	16 Nov 1970	Later returned as Māori Freehold land
5C9A1	18 Dec 1970	
5B1A	21 Mar 1971	
5C3E	16 Apr 1971	
5C3E	16 Apr 1971	
5B5	25 Jun 1971	
5C7B	4 Jul 1972	
5C8	4 Jul 1972	
5B1B	26 Feb 1975	
4BN3B	29 Apr 1976	
5C11B		
5C10D		Later returned as Māori Freehold land
4BS1		Later returned as Māori Freehold land

One of the factors leading Puhipuhi landowners to convert the legal status of their interests back to Māori land was a small reversal in the pattern of urbanization from the 1970s. In that period the economy suffered significant downturns, and cities faced rising unemployment. Some unemployed Northland Māori chose to return to rural areas where the cost of living was much lower.[1172] Anecdotal evidence from Puhipuhi landowners suggests that district saw a modest revival in people returning to live on their remaining ancestral lands in Puhipuhi 4 and 5.[1173]

The dramatic restructuring of the New Zealand economy and state sector from the mid-1980s affected opportunities for employment in the local economy. Two dozen state organisations were corporatised in 1987-1988, including the New Zealand Forest Service, which had employed large numbers of Māori in the state forests adjoining the Puhipuhi lands.[1174]

Further subdivisions occurred in 1993, 1997 and 1998, with partitioning of another eight subdivisions. The largest of these was 66 hectares, another was 20 hectares, and three were 13 hectares. The remaining sections were two hectares or less.

9.4.5 Alienation of land by leasing

Alongside state funded development schemes, the leasing of Māori land was a key state objective towards the goal of bringing all possible land in New Zealand into production. During the 1950s a number of legislative measures were introduced to create a simple and straightforward system of leasehold tenure and promote the renewal of leases.[1175] According to Walzl,

> For Maori, the lessee provided the opportunity of applying his skill and capital to develop the land. Potentially, then, leasing was a positive vehicle for the use and development of Maori land. On the other hand leasing could also result in a challenge to land retention as it was common for a lessee to eventually become the purchaser of the land.[1176]

[1172] Walzl, 2009, #A38, p. 1388
[1173] Personal communications, Dr Benjamin Pittman
[1174] Walzl, 2009, #A38, p. 1389
[1175] Walzl, 2009, #A38, p. 548
[1176] Walzl, 2009, #A38, p. 551

Leasing of Puhipuhi blocks resumed from the 1950s, after the first batch of leases, mostly 40-year leases created around 1917, began to expire. Leases taken out on Puhipuhi lands between 1950 and 1969 are showin in Table 14 below.

Table 14: Puhipuhi land alienated by lease, 1950 – 1969

Block	Date	Leased to	Area (a:r:p)	Terms of lease
5C4	1 Apr 1950	H. Croft	20:0:0.	Yearly, £24 p.a.
5B1A, 5B7B	16 Jun 1950	H. Fox	40:3:30	
5B3B	1 Sept 1950	T. O'Neill	62:3;16	42 years, £15 p.a.
Pt. 5C1	30 Mar 1953	Whakapara Golf Club	130:0:0	20 years, £65 p.a.
5C10A, 5C12A, 5C13	1 Jul 1954	I. Anderson	102:0:0 total	10 years, £70 p.a.
4B3A	28 Jun 1960	L. Atkins	36:2:10	9 years
4B North 4	28 Jun 1960	L. Atkins	146:0:27	9 years
4B North3B	15 Nov 1960	L. Atkins	111:1:20	9 years , £300 p.a.
5C7A	10 Sept 1963	D .& C. Saunders	4:0:25	
5B5	2 Sept 1966	A. E. O'Neill	56:3:4	10 yrs at £65 pa
Part 5B6	2 Sept 1966	A. E. O'Neill	43:0:0	10 yrs at £65 pa
Part 5B1A	20 Oct 1967	P. G. Henwood		10 yrs, £605 p.a.
Part 5B1B	20 Oct 1967	P. G. Henwood		10 yrs, £605 p.a.
5C10H	28 Mar 1968	A. R. Wilkinson	128:0:37	21 yrs, $1000 p.a.
Part 5C4	27 Jul 1968	A & B Priest	169:2:0	2 yrs, $600 p.a.
5C10B	30 Oct 1969	E. L. Edwards	18:2:21	15 yrs, $650 pa
5C12B	30 Oct 1969	E. L. Edwards	83:3:10	15 yrs, $650 pa

Correspondence referring to several of the above leases indicates that lessees typically effected significant improvements during the term of their lease. Not enough information has been found to determine whether landowners were then in a position to pay for these improvements at the termination of the lease, and to reassume control of their lands.

In 1950 the Maori Trustee approved the lease of the 40 acre 5B1A and 5B7B blocks from Makoare Wiremu Ruka to Harry Fox. The Maori Affairs field supervisor noted that Fox had erected a two-bail cowshed and partly completed a small implement shed. Some subdivisional fencing had been carried out.

In 1967 the owners of the 169-acre 5C4 agreed to lease the property to Andrew and Barbara Priest for two years, with right of renewal. The Priests intended to use the land for cropping, maize and running 40 cows and calves and 50 steers. The only stipulation of the owners was that 'the land be properly farmed and manure applied.'

9.4.6 Alienation of land by sale

In 1960 the area of Puhipuhi 4 and remaining in Māori ownership was about 2300 acres. By 1985, however, only 471 acres remained as Māori land. However, official attitudes towards the alienation of Māori land were slowly changing, and in some cases the titles to Puhipuhi lands were amalgamated and resold to Māori landowners with the help of Maori Affairs Department finance, to enable those landowners to make a living from their restructured land parcels.

Aroha Harris has pointed out that in the post-World War II period, 'many Maori people were quite willing to give up at least some of their land interests in return for assistance in the shift to town, or in pursuit of sole or family ownership of a farm.'[1177] The Tokerau Maori Land Board and its successor, the Maori Trustee, appear to have taken account of these intentions in approving at least some sales of Puhipuhi lands. These agencies also appear to have considered whether the sellers had other lands and could therefore afford to part with those they are offering for sale. Table 15 below shows the alienations by sale that occurred between 1944 and 1978. Farm supervisors' reports indicate the factors which prompted the owners' willingness to sell their land, and the Maori Affairs Department to approve the sales.

[1177] Harris, 'Maori Land Title Improvement…', *NZJH,* April 1997, vol. 31, No. 1, p. 134

Table 15: Puhipuhi land alienated by sale, 1944 – 1978

Block	Date	Sold to	Area (a:r:p)	Price
Part 5C10	28 Aug 1944	D. Allison	4:2:39	£50
5C9A2	13 Jul 1956	D. & Te Paea Houston	16:2:36	£510
5C9A2	6 Mar 1959	R. S. Edwards	16:2:36	£510
5C10B	12 Jul 1962	L. H. Davis	18:2:21	£6,779
5C12B	12 Jul 1962	L. H. Davis	83:3:10	£4,725
5C15	6 Sept 1962	W. Birch	136:0:0	£2,436
Parts 5C11 & 5C11B	12 Nov 1965	D. & T. P. Houston	72:0:0. & 88:3:5	£6,625
5C10C & 5C12C	31 Aug 1966	R. M. Nehua	4:2:20. &110:3:20	£3,110
5D	20 Feb 1968	K. E. J. O'Neill		$12,100
5C10A & 5C12A	7 Jul 1968	R. M. Pickens	6:3:30 & 83:1:6	$5,765
5C1A	31 Oct 1977	G. S. Crutcher	100:0:0	$3,000
5C1B	31 Oct 1977	A. S. Shelford	80:0:0	Payment of all duties
5C11A	11 Mar 1978	J. Engar & R. L. Watson	5:0:19	$6,375

In 1958 the Māori Land Court approved the sale of the 16-acre Puhipuhi 5G9A2 to Whakapara farmer Robert Edwards, who planned to farm it in conjunction with his own farm at Waiotu, 'which is subject to frequent flooding. The area being purchased is higher land and will give me a place to put my dairy cows - 45 this year.' The court noted that 5G9A2 'is not being actively farmed by vendors at present - it is mostly in fern and gorse. It is of no particular use to the vendors.' The Māori vendors did not own other land but planned to buy the 88-acre Puhipuhi 5C11B and 72-acre Puhipuhi 5C11 from the Crown with the assistance of the Department of Maori Affairs. The Department planned to transfer the two blocks to the vendors in 1960, 'provided they farm the property in a satisfactory manner in the next two years.'[1178] Both of these blocks remain Māori-owned in the present day.

In 1961 the 200-acre Huruiki property, which lay outside Puhipuhi to the east but had been a significant and valued part of the wider Ngāti Hau estates since the nineteenth century, was sold to Ernest Pickens. Eru Nehua's grandson Pat Edwards had lived on the property with his wife Hiko and their large family since 1925. This remote farm did not pay, and the Edwards family found it difficult to provide schooling for their

[1178] Quoted in Walzl, 2009, #A38, pp. 2103 (no reference given)

children, so from about 1940 Huruiki was leased to a succession of neighbouring farmers, until bought by Mr Pickens.[1179] At the time of this sale, the Māori owners were in arrears with the rates. In a highly atypical outcome for an alienation of this kind, Pat Edwards' grandson Brandon Edwards bought back the property with his wife Kiri 50 years later, in 2001. It is currently vested in the Te Whānau o Nehua Trust.[1180]

In 1968, the valuation reports of the 13-acre Puhipuhi No. 5C13 described it as 'a small block of Maori land with poor access and subject to flooding from the Whakapara River. Improvements are all in poor condition and have been badly neglected for many years. The section is only partly fenced on the boundaries. Owing to its poor access and limited size, best use of this block would be in conjunction or amalgamation with other adjoining farm land.' The 83-acre 5C12A was described as 'a fair block of Maori land which is spoilt by its poor access and susceptibility to flooding by the Whakapara River. Improvements are all in poor condition and have been badly neglected for many years. The section is only partly fenced on the boundaries. Owing to its poor access and limited size, best use of this block would be in conjunction or amalgamation with other adjoining farm land.'[1181]

Today nine Puhipuhi blocks totaling 189.93 hectares (approximately 470 acres) remain as Māori land. This is set out in Table 16 below.[1182] The two largest of these are both 55 hectares. However, the majority are six hectares or less. Two of these smaller sections are the sites of a marae and church/urupā.[1183]

[1179] Malcolm, *Where it all Began…*', 1982, pp 71-74
[1180] 'Huruiki – The return of a Mountain', Ahi Kaa, Radio NZ National, 13 December 2015 at http://www.radionz.co.nz/national/programmes/teahikaa/audio/201782439/huruiki-the-return-of-a-mountain
[1181] Quoted in Walzl, 2009, #A38, pp. 2104-2105 (no reference given)
[1182] Walzl, 2009, #A38, p. 2092
[1183] 'Puhipuhi', Berghan, 2006 , #A39(f), p. 292

Table 16: Puhipuhi - current Māori Land

Block	Acres (a:r:p)	Hectares (ha.)
4B North 4	136:0:00	55.0372
5C3A	1:0:00	0.4304
5C5	5:0:00	2.0234 (marae)
5C6	1:0:00	0.4046 (church/urupā)
5C10G	16:1:16	6.6166
5C11 (pt)	72:0:00	29.1373
5C11B	88:3:06	35.6123
5C13 (pt)	13:0:30	5.6403
5C15	136:0:00	55.0372
Total		**189.93**

9.4.7 Alienation of land by reserving and gifting

As in the preceding period of the twentieth century, the owners of Puhipuhi 4 and 5 reserved small amounts of land for community purposes.

Whakapara Marae

In the post-World War II period, when most of the shareholders in Puhipuhi Māori land blocks no longer lived in the local area, the marae buildings gradually deteriorated, and the site became overgrown with gorse.[1184] In 1955 several children and other descendants of Eru Nehua attended a Maori Land Court hearing at Whakapara to discuss a new marae committee. Tare Hone Nehua told the court that he regretted the condition of the marae. 'It was left by our ancestors to uphold Maori traditions.' Pita Nehua described the Whakapara marae as 'one of the greatest of Ngapuhi' and attributed its decaying state to 'lack of unity.'[1185] Judge Clarke described the marae as 'in a disgraceful state', and ordered the formation of a new group of three trustees. 'They will have the title in their names, control of the moneys and power over the marae.'[1186]

In 1966 the 5-acre 5C5 marae site was formally designated under section 439 of the Maori Affairs Act 1953 as a 'Maori reservation for the purpose of a meeting place,

[1184] Menefy and Cunningham, *Hukerenui – In the Beginning*, c.1988, p. 80
[1185] Whangarei Minute Book No. 28, p. 21
[1186] Whangarei Minute Book No. 28, p. 22

recreation ground and sports ground for the common use and benefit of the Ngatihau Maori people in particular, and of the public in general.'[1187]

Today the Whakapara Marae marae is administered by trustees who represent the descendents of Eru and Te Tawaka Nehua. It operates under a trust deed and charter registered with the Maori Land Court.[1188] The five-acre (approximately two hectare) Whakapara Marae site, Puhipuhi 5C5, remains Māori land.

Scenic reserve

In 1975 Puhipuhi Māori landowners continued the tradition established by Eru Nehua of making Ngāti Hau land available for the public good by offering a block of land within the former Puhipuhi 5C block to the Crown as a scenic reserve.

The 16-acre 5C10G, bordering Puhipuhi Road, was offered for a scenic reserve by Mrs Ani Strongman, a daughter of Eru Nehua, on behalf of the shareholders in the block. A Lands and Survey inspector found that the land was bush-covered but with the under-storey heavily grazed. 'This is a good stand of bush which the Maori owners wish to gift to the Crown. They would like it preserved and named the Hone Nehua Scenic Preserve.' The report recommended accepting the owners' offer and fencing the block from stock.[1189]

This offer created some uncertainty within Crown agencies over the most appropriate legal status for the gifted land. A Lands and Survey Department district officer advised the Commissioner of Crown Lands that 'Although current thinking is that Maori land should not be gifted to the Crown for virtually any purpose, this seems to be a case where owners would be happy to lease the block indefinitely to the Crown for peppercorn rental – provide only that someone was prepared to accept control of the area.'[1190] This appears to have been the outcome agreed with the Crown.

[1187] *NZ Gazette*, 9 June 1966, No. 34, p. 921
[1188] Ngati Hau social media website at http://www.naumaiplace.com/site/whakapara/home/page/132/marae-admin/
[1189] 'Puhipuhi 5C10G scenic reserve', BOI 318 correspondence 1971 – 1992, Maori Land Court, Whangarei
[1190] G. D. Fouhy to Commissioner of Crown Lands, 30 October 1975, BOI 318 correspondence 1971 – 1992, Maori Land Court, Whangarei

Today the 16-acre (6.6 hectare) Puhipuhi 5C10G remains Māori-owned land, and is one of the largest remaining areas of bush-covered land within the original Puhipuhi block. The reserve is named for Eru Nehua, who showed both foresight and generosity by gifting areas of his land, and therefore preserving them from alienation, in an earlier era when his tribal lands and the native bush surrounding them must have seemed both abundant and eternal.

9.4.8 Compulsory acquisition of land for public works

Although all significant infrastructure was already built and the population of the area was either stagnant or in decline, the loss of Puhipuhi land through acquisition under public works legislation did not decrease after 1945, compared with the previous 40 years. This was overwhelmingly due to several large takings for flood control in the Hikurangi Swamp, and highway improvement around the Waiotu Stream, described below. An earlier taking, for a quarry, was offered back to the original owners in this period, but was found to be contaminated with mercury, as described below. These takings are set out in Table 17 below.

Table 17: Puhipuhi land taken for public works, 1973 – 1997

NZ Gazette	Date taken	Area	Purpose	Legislation
19 Dec1973, No. 121, p. 2749	30 Nov 1973	3:16:5 (pt. 4B north 1), 2:1:36.7(p. pt. 4B north 2)	road	Public Works Act 1928
10 Nov 1977, No. 114, p. 2923	3 Nov 1977	2295 m^2 (pt. 4A2)	soil conservation and river control	Public Works Act 1928
11 Feb 1982, No. 12, p. 366	5 Feb 1982	7350 m^2 (pt. 5C16)* 7712 m^2 (pt. 4B South 3B) 6514 m^2 (pt. 5C16)	road	Public Works Act 1981
4 Mar 1982, No. 24, p. 699	25 Feb 1982	8630 m^2 (pt 5C12A) 6.3690 ha. (pt 5C12A) 1.2760 ha. (pt 5C12A) 2010 m^2 (pt 5C12A) 4420 m^2 (pt 5C12A)	river control	Soil Conservation and Rivers Control Act 1941, Public Works Act 1981
9 Dec 1982, No. 148, p. 4249	29 Nov 1982	3950 m^2 (pt. No. 5)	river control	ss. 20, 50 Public Works Act 1981
26 Jan 1984, No. 18, p. 207	18 Jan 1984	8980 m^2 (pt. 4A, 4B South, Waiotu Stream bed)	river control	ss. 20, 50 Public Works Act 1981
16 Aug 1984, No. 143, p. 3166	9 Aug 1984	30 m^2 (pt 4B South 1) 169 m^2 (pt 4B South 1) 4520 m^2 (pt 4B South 1) 170 m^2 (part bed Waiotu Stm)	road	s. 20 Public Works Act 1981
5 Nov 1987, No. 191, p. 5015	23 Oct 1987	45 ha. (4B north 3B) 59 ha. (4B north)	penal institution	s. 20, Public Works Act 1981

NZ Gazette	Date taken	Area	Purpose	Legislation
		15 ha. (4B north 3A)		
31 Mar 1988, No.56, pp. 1368-9	31 Mar 1988	32:0:00 of 4B South 3B, 5C16, 5C12A, and Waiariki stream bed	river control	s. 20, Public Works Act 1981
1 Oct 1992, No. 158, p. 3274	23 Sept 1992	Various pts 4B South 2B and 3B	limited access road and SH1	s. 20(1) Public Works Act 1981; s. 88(2) Transit NZ Act 1989

*Also includes section 24 & 25 Blk XI, Hukerenui SD

In at least two known cases – the Waiotu Stream diversion and the Whakapara quarry site – public works on compulsorily acquired Māori land delivered clear disadvantages to the local Māori community, in the form of environmental degradation, a loss of access to former food supplies, and significant impacts to culturally significant sites. Although changing social attitudes gave Puhipuhi Māori the statutory right to re-acquire lands taken from them or their forebears for public works once that land was no longer required for the stated purpose, the landowners seldom appear to have exercised that right. Whether this is from lack of financial means, the degraded state of some of the sites, or other reasons is not apparent from official records.

Waiotu Stream diversion

As described earlier in this chapter, land was taken under public works legislation from the Waiotu Stream, beside SH1 on the western boundary of Puhipuhi 4BS1, in 1931. Further public drainage works were carried out on the same site in the 1970s and 80s as part of the Hikurangi Swamp Major Scheme undertaken by the Northland Catchment Commission and the Regional Water Board.

In 1975 2,200 square metres of land were taken for roading – 5C12B and 5C12C – under the 1928 Public Works Act to provide access from SH1 to the junction of Waiotu and Whakapara Rivers for soil conservation and river control.[1191] 'This route is along a roadline set apart by the Maori Land Court on 26 July 1945.'[1192]

In 1982 3,050 square metres of land at the junction of the Whakapara and Waiotu Rivers, and 3,660 square metres beside the Whakapara Bridge were taken for river

[1191] *NZ Gazette*, 27 February 1975, No. 18, p. 370
[1192] P. Palmer, Chief Rivers Control and Drainage Officer to Deputy Registrar, Maori Land Court, Whangarei, 15 September 1975, Puhipuhi BOI 318 correspondence, Maori Land Court, Whangarei

control under the Soil Conservation and Rivers Control Act 1941, and sections 20 and 50 of the Public Works Act 1981.[1193] The land was vested in the Northland Catchment Commission.[1194] Further lands from 4A and 4B South and part of the Waiotu stream bed were acquired for the same purpose, under the same legislation, in 1984.[1195] In 1988 land from 4BS, 5C and the Waiariki streambed was acquired for river control purposes under the same legislation.[1196]

Hoana Pitman's descendant, and current shareholder in Puhipuhi 4B South No. 1, Dr Benjamin Pittman, has told the Waitangi Tribunal that the Waiotu Stream diversion 'cut a new channel, eliminating a longer meandering section of the river.' Dr Pitman states that the incremental effect of these drainage works had a range of harmful impacts on the immediate environment, and on the traditional uses of this waterway.[1197]

Later research into the title history of the Waiotu lands revealed a long pattern of error and maladministration of this land by Crown agencies. Land known as the Wairua block, on the western side of the Waiotu River, was awarded to Maihi Kawiti, on behalf of Ngāti Hine and to Eru Nehua, on behalf of Ngāti Hau, by the Native Land Court in 1876. Following the 1883 Crown purchase of the Puhipuhi lands, the Wairua block was surveyed for subdivision in 1887. A small 'island' of about an acre, surrounded by the Wairua River, now sited 100 metres north of the railway crossing on State Highway No. 1 at Waiotu, 2 kilometres south of Hukerenui, was originally included within the boundaries of the subdivisional allotment, but later deleted. The resulting certificate of title therefore did not include this 'island.'

In the 1970s the 'island' was affected by the Hukerenui drainage scheme, which moved the course of the Waiotu River in a westerly direction and effectively merged the island with adjoining farmland. In 1985 the Land Settlement Board consented to the major portion of the 'island' being set aside for river control purposes under section 136(2)(e) of the Public Works Act 1981. This area was vested in the Northland

[1193] *NZ Gazette*, 11 March 1982, No. 26, p. 754
[1194] *NZ Gazette,* 9 December 1982, No. 148, p. 4249
[1195] *NZ Gazette,* 26 January 1984, No. 8, pp. 207-208
[1196] *NZ Gazette*, 31 March 1988, No. 56, pp. 1368-1369
[1197] Brief of evidence of Dr Benjamin Pittman, 10 February 2015, #P38, pp. 11-12

Catchment Commission as it was wrongly believed that it was in Crown ownership. Nominal compensation of $18 was paid to the Land Settlement Board. The land was then vested in the Northland Regional Council, the successor to the Northland Catchment Commission.[1198] In 1995 the Crown, on behalf of Transit NZ, attempted to 'legalise' that part of State Highway 1 passing through the island.

At a 1995 title investigation hearing, Te Raa Nehua described Ngāti Hau occupation of the area. The pā overlooking the island is called Hau Kapua. The island and river were the pā's source of sustenance and the wāhi tapu of their tūpuna. A 1998 valuation report by G. M. Evans found that:

> The injurious effect of partitioning the allotment is significant, for it destroyed the last remaining area of the tribal estate … The beneficiaries have considered the island tapu, a poutokomanawa (a bastion) identifying a key boundary … The desecration for highway and river control purposes cannot not be rectified since the work expended for public good is complete.[1199]

In 1998 the Maori Land Court ruled that the 'island' had not been included in any Crown or private purchase from Māori, nor was it Māori Freehold land. It was therefore deemed to be Māori Customary Land, with ownership shared equally between Ngāti Hine and Ngāti Hau.[1200]

Quarry

During the 1950s the Puhipuhi Road quarry was used by the Whangarei County Council as a source of road metal for roading throughout the Puhipuhi area.[1201] On 25 June 1971 Puhipuhi 5B5 was declared General Land. In 1973 the quarry site was declared Crown Land, together with the right of easement.[1202]

By 1983 the quarry site was no longer required by the Crown and was offered back to descendants of the original owner at current market value. Part of Puhipuhi 5B5, totaling one acre three roods 48 perches (1.2545 hectares.) was offered to the block's

[1198] Meeting minutes, 29 July 1995, Ngāti Hau Trust Board
[1199] G. M. Evans, Matua Valuation, to Te Raa Nehua, 15 March 1998, Ngāti Hau Trust Board
[1200] Minutes of preliminary meeting of Maori Land Court under Judge Spencer, investigation of title, Whakapara marae, 8 May 1995, Ngāti Hau Trust Board
[1201] Kereama-Royal, 'Cultural impact assessment report …', 2000, pp. 2-3
[1202] *NZ Gazette*, 9 August 1973, No. 74, p. 1519

12 owners for amalgamation with the original title, at a valuation of $350. The owners of 5B6 were Carinthia Pulham and Brandon Luke. To amalgamate the compulsorily acquired portion of this block with the remainder, it was revested as Māori land. The land was valued at $800.[1203] The archival record suggests that Carinthia and Luke either could not afford to, or chose not to exercise their right to buy back the land at that price, and its ownership reverted by default to the Whangarei District Council.

In the early 1990s both the Northland Regional and Whangarei District Councils were made aware of public concern at possible contamination of the quarry site, and of road metal extracted from it, from historic mercury mining activities. A report identified significant traces of mercury and arsenic in gravel from the quarry site and within the site itself, and the quarry was closed in 1995. Remedial works, including sealing a section of Puhipuhi Road, were completed in 1997-8.[1204] Whangarei District Council applied for resource consents to retrospectively authorise these remedial works and ongoing discharges from the site. They included an application to divert and discharge stormwater from the quarry site to a tributary of the Pukekaikiore Stream.[1205]

In 1973 three acres of 4BN1 and two acres of 4BN2 were taken under the Public Works Act 1928 for roading.[1206]

In 1987 approximately 125 hectares of Puhipuhi 4B north were bought by the Crown under section 20 of the Public Works Act 1981 for a proposed Northland prison.[1207] In 1994 the land was set aside for justice purposes under section 52(1) of the same Act.[1208]

9.5 Conclusion

In the present day about 470 acres, or about nine per cent of the total area, of the original Puhipuhi 4 and 5 remain as Māori land. What happened during the

[1203] Land Settlement Board, submission to Assistant Commissioner of Crown Land, 16 December 1983, ACIH 16036, MA1, box 507, 22/2/225, ANZ Wgtn
[1204] 'Puhipuhi Mining', Native Affairs, Maori TV, 1 July 2013 at http://www.maoritelevision.com/news/national/native-affairs-puhipuhi-mining
[1205] Kereama-Royal, 'Cultural impact assessment …', 2000, pp. 2-3
[1206] *NZ Gazette*, 5 April 1973, No. 29, p. 716
[1207] *NZ Gazette*, 5 November 1987, No. 191, p. 5015
[1208] *NZ Gazette*, 11 August 1994, No. 81, p. 2543

intervening 130 years was a pattern of partitioning, alienations, accumulated debt and eventual departure for the cities, common to most Māori land in Northland and elsewhere. As emphasised by the authors of several of the reports cited in this chapter, that social pattern was reinforced by legislation and official attitudes which regarded much Māori land as an underused resource to be made available for development, if necessary by non-Māori.

Archival sources suggest that, for the wider Nehua whānau at least, the Puhipuhi 4 and 5 lands withheld from sale in 1883 were successfully farmed over the following 25 years. No sales of land took place in that time, although some landowners approached the Crown about selling their interests. Eru Nehua insisted that the retained lands should not be sold, and his son Hone, who inherited the bulk of his father's lands and much of his personal mana, upheld that principle after his father's death in 1914.

However, the energetic and capable Hone Nehua became seriously ill with rheumatism by the mid-1920s, and this affected his ability to farm his land and maintain economic self-sufficiency. Other Puhipuhi landowners had fewer resources of land to draw upon, and they also fell behind with debt repayments and farm maintenance. Small-scale dairying on second-rate grazing land proved almost impossible to sustain during the long Depression that began in the late 1920s, and sales and leases of lands seemed unavoidable to owners in financial distress.

A succession of Crown agencies worked to manage and alleviate the circumstances of Northland's Māori landowners, while simultaneously addressing the demands of non-Māori to make use of lands often regarded as under-used, weed-infested and debt-laden. The records of institutions such as the Tokerau District Maori Land Board and the Native Department show that they made well-intentioned efforts to help Puhipuhi landowners manage high levels of debt and use their lands more productively so as to retain ownership of them. However, those efforts were frequently unsuccessful in the face of wider economic and political pressures resulting in longterm or permanent alienations of land.

The high rate of Māori urbanisation, which accelerated after World War II coupled with increasing title fractionation, often made it difficult or economically unattractive for absentee Puhipuhi landowners to retain their remaining lands. Although it has not been possible to test this hypothesis, it seems at least possible that rural depopulation may have contributed to the substantial public works takings of Puhipuhi lands in this period. When lands were lying unoccupied and neglected, they may have seemed more appropriate for soil conservation, flood control and other public purposes than actively farmed lands in the vicinity.

In the face of numerous political and economic pressures to convert their landholdings into cash, a minority of Puhipuhi shareholders resisted selling their interests and continued battling to meet rate demands and other challenges, generally under less favourable terms than those faced by their non-Māori neighbours. By the time more equitable policies and social attitudes towards Māori land were introduced in the late twentieth century, only a vestige of Eru Nehua's original papakainga blocks remained in Māori hands.

Chapter 10 – Conclusion

10.1 Background summary

Puhipuhi incorporates the rural settlement of the same name situated 25 km north of Whangarei and 20 km southeast of Kawakawa. It lies largely to the east of State Highway 1, which adjoins it at Whakapara. It is an entirely inland region, and the Whangaruru Harbour lies some 15 km to the east at its closest point. Puhipuhi's northwest corner adjoins Ruapekapeka, the site of a famous 1845-46 battle during the Northern Wars. Before systematic timber milling began on the northern part of Puhipuhi in the 1890s the area was largely covered in dense kauri and other forest, and known for its resources of birds, eels and berries. Ngāti Hau, Ngāti Hine and Ngāti Wai and its associated iwi/hapū of Ngāti Te Rā and Ngāti Manu all have connections to the block.

By 1861 Eru Nehua, the son of a Ngāti Rahiri woman and an American whaler, and his wife Te Tawaka, a grand-niece of Tamati Waka Nene, were living at Taharoa, at Puhipuhi's southern end with the permission and support of Ngāti Hau. Over the following decades, Nehua and his wife and whānau developed extensive grazing lands at Puhipuhi's southern end.

10.2 Answers to commission questions

a) How were title and the initial subdivision of the Puhipuhi block determined? How did the Native Land Court operate in the Puhipuhi block and with what outcomes for those with interests in the block? To what extent did this process and outcomes reflect the preferences of local communities with interests in the block? How did the Crown respond to the extensive and prolonged disputes over the Puhipuhi title and subdivision and what were the outcomes for the owners, including the ability of owners to continue to manage their land collectively?

Between 1862 and 1878, the Crown purchased most of the lands surrounding what became the Puhipuhi block. Several iwi/hapū groups claiming interests in Puhipuhi also took part in negotiating these purchases with the Crown, including some Ngāti Hau chiefs. European settlers later came to live on the purchased lands, and general

stores and other European-owned businesses began operating in the region. From about 1870 Māori from several iwi/hapū began systematically digging for gum at Puhipuhi and selling it to Europeans. This provoked rivalry between the different iwi/hapū claiming rights to the lands. Their chiefs, including of Ngāti Hau, held a number of hui and sought mediation with European officials in an attempt to avoid violence and develop interim agreements over payment of royalties for the gum until legally recognised title could be determined.

In 1871-72 three leading figures of Ngāti Hau applied to the Native Land Court to have title determined to all the remaining Māori lands in the Puhipuhi area. These extended from the southern lands where they were settled and farming and into the northern kauri forests now subject to gum digging by a number of hapū. Ngāti Hau commissioned a survey of the boundary of what would become the Puhipuhi block in support of this application. Other groups claiming rights to some of the lands protested against the survey but refrained from any violent challenges to its completion. However the application for title investigation drew these parties into the Native Land Court, to defend their interests in the land.

By the time of the Native Land Court's first (1873) title investigation hearing into Puhipuhi, the principal claimants to the land were already vehemently contesting each other's claims, in terms that threatened to erupt into violence. Inter-tribal debates over rights to the land and its resources were complicated and probably changed, and in some instances replaced, by strategies, such as the Puhipuhi boundary survey, aimed not only at the competing claimants to those rights, but also at the Crown and its representatives. This had the potential to undermine earlier systems of conflict resolution between iwi/hapū, and it appeared to have challenged the overarching authority of hereditary and traditional leaders such as Maihi Paraone Kawiti (Ngāti Hine). The boundary survey resulted in a greatly increased level of hostility and dissension between the several iwi/hapū claiming rights to Puhipuhi.

In 1873, soon after the boundary survey was completed, the rival claims to Puhipuhi by Ngāti Hau and other iwi/hapū were tested in the Native Land Court, at a hearing in Kawakawa presided over by Judge F. E. Maning. The minutes for Maning's court have not survived, but the evidence available indicates that Ngāti Hau claimed all of

the Puhipuhi block by ancestry. When they refused to allow the Ngāti Hine chief Maihi Paraone Kawiti onto their application, he responded with a counter-claim for the whole of Puhipuhi by conquest. Ngāti Wai, Ngāti Manu and Ngāti te Rā, represented by Hoterene Tawatawa, claimed the northern portion of the lands by ancestry.

Judge Maning delivered no formal judgment at the conclusion of the 1873 title investigation hearing. Surviving evidence indicates that he apparently decided that the three rival parties all had rights in the block and that it should be divided three ways. He also later explained that he recognised Ngāti Hau should have rights in the southern part, of a greater value than the others. However, Maning was much less clear about how the division into three parts might be made, creating conflicting impressions over how the internal boundaries might be drawn and shares within them allocated. He suggested he was considering a roughly three-way split for example, but also apparently proposed a split between Ngāti Hau of 14,000 acres, Ngāti Hine 6,000 and Ngāti Wai, Ngāti Manu and Ngāti Te Rā the remaining 5,000 acres. He created further confusion by proposing to some chiefs that differences could be modified by allocating shares in each other's subdivisions. Maning sought chiefly agreement on his proposals but only appears to have succeeded in creating conflicting understandings and further fixed and bitter positions between two of the principal chiefs, Nehua and Kawiti.

A second hearing, also under Judge Maning, in 1875, made no further progress, apparently because Maning still remained concerned that any attempt to impose a final division might provoke conflict from one or other of the main parties. Again, no minutes for this hearing have been located. Maning blamed his inability to make a judgement entirely on the disagreement between Nehua and Kawiti. He made no admission that this disagreement might owe something to his own post-hearing actions, which produced radically different proposals for partitioning the land.

Between 1875 and 1882 the chiefs made a number of determined efforts to have the matter settled legally and peacefully. Ngāti Hau, for example, made efforts to secure further Native Land Court hearings. The Native Land Court hearings of 1873 and 1875 left the main Puhipuhi claimants in a state of confusion and bitter hostility,

sometimes escalating to threats of physical violence. For the next several years, however, Crown officials made only occasional and somewhat desultory efforts to help resolve this conflict. Nor did the Crown agree, despite repeated applications from Ngāti Hau and other Puhipuhi claimants, to grant a further Native Land Court hearing to determine title to the lands for seven years after Judge Maning's second hearing.

Other Crown officials actively participated in efforts to reach agreement between the parties. Their involvement was initiated by the Māori disputants themselves, rather than by the Crown. Between 1876 and 1878, these included District Officer William Webster, Native Minister Dr Daniel Pollen, Resident Magistrate E. M. Williams, and Member of the House of Representatives for Northern Maori Wiremu Katene. None of these efforts were successful and nor did the government act on the urging of both Williams and Katene to hold an independent inquiry into the Puhipuhi claims.

The reasons behind this inaction may include the Crown's focus, in the mid-1870s, on Māori land purchases elsewhere in the north. It is also possible that following Maning's two hearings, the questions of legal title to Puhipuhi appeared too complex and hotly contested to be resolved by a further hearing at that time. However, neither of these reasons appeared adequate to officials such as Williams and the MP Katene, who considered that more Crown action over Puhipuhi was urgently required. Both men were clearly of the view that the issues which divided the main Puhipuhi claimants were not likely to be resolved at a local level, and that the government should therefore investigate them through a process such as an independent inquiry. The Crown's failure to take such action was avoidable, and probably contributed substantially to the ill-feeling that persisted and worsened between Kawiti and Nehua particularly. However, after 1878 when the prospect of a Crown purchase seemed desirable, and then inevitable, the Crown appeared much more willing than previously to engage with the rival claimants to the land.

b) How did the protection mechanisms provided by the Crown operate in respect of the titling, alienation and administration of land in the Puhipuhi block? To what extent were Māori who wished to retain ownership and control of their land able to utilise the protections for their purposes, such as for reserves, wāhi tapu or commercial development? How did the Crown monitor the implementation of

protections and respond to any difficulties with them raised by owners? What were the outcomes for Puhipuhi owners?

By the mid-1870s private interests were attempting to negotiate purchases in the Puhipuhi lands, primarily to gain access to its valuable kauri timber. By 1878 the Crown was also interested in acquiring the lands and timber. The Native Minister approved a Crown purchase to be undertaken by land purchase agent Charles Nelson. This was to begin before the title to Puhipuhi had been fully resolved or awarded. Nelson took Maning's earlier indications as a guide to who he should deal with, including Maning's apparent preference to favour the Ngāti Hau claim in some way. Almost immediately, Nelson claimed to have made advance payments on the block to two of the three principal chiefs identified by Maning; Nehua (Ngāti Hau) and Tawatawa (Ngāti Wai). He followed this up shortly afterwards with a payment advance to the third principal chief, Kawiti (Ngāti Hine). All of the chiefs appear to have become resigned by this time to the possibility that accepting purchase advances would be the only certain way of having their rights recognised. On the basis of the advances paid, the Crown issued a proclamation prohibiting private buyers in the lands.

The Crown, through Nelson, apparently accepted Nehua's insistence that any purchase from him would need to exclude the southern part of the lands, which he and his whānau had occupied and farmed since about 1861. Effectively Nehua was selling his interests in the northern forest lands, the subject of the bitterest disputes. No other exclusions from the purchase appear to have been considered.

In late 1882 the three main groups of claimants to Puhipuhi jointly sent a letter to Native Minister John Bryce repudiating their decision to sell their interests in Puhipuhi to the Crown and attempting to repay their advances. This was at least partly motivated by a desire for their newly established Native Committee to manage the lands. They were also at the time still under pressure from private buyers seeking to have the Crown monopoly removed and claiming to offer much higher purchase prices. Native Minister Bryce refused to accede to the request to repudiate the advances, and insisted the Crown purchase would proceed.

Although a number of applications had been made since 1875 for a new hearing or to have the Maning decision completed, the Native Land Court only set a date for a new hearing to finally resolve the Puhipuhi title in 1882. The 1882 hearing took place, again in Kawakawa, under Judge Symonds. By that time the Crown was very interested in the outcome of the hearing as a result of its claimed purchase and acted to protect its purchase interests.

After hearing considerably more evidence than Maning, Judge Symonds awarded the majority of the Puhipuhi lands to Ngāti Manu, Ngāti Te Ra and Ngāti Wai collectively, the remainder to Ngāti Hau, and none to Ngāti Hine. This award not only upset long-held assumptions about who would be considered the principal parties, but also Crown assumptions in making the purchase advances. As had been feared earlier, the opposing sides threatened armed conflict and, two months after the 1882 hearing, about 100 Ngāti Hau of Puhipuhi confronted a larger party of Ngāti Wai at Ruapekapeka, over the northwestern boundary of the Puhipuhi block. The standoff resulted in the destruction of clearings and burned fences but while both parties were armed, no bloodshed resulted and the affray appears to have been tribal posturing rather than serious conflict.

The 1882 hearing also provoked a flurry of applications for a rehearing. The rehearing was granted, and held at Kawakawa in May 1883 under judges Loughlin O'Brien and William Mair. The rehearing changed the awards again. This time 2,000 acres in the north of Puhipuhi was awarded to Ngāti Wai and its affiliate iwi/hapū, 3,000 acres in the middle to Ngāti Hine, and the remaining 20,000 acres (approx.) to Ngāti Hau. By the time this decision was made, the chiefs appeared to recognise that their only chance to receive the balance of their payments was to accept a formal determination of the court that at least recognised they had an interest. The Court made awards for Puhipuhi No 1, 4 and 5 of some 20,000 acres in total for Ngāti Hau. Puhipuhi No. 2 of some 3000 acres was awarded to Ngāti Hine and Puhipuhi No. 3 of some 2000 acres to Ngāti Wai. The chiefs supplied lists of names of owners to appear on the title deeds as required, and the deeds were issued in late May 1883.

There are indications that Crown officials intervened in the Court process to ensure that all those who had been paid advances were included on the titles to the blocks.

Greenway, clerk of the court, noted the absence of the Whangaruru-based Hoterene Tawatawa's name from this list, although Tawatawa had accepted advances for Puhipuhi on behalf of Ngāti Wai. Greenway then reported to the Native Land Purchase Department that he had made an application to the Court to have Tawatawa's name admitted. This was granted. The resulting Register of Owners includes Tawatawa's name.

The Crown moved swiftly to complete its purchase of Puhipuhi. The advances it had paid were calculated on the basis of a rate of six shillings per acre. However, assistant surveyor-general S. Percy Smith had conservatively valued the lands at a much higher rate, equivalent to almost 30 shillings per acre including the value of the kauri timber. As well, agents for private buyers had been attempting to buy the Puhipuhi lands at prices much higher than six shillings per acre, and the owners were only prevented from accepting those offers by the Crown's pre-emption, conferred by proclamation.

After rapid and intense negotiations with the owners, all of Puhipuhi apart from the 5,400 acres on which Ngāti Hau had placed restrictions was purchased by the Crown within a few weeks of the final title determination hearing. The Crown purchased the 14,490-acre Puhipuhi No.1 from Whatarau Ruku, Eru Nehua and four others of Ngāti Hau on 5 September 1883 for £8,574 (approx. 12 shillings per acre). It purchased the 3,000-acre Puhipuhi No. 2 from Maihi Kawiti and seven others of Ngāti Hine on 13 September 1883, for £1,800 (12 shillings per acre), and the 2,000-acre Puhipuhi No. 3 from Maraea Motu and Haruwene Hikuwai of Ngāti Wai on the same day, for £1,000 (10 shillings per acre). Those sums excluded the amount of advance payments already made to individual owners of each of the blocks – Eru Nehua, Maihi Paraone Kawiti and Hoterene Tawatawa respectively.

The three groups identified by the 1883 Native Land Court as Puhipuhi's owners probably accepted the Crown's purchase price for a variety of reasons, including:

- the advances already paid, although these established, for Nehua and Tawatawa at least, an exceptionally low price for starting purchase negotiations. These advances also bound the three groups of titleholders to

complete the Crown purchase, by excluding private buyers from making competing offers;

- a sense of exhaustion at the long inter-hapū conflict, and/or the Crown failure to help resolve the matter, and a desire to bring it to a speedy end, even if this meant accepting a disappointing sum;
- Ngāti Hau's knowledge that the Crown promised to repay its original boundary survey costs and that Ngāti Hau continued to own a 200-acre reserve within Puhipuhi No. 1 and all of Puhipuhi No. 4 and 5, their papakainga, and;
- the indebtedness of some owners, who owed money to Kawakawa storekeepers and had become dependent on store-bought goods.

The Ngāti Hau claimants withheld from sale some 5,000 acres of the 12,000 awarded to them in 1883. The title deeds for those areas, legally identified as Puhipuhi 4 and 5, were endorsed with the memorial that they would remain permanently inalienable. There are a number of other indications in the archival record that Eru Nehua intended that those reserved areas of Puhipuhi would remain in Ngāti Hau ownership indefinitely.

The Crown's land purchase agents, the Native Land Court and other Crown officials and representatives were all aware of these intentions, and for some years after the 1883 award of title to Ngāti Hau, respected them. Land purchase agents made no attempt to include the reserved lands in their Crown purchases. Immediately following the 1883 Native Land Court hearing, the court added memorials against alienation to the title deeds for Puhipuhi 4 and 5. However, in 1894 Eru Nehua's daughter Maraea Kake and co-owners of lands in Puhipuhi 4 offered to sell their interests in those lands to the Crown in order to pay pressing legal debts. This offer was seriously considered by the Crown, and in 1895 Puhipuhi 4 was gazetted as subject to 'negotiations for acquisition of Native Lands.'[1209] This suggests that the restrictions on alienation could be relatively easily removed where a purchase was in prospect. There is no indication in the available evidence that Crown officials considered the fact that this land was the remnants of the owners' lands at Puhipuhi

[1209] *NZ Gazette* 18 July 1895, No. 54, p. 1100

and that it had been seen by Nehua and others as a 'reserve' of land that they wanted to protect.

The purchase did not proceed beyond that point, possibly because the landowners asked a higher price than the Crown was prepared to pay, and/or because the Crown largely halted new land purchases from 1899.

In the following decade new legislation such as that establishing the District Maori Land Boards was enacted, primarily to facilitate the sale and lease of so-called 'unused' Māori lands. Of particular significance was the Native Land Act 1909, which replaced earlier and much criticised protections against alienation with supposedly improved protections. Where the land was owned by ten owners or more (as was the case with Puhipuhi No. 4 and 5) alienation could only occur with the agreement of the assembled owners or with the prior consent of the local Māori Land Board.[1210] In 1907 the first formal lease, and in 1910 the first sale of lands within Puhipuhi 4 and 5 occurred, with the approval of the Tokerau District Maori Land Board. This opened the way for the great majority of both blocks to be alienated.

c) To what extent were Puhipuhi lands alienated from Māori ownership, what were the major forms of alienation and in what periods? To what extent were these alienations the result of fees or costs imposed on owners for determining or administering title, or the result of compulsory processes such as public works takings, rates demands, takings as a result of noxious weeds or compulsory vesting? How did the Crown monitor alienations in the block to ensure communities linked to Puhipuhi retained sufficient land for their needs? What were the outcomes for Puhipuhi owners and their communities?

Within weeks of the 1883 Crown purchase, about 25 acres of Puhipuhi 4 and 5 were taken under public works legislation to complete the all-weather Great North Road (later State Highway 1) between Auckland's North Shore and Okaihau. The route passed through land farmed by Eru Nehua and his whānau, and he objected to the

[1210] Hearn, 2006, #A3, p. 431

land taking on the grounds that the planned road would disrupt his farming activities. These objections were over-ruled. No compensation was paid.

In the 1890s the economic exploitation of the Crown-owned portion of Puhipuhi, which had been a primary driver in the Crown's decision to purchase the majority of Puhipuhi, began in earnest. In 1897-88 it acquired some 52 acres of land in Puhipuhi 4 and 5 to extend the main trunk railway from Kamo to Whakapara. Modest compensation was paid for some of these takings, although less than the owners sought through the Native Land Court.

The completion of the state rail link to Whakapara, and later to Waiotū, finally enabled Puhipuhi's kauri to be profitably logged and milled, with the sawn timber cheaply transported to the port of Whāngarei. Logging gangs were soon at work in the forest, supplying several timber mills established around its perimeter. Logging and milling were large-scale, capital-intensive industries, and Māori only participated in them as wage-workers. The introduction of logging further limited Māori access to the forest for gumdigging.

In 1890 deposits of silver were discovered on the Crown-owned portion of Puhipuhi, and a short-lived 'silver rush' broke out. Local Māori, including the Nehua whānau, participated in this rush and owned shares in at least two of the mines (none of the silver mines proved economically productive). The appearance in the State Forest of large numbers of miners, and infrastructure to support them such as a hotel, post office and butcher's shop, prompted the construction of a formed road to the mining site. This passed through Puhipuhi 4 and 5, and 18 acres were acquired under public works legislation. Compensation was paid, although less than the owners requested.

The arrival in the Puhipuhi district of the timber industry, the silver rush and the railway, all within a few years, greatly increased the local population. Eru Nehua built two boarding houses to accommodate travellers, and his people gifted small areas of land within Puhipuhi 5 for a school and church. Between 1890 and 1910 the wider Nehua whānau continued to farm much of Puhipuhi 5, and were among the largest sheep farmers in the Whangarei County. From about 1906 they converted to small-scale dairy farming. The whānau also owned and farmed lands outside Puhipuhi itself,

such as the 200-acre Huruiki block, to the east of Puhipuhi in the hills above Helena Bay. In this period Nehua was able to exert his mana to influence other members of Ngāti Hau to follow his example by retaining their lands from sale or lease.

By 1985 more than 90 percent of the total area of Puhipuhi 4 and 5 was alienated by sale from Māori ownership the majority of this by Crown purchase in 1883. Several small areas were gifted between 1883 and 1900, in the form of lands gifted by Ngāti Hau to establish new community facilities – a school and a church. It is very unlikely that those facilities would have been provided to the Puhipuhi community without such giftings. The subsequent legal and other management of the gifted lands by the agencies to which they had been entrusted was, in general, in keeping with the spirit of the original gifts, and today those lands are among the areas of Puhipuhi still in Māori tribal ownership.

The Stout-Ngata Commission included Puhipuhi 4 and 5 in its investigations during 1907-08, and appears to have followed the wishes of the landowners in recommending the portions of those lands which should be leased for settlement or reserved for Māori occupation. However, a number of areas that the commissioners recommendated be set aside for Māori occupation were alienated by sale within a decade of their inquiry, and portions that they intended should only be leased were also sold by 1920. This suggests that the Crown did not follow the recommendations of the commission, and land that the owners of Puhipuhi wished to retain was permanently lost to them.

By 1912 nearly all the native timber in the Puhipuhi State Forest had been logged, and the cleared areas were being sold for settler farms. The area's population reduced as timber- and mill workers moved elsewhere for work. Some logging companies then hoped to cut timber in the forested areas of Puhipuhi No. 4 and 5. This may have increased pressure on the Māori landowners to alienate their interests in those lands, despite the restrictions on alienation placed on their title deeds.

Until his death in 1914, Eru Nehua did not lease or sell any of his lands within Puhipuhi No. 4 and 5. He and other owners did, however, partition (legally designate

specific interests) in those blocks. Legislation was passed in the early twentieth century, such as that creating Maori Land Councils and Land Boards, to accelerate the process of freeing up 'idle and unproductive' Māori lands for settlement. The combined effect of these legislative and administrative changes, the increased costs of shifting from sheep-farming to dairying, dwindling income from other sources such as gumdigging and the timber industry, and the death of Eru Nehua in 1914, may have contributed to decisions to begin alienating parts of Puhipuhi No. 4 and 5.

During the early twentieth century, the Tokerau District Maori Land Board monitored applications to sell or lease lands within Puhipuhi No. 4 and 5, and its obligations included ensuring that the landowners retained enough land to provide for their needs. Archival evidence indicates that the Board sometimes failed to check the very minimal information supplied to meet this requirement.

The Tokerau District Maori Land Board was required to approve all leases and sales of Māori land within the district. The first lease of land within Puhipuhi No. 4 and 5 began in 1907, with a further eight by 1920. The first sale occurred in 1910, with a further 28 by 1926, totalling some 3,200 acres. From the 1920s, sales and leases slowed or halted for several decades, as the Native Affairs (and later Maori Affairs) Department pursued a policy of land development schemes for Māori-owned land.
Most of the area alienated after 1883 was alienated through sales and leasing. During the early 1930s, some Puhipuhi landowners owed substantial sums in rates arrears, and this situation may have contributed to their decision to a sell or lease their lands.
Leasing resumed from the 1950s, after the first batch of leases began to expire, and a further 17 leases were taken out by 1969. Sales of land resumed from 1944, and 13 took place by 1969, totaling some 930 acres.

Significant areas of Puhipuhi land were alienated in the form of public works takings for roading, a railway, a gravel pit and flood control. On several occasions the landowners objected to either the takings themselves, or the compensation offered (if any). The archival record indicates that the owners rarely received an outcome to those objections that they would have regarded as satisfactory. Instead, their lands were sometimes taken compulsorily under the public works legislation then in force,

and any compensation paid, sometimes as a result of court proceedings, was generally significantly less than the owners claimed.

Māori actively and willingly participated in at least one of those public works projects, the construction of the Airline Road. However, on at least one occasion more land was taken for a railway than was required for that purpose, and the remaining land was retained and used by the Crown. Overall, public works takings appear to have disadvantaged, as well as advantaged, Puhipuhi Māori on several occasions. At times the public works legislation then in force enabled the Crown to treat Māori landowners less equitably than owners of equivalent general land.

The reasons why Puhipuhi landowners chose, or were obliged, to lease or sell their lands over this period are not always easy to determine from the available evidence. However, it is apparent that small-scale dairying on this former kauri forest land was never lucrative and at times, such as during the Depression of the early 1930s, and after the 1950s, generally uneconomic. These pressures on land use were compounded by factors common to multiply-owned Māori lands in other areas, such as the difficulty of raising development finance, paying rates, and managing small and sometimes fragmented areas of land. In the post-World War II period, Puhipuhi landowners participated in the general rapid urbanisation of Māori. Life in larger centres, distant from tribal lands, created further incentives to alienate those lands.

A number of areas of land within Puhipuhi No. 4 and 5, totaling around 300 acres, were taken under public works legislation during the twentieth century, mostly for roading, although also for stream diversion and flood control. In 1913 five acres of land within Puhipuhi 5C block was gifted for the Whakapara Marae. In 1975 the bush-covered 16-acre 5C10G block was gifted for a scenic reserve. In the present day about 470 acres, or about nine percent of the total area, of the original Puhipuhi 4 and 5 remain as Māori land.

d) To what extent was the Crown, as well as any delegated territorial or special purpose authorities, involved in any such alienation and through what practices and processes, such as the use of monopoly purchase powers? When purchasing, what prices were paid and how did they compare with any valuations, on-selling returns

and prices paid in nearby blocks, where known? To what extent did the Crown factor in the value of any timber, minerals or other resources on the lands purchased? How did the Crown respond to any protest or complaints regarding the actions of Crown purchase agents and with what outcomes for owners?

The Crown employed and rigorously defended its monopoly power of pre-emption to purchase 80 percent of the Puhipuhi lands in 1883. It warned prospective private purchasers of the legal consequences of breaching its monopoly power, and rejected approaches from landowners to negotiate with those private purchasers rather the Crown.

During 1878-79, after the initial inconclusive title investigation hearings but before the Native Land Court had issued titles for Puhipuhi, Crown land purchase agents made advance payments to the three main claimants to the Puhipuhi block, as the first decisive step towards Crown purchase. By paying advances to selected claimants, the Crown prompted the claimants to move beyond arguing with each other over ownership rights to the land, and to begin bargaining with the Crown over payment for parts of it.

However, by paying advances before title to the block was established, and therefore without knowing what relative portions of the land the key claimants held, the agents were pre-empting the findings of the Native Land Court, and possibly influencing those eventual findings. They were also setting a base price for the later outright purchase of the land, and eliminating competition from private buyers. All three claimants who accepted advances later tried to repudiate and return them, without success. The balance of evidence indicates that, although the claimants to ownership of Puhipuhi were willing to sell at least part of their claimed interests to the Crown, the actions of Crown purchase agents, and in particular the payment of advances, unduly restricted the claimants' outcomes from such a sale.

As to whether the appropriate owners were selected for the payment of pre-title determination advances, customary rights to Puhipuhi had been twice considered by the Native Land Court and although those hearings were inconclusive, the same

principal claimants appeared in them on each occasion. Those claimants were then offered, and accepted, advances for their Puhipuhi interests. The Crown may therefore have felt reasonably certain as to the principal owners of Puhipuhi, however, it could have no certainty about the proportionate interests each of these owners, or group of owners, held in the land. So the Crown had no reliable basis for deciding the amount of advance each principal owner should receive, relative to the others.

That, certainly, was the view given some years later, in 1891, by a witness to the Rees-Carroll Native Land Laws Commission. The Taumarere teacher Mary Tautari described the Native Land Court system as unfair, and said that a rūnanga-based system would give better results. Mrs Tautari named the Native Land Court hearing into Puhipuhi (presumably the final, 1883, hearing) as an example of a hearing she had witnessed at which the land was awarded to the wrong owners because of the advance payment system:

> It was only because the Government had advanced money on that land to certain people that the land actually passed to the people who received that money; and yet they had no right to it. It looked very like as if the Government [presumably, the Native Land Court is meant here] favoured the people who had received the money.[1211]

By the time of the 1883 Native Land Court hearing on Puhipuhi, agents for private buyers were enthusiastically attempting to acquire parts of the land, and offering sums far in excess of those indicated by the Crown's advance payments. It is clear from the archival evidence that the Crown was also eager to complete purchase of the land and was well aware that, through paying advances, it stood to acquire the Puhipuhi forest for well below its current market value.

As the Crown negotiated with the landowners for a final purchase price, it was aware that the market value of the land was very much higher than its best offers. The year before the Crown purchase Greenway had advised Gill that 'The Kauri forest alone on Puhipuhi No.1 is at a low estimate worth £30,000.'[1212] The Crown's assistant surveyor-general, S. Percy Smith's, subsequent valuation, which he described as conservative, was higher still. Gill stressed that this valuation should be kept

[1211] Minutes of evidence, Native Land Laws Commission, 12 May 1891, *AJHR* G1, Sess. II, pp. 75-76
[1212] J. Greenway to R. Gill, 29 April 1882, AECZ 18714, MA-MLP1 16h, 1884/21, ANZ Wgtn

confidential, an indication of its commercial sensitivity.[1213] Kawiti and the other two main landowners all claimed to have been offered much higher prices for their land than the Crown was prepared to pay.[1214]

The Crown's only valuation of the land plus timber, by S.P. Smith, was over three times what the Crown finally paid. Even given the costs the Crown would later incur for rail and road infrastructure to enable the timber to be extracted, this suggests that the Crown benefitted financially from the sale at the expense of Māori, especially since the Crown also received income from timber licences and the eventual sale of the cleared land to settlers.

Within a few months of the 1883 hearing, after further negotiations by the Crown, purchase was completed with all three groups of claimants. The prices paid were based on factors including the earlier advance payments, the claimants' financial circumstances, the threat of private competition, and the quality and extent of the timber resource. On balance, however, the Crown did not bargain in good faith with the landowners. It knowingly paid them far less for their land and timber than its own assistant surveyor general consider it was worth.

Although they disputed the price, two of the three groups of claimants willingly sold their entire interests in Puhipuhi to the Crown. That willingness may reflect the long and bitter history of inter-iwi conflict over rights to the block, and the claimants' desire to conclude the dispute by disposing of their interests. If so, then the Crown's unwillingness to intervene earlier and more actively to help resolve the dispute suggests that the Crown was primarily concerned to acquire land for development, if necessary at the cost of peace and goodwill between the iwi/hapū.

e) To what extent were Puhipuhi lands remaining in Māori ownership subject to Crown policies and practices intended to overcome title fragmentation and other difficulties identified in the form of Māori title provided? This includes title reform such as amalgamation and consolidation and institutional measures such as block

[1213] R.J. Gill to S. Percy Smith, memoranda, 5 June 1883, AECZ 18714, MA-MLP1 16h, 1884/21, ANZ Wgtn
[1214] M.P. Kawiti to J. Bryce, 9 July 1883, AECZ 18714, MA-MLP1 16h, 1884/21, ANZ Wgtn

committees, trusts and incorporations, and vesting in Māori land boards. To what extent were these reforms and measures implemented by compulsion in the Puhipuhi block, such as by compulsory vesting, conversion and Europeanisation of Māori land interests? To what extent did the Crown obtain consent from Puhipuhi block owners before implementing such measures? What were the outcomes for Puhipuhi owners and their ability to manage their lands, including for the commercial utilisation of their land, such as for timber milling leases?

Economic pressure on Māori to dig for gum in the forest in the northern portion of Puhipuhi purchased by the Crown in 1883 harmed the health of their communities, and compounded the fire risk. Only the fire risk appeared to concern the Crown, which introduced legislation to limit access to the forest. This legislation may have helped to a limited extent to protect the forest from fire, but was inadequate for the purpose, as evidenced by the devastating fire of 1887-88. The Crown failed to introduce any other measures to compensate Māori for the loss of income from their gumdigging activities.

The silver rush on the Crown-owned Puhipuhi lands in the 1890s was exceptional in that it took place within a uniquely valuable State Forest, and one which had suffered devastating bushfires. In attempting to balance the competing interests of gumdiggers, timber millers and miners to this Crown-owned resource, the government chose to give priority to mining, since it showed the greatest promise of large and swift financial returns.

Logging and milling activity at Puhipuhi overlapped with the silver boom and outlasted it by some 15 years, until ended by the total removal of the forest cover. A consensus of expert opinion shows that the income Māori earned from working in the bush or the nearby sawmills represented only a small fraction of the potential economic value of the timber resource they had recently sold to the Crown.

Lasting results of the logging and milling activity at Puhipuhi include the school and church built on land donated by Eru Nehua. The school's land and buildings were later returned to Nehua's descendants, an example of careful and appropriate Crown

action over gifted land. The removal, over less than 20 years, of Puhipuhi's kauri forest resulted in further possible longterm outcomes, such as soil erosion and water quality deterioration on adjacent lands such as the former Puhipuhi 4 and 5 blocks.

The manner in which the Puhipuhi forest was logged and milled meant that, by both contemporary and historical estimates, only about ten percent of the available kauri timber eventually reached the market. Some existing legislative provisions, such as the 1885 State Forests Act, were designed to reduce or prevent such destructive milling practices, but clearly failed to do so in the case of Puhipuhi. Had the forest been milled in a more sustainable manner, it seems possible that the owners of Puhipuhi 4 and 5 may have faced less economic pressure to alienate their land in the early twentieth century.

From early in the twentieth century, a significant loss of ownership and control of lands within Puhipuhi 4 and 5 became apparent, in the form of successive partitions, followed by vesting of lands with Crown agencies such as the Tokerau District Maori Land Board, and alienations by sale and lease. A wave of these alienations took place from about 1910, and may have coincided with the decline of Puhipuhi's kauri timber resources, which were by then almost exhausted. Timber company owners may therefore have turned to the stands of kahikatea on Puhipuhi 4 and 5 in order to sustain their operations. Some Māori owners of those blocks, many of whom had by then partitioned out individual shares within the original blocks, may in turn have hoped to maintain the employment and other economic opportunities provided by the local timber industry by making their own forest resources available for milling. The available documentation does not make this connection explicitly, but the timing of the upsurge of alienations appears significant.

f) What kinds of Crown assistance were available to Puhipuhi owners to manage and utilise their lands as they wished and to what extent were Puhipuhi owners able to take advantage of it? To what extent and on what basis were Crown agencies such as the Tokerau Māori Land Council/Board, the Department of Māori Affairs and the Māori Trustee involved in the development and administration of Puhipuhi land? To what extent did these agencies provide technical and financial assistance to Puhipuhi

owners, either directly or through state-run initiatives such as land development schemes? What was their relationship with the Māori owners? What kinds of obstacle, if any, did Puhipuhi owners experience in obtaining such assistance and how did the Crown respond to any difficulties raised by owners? What were the outcomes for owners, including from timber milling and mercury mining activity and through the return of any Puhipuhi development scheme lands to their Māori owners?

Certain legislation in force in this period was designed to ensure that Māori landowners retained enough land in their possession to provide for their ongoing economic support. Those protections appear to have been either insufficient or inadequately enforced, and failed to prevent the steady diminution of the Ngāti Hau tribal estate, and the transformation of some Puhipuhi landowners from relatively wealthy and successful farmers at the beginning of the century to subsistence dairy farmers struggling to maintain rates and mortgage payments by the late 1920s.

That economic transformation is likely to have involved a multitude of factors, including imprudence by landowners themselves, who may have sold or leased lands in the mistaken belief that they retained sufficient property to sustain themselves in the future. However, the pattern of alienations, so far as it can be determined from the available documentation, suggests that a significant proportion of those alienations either granted or initiated by administrative bodies such as the Tokerau District Maori Land Board favoured the interests of settlers and other lessees and purchasers over those of the landowners.

In numerous written and oral statements, Eru Nehua indicated his opposition to selling land in the areas that became Puhipuhi 4 and 5. Later, his son Hone Nehua, who inherited his father's mantle as the dominant Māori farmer in the Puhipuhi area, also resisted selling any of the land he inherited from his forebears. In the late 1920s Hone Nehua fell into debt and faced foreclosure by the State Advances Corporation which held a mortgage over his farm. His financial difficulties were compounded by the State Advances Corporation which wrongly and unnecessarily extended his mortgage to pay overdue rates. The Tokerau District Maori Land Board resolved these difficulties by partitioning his farm into smaller blocks, one of which was sold after

Hone Nehua's death. This is an example of title fragmentation, and eventual alienation, imposed on a landowner through financial mismanagement not entirely of his own making, resulting in an outcome which, presumably, he hoped to prevent.

It is evident that, especially from the late 1920s, the Crown gave some assistance to Puhipuhi landowners in the form of mortgage and rates relief, professional farming advice, and funding for fencing, fertiliser and other development expenses. That assistance was provided once the land was vested in the Tokerau District Maori Board or its successor agency, the Maori Trustee. Those agencies undoubtedly enabled some Puhipuhi landowners to survive economic stresses which might otherwise have forced them to dispose of some or all of their interests in their lands, and on several occasions landowners voluntarily surrendered their lands to the management of the Land Board, or attempted to do so.

However, the Land Board was also empowered to lease and/or sell lands vested in it, on behalf of the owners. The archival record contains examples of Land Board decisions of this kind which appear to have materially disadvantaged the landowners, and perhaps contributed towards the alienation of lands they would have wished to retain. Those examples include the Puhipuhi 4A4B block, leased for milling on terms which a Native Land Court enquiry found were not properly communicated to the owners, and which resulted in the lessee being 'made practically a present' of the timber on the block.[1215]

A succession of Crown agencies worked to manage and alleviate the circumstances of Northland's Māori landowners, while simultaneously addressing the demands of non-Māori to make use of lands often regarded as under-used, weed-infested and debt-laden. The records of institutions such as the Tokerau District Maori Land Board and the Native Department show that they made well-intentioned efforts to help Puhipuhi landowners manage high levels of debt and use their lands more productively so as to retain ownership of them. However, those efforts were frequently unsuccessful in the face of wider economic and political pressures resulting in longterm or permanent alienations of land.

[1215] Quoted in Hearn, 2006, Wai 1040, #A3, pp. 466-470

The high rate of Māori urbanisation, which accelerated after World War II, coupled with increasing title fractionation, often made it difficult or economically unattractive for absentee Puhipuhi landowners to retain their remaining lands. Although it has not been possible to test this hypothesis, it seems at least possible that rural depopulation may have contributed to the substantial public works takings of Puhipuhi lands in this period. When lands were lying unoccupied and neglected, they may have seemed more appropriate for soil conservation, flood control and other public purposes than actively farmed lands in the vicinity.

The record of partitions and vestings of Puhipuhi lands during the twentieth century reveals a gradual reduction in the proportion of Puhipuhi 4 and 5 remaining in Māori ownership. That trend was only halted, and to a limited extent reversed, after 1974 when several blocks that had been declared general (European) land under the Māori Affairs Amendment Act 1967 were reclassified as Māori land.

In the face of numerous political and economic pressures to convert their landholdings into cash, a minority of Puhipuhi shareholders resisted selling their interests and continued battling to meet rate demands and other challenges, generally under less favourable terms than those faced by their non-Māori neighbours. By the time more equitable policies and social attitudes towards Māori land were introduced in the late twentieth century, only a vestige of Eru Nehua's original papakainga blocks remained in Māori hands.

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Paparahi o Te Raki Inquiry

DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A of the second schedule to the Treaty of Waitangi Act 1975, the Tribunal commissions Mark Derby, historian, to prepare a local study of titling, alienation, land administration, and development issues concerning the Puhipuhi block, to the extent that they are not adequately covered by existing scholarship and by evidence on the Te Paparahi o Te Raki record of inquiry.

2. The report should address the following matters:

   a) How were title and the initial subdivision of the Puhipuhi block determined? How did the Native Land Court operate in the Puhipuhi block and with what outcomes for those with interests in the block? To what extent did this process and outcomes reflect the preferences of local communities with interests in the block? How did the Crown respond to the extensive and prolonged disputes over the Puhipuhi title and subdivision and what were the outcomes for the owners, including the ability of owners to continue to manage their land collectively?

   b) How did the protection mechanisms provided by the Crown operate in respect of the titling, alienation and administration of land in the Puhipuhi block? To what extent were Māori who wished to retain ownership and control of their land able to utilise the protections for their purposes, such as for reserves, wāhi tapu or commercial development? How did the Crown monitor the implementation of protections and respond to any difficulties with them raised by owners? What were the outcomes for Puhipuhi owners?

   c) To what extent were Puhipuhi lands alienated from Māori ownership, what were the major forms of alienation and in what periods? To what extent were these alienations the result of fees or costs imposed on owners for determining or administering title, or the result of compulsory processes such as public works takings, rates demands, takings as a result of noxious weeds or compulsory vesting? How did the Crown monitor alienations in the block to ensure communities linked to Puhipuhi retained sufficient land for their needs? What were the outcomes for Puhipuhi owners and their communities?

   d) To what extent was the Crown, as well as any delegated territorial or special purpose authorities, involved in any such alienation and through what practices and processes, such as the use of monopoly purchase powers? When purchasing, what prices were paid and how did they compare with any valuations, on-selling returns and prices paid in nearby blocks, where known? To what extent did the Crown factor in the value of any timber, minerals or other resources on the lands purchased? How did the Crown respond to any protest

or complaints regarding the actions of Crown purchase agents and with what outcomes for owners?

e) To what extent were Puhipuhi lands remaining in Māori ownership subject to Crown policies and practices intended to overcome title fragmentation and other difficulties identified in the form of Māori title provided? This includes title reform such as amalgamation and consolidation and institutional measures such as block committees, trusts and incorporations, and vesting in Māori land boards. To what extent were these reforms and measures implemented by compulsion in the Puhipuhi block, such as by compulsory vesting, conversion and Europeanisation of Māori land interests? To what extent did the Crown obtain consent from Puhipuhi block owners before implementing such measures? What were the outcomes for Puhipuhi owners and their ability to manage their lands, including for the commercial utilisation of their land, such as for timber milling leases?

f) What kinds of Crown assistance were available to Puhipuhi owners to manage and utilise their lands as they wished and to what extent were Puhipuhi owners able to take advantage of it? To what extent and on what basis were Crown agencies such as the Tokerau Māori Land Council/Board, the Department of Māori Affairs and the Māori Trustee involved in the development and administration of Puhipuhi land? To what extent did these agencies provide technical and financial assistance to Puhipuhi owners, either directly or through state-run initiatives such as land development schemes? What was their relationship with the Māori owners? What kinds of obstacle, if any, did Puhipuhi owners experience in obtaining such assistance and how did the Crown respond to any difficulties raised by owners? What were the outcomes for owners, including from timber milling and mercury mining activity and through the return of any Puhipuhi development scheme lands to their Māori owners?

3. The commission commenced on 25 August 2014. A complete draft of the report is to be submitted by 9 February 2014 and will be distributed to all parties.

4. The commission ends on 22 May 2014, at which time the report must be submitted for filing in unbound form, together with indexed copies of any supporting documents. An electronic copy of the report and supporting documents should also be provided in PDF file format. The report, the accompanying supporting papers and any subsequent evidential material based on it must be filed through the Registrar.

5. The report may be received as evidence and the author may be cross-examined on it.

6. The Registrar is to send copies of this direction to:

Mark Derby
Claimant counsel and unrepresented claimants in the Te Paparahi o Te Raki inquiry (Wai 1040)
Chief Historian, Waitangi Tribunal Unit
Principal Research Analyst, Waitangi Tribunal Unit
Manager – Research and Inquiry Facilitation Services, Waitangi Tribunal Unit
Inquiry Supervisor, Waitangi Tribunal Unit
Local Issues Research Programme Supervisor, Waitangi Tribunal Unit
Inquiry Facilitator(s), Waitangi Tribunal Unit
Solicitor-General, Crown Law Office
Director, Office of Treaty Settlements

Chief Executive, Crown Forestry Rental Trust
Chief Executive, Te Puni Kōkiri

DATED at Rotorua this 10th day of October 2014

Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL

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