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para paragraph
PC Privy Council
PEP Project Employment Programme
pt part
roi record of inquiry
s, ss section, sections (of an Act of Parliament)
sec section (of this report, a book, etc)
sess session
SGGSC Sir George Grey Special Collections
TEP Temporary Employment Programme
trans translator
UCS Urewera Consolidation Scheme
UDNR Urewera District Native Reserve
UDNRA Urewera District Native Reserve Act 1896
UNESCO United Nations Educational, Scientific, and Cultural Organisation
v and
vol volume
Wai Waitangi Tribunal claim

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 894 (Te Urewera) record of inquiry, a select copy of which is reproduced in appendix II. A full copy is available on request from the Waitangi Tribunal.
The memorial stone to Hirini Moururangi (right) in the grounds of Rangiahua Marae, Rangiahua, the major marae of Ngai Tamaterangi. Ngai Tamaterangi kaumatua Charles Cotter gave evidence about Moururangi, who was the brother of his great-grandmother Pukehuia Rangi. Moururangi was among those imprisoned on Wharekauri (the Chatham Islands) without trial, in the wake of attacks by Crown forces in the district. He joined Te Kooti while in detention there. He was a supporter of the Kingitanga, and had fought at Orakau. He passed away aged 85 in 1916. The tribute on his memorial reads: ‘He kaha ki te manaaki tangata Maori Pakeha otira i nga ahua katoa, he hapai hoki i te whakapono’.
6.1 Introduction

In this chapter, our focus shifts from war in central Te Urewera to the Crown’s military operations in the upper Wairoa and Waikaremoana regions a few years earlier. Fighting between Crown forces and Maori who lived in the district took place from December 1865 to April 1866. The hostilities were not directly related to those in the Bay of Plenty in the latter part of 1865. Rather, they stemmed from the siege of Waerenga a Hika pa in Turanga (Poverty Bay) by Crown forces in November 1865, in which some upper Wairoa Ngati Kahungunu participated. Crown forces arrived in the Wairoa district in December 1865. On 25 December, a major battle occurred at Omaruhakeke on the Wairoa river. This was followed by another battle on 12 January 1866 at Te Kopani, on the southern shore of Lake Waikaremoana. Further operations were conducted until April and May; many upper Wairoa people surrendered. During this period, a number of people were killed, and homes and property destroyed. The Crown’s conduct of hostilities has been a significant grievance for the Tuhoe, Ngati Ruapani and Ngati Kahungunu people who submitted claims on these issues.

The war in upper Wairoa and Waikaremoana of 1865–66 resulted in the loss of substantial tracts of customary land to the Crown over the next 10 years. It led first to an immediate ‘cession’ of land at Wairoa (the Kauhouroa block) in 1867 by those Ngati Kahungunu who had aligned with the Crown, then ultimately also to the alienation of more extensive lands beyond this block, which became known as the four southern blocks. We address the post-war history of these lands in the next chapter.

We must draw attention here to the limits of our jurisdiction in respect of the history of the hostilities of 1865 and 1866, and the alienation of land to the Crown (including the Kauhouroa block and the four southern blocks). As we discussed in chapter 1, the Waitangi Tribunal must fix the boundaries of its inquiry districts by lines on a map, which creates problems for those whose rights and interests straddle the lines. One result is that the Wairoa district (including upper or

1. In the nineteenth century, both the block and the stream after which it was named were usually spelt ‘Kauhauroa’. Today, both are spelt ‘Kauhouroa’, and most of the parties before us referred to it as such.
inland Wairoa) is divided between two Tribunal inquiry districts, Te Urewera and Wairoa. Ngati Kahungunu claims in this broad area fall largely, but not entirely, in the Wairoa inquiry district.

The boundary line as drawn meant that Ngati Kahungunu in general, and Ngai Tamaterangi in particular, were limited in the material that they could present to us. We do not have before us a comprehensive body of evidence dealing with their interactions with the Crown. Our vision of the action from their point of view is thus obscured. The same problem arises with assessing the prejudice that may have flowed beyond the time limit and beyond the lines on the map – for it goes without saying that prejudice is not confined within artificial boundaries.

The impact of this Tribunal’s inquiry boundary on the issues addressed in this chapter means that some of the hostilities of 1865 and 1866, notably those at Omaruhakeke, took place outside our inquiry district. We will not make findings on hostilities outside our district, but we cannot avoid some discussion of these matters. Although they occurred outside our boundary, they are vital to an understanding of the issues with which our inquiry is concerned. The research reports prepared by historians which are on our record of inquiry provided evidence on general Wairoa hostilities. It is true that we have not heard from the people of lower Wairoa, Mahia, or Nuhaka on the hostilities of 1865 and 1866; of this we are very conscious. But there is sufficient evidence before us to enable us to set the context for events which did occur within our boundary – and, where appropriate, to state our view of the significance of events outside it. We can and do make findings in relation to specific facts and events within the boundaries of time and place by which we are bound. With that in mind, we have heard and considered all that the various parties said. Our findings are now available to the Wairoa inquiry and to those parties.

With regard to the issues that we do consider, the Crown conceded the following points:

- Crown forces destroyed 10 settlements in the vicinity of Waikaremoana in January 1866, took horses and cattle, and destroyed cereal crops. Although this was ‘draconian’, it was ‘intended to undermine the logistical base of people in armed conflict with the Crown’ and took place in the context of ‘both sides attempting to undermine the other’s ability to maintain logistical necessities for their armed forces’.  

- ‘Maori forces were engaged in military activities on behalf of the Crown’, and ‘the execution of unarmed prisoners by Maori troops engaged in military activities on behalf of the Crown was a breach of the guarantee of the rights of British subjects under Article 3 of the Treaty of Waitangi’.

It will become evident in the course of this chapter that these concessions fell well short of reflecting the Crown’s culpability for and the brutality of the events discussed.

2. Crown counsel, closing submissions, June 2005 (doc N20), topic 4, p11
3. Ibid, p14
6.2 Issues for Tribunal Determination

The Tribunal must resolve two issues in order to decide whether the Crown's military operations in the upper Wairoa and Waikaremoana districts in 1865 and 1866 were in accordance with Treaty principles:

- Was the Crown justified in launching military operations into the upper Wairoa and Waikaremoana regions in December 1865? How were those operations conducted, and was the Crown justified in continuing them until April 1866?
- What was the impact of the Crown's military operations?

6.3 Key Facts

6.3.1 Conflict on the East Coast, 1865: the broader context

Hostilities in upper Wairoa and Waikaremoana from the end of 1865 were part of the broader conflict between the Crown and Maori in the North Island. Following war in Taranaki and Waikato, and occupation by Crown forces of extensive areas in both regions, the Pai Marire faith was carried by missionaries across the island to the Bay of Plenty, the East Coast, and Turanga. The message of deliverance offered by the faith was compromised by the killing of the Anglican missionary Carl Sylvius Volkner by Kereopa Te Rau at Opotiki in March 1865.

The arrival of Pai Marire missionaries on the East Coast soon afterwards was followed by sustained fighting among Ngati Porou, with those who opposed the new faith being assisted by forces supplied by the Crown. The fighting was over by mid-October 1865, and the Crown's focus shifted to Turanga where there had also been enthusiastic support for Pai Marire. There had, however, been peace in Turanga over the preceding months. Tensions mounted only at the end of October, when a small kawanatanga Ngati Porou force arrived there, in pursuit of some of their defeated whanaunga who had fled south.

In November 1865 there was a major confrontation between the people of Turanga and Crown forces (including a substantial Ngati Porou contingent). Those forces laid siege to Waerenga a Hika pa and rapidly secured its capitulation. During the siege, support was received from local reinforcements led by young Rongowhakaata chief Anaru Matete, and from two upper Wairoa chiefs, Te Waru Tamatea and Te Tuatini Tamaiongarangi (Huruhuru Tuatini). Most of the hundreds of people inside Waerenga a Hika surrendered to Crown forces, but a number of the defenders escaped from the back of the pa and made their way to the upper Wairoa. Among them were Te Waru, Tamaiongarangi, and their men returning home, and a group of perhaps 100 led by Anaru Matete.

Soon after these events, Major James Fraser, the officer commanding the local forces at Turanga, was instructed by the agent for the general government on the East Coast, Donald McLean, to ‘take the field’ against Turanga Maori who were stated to be ‘under the protection of the Hauhaus’ of Wairoa district. Fraser was...

appointed to command the militia at Wairoa from 4 December, and he arrived there on 20 December 1865.

6.3.2 Wairoa and Waikaremoana in 1865

The Maori of the Wairoa district in the 1860s numbered between 2,000 and 3,000. The most populous settlements were located towards the coast, by the lower Wairoa River, and on the coast itself. Maori settlement was ‘dense’ within the vicinity of the current town of Wairoa. The population of the upper Wairoa district (north of what is now Frasertown) numbered between 500 and 1,000. The Ngati Kahungunu peoples of the upper and lower Wairoa were descendants of Kahungunu’s marriage to Rongomaiwahine through their eldest son Kahukurau and his son Rakaipaaka and daughter Hinemanuhiri. They have been described as comprising ‘a number of distinct tribal groups, all with autonomous leaders’.

Ngati Ruapani had long been established in the Waikaremoana region. In the 1820s, they suffered heavy casualties in fighting with Tuhoe, and intermarried further with Tuhoe and with Ngati Kahungunu. Tuhoe also had an ancestral presence in the Waikaremoana region, and became more firmly established there as a result of the 1820s conflict and intermarriage (see chapter 2 for a more detailed discussion).

At this time, there was a fairly small number of Pakeha settlers in the Wairoa district. The first settlers at Mahia and the Wairoa River mouth were whalers. There were some 140 there in 1851; this number doubtless declined subsequently, as the industry declined. James Hamlin was the Church Missionary Society missionary there from 1844 to 1863. More settlers arrived by the late 1850s, hoping to run sheep on coastal land and the easily accessible parts of the river valley; Ms Gillingham states that there were at least ‘13 parties’ squatting on Maori land by 1864. Sections in the planned township of Clyde, however, had not yet been auctioned.

Wairoa, like other areas, was visited from 1859 on by Kingitanga representatives and Pai Marire missionaries, and rangatira there had debated how to receive them. The Treaty of Waitangi had not been taken to Wairoa, and when Charles Hunter Brown made an official visit through Te Urewera in 1862, 22 years later, he did not visit Waikaremoana. The Crown finally sent a resident magistrate to Wairoa in 1863 – a year after Lieutenant-Colonel Andrew Russell, civil commissioner in Napier, reported that the district extending north of Napier was ‘little known and much neglected.’ In 1864, Donald McLean had embarked on a sustained programme of land purchase in the district, particularly on and near

5. Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 20
6. Ibid, p 29
7. Ibid, pp 40–41
the coast. Certain rangatira, among them Pitiera Kopu, Paora Te Apatu, Ihaka Whaanga, and Te Matenga Tukareaho of Nuhaka, decided to align themselves with the Crown. They sold land (a number of blocks, amounting to about 185,000 acres across these districts), and established a relationship with Crown officials. During 1865, they were very aware of the fighting elsewhere on the coast and asked for arms and ammunition. But Kopu, of lower Wairoa, also maintained his relationship with the inland hapu who had supported the Kingitanga and adopted Pai Marire. The upper Wairoa rangatira, notably Te Waru Tamatea, met at hui with Kopu and other chiefs who did not approve of their support of the Kingitanga; they discussed and appeared to resolve their differences.

The fighting at Turanga, however, was close to home, and it increased tensions within the Wairoa communities. Kopu warned of the consequences of any involvement at Turanga by Wairoa leaders. As we have seen, however, some went to assist Turanga Maori against the Crown. When the siege of Waerenga a Hika was over, McLean instructed Fraser to move to Wairoa and, on his arrival there, to cooperate with ‘friendly Natives’. Fraser met with Kopu and an expedition was immediately arranged against what was stated to be a large ‘rebel’ force. The expedition initially comprised military settlers under the command of Fraser, and a force drawn from a number of local hapu. The total force numbered between 250 and 400. Subsequently, following a request by Fraser, McLean secured substantial reinforcements from Ngati Porou.

The campaign that followed – that is, its first phase – lasted about three weeks. The first engagement took place on Christmas Day 1865 at the kainga Omaruhakeke, about eight kilometres from Te Kapu (the present Frasertown). After a cursory attempt at negotiation, Crown forces opened fire and marched towards Omaruhakeke. Following heavy firing, the defenders were put to flight up the Mangaaruhe River. There was intermittent skirmishing, but no sustained pursuit, because of Fraser’s anxiety about the size of his force. But this changed with the arrival of Ngati Porou reinforcements, and a combined force numbering 520 set out from Wairoa on 10 January 1866. The second engagement took place two days later at Te Kopani, six and a half kilometres south of Lake Waikaremoana.10 It ended in the rout of the defenders with heavy casualties. They fled towards Onepoto at Lake Waikaremoana, and some escaped across the lake by waka. Subsequently, several of those captured were executed. On 16 January, Fraser told McLean that the Pai Marire were driven out of the country altogether, and on 21 January he reported that the fighting was over. Subsequently, a number of men surrendered to various chiefs, and took the oath of allegiance.

In fact, officials assumed that expeditions would continue until Te Waru Tamatea was killed or had surrendered. As a result, more fighting, on a small scale, did take place. The Government reduced its troops at Wairoa, but supplied arms and ammunition to local chiefs, notably Kopu and Whaanga. There was a further

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10. Many nineteenth-century sources, such as newspapers, spelt this place ‘Te Kopane’. Most parties before us, however, used ‘Te Kopani’.
attack by Crown forces on Mangarua village at Lake Waikaremoana in mid-March 1866. A larger expedition to the upper Wairoa, led by Whaanga, followed in the latter part of April. Fifty of the Pai Marire party were captured at Opouiti, including Nama, a close ally of Te Waru. By 28 April, the whole of the Wairoa ‘hauhau’ were reported to have surrendered, and three days later Te Waru surrendered too.

On 23 May, McLean arrived at Wairoa to receive the formal submission of those who had surrendered. The largest number whose affiliation was recorded were of Ngati Kurupakiaka hapu of Ngati Kahungunu. It was agreed that none would be sent into detention at Wharekauri (the Chatham Islands) – a strategy the Crown had adopted for those of the Turanga men it deemed most troublesome. Despite this, 16 men were sent; notably the rangatira Moururangi of Ngai Tamaterangi. Te Waru, however, was allowed to return to the Wairoa district. Most of the others who had surrendered were released, but some were kept under the surveillance of lower Wairoa chiefs.

The Ngati Kahungunu Hapu of Lower, Upper, and Coastal Wairoa (1865)

At Wairoa, Ngati Kahungunu leaders included Pitiera Kopu of Te Hatepe or Wharepu, the home of his Ngati Puku hapu: Paora Te Apatu of Waahirere; and Hamana Tiakiwai of Te Uhi (a joint Ngati Kahu and Ngati Kurupakiaka pa). Ngati Kurupakiaka and Ngati Puku were among hapu who resided on the eastern bank of the Wairoa River, but who also had interests on the west side. At Whakaki, on the coast between the Wairoa and Nuhaka river mouths, there were a number of hapu, descendants of Te Kapuamatotoru, through various lines, of Hinemanuhiri and Rakaipaaka. At Nuhaka and Mahia, there were Ngati Rakaipaaka communities; at Mahia, the chief Ihaka Whaanga was prominent. To the south and east of Lake Waikaremoana was the area generally referred to by Government officials in the nineteenth century as the ‘interior’, ‘inland’, or ‘upper’ Wairoa, intersected by a number of large tributaries of the Wairoa River: the Waiau, Waihi, Waikaretaheke, Mangaaruhe, and Ruakituri Rivers. Within this

1. Kopu was also known as Kopu Parapara, and ‘Pitiera’ was also spelt ‘Pitihera’. A number of nineteenth-century documents used the latter spelling, and the inscription on his memorial stone reads ‘Ko Pitihera Kopu’: Thomas Lambert, The Story of Old Wairoa and the East Coast District, North Island New Zealand (Christchurch: Capper Press, 1977), p 347.
3. Ibid, p 19
6.4.1 Was the Crown responding to a rebellion?

The claimants and the Crown have opposing views on whether the Crown’s undertaking and conduct of a series of military operations against Urewera and Waikaremoana tribes between December 1865 and April 1866 can be justified in legal or Treaty terms. At the heart of the issue is whether there was a rebellion and whether the Crown’s response was appropriate.

Counsel for the claimants all pointed to the Turanga Tribunal’s conclusion that Turanga Maori were not in rebellion because there is no evidence that those who escaped from Waerenga a Hika pa were seeking to overthrow the authority of the Crown. If events at Waerenga a Hika did not constitute a rebellion, and if the
Crown’s attack on the pa was unlawful (as the Turanga Tribunal concluded), then the subsequent pursuit of refugees from Waerenga a Hika was equally tainted with unlawfulness, and the defensive response of the refugees cannot be categorised as rebellion.11 Counsel for the Wai 945 Ngati Ruapani claimants submitted that it had not been shown that the groups who came to the Waikaremoana area in the wake of Waerenga a Hika (who may not even have been participants in those hostilities, but may simply have been fleeing them) came because they had been invited, or because Ngati Ruapani and other groups were connected with events at Turanga. The attacks on Ngati Ruapani were not justifiable in any sense whatever; ‘their crime seems to have been one of being in the vicinity of a Crown attack on people in flight’.12 Counsel for the Wai 144 Ruapani claimants added that ‘Ruapani never left their rohe to attack the Crown’. Rather, the Crown and ‘loyalist’ Maori invaded the Lake Waikaremoana district.13

Counsel for the Ngai Tamaterangi claimants stated that the ‘invasion’ of Ngai Tamaterangi lands by Crown forces between December 1865 and January 1866 ‘cannot be justified or excused’. Counsel’s submissions focused on the attack by Crown forces on their kainga (not a fighting pa) at Omaruhakeke. Though Omaruhakeke is just outside our inquiry district, this was understandable, given that it was a crucial event in Ngai Tamaterangi history: their world ‘changed forever’ when Crown forces attacked and destroyed their kainga.14 Before the attack, counsel argued:

No breakdown in law and order had occurred. No challenge had been made to state authority. No threat existed to lives and property. No Wairoa Maori were conspiring to overthrow the government by force of arms and no ‘engagement’ was required to ensure the security of the colony.15

Te Waru Tamatea and his supporters were entitled to take action in their defence against the ‘unlawful Crown aggression’.16

The Wai 621 Ngati Kahungunu claimants submitted, in addition, that the hostilities between different Ngati Kahungunu groups within their own sphere of influence did not involve rebellion against the Crown but rather war within the iwi, which was within its tino rangatiratanga to resolve.17 (This submission was

11. Counsel for Wai 36 Tuhoe, closing submissions, pt B, response to statement of issues, 30 May 2005 (doc N8(a)), p 35
12. Counsel for Wai 945 and 1033 Ngati Ruapani, closing submissions, 30 May 2005 (doc N13), pp 7–8
13. The Wai 144 claimant is Vernon Winitana on behalf of himself and descendants of those on the ‘Ruapani list’ (317 owners listed at the time the Waikaremoana reserves were created): counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), p 39.
15. Ibid, p 28
16. Ibid, p 30
17. Counsel for Wai 621 Ngati Kahungunu, written synopsis of closing legal submissions, 30 May 2005 (doc N1), pp 31, 52
rejected by counsel for Ngai Tamaterangi.) Counsel argued that the ‘Kahungunu ki te Wairoa’ leadership and people adopted a ‘neutral stance,’ ‘do nothing to give reason for “Riri Pakeha” [the anger of the Pakeha] to become an excuse for sustained settler initiated European style warfare.’ This neutrality ‘helped to solidify a general impression of the tribe as on the whole “loyal”’.

The Crown’s closing submissions presented the justifications for all its military actions from 1866 to 1868, whether in the Bay of Plenty or Wairoa region. Crown counsel submitted that the Crown’s military response in both regions was appropriate and justified. While it was not explicitly argued that Crown forces in Waikaremoana and the upper Wairoa had been engaged in putting down rebellion, Crown counsel did present general submissions on rebellion. It was submitted that the Waitangi Tribunal has previously defined rebellion too narrowly as ‘seeking or conspiring to overthrow the government, usually although not necessarily by force of arms’. The Crown supported a wider definition, arguing that in Wairoa and the Bay of Plenty, the Crown was ‘under a duty to maintain law and order, and to defend its citizens from attack’.

The Crown concluded that ‘Whakatohea and Urewera groups, among others, were involved in actions that threatened the security and safety of European and Maori in the Wairoa and Eastern Bay of Plenty regions from late 1865 to 1868.’ All military actions undertaken from 1866 to 1868 ‘were in direct response to actual or expected attacks against loyalist Maori, settlers and troops during this period’. The Government’s approach to any military actions, it stated, was a cautious one.

6.4.2 The conduct of the hostilities

In respect of the Crown’s conduct of its expeditions, the claimants submitted that the military actions taken, which involved executions and large-scale destruction of property, were ‘highly inappropriate.’ The executions would, at the time, have been regarded as war crimes. Counsel for the Wai 621 Ngati Kahungunu claimants, however, suggested that the executions by Maori forces should be understood in the context of the delegation of power to commanders in the field. When the kawana engaged rangatira as allies, ‘there was a delegation of the power to take life’. Conversely, counsel argued, in terms of tikanga, utu was important; the taking of life was necessary to restore the balance and enforce authority (rangatiratanga) within Ngati Kahungunu in the circumstances of that time.

The Crown accepted that some ‘draconian measures’ took place, as Crown
forces sought ‘to undermine the logistical base of people in armed conflict with the Crown’. These included the destruction of 10 settlements in the vicinity of Waikaremoana. The people there were treated as rebels, and their property sacked and destroyed. Moreover, some prisoners were executed by Maori troops, though it was not Crown policy of the time to allow its troops to do so. The Crown acknowledged that ‘the execution of unarmed prisoners by Maori troops engaged in military activities on behalf of the Crown was a breach of the guarantee of the rights of British subjects under Article 3 of the Treaty of Waitangi’.

6.4.3 The impact of the hostilities
Among impacts of the expeditions, claimants pointed to the fate of some Waikaremoana prisoners, and the Ngai Tamaterangi chief Moururangi, who were sent to Wharekauri after their surrender. Conditions there were ‘harsh and were intentionally so’, a fact reported by the Turanga Tribunal to have been accepted by the Crown. Counsel for Ngai Tamaterangi pointed also to the long-term impact on the community of being ‘wrongfully branded rebels’.

The Crown does not contest the claim of extensive damage, destruction, and looting of property in ‘settlements further inland’. Nor does it contest accounts of the dislocation of people ‘for extended periods of time’ and the possible long-term consequences of this ‘in being unable to demonstrate ahi ka roa over lands’. It does argue that some of those sent to Wharekauri and detained there were captured in fighting outside the inquiry district; the evidence does not seem to point to people detained in engagements at Waikaremoana being sent to Wharekauri, with a few exceptions. But the Crown conceded that the duration of detention on Wharekauri in the absence of a trial was a breach of the Treaty.

6.5 Tribunal Analysis
6.5.1 Was the Crown justified in launching military operations into the upper Wairoa and Waikaremoana regions in December 1865? How were those operations conducted and was the Crown justified in continuing them until April 1866?

**Summary answer:** Had there been rebellion in the region, or a threat to law and order reasonably requiring a forceful response, the Crown’s launch of military operations would have been justified. But in late 1865 there was no emergency. Influential Ngati Kahungunu chiefs had been committed to maintaining peace throughout 1864 and 1865. They had succeeded in managing the tensions between communities who supported the Kingitanga and those who opposed it, and between those who accepted Pai Marire and those who opposed it. But
this attempt to maintain a compromise position was, however, completely undermined by the Crown's hostilities at Turanga and its determination to quash Pai Marire. Chiefs such as Pitiera Kopu, anxious about the Crown's intentions, urged Wairoa people to abandon Pai Marire. Despite the chiefs' efforts, however, Crown forces arrived in Wairoa in early December 1865 in pursuit of two groups: the Turanga men who had escaped from Waerenga a Hika pa, and the upper Wairoa men who had gone to their assistance. Given the very limited prior relationship between the Crown and the people of upper Wairoa and Waikaremoana it may not be meaningful to assess their conduct in terms of rebellion. Even if we make such an assessment, however, we must conclude there was no rebellion at Waerenga a Hika or in the later hostilities in upper Wairoa and Waikaremoana. Nor was there, by late 1865, a breach of the peace in this area that required quelling by force. The conduct of the men returning from Waerenga a Hika revealed that they had no hostile intentions. There was no disturbance by the people of the area. Further, at this time, the balance of military power weighed heavily in favour of the Crown.

The Crown's military conduct was aggressive, harsh, and disproportionate to any threat allegedly posed by the people of upper Wairoa and Waikaremoana. There was no sincere attempt to negotiate peace – either at the outset, or after the upper Wairoa and Waikaremoana peoples had been routed at Te Kopani. Donald McLean failed to assure himself of the situation in the interior before sending his forces there, failed to offer terms in person to the people of upper Wairoa, and failed also to ensure that his officers were aware of the responsibilities attached to commanding Maori forces. Casualties were high – higher than for the entire campaign in Te Urewera against Te Kooti. Some prisoners were executed in front of a senior Crown military officer (Major Fraser). Rapata Wahawaha, who actually carried out the executions, was never censured. Settlements, houses, property, and extensive crops were destroyed. Moreover, the Crown's aggression reflected a determination to subjugate those deemed 'rebels', or 'Hauhau', while forces were available to the Crown, and the time seemed ripe. In the absence of rebellion or other emergency in Wairoa, there was no need for Crown military operations. If, alternatively, the purpose was to defeat and capture those deemed to have committed acts of rebellion at Waerenga a Hika (and we do not accept that such acts had been committed), then Crown forces still could not embark on broad military operations against all the communities in the district, and indiscriminately destroy their property.

6.5.1.1 Introduction
The Crown's case, as we have seen, is that its military operations in upper Wairoa and Waikaremoana in 1865 and 1866 were justified by the unlawful conduct of the people of the area. At our hearings, the Crown did not assert directly that there had been rebellion in upper Wairoa, perhaps because it had an eye to the future and the restoration of relationships with those who have for so long resented the stigma of being labelled rebels. But it was clear from its submissions in respect of the subsequent take of Wairoa lands, that the Crown did presuppose a rebellion. Counsel argued that confiscation took place 'only where land was actually taken
in consequence of rebellion. It was then submitted that ‘in relation to the Wairoa cession [of 1867], rebel interests were confiscated.’ In other words, the Crown took the Wairoa land because it regarded certain owners as rebels. Moreover, the Crown’s arrangements for cession at that time were based on the assumption that it could invoke the new East Coast legislation – and, as Crown counsel submitted to us, the prerequisite for application of the legislation was that there had been a rebellion.

A difficulty with the Crown’s approach in our hearings is that it did not spell out exactly what conduct it considered constituted rebellion in upper Wairoa. The thrust of the Crown’s case, however, seems to be that we should apply its broader definitions of rebellion to the situation in upper Wairoa in December 1865, and early 1866, and measure the Crown’s response accordingly. This would bring us to the following propositions:

- A state of emergency existed in Wairoa at the end of 1865, in that law and order had broken down.
- The breakdown of law and order, in the context of the time, was properly considered rebellion.
- The Crown thus responded properly, and in accordance with its duty to its Wairoa citizens, by sending in military force and seeking the submission of those Maori who were in rebellion.

In addition, as was explained in chapter 5, we accept that the law allows the Crown to launch a military response where that is reasonably necessary to suppress a threat to law and order, even if that threat does not amount to rebellion, so long as that military response was conducted according to certain standards.

In accordance with these propositions, we examine events at Wairoa in the latter part of 1865. We consider whether lower Wairoa communities and settlers were under threat from those deemed rebels during the course of 1865, and whether they were still under threat at the end of that year, following the Crown siege of the Turanga pa Waerenga a Hika and the return to upper Wairoa of certain chiefs who had fought there. We conclude by analysing whether there was ‘rebellion’ or a breach of the peace such that the Crown was justified in launching military operations into upper Wairoa and Waikaremoana at the end of 1865.

### 6.5.1.2 Were there threats to law and order in Wairoa in the latter part of 1865?

We note first that it is clear there had been tensions among the Wairoa communities in the course of 1865, following the arrival of Pai Marire missionaries in particular. We are struck, however, by the way in which those tensions were managed by the Ngati Kahungunu chiefs over this period. They did not escalate into open conflict – as had happened, for instance, among Ngati Porou.

This was the more remarkable given the emergence of two opposing alignments in the Wairoa district by this time. On the one hand, interior communities

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31. Crown counsel, closing submissions (doc N20), topic 6, p 2
in particular tended to be more favourable towards the Kingitanga.\(^{32}\) ‘Te Waru Tamatea, his brother Raharuhi, and the Ngai Tamaterangi chief Moururangi were strong supporters of the Kingitanga and its aims of protecting Maori autonomy and land.\(^{33}\) Despite Whitmore (then the local civil commissioner) making it clear at a Wairoa hui that the Government would not tolerate the Kingitanga, Te Waru and Raharuhi had led a contingent to assist Ngati Maniapoto (to whom they were related through their father) in their defence against invading British forces at Orakau at the end of March 1864 (see the sidebar on page 523).\(^{34}\) Dr Vincent O’Malley states this group fought alongside a larger group from Te Urewera which ‘almost certainly’ included some Ngati Ruapani.\(^{35}\) The return of the upper Wairoa taua – having suffered heavy casualties – led to suspicions among lower Wairoa Maori, as well as among settlers there and in Hawke’s Bay, that Wairoa, Mohaka, or Napier might be attacked. But as early as July 1864, Whitmore reported that there was no immediate need even for a blockhouse at Wairoa; and indeed, no attacks eventuated.\(^{36}\)

On the other hand, as we have seen, a number of lower Wairoa chiefs eventually aligned themselves with the Crown, and sold land during 1864 and 1865 after McLean opened negotiations there. We comment only briefly on these purchases – which are outside our inquiry area – insofar as they show the development of policy on the part of the central government, the Hawke’s Bay provincial government, and Wairoa rangatira. (We do not consider the purchases themselves.) Gillingham stated that both the Crown and the chiefs saw the purchases as having political and economic advantages. The rangatira, in broad terms, saw land sales as indicating support for the Government, while distancing themselves from the Kingitanga; they also hoped for economic benefits. McLean (chief land purchase commissioner, and also Superintendent of Hawke’s Bay) hoped to obtain land that would advance Hawke’s Bay settlement, and what he saw as the provincial government’s defence. As land purchase officer Samuel Locke put it later in his Reminiscences,

> as will be shown [those purchases] tendered [sic] much towards the safety of this province through giving the government a hold on that end of the district, by which means we were enabled to occupy the country for defensive [sic] and other purposes without reference to the native population.\(^{37}\)

\(^{32}\) Cathy Marr, ‘Crown Impacts on Customary Interests in Land in the Waikaremoana Region in the Nineteenth and Early Twentieth Century’ (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A52), p 69

\(^{33}\) Charles Manahi Cotter, brief of evidence, no date (doc 125), p 15

\(^{34}\) Gillingham, ‘Maori of the Wairoa District’ (doc 15), pp 55–57


\(^{36}\) Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 63

\(^{37}\) Locke, ‘Reminiscences’ (Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 117)
Locke also intended that sales would assist in organising coastal Wairoa Maori into a strong 'loyal' party in the hope of preventing the 'settled' portions of the district from 'becoming another Taranaki'.

The chiefs, however, had their own concerns. Counsel for the Wai 621 Ngati Kahungunu claimants suggested to us, as we have seen, that 'Kahungunu ki te Wairoa leadership and people' saw themselves implementing a policy best described as one of neutrality; their focus was 'do nothing to give reason for Riri Pakeha' [the anger of the Pakeha] to become an excuse for sustained settler initiated European style warfare. There were also positive motives at work. That is, those leaders were generally 'traditionalist, tribalist and optimistic; still confident they could come to advantageous terms with settlers and the government.' They had seen that the Kingitanga had not been able to hold Waikato lands against Crown forces, and many had been convinced that 'active resistance was futile and more could be gained by joining the Government and seeking to influence it through cooperation.'

Given these alignments, the arrival of Pai Marire missionaries in Wairoa in the early part of 1865 was bound to create dilemmas. Here, as elsewhere throughout the region, Pai Marire found immediate support among those who, Marr explains, were less confident that they could benefit from cooperation with the Government, and who tended 'to regard resistance and defence of their lands as the best means of preserving their autonomy.' Anaru Matete explained to a local settler that 'we have joined the Hau Hau because we think by so doing we shall save our land (Te Ao) and the remnants of our people.' (We note the Turanga Tribunal's comment on the phrase 'Te Ao', which conveyed a broader meaning than 'land', as it was translated at the time; rather it evoked a sense of 'the Maori way of life'.) As that Tribunal noted, 'the teachings, the spiritual and self-determination messages of the Pai Marire, were compelling.' Bishop Williams observed that the rituals had an intense impact: he wrote later of the 'profound and spiritual effect of the karakia and lamentations uttered by the visitors, particularly for those lost in battle at Taranaki and Waikato.' As he put it, 'There was a chord touched which vibrated in the native breast. It was that of aroha ki te iwi . . . and they could not resist it.' Pai Marire was brought to Wairoa by the spiritual leaders Ponipata and Watene, whose message did not echo the violence which Kereopa had urged at Opotiki.

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38. Marr, 'Crown Impacts on Customary Interests in Land' (doc A52), p 70
39. Counsel for Wai 621 Ngati Kahungunu, written synopsis of closing legal submissions (doc N1), p 31
40. Marr, 'Crown Impacts on Customary Interests in Land' (doc A52), p 73
41. Ibid, p 72
42. Ibid, p 73
43. Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 66
44. Ibid
45. William Williams, Christianity Among the New Zealanders (London: Seeley, Jackson and Halliday, 1867), p 369 (Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 66)
46. Gillingham, 'Maori of the Wairoa District' (doc 15), pp 104–111; Michael Belgrave and Grant Young, summary of 'War, Confiscation and the “Four Southern Blocks”', November 2004 (doc 13), p 4
A monument to Pitiera Kopu of Ngati Kahungunu (Ngati Puku hapu) at Wairoa. Kopu’s kainga and pa were at Te Hatepe, just north of the current township of Wairoa. He was acutely aware of the geopolitical position of Wairoa, and his main concern was to keep the peace. He had hoped to maintain a positive relationship with the Crown while also maintaining links with inland Wairoa hapu that had supported the Kingitanga and embraced the Pai Marire faith. When the Crown intervened, he and other lower Wairoa chiefs led their hapu alongside military settlers, under Fraser’s command. In 1867, he was deeply saddened when the Crown demanded cession of a large block of Wairoa land for military settlement.

Niu at which Pai Marire services were conducted were soon erected at a number of pa. These included lower Wairoa pa such as Te Uhi, the Ngati Kurupakiaka pa on the north bank of the river; and coastal pa such as Whakaki and Nuhaka. As Gillingham underlines, it is misleading to assume that there was a clear split between interior and coastal peoples where acceptance of Pai Marire teachings was concerned.47

During this period, Pitiera Kopu played a key role at Wairoa. From what we know of Kopu – and we are very aware that we have not heard from the lower Wairoa hapu – this does not surprise us. He seems to have been keenly aware of the geopolitical position of Wairoa. People in the interior communities and within some coastal Wairoa communities were committed to the Kingitanga and to Pai Marire. To the north were the autonomous leaders of Turanga; to the south the powerful Kahungunu chiefs (many aligned with the Crown); and at Napier, Crown power was concentrated in McLean. Two points may be made about

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47. Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 129
The Pai Marire Faith

Professor Binney explained the Pai Marire faith in these terms:

The religion was essentially scriptural: it looked to a deliverance of the people from oppression (as they saw it), and the followers of the new faith prayed for that deliverance, communicating with the Holy Spirit through rituals constructed by Te Ua Haumene and conveyed by the emissaries. Unquestionably, there was an atmosphere of excitement generated by its arrival in new areas, and possibly a sense of an immediacy of divine intervention. These ideas derived from the biblical texts of Daniel and Revelation, where the Archangels Gabriel and Michael acted as the messengers of God to the people. But Te Ua did not preach or incite a war at the end of the world. He offered a theology of liberation, and a new generation of different Maori missionaries.¹

According to the Tribunal’s Turanga Tangata Turanga Whenua report, ‘To many


Kopu’s dealing with a potentially fraught situation. First, his main concern was to keep the peace. Secondly, he preferred to manage the situation himself, with minimal settler involvement.

At hui held between April and June 1865, the benefits and drawbacks of the new faith were discussed by both parties. While the hui took place, Kopu asked that armed settlers remain on their side of the river by their stockade. Kopu and other rangatira rejected Pai Marire – Kopu explaining at one April hui that he thought it would lead to ‘disaster’⁴⁸. At a subsequent hui, Te Waru Tamatea, defending his own choices, was reported to have remarked that ‘there had as yet been no bloodshed at Wairoa and he should not commence it, but where ever fighting was going on he should go to it, his should not be a “Kohuru” but a “riri Awatea”⁴⁹. That is, he would not kill by stealth, but the fighting would be fair and open.⁵⁰ Those chiefs who were opposed to the faith understood that it offered protection for the people and their land – but feared the consequences of what they saw as the anti-Pakeha

⁴⁸. ‘Wairoa’, Hawke’s Bay Herald, 25 April 1865, p 2 (Mary Gillingham, comp, supporting papers to ‘Maori of the Wairoa District’, various dates (doc 15(a)), p 197)
⁴⁹. Deighton to McLean, 23 April 1865 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 249)
⁵⁰. Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 111

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Maori, Pai Marire offered both spiritual salvation and the retention of their land and independence.\textsuperscript{2} That Tribunal also explained the pejorative origins of the term ‘Hauhau’:

Professor Binney explained that ‘Hauhau’ was used by Maori themselves to refer to the ‘breath of life’ (‘hau’, in Pai Marire karakia) and ‘the spirit within one that comes from God’. But the term came to be used in other senses. Those who took a strongly political stance, and who came into conflict with the Crown and with other Maori communities, became known popularly as ‘Hauhau’. And the term also came to be used by settlers as a purely pejorative term, variously denoting ‘rebel,’ ‘troublemaker,’ or ‘pagan’ (the latter because Pai Marire beliefs were often assumed at that time to be unchristian).\textsuperscript{3}

As we explained in chapter 5, by 1869 officials and officers were using the word ‘Hauhau’ to describe any Maori person or group who was perceived as an enemy of the Crown.

\begin{itemize}
  \item [3] Ibid, p 65
\end{itemize}

aspects of the new teachings (evident in the murder of Volkner). But Wairoa communities who had erected niu, and whose karakia were Pai Marire, were not interfered with.\textsuperscript{51} Those who converted to Pai Marire were, we note, in a minority; Gillingham suggests their total numbers in April, spread over several settlements, were from 300 to 350.\textsuperscript{52} They were also probably aware of Governor Grey’s proclamation, issued in April 1865, condemning the ‘fanatical sect’ in strong terms and stating the Governor would resist and ‘suppress’ – by force of arms if necessary – any ‘fanatical doctrines, rites and practices’ committed in the name of the faith.\textsuperscript{53}

The understanding between these various parties in Wairoa was reinforced in mid-1865, when a dispute over the flying of a Union Jack at Te Uhi (contested by the Pai Marire converts there) was resolved. At a hui convened by Locke, Kopu, and Te Apatu in June, arrangements were put in place ‘for the maintenance of peace in the district’.\textsuperscript{54} Locke explained to the ‘Hauhau’ that those who belonged to the ‘Government party’ were entitled to hoist the flag ‘and that it was not intended as a challenge – but on the contrary that all the natives of this district as long as

\begin{itemize}
  \item [51] Ibid, pp 106–111, 115–116
  \item [52] Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 112
  \item [53] ‘Proclamation’, 22 April 1865, New Zealand Gazette, 1865, no 14, p 129
  \item [54] Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 116
\end{itemize}
they behaved properly would not be interfered with in any way’.\(^{55}\) He wanted the Waikato missionaries to leave; and they did so.\(^{56}\) As Gillingham notes, this seems to suggest that ‘Maori, at least, considered the influence of the Pai Marire emis-
saries from other districts as the trigger for potential disorder rather than the Pai 
Marire religion itself’.\(^{57}\) But Locke, the local government official, seems to have 
accepted that the practice of the Pai Marire faith would continue. It is difficult 
to say whether this was because Kopu, who had considerable influence, urged 
restraint on him, or because it reflected McLean’s own policy at about the same 
time of refraining from confrontation with visiting Pai Marire groups in Hawke’s 
Bay, lest widespread conflict result.\(^{58}\) Both factors may have been important.

But the outcome was peace in the district. Locke said so himself.\(^{59}\) Dr John 
Battersby, the Crown’s historian, gave evidence that “it was not the arrival of Pai 
Marire in the Wairoa region itself that caused problems . . . peace was maintained 
at Wairoa for most of 1865 with Hauhau and loyalist living peacefully in the same 
vicinity”.\(^{60}\) In his view, it was the arrival of Pai Marire missionaries much farther 
north at Waipu that ultimately led to conflict in upper Wairoa and Waikaremoana.

We turn next to examine the impact of fighting in the latter part of 1865 on the 
East Coast, and at Turanga.

\subsection{6.5.1.3 The impact at Wairoa of the siege of Waerenga a Hika, November 1865, 
and its outcome}

The arrival of Crown forces at Wairoa in December 1865, and their movement 
up the Wairoa River valley, followed key battles on the East Coast between those 
Ngati Porou who converted to Pai Marire and those who were strongly opposed to 
it. This conflict within Ngati Porou ended in the defeat of those who had adopted 
the new faith. Five hundred Ngati Porou prisoners had been taken and the ‘ring-
leaders’ sent to Napier and held in jail.\(^{61}\) The Crown forces – now with a substantial 
Ngati Porou presence – moved south to Turanga, where they besieged Waerenga a 
Hika pa from 17 to 22 November 1865.

Among those who went to the aid of the defenders were local reinforcements 
led by Anaru Matete, of Rongowhakaata, and the two upper Wairoa rangatira – Te 
Waru Tamatea, the prominent Ngati Hinemanuhiri chief of the period, and the 
high-born chief Te Tuatini Tamaiongarangi. Matete advanced with his men from a 
neighbouring pa to support their whanaunga in Waerenga a Hika on 19 November, 
and engaged with Government forces in what was the major battle of the con-
flict; 34 were killed. Not a great deal is known about the participation of Te Waru

\begin{footnotes}
\footnotetext[55]{Locke to McLean, 2 June 1865 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ 
(doc I5(a)), pp 277–279)}
\footnotetext[56]{Gillingham, ‘Maori of the Wairoa District’ (doc I5), pp 115–116}
\footnotetext[57]{Ibid, p 119}
\footnotetext[58]{Ibid, p 116}
\footnotetext[59]{Ibid}
\footnotetext[60]{John Battersby, ‘Conflict in the Urewera and Bay of Plenty Districts: 1864–68’ (commissioned 
\footnotetext[61]{Waitangi Tribunal, \textit{Turanga Tangata Turanga Whenua}, vol 1, p 78}
\end{footnotes}
Te Waru Tamatea

Te Waru Tamatea was born in the mid-1820s – probably at one of the many kainga of the upper Wairoa, such as Whataroa or Erepeti, with which he was later associated. Although of Tuhoe descent through his father Rihara, his primary tribal affiliations were to Ngati Kahungunu, and the hapu Ngati Hinemanuhiri, Ngati Hinganga, and Ngati Hika. Te Waru had at least two brothers and a sister, and at least four children – all of whom played a significant role in the events of his life. He was tall and had a moko that was partly obscured by a small beard. He wore his hair long, drawn together at the top by a koukou (headdress of feathers). All these features are shown in a striking portrait photo of him from the period.¹

By the early 1860s, Te Waru had emerged as one of the most prominent leaders of the upper Wairoa communities. Like their lower Wairoa kin, the upper Wairoa peoples remained relatively untouched by European colonisation following the signing of the Treaty of Waitangi, but also remained separate from the Kingitanga following its formation in 1858. This position changed with the beginning of the Waikato war; Te Waru was at the centre of a flourishing support among his people for the King. By the end of 1863, Te Waru and his people had become committed supporters. In March 1864, he and a party of between 20 and 40 travelled to Waikato, where they joined a combined force of Waikato, Ngati Maniapoto, Ngati Raukawa, Tuhoe, and Ngati Whare, which numbered about 300. Their exact motivations for offering support are unclear, but it is likely to have been a combination of a political commitment to the Kingitanga and whakapapa ties. At Orakau they constructed earthworks and reinforced the pa. From 31 March to 2 April, the pa was attacked by imperial troops. On the third day, the survivors fled out the back of the pa through a swamp. In total, half the defenders – about 160 people – were killed. This included the majority of the upper Wairoa contingent – some 30 people, according to one estimate. GS Whitmore reported that only six survived. Among those killed were Te Waru’s brother, Raharuhi, whose four sons also died. Te Waru’s son, Tipene, was shot in the arm and captured. His arm was amputated and he was later released.²

The other survivors, including Te Waru, returned to Wairoa. Their return sparked protests from some lower Wairoa communities who opposed the Kingitanga and wished to remain neutral. But leaders of these communities, such as Pitiera Kopu, sought dialogue with Te Waru. For his part, Te Waru wished to remain at peace – and signalled so throughout 1864 and early 1865.  

The arrival of Pai Marire missionaries in March 1865 escalated tensions among the various communities. A number of the upper Wairoa communities were converted to the faith at this time, as was Te Waru. Fearing the consequences, however, Kopu told the emissaries to leave. But Te Waru remained in dialogue with the lower Wairoa leaders, and reaffirmed his commitment to peace at a number of hui. He stated clearly and repeatedly that he would not commence hostilities and would only go to assist where fighting had already begun. He remained true to his word and went in support of the Turanga peoples when fighting broke out at Waerenga a Hika in November 1865.

As discussed in detail elsewhere in this chapter, his return to the upper Wairoa was followed by the arrival of Crown forces. He was shot in the forearm the day after the major battle at Omaruhakeke, but escaped. It is unclear whether he fought at Te Kopani, but by March 1866 he was known to be on the northern side of the lake. On 9 May, he and 15 others surrendered and were taken to Wairoa where they took the oath of allegiance in the presence of Donald McLean. Unlike some who were sent to Wharekauri following other battles in Hawke’s Bay, Te Waru was allowed to return to Wairoa. He stayed under the guard of Tamihana Huata at Pakowhai for a few months, and was present at the Te Hatepe hui in 1867 (see chapter 7). Te Waru opposed the cession of any land. Such a cession, he stated at the hui, undermined his act of surrender the previous year and made redundant the peace he and his lower Wairoa kin had negotiated subsequently. Following the hui, he returned to the upper Wairoa.

The return of Te Kooti and the Whakarau from Wharekauri in July 1868 was a significant moment in Te Waru’s life. In August, he sent to Te Kooti a tiwha (gift) of his daughter, Te Mauniko (or Te Mautiki), and the greenstone mere, Tawatahi.
This signalled his commitment to Te Kooti and his cause; Te Kooti’s acceptance of the tiwha in turn meant their cause was one and the same. Te Kooti travelled to Puketapu on the eastern edges of Te Urewera, where he was joined by Te Waru and his people. At the end of September – unaware of his commitment – four lower Wairoa chiefs were sent to Whataaroa in an attempt to prevent Te Waru joining Te Kooti. They were killed on the order of Te Waru’s brother, Reihana. This event saw lower Wairoa communities lend their active support to the pursuit of Te Kooti, first at the battle at Ngatapa in January 1869, and later when he and the Whakarau returned to Te Urewera. But it was Te Kooti who struck first. In April 1869, Te Waru led a diversionary party to the Waiau River, where they encountered a force of lower Wairoa Kahungunu. Seven of his men were killed, but the diversion allowed Te Kooti to strike at an undefended Mohaka. Te Waru departed the upper Wairoa to rejoin Te Kooti at Waikaremoana; he never returned.  

Te Waru and his people sought refuge in Te Urewera during the Crown’s first military expedition into the region in May 1869. He accompanied Te Kooti to Taupo, but returned to Te Urewera sometime in late 1869 – a quarrel is said to have caused a permanent rift between him and Te Kooti. The Crown’s military operations around Lake Waikaremoana in mid-1870 saw him withdraw to Ruatahuna. But he was no longer welcome among Tuhoe, who feared the consequences of having him in their midst. Faced with few other options, Te Waru and about 40 of his people surrendered at Fort Galatea on 9 December 1870. They were taken to Te Teko, where they were held under surveillance, and were later sent to Maketu. In June 1874, a portion of eastern Bay of Plenty confiscated land at Waiotahe was selected as a place for their permanent residence. At Waiotahe, he and his people became known as Ngati Tamatea. In August 1874 – at the same time as they were offered seed potatoes and tools for cultivating their new land – Te Waru was said to be willing to sell his interests in the four southern blocks. This was followed through in September 1877, when the Government paid his people £300. We discuss these events in more detail in the following chapter.

Te Waru Tamatea died in April 1884. He had spent the last 15 years of his life in exile. He never returned to his ancestral lands in the upper Wairoa. Ngati Tamatea remain today on their land in Waiotahe, where their marae is Maromahue.  

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The remains of Waerenga a Hika Pa following the Crown siege, 1865
and Tamaiongarangi at Waerenga a Hika. If they arrived during the siege, they may well have joined with Matete’s reinforcements. Both parties would successfully evacuate at the rear of the pa at the time of the surrender. Matete led about 100 Turanga men in the evacuation who, according to Professor Binney, made their way to Te Reinga; here they joined up with Te Waru. Some remained in the upper Wairoa Valley while others travelled farther inland to Lake Waikaremoana.

The question we must answer is whether these actions constituted rebellion, or a threat to law and order in Wairoa, sufficient to justify the Crown’s military actions that followed. Battersby stated that ‘there was no state of rebellion at Wairoa’ until groups from there travelled to Waerenga a Hika and involved themselves in fighting; thereafter they continued in rebellion, in that they refused to submit to colonial forces. Perhaps because of this assumption, Battersby gave us little detail about events leading to the Crown’s operations in Wairoa. He noted the surrender of large numbers of Turanga people at Waerenga a Hika and the escape of a number of others from the pa, among them Te Waru and others from the Upper Wairoa and Urewera districts. Battersby referred to the arrival of Anaru Matete with about 100 people from Turanga at Wairoa by December 1865. He reported a correspondent of the Hawke’s Bay Times writing of a gradual ‘drawing to a state of war’ and he added that Kopu wrote to McLean for arms, expecting hostilities, then went to Napier, and returned ‘less enthusiastic about becoming involved in the conflict.’ His analysis then moved on to the arrival of Fraser at Wairoa.

It is difficult to be certain from Battersby’s account what breaches of the peace had occurred there, or even if any threats against lower Wairoa communities had been made. Crown counsel, drawing on Battersby’s research, said only that, in the wake of the movement of Pai Marire supporters towards Poverty Bay in October and November 1865, ‘the political situation at Wairoa deteriorated. The deterioration was compounded when Te Waru Tamatea and his supporters went to the defence of Waerenga a Hika.’

From other accounts, it is clear that hostilities on the East Coast and at Turanga inevitably produced tension in Wairoa by October and November 1865. Rumours, not surprisingly, abounded. Whaanga requested Government soldiers at Mahia to protect the residents, as they feared they would be killed ‘by inland Pai Marire.’ Kopu reported to McLean in early October that Pai Marire of the inland region were discussing waging war on Turanga. (Such rumours echoed those published by the Hawke’s Bay Herald and the Daily Southern Cross, before Waerenga a Hika, 62.)

65. Crown counsel, closing submissions (doc n20), topic 3, p.25
67. Ibid, p.121
that a large number of Ngati Porou of the Pai Marire party, refugees from the fighting there, had planned an attack on the Turanga kawanatanga party.\(^{68}\) Tension at Wairoa was exacerbated by news of the arrival of Crown forces at Turanga and the siege of Waerenga a Hika pa by Crown forces the following month. We note, however, that the Reverend Tamihana Huata of Pakowhai reported nevertheless (on 18 November) that all was quiet.\(^{69}\) Kopu’s initial response was to publicly discourage any Wairoa participation at Turanga; if he heard of any Maori who were implicated in the Turanga dispute, he stated at a hui convened at this time, he would imprison them and hand them over to the authorities.\(^{70}\) Such statements were clearly designed also to impress on the Crown’s representative (the resident magistrate) where Kopu’s loyalties stood. Clearly he hoped to ward off Crown anger at any possible Wairoa involvement at Turanga.

### 6.5.1.4 Renunciation of Pai Marire

Immediately after the fall of Waerenga a Hika on 22 November, Kopu took further steps. At another ‘very large’ hui held at Wairoa on 26 November, he urged local Pai Marire believers to give their allegiance to the Government to prevent the outbreak of war in the district.\(^{71}\) According to a report of the hui in the *Hawke’s Bay Times*, under the headline ‘Large Native Gathering: Determination of the Hau-Haus to commence War!!’, Kopu ‘gave full explanations of the plans of the Government’, and impressed on the ‘Hauhau’ the foolishness of continuing ‘in rebellion’, and the importance of securing pardon – evidently for their conversion to Pai Marire teachings – by submitting; ‘while if they began fighting again they would not only lose their opportunity, but also forfeit all their lands to the Government’.\(^{72}\) It is not clear if any Government official was present at the hui. Kopu may have been aware that McLean was due to arrive the following day, and that he would have to report to him.\(^{73}\) It seems from what Kopu said at the hui that he concluded, or had been told, that the departure to Turanga of a small group from up-river would be sufficient to bring Crown retribution on the heads of all Wairoa communities. Meanwhile, Ihaka Whaanga also called a meeting at Mahia which was attended by people all along the coast and peninsula as far as Nuhaka. Locke reported that Whaanga sought to ascertain attitudes to Pai Marire, to make arrangements if ‘rebels’ should arrive there from other places, and to prevent any outbreak within his district.\(^{74}\)

The result of these hui was that many took the oath of allegiance or declared their willingness to fight on the Government side. The communities of Nuhaka

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68. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 80
69. Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 123
70. Ibid
71. Ibid, p 125
72. *Hawke’s Bay Times*, 11 December 1865 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 344)
73. Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 125
74. Ibid, pp 125–126
and Whakaki decided to renounce Pai Marire. This constant theme – the importance of giving up the faith to prove loyalty to the Crown – contrasts markedly with the understandings reached some months earlier that Pai Marire services could be held without antagonising the Crown. But it was a theme that reflected the recent turn of events on the coast.

6.5.1.5 The thrust of Crown policy, October–December 1865

The Turanga Tribunal considered changes in Crown policy during this period, and we refer to them here because they provide a crucial context for evaluating the Government’s decisions about Wairoa.

McLean, who was superintendent of Hawke’s Bay province and was appointed agent for the general government in March 1865, had a major impact on the shaping of Crown policy. Until October, he had had only lukewarm central government support for his determination to intervene on the East Coast. But the new Premier, Edward Stafford, who took office in mid-October, was much more committed to McLean’s aim of applying pressure to Turanga (once the ‘rebels’ had been quashed on the East Coast), which McLean deemed ‘troublesome’ and ‘the greatest nest of disaffection on this side of the Island’.

J D Ormond, deputy superintendent of Hawke’s Bay, encouraged Stafford to give McLean ‘more latitude’ with respect to Poverty Bay, arguing that ‘no submission other than an actual & complete one should be allowed to be accepted’.

Stafford’s private view was that it appeared to be ‘the best thing to do to put down Hauhauism in Poverty Bay while our forces are flushed with success, & the rebels correspondingly dispirited.’ He was gravely concerned about the colony’s spiralling debt, and anxious that the ‘Native difficulty’ be laid to rest. On 1 November, he instructed McLean to bring an end to ‘troubles’ on the East Coast, to expel emissaries of the ‘Hauhau’ from Poverty Bay, and to secure the oath of allegiance from adult males who were not accused of a specific crime. If Turanga Maori did not in future ‘preserve the peace’, part of their land would be confiscated, and military settlements established there.

With Stafford’s blessing, McLean moved with considerable speed. He arrived in Turanga with a large colonial and Ngati Porou force on 9 November. His approach to negotiations with the Turanga chiefs was inflexible – though the chiefs were anxious to keep the peace. In his communication with the chiefs just before hostilities began, setting terms for their surrender, he characterised ‘Hauhau’ aims in negative terms: ‘It is well known to all that the aim of the Hauhaus is to murder...’

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75. McLean to Stafford, 26 October 1865 (Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 1, p 79)
76. Ormond to Stafford, 26 October 1865 (Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 1, p 79)
77. Stafford to McLean, 3 November 1865 (Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 1, p 110)
78. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 1, pp 79–80
79. Stafford to McLean, 1 November 1865 (Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 1, pp 79–80)
and destroy: they have done this in many instances and have been punished.\textsuperscript{80} The Turanga Tribunal considered that there was no evidence to support the allegation that the aims of the 'Hauhau' were generally violent and destructive; in Turanga, in fact, there had been no outbreak of violence during the eight months following the arrival of Pai Marire there. Despite this, McLean made what were ultimately allegations against the faith itself.\textsuperscript{81} Though McLean's charges against Turanga Maori were broader than this (including, for instance, their threatening of Government supporters), it was clear that the Crown now regarded 'Hauhau' as an enemy, against whom Crown force might properly be turned.

When negotiations broke down, McLean left Turanga, instructing Fraser to begin military operations. Fraser laid siege to Waerenga a Hika, and the ending of the siege after five days was followed by the taking of many prisoners, and the eventual deportation of over 100 of them to the Chathams, where they were held without trial.\textsuperscript{82} Stafford, signalling the hard line the Government intended to take with the prisoners on 7 December, wrote that 'It is full time the Natives should know and believe that the Govt will really do what it says. Pity tis that after some 26 years of our (I was going to say “rule” but won't) presence in the Colony, they have yet to find out that!'\textsuperscript{83}

At the same time, McLean was preparing to send Crown forces on to Wairoa.

\textbf{6.5.1.6 Was there ‘rebellion’ or a breach of the peace justifying military action in upper Wairoa and Waikaremoana at the end of 1865?}

The claimants’ position, in brief, is that ‘rebellion’, properly understood, is more narrowly defined than the Crown contends, and that upper Wairoa and Waikaremoana Maori engaged only in defensive action, not rebellion, in late 1865 and early 1866. Therefore, they say, the military force the Crown brought to bear against the people of the area was unjustified, unlawful, and in breach of the Treaty of Waitangi.

The Crown's position is that 'rebellion' has a broader meaning than is argued for by the claimants, and that there was a state of rebellion to which the Crown was responding appropriately.\textsuperscript{84}

Our analysis of the situation begins from a point made in chapter 5: because rebellion involves a renunciation of the allegiance owed by a subject to the Queen and the Queen's government, it is not appropriate to describe as ‘rebellion’ the conduct of Maori who had no prior relationship with the Government. In the case of upper Wairoa and Waikaremoana, it is difficult to say what kind of relationship communities there had with the Government by 1865. Though the Treaty had not been taken to Wairoa, Crown agents were sent to lower Wairoa 20 years later, from 1862. People from inland Wairoa attended some hui during 1864 and

\textsuperscript{80} ‘Terms of Surrender’ (Waitangi Tribunal, \textit{Turanga Tangata Turanga Whenua}, vol 1, p 85)

\textsuperscript{81} Waitangi Tribunal, \textit{Turanga Tangata Turanga Whenua}, vol 1, p 109

\textsuperscript{82} Ibid, pp 122–123

\textsuperscript{83} Stafford to McLean, 3 December 1865 (Waitangi Tribunal, \textit{Turanga Tangata Turanga Whenua}, vol 1, p 122)

\textsuperscript{84} Crown counsel, closing submissions (doc N20), topic 3, p 16
1865, hosted by lower-river Kahungunu chiefs, at which Crown officials spoke about Government policy. There must thus have been some understanding of the role of the Crown – even if its opposition to the Kingitanga and determination to buy land near the coast would not have been well received by Kingitanga supporters. But, as Marr points out, ‘there had virtually been no real Crown presence established in the Waikaremoana region’ before Crown forces were sent in. ‘Very few Pakeha had visited the district, Crown purchases had not extended that far inland, there were no Pakeha settlements, no Crown land and no active Crown institutions apparent in the region.’ The Premier’s statement which we quoted above, acknowledging lack of Crown governance in Turanga, would apply equally in upper Wairoa and Waikaremoana. We have little evidence of any attempt by Crown officials to establish relationships with the upper Wairoa or Waikaremoana communities; overwhelmingly, officials’ interaction was with the lower river and coastal chiefs. It does not seem that any upper Wairoa or Waikaremoana chiefs attended the Kohimarama conference in 1860. Nor is it clear whether representatives of all those communities attended hui at Wairoa. Tuhoe and Ngati Ruapani from the interior may not have done so. It is thus possible, as Marr suggests, that the first contact many people of the region had with the Government was being attacked by its forces. That would make it inconsistent with the Crown’s Treaty obligations for it to defend the use of military force against those people by relying on their ‘rebellion.’

But even if there had been a prior relationship between the peoples of the area and the Crown sufficient to give rise to a duty of allegiance to the Queen, making it meaningful to analyse the situation in terms of rebellion, we would find that none was established. First, with regard to events at Waerenga a Hika, we note that the only relevant conduct that could plausibly be argued to be rebellion was the assistance rendered by Te Waru Tamatea, Te Tuatini Tamaiongarangi, and their men. In our assessment, that conduct was not rebellion. Our first reason is that, as the Turanga Tribunal found, the taua was assisting in the defence of a pa, in which there were hundreds of non-combatants, against unlawful aggression. In those circumstances, we consider the defence of self-defence applies equally to the assisting taua as it does to those being assisted: the Tauranga Moana Tribunal’s analysis provides a sound basis for that conclusion. Further, we note that the number of men who provided assistance at Waerenga a Hika was small; Te Waru Tamatea’s party had already suffered heavy casualties in the fighting at Orakau. A small group was less likely to pose a genuine threat to peace when they returned from Turanga to the Wairoa area. Professor Brookfield has noted that the 1863 New Zealand Settlements Act was premised on there being such a substantial threat to future peace by the conduct of ‘a tribe or a section of a tribe’ that military settlements were the best means of protecting peaceful citizens (see chapter 5), while

85. Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 80
86. Ibid, pp 80–81

531
the 1866 East Coast legislation was focused on use of the confiscated land to pay for the costs of the hostilities rather than providing for military settlement – it is implicit in the notion of rebellion that the scale of the activity involved poses a genuine threat to the Government and future peace. The scale of the activities of the Wairoa people would not, in our view, justify being regarded as rebellion.

The only other possible contender for conduct that could be argued to amount to ‘rebellion’ was the conduct of those who fought against the Crown forces in the upper Wairoa and Waikaremoana areas in late December 1865 and early January 1866. However, as we will see, the Crown was the aggressor in this conflict, in circumstances where the people who were attacked had offered no threat to law and order in the area or beyond. This supports the conclusion that there was no rebellion to which the Crown was entitled to respond with force.

We turn next to the point that we accepted in chapter 5 – that in the absence of rebellion, the Crown’s use of military force might still be justified if a breach of the peace occurred that could be quelled only by the use of such force. In chapter 5 we found that the threat posed by Te Kooti and his followers in March and April 1869 was such as to justify a military response from the Crown. But our examination has revealed no such breach of the peace by the peoples of upper Wairoa and Waikaremoana. No attack had been made by the men of upper Wairoa after Waerenga a Hika, and there is no indication that one was expected. The fighting men who returned from Turanga did not pass through the coastal Wairoa settlements, but made their way directly overland to Te Reinga, and thence farther inland. (A letter written to McLean by a settler on 27 November offered information that ‘about 200 Hau Haus’ coming from Turanga had ‘halted some distance up this River’.) Nor does the evacuation of Waerenga a Hika by a substantial party of men from Turanga iwi in itself show that they intended to continue a fight with the Crown which they had not sought in the first place. The Turanga Tribunal noted that surrender and evacuation came after only five days of siege; it considered that those inside ‘clearly had no stomach for war’; they were simply protecting themselves.

It was perhaps to be expected that many Turanga men would leave the pa rather than surrender. In the crucial days before hostilities there began, when the rangatira of Turanga were so anxious to talk to McLean, it was clear that they did not want to cross the river to lay down their arms before the large armed Ngati Porou force at McLean’s back, thus placing themselves in a position of weakness. ‘The ignominy – and the dangers – for Turanga Pai Marire would have been too great.’

88. This was the East Coast Land Titles Investigation Act 1866, which provided a role for the Native Land Court in determining rebellion, and thus land confiscation, but not necessarily for military settlement (see chapter 7).
89. Thomas Pearce to Superintendent, 27 November 1865 (Gillingham, supporting papers for ‘Maori of the Wairoa District’ (doc 15(a)), p325)
90. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 1, p 112
91. Ibid, p 111
surrendered. The Turanga men who evacuated Waenga a Hika took what must have seemed a prudent course of action, avoiding surrender of all their people to Crown forces largely composed of Ngati Porou, whose motives they distrusted.

Further, in assessing whether there was, or was likely to be, a breach of the peace at Wairoa, we note that the reactions of lower Wairoa Ngati Kahungunu are revealing. As we have seen, hui were held in lower Wairoa, and arms were sought by a number of chiefs. But the evidence is that Kopu and Whaanga, and those who took the oath of allegiance, were apprehensive of the Crown’s intentions, rather than the intentions of their upper Wairoa whanaunga and the Turanga people who had fled there. Given the numbers of their own fighting men, we doubt that they considered their own whanaunga a threat with which they could not deal. Thomas Lambert stated that there were reported to be about 1,000 fighting men ‘within striking distance of the town;’ the ‘great majority’ classified as ‘friendlies.’ Though Lambert suggested ‘many were slipping away . . . and joining the ranks of the Hauhaus’ in 1865, we note that those who surrendered early in 1866 as the fighting drew to a close – many from upper Wairoa and Waikaremoana – numbered 300.92

In other words, Lambert’s figure – which sits fairly well with an overall Wairoa population of between 2,000 and 3,000 in the 1850s and early 1860s93 – seems to underline the superior numbers of those who were not Pai Marire converts. Had there been any attack, Kopu, Whaanga, and Te Apatu were more than able to defend themselves. In addition, the Government had built a strong blockhouse at Wairoa in September 1865 which could hold 100 men. There was ‘no special disturbance’ at that time, but it increased the local defensive capacity.94 It is our view that Kopu and his fellow chiefs took the position they did in December 1865 both because they had already committed themselves to the Crown, and because they feared that land confiscation might be a consequence of Te Waru Tamatea’s assistance at Turanga. (As events would show, they had very good reason to be nervous.) They were anxious to prove themselves active allies (as they would doubtless have seen it), perhaps to demonstrate to the Crown their ability to keep order in their own district, at a time when Crown forces were heading in their direction.

The Crown’s responsibility, however, was to be certain that there was a tangible threat to Wairoa. A reporter for the *Hawke’s Bay Times* reported on 19 December that ‘Rumor says that unless the strong body of Hau-haus now assembled at Manga-aruhi [sic] commits some acts of violence, no hostile expedition is to be taken against them’ – this despite the past acts of hostility of some against the Crown, and the alarm of the settlers, and of Maori.95 The tone of the overall piece was sardonic; but it is nevertheless a reminder that, at the time, preconditions for a Crown attack on the ‘Hauhau’ were talked about. In fact, however, the Crown

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95. *Hawke’s Bay Times*, 19 December 1865
failed to assure itself that there was a genuine or even apparent threat, or any signs of hostility before it assembled its invading force. McLean had dealt with Turanga; now he turned his attention to Wairoa.

### 6.5.2 How did the Crown conduct its military operations, and was the Crown justified in continuing them until April 1866?

We turn now to consider the Crown's conduct of its military expeditions in upper Wairoa and Waikaremoana during the period from December 1865 to April 1866. We reiterate that the hostilities at Omaruhakeke fall outside our inquiry district boundary, and it is not our role to make findings on them, but they form part of the context for our analysis of the Crown's military operations.

In the Wairoa conflict, it was the Crown, not those who lived in or had taken refuge in upper Wairoa and Waikaremoana, which took active steps to initiate hostilities. The Crown's historian provided a narrative of events; and Crown counsel referred to the start of the ‘first phase of fighting between Pai Marire and government forces led by Fraser’, but did not consider the circumstances in which that fighting took place. Those circumstances are, however, important to our analysis.

What was the purpose of the Crown's expedition? According to McLean's instructions to Major Fraser (who had led Crown forces at Turanga) of 4 December: ‘The chief Kopu will co-operate with you in inducing those Hauhaus [from Poverty Bay] as well as the insurrectionary tribes of this district to submission.’ He was also to delay his advance until the ‘friendly’ Maori were supplied with weapons. Nearly two weeks later, McLean explained to the Colonial secretary that Fraser had been instructed to ‘move to the Wairoa with a sufficient force to cooperate with the friendly Natives of that place in reducing the Hauhaus of upper Wairoa together with those of Poverty Bay to submission.’

McLean, however, reported to the Government that he had first tried negotiations:

> Anxious to avoid further hostilities I deputed influential Chiefs to confer with the Hauhaus in the above districts in the hope that the punishment already inflicted at the East Cape, and Poverty Bay might be sufficient to convince them that it would be more wise to submit than continue a struggle in which they were sure [to] lose.

> They decline all terms, and there is no alternative but to carry on military operations against them.  

Gillingham could not find any evidence of written instructions to the Wairoa chiefs to convince those who were Pai Marire to surrender. However, from the number of hui held in Wairoa and on the coast immediately after Waerenga a

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96. Crown counsel, closing submissions (doc N20), topic 3, p 25

Hika, and the resulting decisions of some groups to take the oath of allegiance, Gillingham thought that the chiefs were carrying out McLean’s request with respect to their own hapu. But McLean referred to his having deputed chiefs to confer with ‘Hauhau’ of upper Wairoa. We agree with O’Malley that ‘[e]vidence of Government peace overtures of the kind described by McLean is . . . difficult to find.’ The one piece of evidence we do have – though it evidently postdates McLean’s report to the Colonial secretary – suggests an eagerness for engagement, rather than for peace. According to Samuel Deighton:

Kopu sent a note to the Rebels on the Waiau branch [the Waiau River] asking whether they meant to fight & if they did requesting them all to [come] over to the Wairoa branch & make one fight of it; he also informed them that if they did not go he should drive them out of their Pa at once.

6.5.2.1 Omaruhakeke

It is true that there were some negotiations when Fraser’s force arrived at Omaruhakeke on Christmas Day 1865. Fraser, his officers, and men had arrived at Wairoa on 8 December in the first steamer that had crossed the river bar, firing off their six-pounder half a dozen times and pitching camp close to the block-house. Fraser and Captain Reginald Biggs went on to Napier. On 13 December, Captain John St George reported a meeting with Paora Te Apatu and Whaanga ‘as to the advisability of starting at once to pitch into the hauhaus.’ And, by 17 December, he was getting impatient for Fraser’s return, so that ‘we should then be able to go into the niggers at once.’ It was known that those who returned from Waerenga a Hika had split into two parties – one of which had gone to the upper Wairoa; the other to Lake Waikaremoana. The initial focus, however, was the upper Wairoa. The force under Fraser’s command marched to ‘the front’ on 23 December 1865, their ‘native allies’ having set out the previous day. Fraser, Biggs, Hussey, and St George commanded the military settler forces, which numbered between 100 and 150 (the sources vary on this point). The Ngati Kahungunu chiefs Kopu, Whaanga, and Karauria Te Iwirori led Maori forces. Estimates of

98. Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 127
100. S Deighton to McLean, 21 December 1865 (Gillingham, supporting papers for ‘Maori of the Wairoa District’ (doc 15(a)), pp 364–365)
101. J C St George, diary, 13 December 1865, ms-copy-micro-0514, Alexander Turnbull Library
102. Ibid, 17 December 1865
103. Locke to McLean, 18 December 1865 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 352–354)
104. Fraser, in his official report, said that 100 Pakeha set out from Wairoa. St George reported that there were 110 Pakeha of all ranks. Thomas Lambert, writing many years later, noted Fraser’s figure but said that there were 80 men of the Taranaki Military Settlers, along with 60 or 70 of the Hawke’s Bay Military Settlers: Fraser, 27 December 1865, AJHR, 1866, a-6, p 7; J C St George, diary, 23 December 1865, ms-copy-micro-0514, Alexander Turnbull Library; Lambert, Story of Old Wairoa, p 569.
their force ranged between 150 and 250. The total force thus numbered between 250 and 400. The force camped a couple of miles above the junction of the Wairoa and Waiau Rivers, and remained there during 24 December primarily because ‘the natives would not start on a Sunday’.

The upper Wairoa people were neither entrenched nor did they come out to engage Crown forces. On a reconnaissance trip made a week before, St George had reported passing several ‘deserted’ pa before reaching Mangaaruhe (Te Waru Tamatea’s pa) and Marumaru, which were on the right and left bank of the Wairoa respectively, with the kainga Omaruhakeke about a mile (1.6 kilometres) away at the junction of the Wairoa and Mangaaruhe Rivers. He reported that neither pa seemed very strong, though they were full of people. A newspaper account written by another member of the party reported that there was ‘no appearance of palisading of any kind, and their entrenchments must consist of earthworks only.’ When the forces arrived on Christmas Day, Fraser described the ‘enemy’ as having ‘scattered’, some to the ‘kainga’ Omaruhakeke and others to the hills. Some of those who had abandoned the settlement on the left bank, however, had crossed the river. They were offered a flag of truce by Fraser, who was said to have sent it via a Maori woman, so that they could surrender; otherwise they would be attacked. Matthew Scott, the local medical officer who was surgeon to the force, stated that it was the white handkerchief of FE Hamlin, the interpreter, that was hoisted. Fraser’s message of truce, however, was said to have been rejected ‘with contempt’.

A lengthy korero across the river did take place, according to St George, between Te Waru’s brother and Kopu, but it did not avert the attack as ‘they would not give in.’ Scott wrote:

Fraser grew tired of the finessing, and sang out to Hamlin, who was the interpreter, ‘Tell them to throw down their arms and surrender!’ An evasive answer being returned, down came Hamlin’s handkerchief, up went the Union Jack (ready bent on) [that is, ready to hoist], and simultaneously No 9 [Taranaki No 9 Company Military Settlers] gave fire with a tremendous crash . . .

The bulk of the force then marched up-river towards Omaruhakeke.

Several factors might account for the reaction of the defenders: the unacceptability of Fraser’s terms of unconditional surrender (as he described them himself);
the prospect of being made prisoners; the command of Fraser, who had led the forces at Waerenga a Hika; the absence of any Government official to dignify the negotiations, as had been the case at Turanga (McLean had at least been present there in the initial stages, a fact which would have been known to Te Waru Tamatea). Gillingham, noting that an opportunity was given to the people to surrender, thought it ‘debatable’ whether it was adequate, given the nature of korero to which the various Ngati Kahungunu parties were accustomed on such weighty matters.\footnote{112} As counsel for Ngai Tamaterangi pointed out, McLean gave the occupants of Waerenga a Hika three days to consider written terms of peace: ‘none were offered to the inhabitants of Omaruhakeke.’\footnote{113}

As the force advanced across the river towards Omaruhakeke, the defenders took up positions in the kainga. They were, Fraser reported, driven ‘pellmell’ before his assault; they ‘fled in all directions’, sustaining a number of casualties. That day and the next they were pursued in the bush by Kopu and Biggs; Te Waru was said to have been shot in the wrist in the encounter on 26 December.\footnote{114} Fraser

\footnote{112. Mary Gillingham, written responses to questions, no date (doc 153), para 4}  
\footnote{113. Counsel for Ngai Tamaterangi, closing submissions (doc N2), p 23}  
\footnote{114. Cowan, New Zealand Wars, vol 2, p 133}
noted that a large ‘unfinished’ pa was found in the hills— which may indicate that the people of the district had hoped to be better prepared.

At Omaruhakeke, some 13 people were reportedly killed. This figure is derived from Fraser’s official report to the Government, where he identified ‘about ten’ killed in the first attack, and three more in Kopu’s pursuit – as opposed to two dead on the Government side. However, it is possible that more were killed in battle. Lambert records in his history that ‘The enemy suffered pretty heavily from the fire of the Europeans, but were not so hard pressed as to be unable to carry off their dead and wounded.’ In the absence of other estimates, however, we must accept Fraser’s figure of 13 killed as a minimum. Fraser himself stated, ‘I have no doubt that I am considerably underrating their loss’. Ngai Tamaterangi claimants identified Omaruhakeke as a Ngai Tamaterangi settlement; as we have seen, the pa of Te Waru Tamatea and Nama were within a mile of it.

We note that the kainga Omaruhakeke was subsequently ‘razed’ by order of Fraser. Scott gave an account of the nature of the attack, and the destruction of property by Crown forces, whom he said did ‘wild and terrible work’ in attacking

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115. Fraser to Under-Secretary for Colonial Defence, 27 December 1865, AJHR, 1866, A-6, pp 6–7
116. Ibid, p 7
118. Counsel for Ngai Tamaterangi, closing submissions (doc N2), pp 19–20
the village; they attempted to shoot those who tried to escape up the nearby hillside. Later they returned to destroy property: ‘we burned ploughs and carts and carved houses, also much maize, and split up canoes and did other mischief.’

This was ‘bush scouring’ in action – a ‘new style of warfare’ in New Zealand identified by Professor Belich as having emerged at this time. Marr explains that the aim of bush scouring was to search out and attack assets highly valued by local Maori, generally crops and villages but sometimes also non-combatants. This forced local Maori to either flee the area and suffer severe moral and economic loss, or to stop and fight in an ad hoc fashion with small forces and from unsuitable positions.

It was designed to clear the ‘enemy’ from the area.

6.5.2.2 Te Kopani

At this point, there was a pause. Crown forces moved back down the Wairoa River and camped at Pakowhai, between the Wairoa and Waiau Rivers. Major Fraser wanted reinforcements before he proceeded, and McLean went up the East Coast to secure the participation of those Ngati Porou who had played an important part in the hostilities at Waerenga a Hika. He took with him a letter from the Ngati Kahungunu chiefs Kopu, Whaanga, and Te Apatu. A force of 150 Ngati Porou returned with McLean, arriving at Wairoa on 4 January. As Gillingham notes, no attack was launched by the upper Wairoa and Turanga fighters during this time.

While waiting for the Ngati Porou contingent to arrive, the remaining force continued small-scale operations in the upper Wairoa. Instead of pursuing Te Waru and his people up the Mangaaruhe River, however, the force proceeded up the Waiau River in the direction of Lake Waikaremoana. On 1 January, Fraser, St George, Deighton, and 250 of Kopu’s and Whaanga’s men departed Wairoa (Pakowhai). The following day they moved up the Waikaretaheke River towards Lake Waikaremoana – in St George’s words, ‘some half dozen miles into the Urewera country.’ They did not meet any of the ‘enemy’, though there were sightings in the distance. According to a report in the Hawke’s Bay Herald, the people entrenched themselves for a time on Tukurangi hill, but evacuated it during the night; there was no fighting. The people fled to the lake, and crossed it by canoe.

119. Cowan, New Zealand Wars, vol 2, p 133
121. Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 76
122. ‘Maori account of the campaign against the Hauhaus on the East Coast 1865–70’, no date, p 15, MS-papers-1187–006b, Alexander Turnbull Library
123. Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 134
124. J C St George, diary, 2 January 1866 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 111)
125. ‘Retreat of the Enemy upon Waikaremoana’, Hawke’s Bay Herald, 6 February 1866, p 3 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 111)
Captain John St George. In 1865 and 1866, St George was one of the officers of the military settler forces during the Crown’s campaign in the upper Wairoa and Waikaremoana districts. His diary sheds considerable light on the conduct and attitudes of the officers who led the campaign. St George was later killed in fighting with Te Kooti’s forces at Te Porere in 1869.
At some point before the forces withdrew to Pakowhai on 4 January, further destruction of settlements occurred, as well as large-scale appropriation of horses, cattle, and crops. This was described in the *Hawke’s Bay Herald*:

No fewer than ten settlements were taken possession of and destroyed; and in the vicinity of those settlements were large tracts of valuable land, hitherto wholly unknown to the European settler. Immense cultivations – the extent of which took the friendly natives completely by surprise – were found in the vicinity of the kaingas, as well as large numbers of horses and cattle. The cultivations comprised crops of all kinds of cereals, and are estimated to be worth, as they stand, a large sum of money. They were all taken possession of by the expeditionary force, and may not improbably form a valuable addition to the colonial commissariat.\(^{126}\)

Binney states that this destruction took place ‘in the vicinity of Waikaremoana’,\(^ {127}\) though exactly where is not clear. It is likely – given the troops had two days to scour the country before retiring on 4 January – that 10 settlements were found in a broad area along the southern and eastern shores of the lake. What is clear is that the destruction took place at Waikaremoana, not the upper Wairoa Valley. Hostilities had now been extended to the communities on the lakeshore itself who had had no involvement at Waerenga a Hika at all.

On 10 January, after the Ngati Porou reinforcements had arrived, a further expedition started up the Waikaretaheke River under Fraser’s command. It was 520 strong, and comprised mostly lower river and coastal Kahungunu hapu, and the Ngati Porou contingent led by Rapata Wahawaha and Te Hotene Porourangi.\(^ {128}\) According to Fraser, the purpose of the expedition at the outset was to proceed to Whataroa ‘pa’ or ‘kainga’ (on the Mangaaruhe River) to discover whether ‘all the Hauhaus had evacuated the district’, and also to give Ngati Porou the opportunity of acquainting themselves with what was unknown country to them. But en route, intelligence was received that the ‘rebels’ were still on the southern shore of the lake, and it was therefore decided to change their course. According to Fraser’s report, it was after they had marched some 17 miles (27 kilometres), and reached the Waiau River, that ‘the natives’ decided to go to Waikaremoana, and the ‘enemy’s’ pa at Te Onepoto.’\(^ {129}\) Although Fraser was aware that some of the Waerenga a Hika refugees had fled to Waikaremoana before Omaruhakeke, he now seemed to distance himself from this major strategic decision.

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\(^{126}\) Binney, ‘Encircled Lands, Part 1’ (doc A12), p 111

\(^{127}\) Binney, ‘Encircled Lands, Part 1’ (doc A12), p 111

\(^{128}\) Fraser explained in his official report that it was an ‘expedition undertaken by the friendly natives of this place’, which suggests there were no Pakeha troops, apart from a few officers. He gave the following numbers for the force: Kopu – 120; Ihaka Whaanga – 150; Karauria 50; Hotene, Ropata, and Paura Pareau – 200; total – 520: Fraser to the Superintendent of Hawke’s Bay, 15 January 1866 (Gillingham, supporting papers for ‘Maori of the Wairoa District’ (doc 15(a)), p 379).

\(^{129}\) Fraser to Superintendent of Hawke’s Bay, 15 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 380)
By this time, many of the upper Wairoa Ngati Kahungunu peoples, along with Matete’s group of Rongowhakaata, had retreated towards Waikaremoana. There they were joined by people from the Tuhoe and Ngati Ruapani settlements of the region (it is unclear how many). It is likely that this group included a significant number of women and children. Fraser noted after Omaruhaakeke that the women and children had been sent on to the lake, and that Matete’s group sheltered there also. On 12 January, the Crown force proceeded up the Waikaretaheke River. Their progress was halted at Te Kopani – said to be about four miles (6.4 kilometres) from Te Onepoto on the Waikaretaheke River – where they were ambushed while passing through a gully. In the distance, Fraser later reported, Crown forces could clearly see a pa – what they presumed to be the pa at Te Onepoto and the ‘Hauhau stronghold’. But those who had retreated towards Waikaremoana had entrenched themselves in earthworks covered in dense fern. As the column passed through the gully, they fired down on it from the pits.

Why did they decide to lay an ambush? The size of the Crown column, it is evident, was such that the local and refugee force decided to do so in an attempt to blunt its strength before they were trapped between it and the lake. This was clearly a defensive action. St George said they had a good view of the ‘retiring enemy’ and there were about 150 men. Fraser gave a figure of 200.

Ihaka Whaanga was severely wounded in the first assault. The Crown forces found it difficult to penetrate the rifle pits. But Wahawaha’s tactic of firing the fern cover saw the ambush finally fail, and the defenders flee as Wahawaha’s men charged the rifle pits. About 20 of Wahawaha’s men chased those who fled for the four miles (6.4 kilometres) from Te Kopani to Te Onepoto and Lake Waikaremoana. Some escaped across the lake in waka that lay waiting for them; others dispersed into the surrounding forests.

When they reached Te Onepoto the ‘friendly natives’ took 14 prisoners, nine of whom were men. Four prisoners were executed the following day by Wahawaha, who called them out of the whare where they were confined, seated them in a row, and shot them with his revolver ‘one after the other’.

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130. Cowan, *New Zealand Wars*, vol 2, p 134; Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), p 162
131. Fraser to Under-Secretary for Colonial Defence, 27 December 1865, AJHR, 1866, A-6, p 7
132. Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 111
133. Fraser to McLean, 15 January 1866 (Gillingham, supporting papers for ‘Maori of the Wairoa District’ (doc 15(a)), pp 380–381)
134. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 111
135. J C St George, diary, 12 January 1866, ms-copy-micro–0154, Alexander Turnbull Library
136. Fraser to Superintendent of Hawke’s Bay, 15 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 383)
137. Ibid
138. J C St George, diary, 12 January 1866, ms-copy-micro–0154, Alexander Turnbull Library
139. Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), p 163
high-born chief Nama of Whataroa.  

Two ‘men of the Urewera’ were also said to have been shot.  

St George recorded that ‘Fraser & the Chiefs held a runanga and decided on shooting 4 of the prisoners’; he thus clearly implicates Fraser in the decision-making. Fraser, in his official report, made no attempt to pass over the executions, which he said followed a runanga held by the chiefs. In fact, he justified them on the grounds that ‘three [of the prisoners] came from other places to fight against the Government and . . . the . . . fourth . . . had previously fought against the Government at Turanga’. Asked later to explain what had happened, Fraser said he could have done nothing to prevent it. The Reverend Tamihana Huata
believed Fraser was responsible for the four executions.\textsuperscript{145} Wahawaha’s account implicates Kopu and Te Apatu in the decision-making alongside Ngati Porou,\textsuperscript{146} though Porter recorded that Kopu ‘remonstrated’ with Wahawaha.\textsuperscript{147} St George, who accused Tamaiongarangi of baying for the blood of Pakeha and playing a key role in causing the ‘natives to rise in Turanga’, stated that he ‘well deserved the death he received.’\textsuperscript{148} A press correspondent, however, reported at the time:

\begin{quote}
I regret to say that four prisoners, namely Huruhuru te Tautene [Te Tuatini Tamaiongarangi], his [nephew] Matenga (a mere lad), together with 2 men of the Urewera, were slaughtered the following day (Saturday) in cold blood, with the sanction, it is said, of Major Fraser. This I cannot credit, as it would be an everlasting disgrace were it true.\textsuperscript{149}
\end{quote}

We will explore these matters further below.

In the wake of the executions, Wahawaha and a small party explored the surrounding countryside for those who had escaped. He encountered a small group in the woods and attacked, killing three before they escaped across the lake in two canoes that had previously been undiscovered by Crown forces.\textsuperscript{150} In addition to this, according to St George, after the four men were shot the forces set about destroying the surrounding settlement at Te Onepoto. “The Tuparoa natives had a grand war dance and after looting and burning the kainga we all returned and camped where we had stopped the day before.”\textsuperscript{151}

There are widely varying accounts of the death toll at Te Kopani. We consider them further here, not only because of the importance of this issue to the claimants, but also because knowing the number of casualties is important to understanding why the latter stages of the conflict unfolded as they did. Fraser’s figure of 25, given in his official report (unofficially, the following day, he wrote ‘25 or more’\textsuperscript{152}) was the lowest figure; it evidently included the four who were executed by Wahawaha at Te Onepoto on 13 January, and the three his party killed ‘in the woods’\textsuperscript{153}. St George wrote in his diary that 35 had been killed.\textsuperscript{154} A contemporary

\textsuperscript{145} Gillingham, ‘Maori of the Wairoa District’ (doc I5), p139
\textsuperscript{146} Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), p163
\textsuperscript{147} Thomas Porter, History of the Early Days of Poverty Bay: Major Ropata Wahawaha: The Story of his Life and Times (Gisborne: 1923), p20
\textsuperscript{148} St George, diary, 13 January 1866, ms-copy-micro-0154, Alexander Turnbull Library
\textsuperscript{149} Hawke’s Bay Times, 22 January 1866 (Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), p163)
\textsuperscript{150} Fraser to McLean, 15 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc I5(a)), p384); Fraser, dispatch, 16 January 1866, New Zealand Gazette, 1866, no 10, pp61–62
\textsuperscript{151} J C St George, diary, 13 January 1866 (Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), p163)
\textsuperscript{152} Fraser to McLean, 16 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc I5(a)), p404)
\textsuperscript{153} Fraser to McLean, 15 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc I5(a)), p384); Fraser, dispatch, 16 January 1866, New Zealand Gazette, 1866, no 10, pp61–62
\textsuperscript{154} Binney, ‘Encircled Lands, Part 1’ (doc A12), p111

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newspaper account, however, reported that ‘forty-one Hau Haus were killed’, and later raised this to 50.\footnote{155} Wahawaha himself stated that ‘upwards of 60 people had been killed; this was given as between 60 and 80 people in Thomas Porter’s biography of Wahawaha.\footnote{156} How do we account for such differences in what are three accounts from those present at the fighting?

Major Fraser’s official report was sent to the Government just three days after the main battle, and it is evident operations continued after that. We might deduce that he had downplayed casualties, or simply that he was not altogether certain about his figures, as his report seems to indicate:

25 killed; wounded unknown (as far as can be ascertained).
‘Friendly’ : 12 killed; 17 wounded\footnote{157}

As the commanding officer, he would have relied heavily on reports received after the attack, and on a count of bodies recovered. He was writing soon after the battle, in the context of ongoing operations at the lake, and it is conceivable that a full picture of the events of 12 and 13 January had not yet emerged. But even the day after writing his official report he was beginning to revise his figures upwards. He wrote to McLean, ‘We have killed 25 or more of the enemy’.\footnote{158} We note that St George, writing in similar circumstances, recorded in his diary that 35 had been killed.\footnote{159} It is interesting that the figure is higher than Fraser’s, though he too may have been unaware at the time of the full picture.

The account later published in the \textit{Hawke’s Bay Herald} on 6 February 1866 was described as having originated ‘from the pen of an eyewitness to the affair’. The paper’s correspondent described the ambush and the storming of ‘enemy’ positions by the Kahungunu and Ngati Porou forces, ‘causing total defeat of the enemy, who were seen flying in all directions’. Mostly the men made for their pa some five miles (eight kilometres) away, where ‘men, women and children’ had been sighted before the attack, at the niu. Later, it was suspected that their activity was designed to distract attention from the hidden rifle pits; they might, of course, have been invoking divine assistance. According to the correspondent, the pa was ‘carried by storm . . . The men, women and children were now to be seen running for their canoes to make their retreat across the Waikare Moana lake.’ The day was fine, and the lake calm, the correspondent reported, which was the only reason many were able to get out of harm’s way; the day before, the sea had been heavy, and the canoes would have been useless. But though many got away, others were shot while running to the canoes. The correspondent described the results:

\begin{itemize}
  \item [155] ‘The Fight at Waikaremoana’, \textit{Hawke’s Bay Herald}, 6 February 1866, p 3
  \item [156] Rapata Wahawaha, ‘Maori Account of the Campaign against the Hauhaus on the East Coast 1865–70’, no date, ms-papers-1187–0068, Alexander Turnbull Library; Porter, \textit{History of the Early Days of Poverty Bay}, p 17
  \item [157] Fraser, dispatch, 16 January 1866, \textit{New Zealand Gazette}, 31 January 1866, no10, p 61
  \item [158] Fraser to McLean, 16 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 404)
  \item [159] Binney, ‘Encircled Lands, Part 1’ (doc A12), p 111
\end{itemize}
Thirty-three of the enemy killed were buried by our people, and eight were shot while in the water, making their escape to their canoes, and were seen to sink, – making the ascertained number killed on the enemy’s side 41.\footnote{160}

This is the most detailed contemporary account of the pursuit to the lake we have, and it is hard to dismiss it. The reporter’s account and Fraser’s seem to differ on some of the details of the events. Fraser does not mention the storming of the pa (though he did report sighting it at the outset, and its flags flying at the niu), or the presence of women and children, though he had reported earlier that the Omaruhakeke people had sent their women and children on to the lake. It is possible that while Fraser would not have sought to conceal the full number of fighting men killed or wounded, he was less confident about admitting the presence of women and children in the middle of a running battle. Fraser also wrote that only a ‘few Hauhau’, once they reached the lake, left by canoe, and the rest escaped to the woods. The Herald account, while also stating that those men who did not leave dispersed into the forest, implied that many more, including women and children, ran to their canoes, so that as many as eight were shot while attempting escape. Given the level of detail provided in the Herald account – detail that is supported by other sources but that also enhances our overall picture of the battle – the figure of 41 is a more reasonable estimate for the number of deaths than Fraser’s 25.

A subsequent report (dated 2 February) in the Hawke’s Bay Herald of 6 February provided the ‘latest intelligence’ on developments at the lake, and gave a revised figure for casualties: ‘The number of rebels killed in the late engagement at Waikare–Moana is stated to be fifty. One of the rebel chiefs who was wounded in the affair has since died.’\footnote{161}

These two newspaper reports are the only accounts available to us which were written soon after the events in question, but with enough distance for a full picture of the events to have emerged.

Rapata Wahawaha’s account is contained in an undated manuscript.\footnote{162} He described how ‘upwards of 60’ people were killed at the Waikaremoana battle. Thomas Porter gave his own version of this account, emphasising Wahawaha’s role. According to Porter, Wahawaha ‘received inspiration that won the day’, setting alight the fern and allowing the Crown forces to mount assaults on the left and right flanks with little opposition:

In a few minutes volumes of smoke were rolling up the hillside, blinding and discomfiting the concealed enemy, behind which the now exultant friendlies, when they once gained the crest of the ridge and rifle pits, were enabled to decimate the Hauhaus, who retired with great loss upon Waikaremoana, leaving some 60 or 80 of their dead upon the field. No prisoners were taken, but it is said that many badly wounded crept

\footnotesize{\textsuperscript{160} ‘The Fight at Waikaremoana’, Hawke’s Bay Herald, 6 February 1866, p 3

\textsuperscript{161} Ibid

\textsuperscript{162} Rapata Wahawaha, ‘Maori Account of the Campaign against the Hauhaus on the East Coast 1865–70’, no date, ms-papers-1187–006B, Alexander Turnbull Library}
into the thick fern to die, or perished miserably alone in the many caverns and concealments of that rugged country.\textsuperscript{163}

Porter’s is a somewhat dramatic account, focused on the exploits of Wahawaha – and first published in the 1890s, three decades after the events in question. His account of the wars is not particularly careful, and in fact provides two versions of the battle at Te Kopani. But the figure he gives of 60 to 80 dead would have reflected his own understanding of the full extent of casualties during and after the battle.

We add that Thomas Gudgeon and James Cowan, in their histories of the wars, both gave figures of those killed which were closer to Porter’s than to Fraser’s: Cowan’s figure was 60; Gudgeon’s was ‘about 50’ (in an appendix to his book he specified 54, evidently adding those executed to the total).\textsuperscript{164} Both writers had the advantage of talking to those who had been present at the battle, as well as consulting published reports. Elsdon Best, in \textit{Tuhoe: Children of the Mist}, supplied Porter’s and Gudgeon’s figures without providing his own assessment.\textsuperscript{165} In his later publication, \textit{Waikaremoana: The Sea of the Rippling Waters}, he was more forthcoming. Describing how the battle at Te Kopani resulted in heavy losses for the inhabitants of the pa, he wrote that they left ‘nearly eighty of their dead upon the field. It is certain, however, that this does not represent the enemy’s loss, and even now the oncoming Pakeha often finds mouldering skeletons in gully and cave, with probably the remains of a gun by the side thereof’.\textsuperscript{166} Thus, Best, on the basis of his oral sources, and of the finding of koiwi (human bones), was moving to a figure higher than that given by Wahawaha. The battle at Te Kopani, he had been told, was a bloody affair.

There is no way of knowing exactly how many people were killed at Te Kopani. All the first-hand accounts, however, described the rout of the pa in no uncertain terms. The occupants were utterly defeated from the right and left flank, and from the centre (Fraser described them as ‘completely routed’), and were then pursued for four miles (6.4 kilometres) to the lake before the remnants scattered to the forests or crossed the lake.\textsuperscript{167} In these circumstances, and given that there were said to be from 150 to 500 or 600 ‘rebels’ in the pa at the outset (this latter figure is Lambert’s),\textsuperscript{168} casualties of upwards of 50 seem very probable. Fraser, from his somewhat limited vantage point, was certain of half this number, but we conclude that his figure was simply too low. It is difficult to give a precise figure for the number killed while trying to cross the lake, or who died subsequently as a result of

\begin{figure}
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\begin{thebibliography}{99}
\bibitem{163} Porter, \textit{History of the Early Years of Poverty Bay}, p 17
\bibitem{164} Thomas W Gudgeon, \textit{Reminiscences of the War in New Zealand} (Papakura: Southern Reprints, 1986), p 103, app; Cowan, \textit{New Zealand Wars}, vol 2, p 135
\bibitem{165} Elsdon Best, \textit{Tuhoe: Children of the Mist}, 2 vols (Wellington: AH & AW Reed, 1972), vol 1, p 590
\bibitem{166} Elsdon Best, \textit{Waikaremoana} (Wellington: Government Printer, 1975), p 104
\bibitem{167} Fraser to McLean, 15 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 382)
\bibitem{168} Lambert, \textit{The Story of Old Wairoa}, p 580
\end{thebibliography}
their injuries. We cannot discount the possibility that some women and children were killed. We conclude that a figure of 40 to 50 killed is a minimum, and it is probable that the casualties were higher.

6.5.2.3 Hostilities after Te Kopani
In the wake of the fighting at Te Kopani and at Waikaremoana, most of those who escaped ‘scattered in Te Urewera,’ according to Binney. Fraser reported to McLean on 16 January that ‘we have driven them [the “enemy”] out of the country altogether,’ and on 21 January he referred to the fighting being ‘over’. At this point, McLean (who was then in Wairoa) wrote a terse demand to the ‘Chiefs of the Hauhaus . . . residing at Waikare Moana or thereabouts’ on 24 January 1866 that they should surrender now that ‘the bravery of both parties has been displayed’:

Therefore this is a word to you, that you should turn over to the Government, abandon your Hauhauism, take the Oath of Allegiance to the Queen of England, and deliver up your arms; In order that the conditions of peace, and terms on which your lives may be spared should be made known.

In short, they were to surrender themselves to the power of the Crown. McLean wrote to Governor Grey soon afterwards explaining that the ‘Hau Haus [had] been driven from all their positions at the Wairoa and have retreated to the North End of the Waikare moana Lake’ and that he was ‘really anxious that peace should be established whenever it is possible to do so’. McLean’s messenger, Ihaka Papatu, was a man of rank (the brother of Tamihana Huata and Hapimana Tunupaura). He was captured, and was reported several weeks later to have been killed and decapitated. Kopu sent a messenger to Waikaremoana at about the same time, who returned with news that the ‘Urewera Hauhau’ were fortifying their pa at Tikitiki to renew fighting. Kopu had sent an offer of peace, while at the same time seeking more guns himself from McLean.

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170. Fraser to McLean, 16 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 404)
171. Fraser to McLean, 21 January 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 407)
172. McLean to chiefs of the Hauhaus, 24 January 1866 (Judith Binney, comp, additional supporting papers to ‘Encircled Lands’, various dates (doc A12(b)), p 504)
173. McLean to Grey, 26 January 1866 (Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), pp 163–164)
174. The messenger was first reported missing by Ihaka Whaanga on 14 February 1866. On 6 March McLean wrote that the Waikaremoana people had ‘made a prisoner of the messenger’. At the end of March, the Hawke's Bay Herald reported the discovery of his body. McLean used this information to justify Kopu's execution of a prisoner at Mangarua in March: Ihaka Whaanga to McLean, 14 February 1866 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), p 505); McLean to colonial secretary, 6 March 1866 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 501–503); ‘Wairoa’, Hawke’s Bay Herald, 27 March 1866, p 4; McLean to colonial secretary, 7 April 1866 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 495–496).
175. Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), p 164
After this, during February, groups of people began surrendering ‘at Wairoa’. McLean reported to the colonial secretary on 25 February that he had received no answer to his letter addressed to the chiefs, but their response was evident in their various actions. In light of the Crown’s unprovoked military operations, it is perhaps not surprising that these ran the full gamut from resistance (as is evident in the killing of Papatu) to submission. On 10 February, about a dozen people surrendered to colonial forces at Wairoa. Another 30 surrendered on 16 February, and about 40 were reported to have ‘come in’ and taken the oath of allegiance on 21 February.

The next two months were characterised by rumours of large numbers of ‘Hauhau’ gathering at various pa; by expeditions mounted by Kopu and Whaanga, and by surrenders, which increasingly gathered momentum. The rumours continued throughout March and April. On 6 March, McLean reported continuing hostility by the ‘Hau-haus at Waikaremoana’, who had made ‘no signs of submission’. On 7 March, Paora Rerepu reported 200 ‘Urewera’ were gathered there and were coming to attack either Wairoa or Mohaka. (Earlier, on 4 February, he had reported rumours of 300 ‘Urewera’ building three pa to prepare for fighting – but added that he was doubtful about this report.)

During April, there were many rumours. On 17 April, McLean advised that Kereopa was said to be at Maungapohatu with a very large hostile force, and that an attack on Poverty Bay and Wairoa was being planned. The Hawke’s Bay Herald reported a few days later that the party Kereopa was rumoured to be bringing to Wairoa comprised ‘Te Urewera, Waikato, Rongowakaata [sic], and Ngatikahungunu, and to number 800 men’. Even the paper was prepared to admit that the number might be exaggerated. Kopu and Whaanga had offered to lead a force to capture him; the Government considered, however, that efforts to apprehend Kereopa should be undertaken by the East Coast Expeditionary Force. A few days later, a man from Ruatahuna reported that Te Waru was at Ruatahuna, along with Rongowhakaata and Urewera people in large numbers, awaiting Matete, who was in Taranaki. Not long afterwards, Whaanga sent news that a ‘Hauhau’ pa was being constructed at Te Reinga (though this turned out to be a false rumour).

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176. McLean to colonial secretary, 25 February 1866, IA 1 1866/634, Archives New Zealand, Wellington
177. Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), p164
178. The Hawke’s Bay Times reported that 41 surrendered, whereas Deighton wrote that there were 42: Hawke’s Bay Times, 1 March 1866, p3 (Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), p164); Deighton to McLean, 23 February 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p355).
179. Paora Rerepu to McLean, 7 March 1866 (Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), p165); Paora Rerepu to McLean, 4 February 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp398–400)
180. McLean to colonial secretary, 17 April 1866 (Binney, additional supporting papers to ‘Encircled Lands’ (doc a12(b)), p480)
181. Hawke’s Bay Herald, 24 April 1866 (Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), pp167–168)
182. Battersby, ‘Conflict in the Bay of Plenty’ (doc b2), p168
Meanwhile, a number of expeditions took place between February and April. Binney suggests, on the basis of draft instructions to Fraser dated 13 January, that it was decided that subsequent expeditions should be ‘exploratory, not a full-scale military operation.’ The Government, Fraser was told, did not have the resources for the expensive operation he proposed of ‘surrounding the natives supposed to be at lake Waikari Moana.’ The result of this decision, in her view, was that control was shifted into the hands of ‘Maori allied to the government.’ It is clear that operations continued; the reality was that the Government, spurred on by the active support of coastal Kahungunu leaders, refused to halt expeditions before Te Waru was killed, captured, or had surrendered. Subsequent expeditions were led by chiefs, without European officers; they were not systematically reported, and thus disappeared from later historical accounts. We note, however, that there were at least periodic reports made to Government officials, and that newspaper accounts were also published. Paora Rerepu reported on 4 February that he had returned from Te Putere, where he had captured 10 ‘Hauhau’ fugitives, whom he was keeping at his pa at Te Hakī.

After the rumours of ‘Hauhau’ gathering at Waikaremoana, a further ‘foraging’ expedition, as the *Hawke’s Bay Herald* correspondent described it, was made by Whaanga and Kopu to Te Onepoto in mid-March 1866. At a village called Mangarua, three miles (five kilometres) from Lake Waikaremoana, they surprised a group of 200 people engaged in Pai Marire karakia. Some, it appears, fled, and were fired on. According to the report, four men and an elderly woman were killed. Those who remained promised to surrender. Binney says that a premature gunshot (perhaps fired as a warning) prevented the killing of more people; most were able to escape. ‘The Herald’ account went on to describe the recovery of the body of the ‘missing native’ – evidently McLean’s messenger – and then the surrender and execution of ‘an old man,’ the chief Rangikumapua:

An old man and woman surrendered to Kopu: the old man prayed hard to have his life spared; but Kopu, after listening quietly to all he had to say, shot him. This was rather too bad, as the old man could not have done the slightest harm to anyone; and the only excuse given is, that Kopu takes no prisoners.

Fraser, in his report on the matter, stated that Rangikumapua had been taken prisoner and shot about an hour later; he did not expand on the circumstances.

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184. Colonial Defence Office to Fraser, 13 January 1866 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 127–130)
185. Paora Rerepu to McLean, 4 February 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc I5(a)), pp 398–400)
186. ‘Wairoa’, *Hawke’s Bay Herald*, 27 March 1866, p 4
187. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 113
188. ‘Wairoa’, *Hawke’s Bay Herald*, 27 March 1866, p 4
He was thankful, as he put it, that as he was not there no one could accuse him on this occasion of execution. Despite this, and despite McLean's reporting the murder of his messenger on 7 April ‘in extenuation’ of the executions carried out by Kopu, the Government expressed to McLean (for him to pass onto the chiefs) its disapproval ‘in the strongest manner of the murder of prisoners in cold blood.'

Six people were killed at Mangarua: five as they attempted to escape an unexpected attack, and one after surrendering.

Later in April, there were rumours of a possible attack on Poverty Bay being planned by ‘Hauhau’s, then supposed to be in a pa near Lake Waikaremoana. The result was scouring operations by Whaanga and Te Apatu, with two forces – one of 120 men, and another of 170 men – in various directions around Marumaru. Whaanga offered the opportunity of surrender to a party of some 50 ‘Hauhau’ whom they met – among whom were men of his own hapu and Te Apatu’s. All took it except 10, who later changed their minds and also ‘came in.’ Nama, the Whataroa chief, and Himiona, a lower Wairoa chief, were among the first group. Fraser, having been informed by Whaanga of developments on 24 April, took a small force to join up with Whaanga at Opouiti (near Marumaru). He raised the question why the party – well armed – had come so close to Wairoa, and was told that they had come to surrender, though the chiefs were divided about doing so.

There were further rumours of a strong pa at Te Reinga, but Whaanga’s scouts found that there was no sign of a pa there. They did, however, bring in ‘some more prisoners, chiefly old men and women’ whom they found there. Fraser then sent ‘Queen’s natives with some Hauhaus’ to go and try to ‘bring in all the Hauhau remaining’ from the kainga at Te Putere, where they were gathered. By the end of the week, he reported, ‘the whole of the Hauhau, except Te Waru and his immediate followers about thirty in number were collected at Marumaru.’ Fraser, meanwhile, left with a force at the end of April for Te Reinga towards Turanga on an inland track, being uncertain that ‘he had foiled the plans [for attack] that had earlier been reported.’ But he found no sign of ‘Hauhau’, and having reached Turanga concluded that there was no danger of an attack since the ‘Hauhau’ at Wairoa had all surrendered.

Fraser reported later that ‘the complete surrender of the Hauhau’s belonging to the Wairoa and adjacent country’ had concluded on 28 April at Opouiti. On 7 May, McLean reported that 260 people had been captured by Whaanga – among them ‘six or seven chiefs of some distinction’, including Nama. Some were kept under the surveillance of chiefs of lower Wairoa, but most were released once they

191. Fraser to Under-Secretary for Colonial Defence, 26 May 1866, AD 1 1866/2334, Archives New Zealand, Wellington
193. Fraser to McLean, 7 May 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 450–451)
194. Fraser to Under-Secretary for Colonial Defence, 26 May 1866, AD 1 1866/2334, Archives New Zealand, Wellington
195. McLean to Colonial Secretary, 7 May 1866, IA 1 1866/1467, Archives New Zealand, Wellington
took the oath of allegiance. Te Waru Tamatea and about 15 others finally surrendered on 9 May; they were received by Kopu at his pa on 10 May. Two weeks later, Te Waru ‘and the Hauhaus’ took the oath of allegiance in McLean’s presence. Fraser reported on 26 May, when he returned from his expedition, that a total of 300 men had surrendered. A list of Wairoa ‘prisoners of war’ compiled about this time – evidently incomplete – gives 97 names, divided into three parties: Te Waru’s men (13), Ngati Kurupakiaka (65), and Nama’s men (19). Te Waru was said to have been sent to Napier, though he was later allowed to return to Wairoa. At Napier, ‘the worst’ were selected to be deported to the Chathams. Ultimately, a small group who were from Wairoa was sent to Wharekauri. (We discuss this further below.)

These events effectively marked the end of the upper Wairoa and Waikaremoana fighting. Despite McLean’s continued urgings that Kereopa Te Rau and Patara Te Raukatauri should be captured, and that it was necessary to ‘reduce the Ureweras to submission if they continued as at present to threaten our outposts at Wairoa and Poverty Bay’, the hostilities were by then over.

6.5.3 Treaty analysis and findings
We have established already that there was no rebellion in Wairoa, or even a breach of the peace. The result is that the Crown was not justified in sending its forces into upper Wairoa and Waikaremoana. But because it did so, we have asked whether it was justified in continuing military operations until April 1866; and we have examined the Crown’s military operations in the area to assess whether they were conducted in a manner consistent with the principles of the Treaty of Waitangi.

In chapter 5, we have considered the Treaty and other standards that apply to the Crown’s conduct of its military expeditions. In summary we found that:
- The Crown in the 1860s considered itself bound to act according to some, at least, of the accepted laws and usages of war. It accepted that, by these standards, prisoners should not be summarily executed, that non-combatants should not be killed, and that women and children should not be treated as prisoners.
- The Crown is entitled by law to use appropriate force during a state of emergency. Even in those circumstances, however, fundamental Treaty rights endure, such as the rights, guaranteed by article 3, not to be arbitrarily deprived of life or to be punished outside the law.

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197. Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), p 170
198. Gillingham, ‘Maori of the Wairoa District’ (doc I5), p 149
199. Lambert, The Story of Old Wairoa, p 582
201. McLean to colonial secretary, 30 May 1866 (Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), p 169)
The fundamental Treaty principles of active protection of the lands and property of Maori, of good government, and the obligation to act in good faith apply to the conduct of the Crown’s military expeditions in Te Urewera.

We consider first whether the Crown was justified in continuing operations into the first few months of 1866. We note that, from the outset, Crown forces were dealing with communities who were on the defensive. In our view, this remained the case throughout the conflict. As the forces marched up the Wairoa Valley, they reported abandoned or unfinished pa. When they destroyed 10 settlements in the vicinity of Waikaremoana in early January, there was no mention of armed opposition. When the fighting men of Waikaremoana and upper Wairoa turned and laid an ambush at Te Kopani on 12 January, they were facing a very large Crown force. Tactically, ambush was their best option: they must have concluded that it was simply too risky to take the brunt of a full-scale attack on the shores of the lake. Their casualties were high enough, as it turned out, in conditions where initially they had had the upper hand.

Nor were any attacks made on Wairoa or other towns – despite rumours of possible attacks by ‘Hauhau’ parties throughout the period. The killing of McLean’s messenger stands as the exception. Fraser was still voicing his suspicions that an attack might be made in April, even as surrenders were under way; he was doubtful of the intentions of a party of 50 men at Marumaru because they were armed, despite McLean’s demand that arms should be brought in to be given up by those ‘coming in’. We note also, towards the end of the Crown’s operations, the taking by surprise of those gathered at Mangarua who were holding karakia when Whaanga’s men arrived; many simply ran. And the final descriptions of those who were rounded up at Te Reinga, or capitulated at Te Putere, convey no evidence of defiance, let alone armed resistance. The Turanga Tribunal found that Turanga Maori had not sought hostilities, and had no wish for active involvement in the hostilities that were visited on them in November 1865 – hence their surrender after only a few days of the siege of their pa Waerenga a Hika.202 The same, we find, is true of the communities of upper Wairoa and Waikaremoana.

We are not surprised – given the stated purpose of the Crown’s operations – that Crown forces continued those operations as far as the lake, and into January and beyond. The mopping-up operations underlined the Crown’s determination to secure the complete subjugation of the interior peoples. But we cannot think they were justified. Fraser, writing to the Government in May, was full of praise for the chiefs who had assisted him as they ‘fought and conquered a powerful foe equal if not superior in numbers to their own’.

But those whom Crown forces pursued were hardly an aggressive foe; if ‘powerful’, they did not set out to demonstrate their power by mounting attacks on Crown forces, or on the pa of Crown-aligned Ngati Kahungunu, or on townships. Rather, they simply retreated before the Crown forces.

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202. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 1, p 112
203. Fraser to Under-Secretary for Colonial Defence, 26 May 1866, AD 1 1866/2334, Archives New Zealand, Wellington
Given that there were no signs of an aggressive enemy at the outset, there would appear to have been every opportunity for Crown negotiation with the upper Wairoa leaders. But it seems clear from McLean’s own absence (compared with his prominence at Turanga in the early days of the confrontation there) that he was not interested in a political solution before Crown forces had been sent in. At Wairoa, he left the conduct of affairs solely to his military commander, Fraser, enjoining him to work with the chief Kopu. And in the course of the operations, it seems that Fraser increasingly left the force’s conduct to the chiefs on whom he relied so heavily for support. There was, as we have seen, some negotiation initially at Omaruhakeke; but, compared with Turanga, little enough time was granted the defenders to consider Fraser’s terms. In any case, given the aftermath of Crown successes on the East Coast and at Turanga, unconditional surrender was not an attractive option. Ultimately however – in the wake of its dispatch of a much larger force to Lake Waikaremoana, the infliction of substantial casualties, and constant harassing to pressure those who remained in the district – the Crown succeeded in securing such surrenders on its own terms. McLean’s written offer of unconditional surrender in late January 1866 might have averted further large-scale casualties, but casualties might have been averted altogether had negotiations been conducted the previous month. The life of McLean’s messenger, Papatu, might not have been on the line had the Crown’s military operations (and the execution of chiefs) not aroused such resentment. While we cannot excuse such a killing – particularly that of a messenger – this was perhaps the single act of aggression committed by those whose lands had been invaded, and communities devastated.

In respect of the Crown’s conduct of its hostilities, we find that it was undiscriminating. Crown forces were sent into a district where there were a number of different tribal communities, whose identities – let alone their involvement in any previous hostilities – were not clear to the Crown. We consider there was a heightened onus on the Crown, in the circumstances, to proceed cautiously. Having made few efforts in the previous 25 years to establish a relationship with the people, although it regarded them as citizens to whom it owed treaty obligations, the Crown was obliged to ensure that they understood the Crown’s role and intentions and, equally, that the people’s role and intentions were understood by the Crown. Only then could the risk of misunderstanding, mistrust, and hostilities based on mistaken premises be minimised.

The retreat of Te Waru Tamatea, and of Anaru Matete, held to be rebels, was evidently sufficient to justify either the casting of a wide net (to capture them), or wide-ranging punishment for communities which now stood accused of rebellion – or its identical twin, in Crown parlance, ‘Hauhauism’. The Crown’s duty of good government obliged it to be certain who its forces were attacking, and why. The Crown failed in this most basic duty. In the absence of such certainty, a strategy designed to render whole districts uninhabitable was particularly indefensible. As we have found in chapter 5, the destruction of property that served no military purpose was in breach of the plain meaning of articles 2 and 3 of the Treaty of Waitangi, and of the principle of active protection. The Crown’s wide-ranging and draconian raids were conducted without concern for the welfare
of non-combatants. They could not be justified on the grounds that either the Turanga men or Te Tuatini Tamaiongarangi and Te Waru Tamatea had committed killings for which they needed to be held to account. They could not be justified on the grounds that belief in Pai Marire teachings was akin to rebellion (though McLean’s insistence in January 1866 that Pai Marire beliefs be given up when people surrendered to the Crown implies that this was the position the Crown took). They could not be justified on the basis that such communities were offering, or might offer, assistance to upper Wairoa ‘rebels’, and therefore stood condemned as rebels also. We have found that Te Waru Tamatea and Anaru Matete were not in rebellion against the Crown when they resisted its attack at Waerenga a Hika.

Belgrave and Young argued that ‘the degree of sustained violence deployed during the armed conflicts of 1865 and 1866 was more limited when compared to the fighting between 1868 and 1872 which followed’.204 Although this statement is true so far as the duration of the conflicts is concerned, we cannot accept that what occurred in the upper Wairoa and Waikaremoana was anything less than what occurred during the Crown’s later military operations in pursuit of Te Kooti. The number of those killed in this brief, five-month period – perhaps upwards of 70 – eclipsed the total death toll of the period from 1869 to 1871. The death toll at Te Kopani was among the highest of any battle during the New Zealand wars. And while the destruction of property was conducted without the same stated determination to deprive the local people of a means for survival, and thereby punish them, the effect was the same. Crown forces destroyed settlements such as Omaruhakeke and Te Onepoto wholesale when they were captured, and scouting parties eliminated other cultivations when they were found. This was conducted without thought to the welfare of non-combatants.

In respect of the execution of prisoners, the Crown has conceded that ‘the execution of unarmed prisoners by Maori troops engaged in military activities on behalf of the Crown was a breach of the guarantee of the rights of British subjects under Article 3 of the Treaty of Waitangi’.205

We have found that there are no circumstances in which such acts could be justified. The Crown at the time considered itself bound to act according to some, at least, of the accepted laws and usages of war. It accepted that prisoners should not be summarily executed. This is evident both in the explanations sought from Major Fraser after the Government received reports of such executions after Te Kopani, and in the formal admonishment he received from the Native Minister for not preventing ‘the unnecessary and unlawful execution’ of the four prisoners. The Minister further recommended to the Governor that he point out to the chiefs concerned that, ‘however loyal their intentions may have been, yet that the putting these men summarily to death without regular trial and without the signification of the Governor’s assent was an unlawful act, and is repugnant to the

205. Crown counsel, closing submissions (doc N20), topic 4, p 2
feelings and customs of civilised people.\textsuperscript{206} And, after the execution of the chief Rangikumapuao in March 1866, McLean was instructed to reprimand Kopu and others, informing them that ‘the Government disapproves in the strongest manner of the murder of prisoners in cold blood’.\textsuperscript{207}

It has to be said, however, that such concerns were less evident among the officers. Fraser himself clearly considered that being in arms against the Crown – even in the course of past hostilities – was sufficient reason to deprive a prisoner of any right of due process and then execute him. St George thought Tamaiongarangi, who, according to rumour, was anti-Pakeha, and had incited rebellion at Turanga, ‘deserved’ to be shot. In his diary, St George matter-of-factly recorded Fraser’s presence at the runanga that decided the fate of the four prisoners. We consider that St George’s account of Fraser’s presence is reliable. In any case, from Fraser’s own statements it seems that he neither tried to stop the executions nor thought them unjustified.

Despite his reprimand by the Minister, there was no inquiry into the circumstances of the executions; nor was Fraser court martialed. The Crown evidently failed to impress on Fraser the seriousness with which executions were regarded, since we must conclude that he failed to impress this on the chiefs. As a result of this failure, a fifth prisoner was later executed. Given that military operations were continuing, the Crown was culpable. Counsel for the Wai 621 Ngati Kahungunu claimants put it to us that rangatira who were ‘engaged as allies’ by the Governor understood that they were delegated the legal power to take life in time of war. In the circumstances of war in Wairoa, utu (the restoration of social balance) was sought by those rangatira who upheld the ‘dominant Kahungunu political line of neutrality’, as counsel put it. This stance, counsel suggested, had been disrupted by those Kahungunu who would not accept it; therefore the right and duty of Kahungunu rangatira who stood by it was to exercise the social sanctions available to them. Utu required the execution of some whanaunga.\textsuperscript{208} But we are not certain that there was a customary obligation on rangatira to accept a ‘dominant’ political line. On the contrary, rangatira were accustomed to adopting and acting in accordance with positions which best suited the interests of their own hapu. It seems unlikely that utu should have been taken solely because some Kahungunu rangatira had adopted a different political stance from that of the majority. In any case, the taking of life as a customary sanction was no longer acceptable for those – like the lower Wairoa chiefs – who had accepted kawanatanga and the Treaty.

Gillingham records that after Ngati Porou arrived at Wairoa in early January, they and Ngati Kahungunu held talks ‘to discuss aspects of their military strategy’, including the fate of prisoners captured. According to the Ngati Porou leader Te

\begin{itemize}
  \item \textsuperscript{206} Haultain to Governor, memorandum, 2 February 1866 (Crown counsel, closing submissions (doc N20), topic 4, p 13); Haultain to Governor, memorandum, 2 February 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc I5(a)), pp 401–402)
  \item \textsuperscript{207} Crown counsel, closing submissions (doc N20), topic 4, p 13
  \item \textsuperscript{208} Counsel for Wai 621 Ngati Kahungunu, written synopsis of closing legal submissions (doc N1), p 52
\end{itemize}
6.5.3

NGA PAKANGA O WAIROA ME WAIKAREMOAONA

Hotene Porourangi, they agreed before starting that if Nama, Tamaiongarangi, and ‘several others’ were captured they should be executed, but that Te Waru should be spared. This strategy was ‘apparently widely understood by the assembled Maori.’ There was no evidence that Fraser was aware of the agreement, and it is possible that he did not know in advance that the executions were to take place.

We are certain, however, that chiefs who fought for the Crown could not in fact operate outside the laws of war observed by the Crown. Crown counsel, while arguing that ‘Maori troops acted in a reasonably autonomous manner at times, and the chain of command between them and the commissioned troops they fought with is unclear’, accepted that Maori forces were engaged in military activities on behalf of the Crown, though they were not Crown troops. Given that it was not Crown policy at the time to allow its troops to execute prisoners, the Crown accepted that there were a series of failures in the events at Wairoa: in providing appropriate instructions to troops before military actions took place, and in ensuring any illegal actions were penalised. We would add that it was incumbent on the Crown’s commanding officers to ensure that chiefs fighting in the Crown’s forces understood and observed such instructions. Major Fraser failed to fulfil his obligations in this respect. We reiterate the Turanga Tribunal’s argument that it was ‘of the utmost importance that the Crown did not succumb to the instinct for revenge. The moral authority of the Crown to require its subjects to comply with a standard prescribed by law, depended on the Crown itself adhering to the same standard.’

The treatment of the prisoners who were deported to Wharekauri (the Chatham Islands) was an issue raised by the claimants. In particular, Ngai Tamaterangi spoke to us about their rangatira Moururangi. Charles Cotter, whose great-grandmother Pukehuia Rangi was Moururangi’s sister, told us that Moururangi was imprisoned on the Chathams, and became a follower of Te Kooti. The Crown raised some doubts about the number of prisoners taken in fighting at Waikaremoana who were deported to Wharekauri. Citing Binney’s clarification of this issue, Crown counsel stated that though a number of Ngati Kahungunu were sent there on the St Kilda, most appear to have been captured in Hawke’s Bay. On its face, the evidence does not identify people detained as a result of the fighting at Waikaremoana who were sent to Wharekauri, other than perhaps three Ngati Kahungunu men ‘said to have been captured at Te Wairoa.’ Counsel accepted, however, that the evidence is not clear, given Kopu’s arrangement for all the Wairoa prisoners to be taken to Pakowhai by Tamihana Huata.

210. Crown counsel, closing submissions (doc N20), topic 4, p 14
211. Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, pp 246–247
212. Cotter, brief of evidence (doc 125), paras 10.5, 13.3
213. Crown counsel, closing submissions (doc N20), topic 6, p 4; Judith Binney, response to statement of issues, 17 November 2003 (doc 81(a)), pp 44–45. Crown counsel, citing the evidence of Charles Cotter, also states that Moururangi (Mr Cotter’s tipuna) was captured in Hawke’s Bay following the fighting at Petane and Omarunui. Mr Cotter’s brief of evidence, however, does not state where Moururangi was captured: Cotter, brief of evidence (doc 125), p 15.
6.5.3

In respect of the detention of these three Kahungunu men on Wharekauri, we record the Crown's acceptance that the detention of the prisoners held there – from Turanga, Wairoa, and Hawke’s Bay – ‘with the passage of time . . . began to assume the character of indefinite detention without trial . . . The duration of detention in the absence of a trial was a breach of the Treaty.’

We must note, however, that the greater number of prisoners were not deported, and it seems that many were released after they had surrendered and taken the oath of allegiance. The Crown thus spared them the added indignity and injustice of indefinite detention.

We find the Crown to have breached the principles of autonomy, good government, and active protection, and also the plain meaning of the Treaty:

› in making war upon the peoples of upper Wairoa solely for the purpose of subjugating them, when there was no rebellion and no threat to law and order justifying the use of force; and
› in continuing the war and carrying it to Waikaremoana, again without justification and for the purpose of subjugation.

214. Crown counsel, closing submissions (doc N20), topic 6, p 5

Charles Manahi Cotter, kaumatua of Ngai Tamaterangi ki Ngati Kahungunu. Mr Cotter expressed Ngai Tamaterangi anger at their having wrongly been treated as ‘rebels’ by the Crown, at the invasion of their lands in the mid-1860s by Crown forces, and at the subsequent loss of their people, villages, and lands. He highlighted the deportation of Moururangi, the brother of his great grandmother Pukehuia Rangi, to the Chatham Islands and his detention without trial. Mr Cotter passed away after the Tribunal’s hearings.
We also find the Crown in breach of its duty actively to protect Maori and their lands, when it destroyed their property and food supplies in the district without the shadow of a justification.

Finally, we find the Crown in breach of the article 3 guarantees, and the principle of good government, for the killing of non-combatants and the execution of prisoners.

We turn next to consider the prejudicial impacts of these serious Treaty breaches.

**6.5.4 What were the impacts of the Crown’s military operations, December 1865 – April 1866?**

**Summary answer:** Maori who defended their upper Wairoa and Waikaremoana lands against invading Crown forces from December 1865 to April 1866 suffered heavy casualties. At least 59 people (nearly all those we know of were men) were killed; more probably the figure was 69, and it may have approached 100. It is difficult for us to say how many of these were Ngati Kahungunu losses – including Ngai Tamaterangi and Ngati Hinemanuhiri – and how many were Tuhoe or Ngati Ruapani. Pa and kainga on the southern shores of the lake and on adjoining lands were destroyed, and settlement disrupted. Most, if not all, the people living on Waikaremoana lands, including Ngati Kahungunu, Ngati Ruapani, and Tuhoe, evacuated the land to seek safety elsewhere. Subsequent Crown expeditions into the wider Waikaremoana lands in the context of the war in Te Urewera compounded the situation, and it does not seem that the southern communities were re-established at that time. The disruption of settlement created difficulties for those who had to defend their rights against a range of Crown actions (the subject of the next chapter) which soon impinged on the south-east Waikaremoana lands. Politically, the Crown’s determination to destroy the influence of Pai Marire on the East Coast was a key factor in the decision of lower and coastal Wairoa chiefs to support the Crown in the hope of proving themselves good allies and to fight their Pai Marire whanaunga with whom they had previously kept the peace. The hostilities of 1865 and 1866, and the way in which they were conducted, laid the basis for support for Te Kooti among those whom Crown forces attacked.

**6.5.4.1 Introduction**

The Crown’s military intervention had immediate impacts on the people of upper Wairoa and Waikaremoana: loss of life, destruction of pa and kainga, and looting of property. The bitter note the hostilities brought to relations between the Crown and upper Wairoa and Waikaremoana Maori was underlined by the execution of several prisoners, on more than one occasion, and the sending of some to detention in the Chatham Islands. The Crown’s determination to secure land in the wake of the conflict, and the impact on all the peoples of Wairoa and Waikaremoana of the mode by which it acquired such land, brought further long-term resentment and resulted in claims which are addressed in the next chapter. Here, we consider the prejudicial effects of the Treaty breaches we have identified in relation to the war.
6.5.4.2 Social, economic, and cultural impacts

6.5.4.2.1 Loss of life

The conflict that began in the upper Wairoa on 25 December 1865 resulted in considerable loss of life for the Ngati Kahungunu people of upper Wairoa and Waikaremoana, and also for Tuhoe, and Ngati Ruapani. There may also have been casualties among the Turanga men who had evacuated Waerenga a Hika.

Thirteen people were killed at Omaruhakeke; at Te Kopani, a minimum of 40 to 50 people (the figure may have been higher, up to 80); and at Mangarua, six. The total minimum figure is thus 59; more probably it was 69; but the number who died may have approached 100. Most of these died in combat, or while fleeing Crown forces; it is probable that an unknown number died as a result of wounds they sustained. Five were summarily executed.

It is difficult for us to say how many of those killed in upper Wairoa and Waikaremoana were Ngati Kahungunu, and how many were Tuhoe or Ngati Ruapani. Certainly there must have been many Ngati Kahungunu losses. At Te Kopani, we assume that the casualties must have included Ngati Hinemanuhiri, Ngati Hinganga, and Ngai Tamaterangi; we know that those who escaped from Omaruhakeke had retreated towards the lake, and must have taken refuge at Te Kopani. Te Wao Ihimaera of Ngati Ruapani, Ngati Hinekura, and Tuhoe gave evidence in the Maungapohatu appeals before the Urewera commission (in 1906) that some of the ‘appellants’ – that is, Ngati Kahungunu – were killed during the fighting at Te Kopani. Others, he said, were buried at Waikaremoana; though some were ‘afterwards taken up and removed, ie te tuatini and others, and Waata’.

Given the number of Ngati Kurupakiaka who later surrendered to Crown forces, it seems likely that they too must have suffered losses in the fighting. Crown-aligned Ngati Kahungunu also suffered losses – at least one at Omaruhakeke, 12 at Te Kopani, and perhaps a further 12 in a battle during March. Hemi Huata, son of Tamihana Huata, giving evidence in 1946 before the appellate court in the Lake Waikaremoana title investigation, spoke of fighting in this period, stating that ‘The Hauhaus were finally defeated but not until a lot of blood had been spilled by the Kahungunu people’.

The impact of the conflict on the interior hapu of Ngati Kahungunu such as Ngati Hinemanuhiri and Ngai Tamaterangi was undoubtedly great. We have noted earlier the heavy losses suffered by Te Waru’s people at Orakau; on top of these came the casualties at Omaruhakeke and Te Kopani. In addition, Ngai Tamaterangi took a blow to their leadership, with the death of their principal rangatira Te Tuatini. Estimates of the upper Wairoa population – based on observations of kainga populations and numbers who gathered for tangi – ranged from 250 to 1,000. No such estimates were given to us for the post-war population.

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216. Belgrave and Young, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), p 188
However, a total loss of upwards of 75 from the battle at Orakau to the conclusion of hostilities in May 1866 can be seen as significant. Speaking of Omaruhaakeke specifically, Ms Gillingham stated that while there is ‘little direct evidence of deaths and destruction resulting from the attack’, it was likely that there was a significant impact ‘given the proportion of those killed to the size of the community populations and apparently wholesale destruction of their resources.’ Speaking of what occurred at Te Kopani, Gillingham accepted that death and destruction of property would have resulted in a significant impact on the people. She noted that Fraser reported a shortage of food in August 1866.

Tuhoe and Ngati Ruapani suffered casualties as well. There is clear evidence to show that the ‘Urewera’, as they were termed in official and newspaper reports, fought in and suffered losses during the battle at Te Kopani. In April 1866, McLean stated that Potutu, ‘a chief of the Uriwera tribe’, surrendered at the same time as Te Waru, along with his followers. Te Whenuanui is also recorded in oral tradition as having participated in the battle of Te Kopani. In March 1875, according to Binney, McLean ‘both brutally and inaccurately’ told Te Whenuanui that his participation at the battle of Te Kopani had been the ‘cause’ of Tuhoe’s land having being taken. A letter written by the Wairoa chief Paora Rerepu identifies the Tuhoe chief Hakaraia Te Wharepapa among those who were killed in the fighting there. Rerepu also stated, on the basis of what he had been told by people he had captured at Te Putere, that while 20 of ‘the Ureweras’ were building a pa at Waikare, ‘the main part of the Ureweras were killed in the fight at Waikare’.

The correspondent of the Hawke’s Bay Times stated that among those executed after the battle at Te Kopani were ‘2 men of the Urewera’. We have no evidence regarding the identity of those killed at Mangarua.

The 60 to 70, or more, who were killed in the upper Wairoa and Waikaremoana conflict thus included numbers of Tuhoe and Ngati Ruapani men. Tuhoe would have counted the dead among their 200 killed in the New Zealand wars as a whole. We have seen in chapter 5 how these losses were swiftly followed by a remarkable population recovery in the 1870s and 1880s. Nevertheless, their male population suffered a terrible blow in the war years; and the Waikaremoana conflict made its contribution to those losses.

218. Gillingham, responses to written questions (doc 153), para 2
219. Ibid, para 6
220. McLean to colonial secretary, 6 April 1866, IA 1866/1098, Archives New Zealand, Wellington
223. Paora Rerepu to McLean, 4 February 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 398–400)
224. Hawke’s Bay Times, 22 January 1866 (Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), p 163)
6.5.4.2.2 For Ngati Ruapani, Vernon Winitana told us that they believed the Crown’s actions and, as he put it, the ‘collusion of Maori with the Crown,’ led almost to the ‘complete and utter destruction of Ruapani as a people with a form of genocide, a scorched earth policy that our elders term “kohuru”’.\(^{225}\) As we have seen in chapter 5, we do not consider genocide the appropriate term in this context. Genocide was not what was intended; nor was it the result. But it is perhaps not surprising that Ngati Ruapani have arrived at such a view given their losses in the two conflicts of 1865 to 1866, and 1869 to 1871. In 1875, Tamarau Te Makarini told the Native Land Court that there were only 50 Ngati Ruapani left.\(^{226}\) Their survival into the twentieth century was not always guaranteed.

6.5.4.2.2 DISRUPTION OF SETTLEMENT

As well as the deaths of many people, the Crown’s military actions in late 1865 and early 1866 also resulted in very considerable destruction of kainga and homes, and appropriation of livestock and crops. The short-term impacts of such losses on the well-being of those communities affected would obviously have been devastating. It was reported in August 1866 that the ‘Ureweras’ were short of food, and had crossed Lake Waikaremoana to the Wairoa side to obtain seed potatoes. Though they secured some, Fraser then extracted an agreement from Te Waru Tamatea to ensure that they would get no more.\(^{227}\)

The longer-term impacts of the conflict of 1865 and 1866 were also dramatic. The conflict marked the first stage of a process which ended in the loss to the Crown of the lands to the south and east of Lake Waikaremoana. The successive stages of this process are outlined in chapter 7. Here we focus on the disruption by war of settlement patterns and customary rights in these lands.

All the historians who gave evidence to us pointed to impacts of this kind. Binney argued in her report that the wars had a marked effect on peoples’ settlement of the land, even before the alienation to the Crown of the four southern blocks. She stated that those Te Urewha hapu who had been living on the blocks lost ‘access to the resources of these lands.’\(^{228}\) Marr also argued that the population in the interior was disrupted. As a result of ‘the destructiveness and indiscriminate nature’ of Crown bush-scouring, many Ngati Kahungunu left the interior lands and relocated to live with their whanaunga in coastal areas. Tuhoe and Ngati Ruapani communities ‘also appear to have withdrawn from the upper reaches of the Waikaretaheke River and areas further out from the lake for protection and easy escape into Te Urewera country.’\(^{229}\) Gillingham likewise pointed to the ‘repatterning of the Maori population in the district’ as Ngati Kahungunu abandoned the interior, and their kainga were deserted.\(^{230}\) She noted that, in the short term,
Major Fraser exercised his authority to ensure that those who had surrendered remained down-river. Some of those who were based at Pakowhai seem to have visited their homes inland, but ‘their movements were monitored’. In August 1866, he sought to ensure that crops were not planted ‘at such a distance from the settlement as to render [them] available for Mr Anaru Matiti [sic] when he makes his threatened attack’. Fraser reported later that, as far as he knew, Maori had complied with his request. The following month, he called a meeting of local Pai Marire believers, intending to order them to remain near Pakowhai and prohibiting their visits inland. It was probably in this context that some went into hiding. Katarina Kawana told us that her tipuna, Peta Hema, was forced into hiding when Crown soldiers attacked at Omaruhaake and Waikaremoana. This prohibition on movement was lifted after the Te Hatepe hui in April 1867. Upper Wairoa Maori, including Te Waru Tamatea, were allowed to return to their settlements (outside the Kauhouroa block) without restriction.

Belgrave and Young agreed that the impact of the wars on occupation and customary rights to Waikaremoana lands was significant. (We consider in the next chapter the complex issue of the short- and long-term impacts on customary rights, and the terms in which those rights were later debated and defended in courts and commissions.) Belgrave and Young referred to what they called the Waikaremoana ‘clearances’. After 1867, they said, the Waikaremoana lands were ‘vacant lands’, and occupation by Ngati Kahungunu and Tuhoe was subsequently limited. ‘Most if not all the people living on the Waikaremoana lands, including Ngati Kahungunu, Ngati Ruapani, and Tuhoe who were not involved in the fighting, evacuated the land to seek safety elsewhere.’ It was clear also that in subsequent generations ‘only a small number of people returned to occupy the land in a sustained way.’ By the early twentieth century, according to Belgrave and Young, people had difficulty providing evidence in court of their own long-term permanent occupation. Thus, in the specific case of the Lake Waikaremoana title investigation (1915–16), Ngati Kahungunu witnesses could demonstrate their grandparents’ occupation two generations earlier, and knowledge of sites handed down to them, but could not show that they had permanently occupied land at the lake.

Although Belgrave and Young confined their discussion to the broader Te Urewera conflicts of 1868 to 1872, it seems clear to us that the ‘Waikaremoana clearances’ must be seen as a result of the fighting of 1865 and 1866 as well as of the later hostilities. We have referred above to evidence of destruction of villages in 1865 and 1866. Although, as noted above, Belgrave and Young argued that the destruction caused was significantly less than that which took place at Waikaremoana in

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231. Ibid, p 151
232. Ibid, pp 150–151
233. Katarina Kawana, brief of evidence (doc 129), para 23
235. Ibid, p 22
236. Ibid
Our ancestors who were murdered by Government troopers, were taken completely by surprise because they did not know what wrong they had committed against the Crown and the Government. The troopers deliberately burnt the Hapu’s homes, their canoes, all their resources, including the huge vegetable gardens, except for the food that was stolen for the troopers’ own benefit. The Hapu of Waikaremoana were left distressed, gouged with pain, bereft of food, bereft of resources, bereft of everything, except absolute poverty. On top of all this, they were forcefully removed by the Government from their land, from their bathing and cherishing waters, from their life giving springs.'

Rangimarie Pere

1. Rangimarie Pere, brief of evidence, 18 October 2004 (doc H41(a)), pp 5–6

1870 and 1871, we do not agree. The damage done to settlements on the southern side of the lake in the earlier fighting was proportionately as great.

Later evidence of witnesses in early Native Land Court hearings testifies to the extent of the disruption of Maori settlement in the wider district. Hapimana Tunupaura, of Ngati Kahungunu hapu Ngati Puta and Ngati Taunoa ‘by Waikare Lake’, spoke at the 1875 land court hearing, claiming that he had cultivations at Maungamauku and all over the Tukurangi block; he had ‘only stopped cultivating with the land war.’ Tamihana Huata, at the same hearing, made a similar statement; he named a number of Ngati Kahungunu hapu in the region of Mangaaruhe, and Te Reinga, and stated that they had cultivated there until they joined the ‘Hauhau’: ‘We are not cultivating now, it was when we joined the Hauhau that we ceased cultivating, part joined and part remained loyal.’ Tamarau Te Makarini, who also gave evidence, stated that he had lived on Tukurangi lands before Christianity had come; ‘about 200 Urewera’ had lived at the pa at Tukurangi. He had also cultivated on the lands adjacent to the Waihi Stream ‘up to the time of the war’ of the 1860s.

Crown forces also destroyed pa at and near Lake Waikaremoana, as we have seen. We refer in more detail to the history of two key pa – Te Pou o Tumatawhero and Te Tukutuku o Heihei – on which we received evidence. It is probable that at

238. Napier Native Land Court, minute book 4, 4 November 1875, fol 75–76 (Marr, Crown Impacts on Customary Interests in Land (doc A52), p 194)
239. Napier Native Land Court, minute book 4, 4 November 1875, fol 81 (Belgrave and Young, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), p 44)
240. Napier Native Land Court, minute book 4, 4 November 1875, fol 78–79 (Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 197)
least one of these pa was destroyed at this time. Because of the early alienation of the land in question (in circumstances which we consider below) and modification of the land in the twentieth century, particularly during hydro development, one of the issues before us was the location of the two pa. Yet there is no question of their importance before the hostilities of 1865 and 1866.

Te Pou o Tumatawhero was located on the promontory on the eastern shore of Te Onepoto Bay.\(^{241}\) It was built – according to Tuhoe oral tradition – by Tumatawhero, brother of Te Purewa, after the tatau pounamu between Tuhoe and Ngati Kahungunu. Ngati Ruapani tradition describes how they joined Tumatawhero in the construction of this pa, as he had married Hinemare, a Ngati Ruapani woman.\(^{242}\) Detailed evidence about the pa was given by several Tuhoe and Ngati Ruapani witnesses – suggesting to us that memories of the pa left a strong mark in Tuhoe and Ngati Ruapani oral tradition.\(^{243}\) We were told that Tuhoe built Te Pou o Tumatawhero to defend their southern gateway.\(^ {244}\) Anaru Paine's description of the area suggests the location of Te Pou o Tumatawhero was important in protecting the abundant resources of the area. From the hill Raekohu there was a direct line from Kiriopukai lake through to Te Kopani. 'In this one place', he said, 'are gardens, bird hunting areas, eel netting places, forts, and caves for interring the bones of our ancestors.' Paine explained the significance of the pa in terms of its proximity to these resources: 'Therefore the fort Te Pou o Tumatawhero was used as a station to repel invaders who wanted to take this area of unique abundance.'\(^ {245}\) Evidently the pa succeeded in its purpose, as there were no further hostilities. We add that Elsdon Best recorded Tutakangahau (who was born in the early nineteenth century) talking about the area above Te Onepoto Bay, possibly referring to Te Pou o Tumatawhero: 'In my young days, when I lived on the further shore, I could see that the hill above One-poto was covered with large whales (houses), and the great himu (posts) were standing.'\(^ {246}\)

The pa Te Tukutuku o Heihei was located above the lake shore, to the east of Te Pou o Tumatawhero.\(^ {247}\) According to Sidney Paine, 'In 1863 Tuhoe again took measures to strengthen the Waikaremoana from attacks arising from the East Coast.'\(^ {248}\) It was, he said, 'a very strategic location for a fortified pa in that area by reason of the panoramic view towards Wairoa and the “gateway” to those more eastern lands.'\(^ {249}\) The pa was built, according to Tutakangahau's account to Elsdon

\(^{241}\) The Crown agreed that this was the likely location of Te Pou o Tumatawhero: Crown counsel, closing submissions (doc N20), topic 28, p 24.

\(^{242}\) Rapata Wiri, brief of evidence, 19 October 2004 (doc H52), p 11

\(^{243}\) See Hirini Paine, brief of evidence, 18 October 2004 (doc H20); Irene Huka Williams, brief of evidence, 18 October 2004 (doc H23); Anaru Paine, brief of evidence, 18 October 2004 (doc H39); Wiri, brief of evidence (doc H52)

\(^{244}\) Paine, brief of evidence (doc H39), pp 3–4

\(^{245}\) Best, Waikaremoana, p 94

\(^{246}\) Crown counsel noted that 'the evidence indicates that both pa were built close to one another’ and cited the evidence of Sidney Paine describing the location of Te Tukutuku o Heihei as just to the east of Te Pou o Tumatawhero: Crown counsel, closing submissions (doc N20), topic 28, pp 24–25.

\(^{247}\) Paine, brief of evidence (doc H20), p 6

\(^{248}\) Ibid, p 9
Best, after a challenge from Ngati Kahungunu, but again, care was taken to avoid fighting:

Ngati-Kahu-ngunu built a pa (redoubt) at Tuku-rangi, with the intention of seizing Wai-kare Moana. A party of us, including persons of Tama-kai-moana, Ngai-Te Kahu, Ngai-Tama and Ngati-Rongo, went and built a pa near Wai-kare-taheke. Some of that party were Pihopa, Tipihau 11, myself, Kewene, Te Hawiki, Puta, Pei, Peka, Kereru, Numia, Te Ahi-tahu and Te Iwi-kino. While we were at Te Rara, Ngati-Kahu-ngunu came. Some of our people wanted to fire on them, but the chiefs and catechists and Tamehana of Ngati-Kahu-ngunu, preserved peace. Hence the trouble ended without bloodshed. Then we left there and build a pa named Te Tukutuku-o-heihei above the lake shore, a little way east of One-poto (just east of Te Pou o Tu-mata-whero). That pa was built in order that we might hold those lands.249

It is likely that, in his evidence before the Native Land Court in 1875 (referred to above), Te Makarini was talking of Te Tukutuku o Heihei when referring to a pa where 200 people lived. Tamihana Huata acknowledged as much in his evidence, stating that he visited a pa with the Anglican missionary James Hamlin.250

We acknowledge that it is possible both these pa were not occupied in the mid-1860s. We agree with Crown counsel that there is ‘conflicting evidence as to whether Te Tukutuku-o-Heihei was built before Te Pou o Tu-mata-whero’.251 Te Tukutuku o Heihei may have been constructed in the mid-1860s; if so, it could have been built as a replacement for Te Pou o Tumatawhero, which was nearby. But it seems probable that at least one of the pa was in existence and was occupied by a significant number of people when Crown forces arrived at the lake shore on 12 January 1866. The destruction referred to by St George in his diary likely included this pa.

We refer to these pa because the histories before us are a graphic reminder of the forcing of communities from the district – in this case, Tuhoe and Ngati Ruapani. There is no record of people residing on the southern shores of the lake between 1866 and the laying out of reserves in the 1870s and 1880s. When Colonel Herrick arrived at Te Onepoto in 1869 as part of the first expedition in pursuit of Te Kooti, there were no visible signs of settlement. Though he captured horses, there were no houses and no cultivations of any significance – no sign that any Maori group used the area as a place of settlement as they once had.252 Herrick’s troops erected a camp on what had probably been the site of Te Pou o Tumatawhero.253 A redoubt was constructed on the land, and the site was later set aside in the Locke deed (1872) as a military reserve.

249. Best, Tuhoe, vol 1, p 517
250. Napier Native Land Court, minute book 4, 4 November 1875, fol 82 (Belgrave and Young, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), p 44)
253. Best, Waikaremoana, p 105
A further powerful reminder of the kind of cultural destruction involved in the wasting of kainga and pa was provided by the evidence of Te Awekotuku and Nikora. They drew attention to a dramatic carved gateway at Te Onepoto, which Colenso had described on his visit to Te Urewera in 1841:

The gateway was, as is often the case, embellished with a pair of huge and boldly-carved human figures, besmeared with shining red pigment, armed with spears, and grinning defiance to all comers. These were not only seen to advantage through being elevated above the horizon, but their eyes (or rather sockets), instead of being set with glittering Haliotis shell (according to the usual national custom), were left open, so that the light of the sky streamed through them, and this was yet more particularly manifested owing to the proper inclination given to the figures, looking down, as it were, on all toiling up the narrow steep ascent into the well-fenced village.  

Such taonga, as they noted, might be destroyed or appropriated by attacking forces during the wars: ‘Huge boundary markers, gateways, carvings, simply disappeared.’ We note here the entry in St George’s diary on 13 January 1866, recording the ‘looting and burning of the kainga’ at Te Onepoto by the Crown’s forces. While we do not have explicit evidence to show that the gateway was taken or destroyed at this time, it is hardly drawing a long bow to conclude that this was when the gateway met its fate. Similar destruction certainly occurred at Omaruhihi, as was recorded by medical officer Scott in his account. Pa and kainga were not only homes, but were the inheritance of communities. Carved houses and gateways were repositories of peoples’ histories and traditions; smaller taonga also carried their own histories.

6.5.4.3 Political impacts
The outcome of the conflict of 1865 and 1866 in upper Wairoa and Waikaremoana was a deterioration of relationships between Tuhoe, Ngati Ruapani, and the Crown, and between interior Ngati Kahungunu and the Crown. Relationships within Ngati Kahungunu were also strained.

For Tuhoe, the attacks on their pa and villages in the early months of 1866 followed soon after their first experience of the Bay of Plenty conflict. We have shown in chapter 4 that Tuhoe were ‘caught up in the edges of the conflict in the eastern Bay of Plenty’ after the killing of Carl Sylvius Volkner and James Te Mautaranui Fulloon, the flight of Kereopa Te Rau and his party to Te Urewera, and the arrival of Crown forces in the district. Tuhoe were not involved in those killings, and were not directly involved in the conflict that followed, in which Crown forces targeted Ngati Awa and Whakatohea. The conflict ended in mid-October 1865. But

255. Te Awekotuku and Nikora, ‘Nga Taonga o Te Urewera’ (doc B6), p 54
between January and May 1866 there was still a period of ‘uneasy peace’ in relations between the Crown and Tuhoe in the Bay of Plenty. As we explained in chapter 4, East Coast Expeditionary Force officers were anxious to capture Kereopa Te Rau (despite the conviction in March 1866 of four men for Volkner’s death – none of them Tuhoe), and Tuhoe leaders were nervous of the garrison stationed in Opotiki, and its unpredictable forays into their rohe. The situation stabilised by mid-1866 when the Crown abandoned its attempt to secure Kereopa Te Rau, and reduced its garrison at Opotiki. Yet the outcome of the killings and the hostilities that followed would be the inclusion of Tuhoe lands in a confiscation which was not aimed at them.

In Waikaremoana, Tuhoe (and Ngati Ruapani) became caught up similarly in the aftermath of events which had occurred outside their own lands. Kereopa Te Rau had taken refuge in Te Urewera; Anaru Matete and the Turanga men took refuge from the Crown forces which had attacked Waerenga a Hika. Tuhoe and Ngati Ruapani had not even been involved at Waerenga a Hika, but their kainga and pa lay in the path of the Crown forces which proceeded up-river from Wairoa, and because of that, and because of the defence mounted by their fighting men, they were destroyed. We referred in chapter 4 to the legacy of the unaddressed grievance of the raupatu of half the most productive lands of Tuhoe which were arbitrarily included in the Bay of Plenty confiscation. By September 1867, Tuhoe understood that they had failed to secure the return, through Crown processes, of any of their unjustly taken lands. We concluded chapter 4 by saying that the hostility of Tuhoe leaders had immediate consequences following the arrival of Te Kooti in Te Urewera. After Te Kooti sought refuge in Te Urewera, following his defeat at Ngatapa, Tuhoe would join him in large numbers early in 1869.

We add here that confiscation was not the only trigger for Tuhoe support of Te Kooti. The further grievance of unprovoked Crown attacks on their people and homes at Waikaremoana, the number of men killed – including two who were executed – and their being driven from their lands, must be counted among the reasons that made Te Kooti’s teachings so compelling to Tuhoe.

For upper Wairoa peoples, the same was true. We have shown that the attacks on their pa and kainga at Omaruhakeke and elsewhere were not the result of rebellion or breach of the peace. Though we do not know if other Ngati Kahungunu hapu in the path of Crown forces joined Te Kooti, it is well known that Te Waru Tamatea and Nama did. Similarly, Moururangi of Ngai Tamaterangi joined Te Kooti while in detention on Wharekauri. Tei Ruawai Hema expressed the Ngai Tamaterangi resentment at the treatment of his tipuna, Moururangi: ‘The Crown treated members of my family as rebels. Hirini Moururangi was sent to prison on the Chatham Islands without a trial.’

Te Amo Kapene of Ngai Tamaterangi was ‘also considered a rebel’, according to his descendant Lillian Tahuri, and he fought alongside Te Kooti. Mr Cotter stated that the losses suffered by their tipuna when their lands were invaded by

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256. Tei Ruawai Hema, brief of evidence, 29 November 2004 (doc I27), para 8.2
257. Lillian Tahuri, brief of evidence, 29 November 2004 (doc I31), para 6
Crown forces led to their support of Te Kooti – which brought with it new costs. They had been attacked in the first place because they were called ‘rebels’, and the label stuck after they had fought in support of Te Kooti. As Charles Kapene put it,

I understand that much of our history has been lost as the old people were afraid to talk about their involvement with Te Kooti and the land wars. This is because it was known that if you were a descendent of a rebel then you would be punished and your lands taken.

To protect themselves and their lands, and ‘confuse the Crown’, members of the family of Tei Ruawai Hema took their father’s first name. The descendants of Te Amo Kapene did the same, we were told by Lillian Tahuri.

For these Ngati Kahungunu hapu of the interior, the attacks would be followed by the ‘cession’ of Wairoa land, and the threatened loss of land beyond the block taken by the Crown. (We address this issue in the next chapter.) But their bitterness against the Crown had its roots in their experiences of the conflict of 1865 and 1866, in which they lost many of their men, while those who survived were either captured or obliged to surrender. Their homes were destroyed, and they were forced to abandon their lands. Though some returned to Whataroa and Erepeti

258. Cotter, brief of evidence (doc 125), para 3.8
259. Charles Te Arani Kapene, brief of evidence, 29 November 2004 (doc 126), para 2.5
260. Hema, brief of evidence (doc 127), paras 8.3–8.4
261. Tahuri, brief of evidence (doc 131), para 6
after the Te Hatepe hui of 1867, others do not appear to have returned to their land in the upper Wairoa Valley until their resettlement on reserves in the 1870s.

More broadly, throughout the Wairoa district the Ngati Kahungunu polity suffered a blow. As we have seen, the arrival of Kingitanga representatives, and then Pai Marire missionaries, had posed challenges to the chiefs. But though the new faith divided communities, the divisions were managed, and there was a broad commitment among Wairoa Ngati Kahungunu to remain at peace. We accept Gillingham’s argument that ‘Peace in the Wairoa district was . . . grounded in the local balance of chiefly power, particularly between Kopu of Te Wairoa and Te Waru Tamatea of Whataroa.’262 This balance was shattered by the determination of the Crown to equate Pai Marire observance with rebellion, and to quash it along the whole of the East Coast. The outbreak of hostilities at Turanga, the support of Te Waru Tamatea and Te Tuatini Tamaiongarangi for the Turanga defence, the arrival of refugees from Turanga in the upper Wairoa district, and the nervous reaction of the lower Wairoa chiefs to these events, ‘set the pro-government and Pai Marire Maori of the Wairoa district at loggerheads’.263 The lower Wairoa chiefs had invested over the past two years in a political and economic future to be based on a relationship with the Crown and the arrival of settlers in the district. The choice they saw before them at the end of 1865 was to abandon that future, or to fight their whanaunga. In our view, that was a choice they should not have had to make. But it was enforced by a Crown intolerant of religious beliefs and observances that were deemed savage, and hostile to what were seen as political challenges.

As we will see, the tensions caused by the hostilities of 1865 and 1866 would reverberate in the subsequent history of land ‘cession’ and in the history of the four southern blocks. But they date from this conflict. We consider the political impacts of the events which culminated in the loss of the blocks in the next chapter.

262. Mary Gillingham, summary of ‘Maori of the Wairoa District and the Crown, 1840 to 1880’, 11 November 2004 (doc 114), p 5
263. Ibid, p 6
CHAPTER 7

NGA WHENUA NGARO –
THE LOSS OF THE FOUR SOUTHERN BLOCKS

7.1 Introduction
The conflict of December 1865 to April 1866 brought with it substantial loss of life and large-scale disruption of settlement in the regions of the upper Wairoa River and Lake Waikaremoana. But these events had other far-reaching ramifications. Of lasting significance for the peoples of this region and their land was the Crown’s decision to punish those who had fought against it by securing land in the Wairoa district for military settlement. The circumstances in which this decision was implemented had consequences that could hardly have been foreseen at the conclusion of hostilities – and which are still difficult today to understand. Our purpose in this chapter is to unravel the complex chain of events which began with the Crown’s initial acquisition of land at Wairoa in 1867 by way of ‘cession’ and ended in 1875 with its acquisition of 178,226 acres of land extending to the southern shores of Lake Waikaremoana. We refer to the four blocks involved – Waiau, Tukurangi, Taramarama, and Ruakituri – as the ‘four southern blocks’, a term which describes the land in relation to the Te Urewera inquiry district.

The circumstances in which these lands passed from Maori ownership have been a lasting source of grievance to claimants before us: Tuhoe, Ngati Ruapani, and Ngati Kahungunu. And those circumstances are extremely complex. Rarely have we encountered such pervasive misunderstanding, among officials and contemporary observers, of agreements that the Crown made with Maori. As a consequence, it remains difficult today to make sense of what happened. But a theme that is constant throughout the story of the four southern blocks is that Crown power was misused, and unrelenting pressure was applied to induce the Maori owners to part with their lands.

The Crown acquisition of the four southern blocks 10 years after the beginning of conflict in the upper Wairoa and Waikaremoana regions was the culmination of a series of key events. The first was the signing of the Te Hatepe deed in 1867, between the Crown and those Ngati Kahungunu who had fought alongside it during the recent hostilities. This deed, named after the upper Wairoa pa where it was said to have been negotiated, involved the ‘cession’ of land in the upper Wairoa in an area known as the Kauhouroa block.1 At the same time, the Crown stated that

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1. In the nineteenth century, both the block and stream after which it was named were usually spelt ‘Kauhauroa’. Today both are spelt ‘Kauhouroa’. Most of the parties before us referred to them as such.
it abandoned its claims to land under the new East Coast confiscation legislation. In return for 'ceding' the Kauhouroa block, the 'loyal' signatories to the Te Hatepe deed were promised land of their 'rebel' kin in an area east and west of the block.

But the Crown's promise was not immediately implemented, and this led to the signing of another deed in 1872. This is known to us as the 'Locke deed' – named after the principal Crown official who negotiated its terms, Samuel Locke. The deed referred to, and seemed designed to fulfil, the terms of the Te Hatepe deed: it promised to divide the land to the north and west of the Kauhouroa block into four blocks, and identified the owners who would receive Crown grants. Locke said, wrongly, that the land had been confiscated under the East Coast legislation and 'returned to Natives'. Thus, the Locke deed designated the land – for the first time – as four blocks. They extended as far as the southern shores of Lake Waikaremoana, and involved a significantly different area from that defined in the Te Hatepe deed. Most of the land was in fact outside the boundaries of land to which the East Coast confiscation legislation applied.

At this point, Tuhoe and Ngati Ruapani – who claimed rights in the land to the south of the lake – became caught up in the events, and one of their chiefs signed the Locke deed alongside all the Ngati Kahungunu signatories. The chiefs submitted lists of owners to Locke who was to secure Crown grants for them. But the majority of Tuhoe leaders were angered at the Crown's apparent assertion of authority over their lands and, in 1874, at the suggestion of officials, they applied for a Native Land Court hearing in the hope of protecting their tribal rights. Meanwhile, the Crown began to purchase interests in the land from those among Ngati Kahungunu whom it considered owners, further angering Tuhoe. The 1875 court hearing of the four blocks was an unusual one, as we will see. It was complicated by the judge's question as to whether the land before him had in fact been confiscated, and the referring of the matter to the Solicitor-General. The case ended with Tuhoe and Ngati Ruapani withdrawing from the proceedings, and the blocks were therefore awarded solely to Ngati Kahungunu, the only claimants left in the court. The Crown then completed its purchase of the blocks from Ngati Kahungunu, and also (despite the fact that they were not owners recognised by the court) from Tuhoe and Ngati Ruapani, and by 1877 the blocks were Crown land.

In this chapter we consider the claims of various Tuhoe and Ngati Ruapani claimant groups, as well as two Ngati Kahungunu claimant groups: Wai 621 Ngati Kahungunu (who described themselves as Ngati Kahungunu ki Wairoa) and Ngai Tamaterangi (a hapu of Ngati Kahungunu, who described themselves as incorporating 'all . . . the descendants of Hinemanuhiri . . . who wish to be included').

There are a number of points of disagreement between claimants and the Crown over the events surrounding the loss of the four southern blocks from Maori ownership. Many of these disagreements stem, we believe, from the sheer complexity of the issues. The primary point in dispute between the parties is whether

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2. Counsel for Ngai Tamaterangi, closing submissions, 30 May 2005 (doc N2), p 6
the Crown acquired the four southern blocks through coercion or as the result of voluntary sales. The claimants alleged that a series of wrong assumptions on the part of the Crown, beginning with the Te Hatepe deed and continuing with and beyond the Locke deed, unfairly influenced the course of events. The Crown, however, downplayed the significance of the Te Hatepe and Locke deeds, suggesting that no lasting prejudice resulted from any misunderstandings that occurred. The claimants also alleged that they were subject to significant pressure following the signing of the Locke deed, which resulted in the alienation of the four blocks. For Tuhoe and Ngati Ruapani, a threat of confiscation suddenly confronted them when they took the land to the Native Land Court in 1875. For Ngati Kahungunu, there was the pressure of debt and uncertainty about the outcome of the court’s proceedings. For all parties, there was pressure from the Crown’s insistence that a tribal boundary be defined in the blocks. The Crown argued that evidence for a threat of confiscation is limited, and implied that any pressure to sell the land was not created by the Crown.

No concessions of Treaty breach were made by the Crown in connection with its acquisition of the four southern blocks. Nor was any evidence led by the Crown on what has proven to be one of the most complex series of events brought before this Tribunal, and in which we have found there to be numerous and serious breaches of Treaty principle.

Our purpose is to explain the relationship between the Crown’s initial decision to seek a cession of land at Wairoa in the wake of hostilities, its later assertion that the four southern blocks had been confiscated but would be returned to Maori, its confused and failed attempt to do that, and its final decision to purchase the blocks. We ask also why Tuhoe, Ngati Ruapani, and Ngati Kahungunu came to sell their land in 1875, and whether the loss of the land was prejudicial.

It is important to record at the outset that there are two matters closely connected to the events examined in this chapter but which are outside our jurisdiction. At the outset of the Te Urewera inquiry, this Tribunal decided to hear Tuhoe claims to the four southern blocks so that all Tuhoe claims could be heard in their entirety. With one exception, Tuhoe claims to the blocks relate to the events up to 1875, when the blocks were alienated to the Crown. The exception relates to Tuhoe and Ngati Ruapani reserves in the blocks. We decided, therefore, to hear claims to the four southern blocks up to the time of their alienation in 1875, except for claims to the Tuhoe and Ngati Ruapani reserves, which would be addressed without limitation as to time. The boundaries set for the Te Urewera Inquiry District mean that the following matters are outside our jurisdiction and so we cannot examine or reach conclusions about them:

- the loss of the Kauhouroa block through the Te Hatepe deed; and
- all issues relating to the Ngati Kahungunu reserves in the four southern blocks.

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3. See presiding officer, memorandum, 12 April 2002 (paper 2.32), p 9
The first of those matters – the ‘cession’ of Kauhouroa – is central to the Te Hatepe deed, which itself is crucial to understanding the four southern blocks issues within our inquiry district. Inevitably then, we discuss the ‘cession’ of Kauhouroa in this chapter but, as noted, make no findings on it.

Finally, we note that, while all issues concerning the Tuhoe and Ngati Ruapani reserves in the four southern blocks are within our jurisdiction, we will present our examination of most of those issues in later chapters. The matter of the adequacy of the reserves – originally 2,500 acres – is, however, included in this chapter’s discussion of the impacts upon the claimants of the loss of the four southern blocks.

### 7.2 Issues for Tribunal Determination

There are three key questions to be answered in this chapter. The first is: How and why did the Crown acquire the four southern blocks? How informed or willing was Maori participation in the process by which the blocks were acquired?

We have structured our analysis around three major sub-questions:

- Why did Maori and the Crown enter into the Te Hatepe deed (1867), and what was its effect?
- Why did Maori and the Crown enter into the Locke deed (1872), and what was its effect?
- Why was there a Native Land Court hearing for the four southern blocks in 1875, and what were its outcomes?

Our analysis of question 1 closes with a series of conclusions and Treaty findings on the main issues.

Our second key question is: What were the impacts of Crown acts and omissions in its acquisition of the four southern blocks? We address cultural, social, economic, and political impacts in turn.

We also consider a related claim about two pa sites at Onepoto (on the southern shore of Lake Waikaremoana) that have been acquired by the Crown. We received specific claims on this issue, so we consider it separately. The question we ask is: How did the Crown acquire and use the pa sites Te Pou o Tumatawhero and Te Tukutuku o Heihei? We make a specific recommendation to the Crown in connection with Te Pou o Tumatawhero. This marks an exception to our general approach – that it is premature for this Tribunal to make remedial recommendations before the completion of our inquiry into all Te Urewera claims. In our view, the circumstances of Te Pou o Tumatawhero are such as to justify a remedy that is independent of other Treaty settlement arrangements.

The blocks of land, and the wider areas, involved in the events discussed in this chapter are not readily depicted. At the very end of the chapter we have included a section entitled ‘Explanatory Note: Te Hatepe Deed, ECLTIA, and Four Southern Blocks Maps’. This explains a number of historical mapping issues relating to the origin and history of the four southern blocks and contains depictions of the relevant land areas. Readers are advised to refer to this section throughout the chapter.
7.3 **Key Facts**

7.3.1 **The Te Hatepe hui – the cession of the Kauhouroa block, 1867**

Following the conclusion in 1866 of hostilities between Crown forces and Maori of upper Wairoa and Waikaremoana, preparations were made for the taking of land in the district. Donald McLean (who was at that time agent for the general government in Hawke's Bay and member of Parliament for Napier) made it clear, when he visited Wairoa in May 1866, that land would be confiscated there. By the following year, the Crown had available to it newly passed legislation, the East Coast Land Titles Investigation Act (ECLTIA) 1866, which was designed to refine the process of confiscation by targeting only those who were found to have been in rebellion. Unlike the process under the New Zealand Settlements Act 1863, the Native Land Court would be involved. It would determine the customary rights of all Maori who claimed land, but the interests of those found to be rebels would be forfeit to the Crown. The Government intended to use the legislation throughout the East Coast region to punish 'rebels', and secure land. It was rapidly discovered, however, that separating out the interests of 'rebel' and 'loyal' Maori was unlikely to work in practice as the Government hoped it would. The Government would secure a mere patchwork of land plots, instead of a block of considerable size.

Rather than using the new East Coast confiscation legislation at Wairoa, therefore, the Government decided to insist on a cession of land. It dealt directly with the Ngati Kahungunu leaders who had assisted it in the fighting of 1865–66, and succeeded in securing the land it wanted for military settlement at a major hui at Te Hatepe in April 1867. The hui was attended by 1,500 to 2,000 Maori from the region, including the chiefs of Ahuriri. McLean, Reginald Biggs, Samuel Locke, James Crowe Richmond, and George Stoddart Whitmore attended on behalf of the Crown. Tuhoe and Ngati Ruapani chiefs were not present. Government speakers emphasised that confiscation had already been decided on; the only point at issue was which lands should be taken.

A deed recording the agreement, known as the Te Hatepe (or 'Wairoa Block') deed of cession, was signed by 153 Ngati Kahungunu. The Crown agreed in the deed to withdraw all its claims to certain land within the schedule of its new East Coast Land Titles Investigation Act. Instead, it would accept a cession of 40,000 to 50,000 acres within this area. This land would become known as the Kauhouroa block, and the Crown proceeded to locate military settlers on it. In return for the land, the Crown made a number of promises to Ngati Kahungunu. Among them – though not recorded in the deed – was a promise that 'rebel' land within the area defined in the deed should be granted to those Ngati Kahungunu who had lost their rights in the block through cession; and also to those who had no rights in that block but who had provided military assistance to the Crown, as payment for their services. A Crown official, Biggs, later took the deed to the Native Land Court, evidently assuming it could be 'confirmed' under ECLTIA. He later reported to Richmond that the deed had been confirmed, though there is no record of this in the court minutes.
7.3.2 The Locke deed – the creation of the four southern blocks, 1872

By 1872, the Crown had not yet delivered on its undertaking to divide ‘rebel’ lands among ‘friendly Natives’, in return for the cession of the Kauhouroa block. Ngati Kahungunu chiefs had signalled their concerns about this at least as early as 1869. Samuel Locke, who had conducted many of the Crown’s purchases in lower Wairoa in 1864–65 before hostilities broke out, represented the Crown in making a new agreement in 1872.

By this time, five years after Te Hatepe, a great deal had changed. There had been war in Te Urewera, and further hostilities in the Waikaremoana district. In mid-1868, the upper Wairoa Ngati Kahungunu leader Te Waru Tamatea committed himself to Te Kooti, the Ringatu spiritual leader. Te Kooti had been taken prisoner after the battle at Te Waerenga a Hika, and sent to Wharekauri (the Chatham Islands), where he and many others were detained illegally without trial. After their escape in July 1868, return to their region, and failure to secure safe passage through to their intended destination at Taupo, Te Kooti – accompanied by a large party of upper Wairoa men – attacked settlers living in the outlying district of Matawhero; among those killed was Biggs. After being defeated at Ngatapa by Crown forces, Te Kooti took refuge in Te Urewera. The earlier killing of four lower Wairoa chiefs in October 1868, along with Te Kooti’s attack on Mohaka, resulted in Ngati Kahungunu forces being involved with other Crown forces in the pursuit of Te Kooti. We have surveyed the hostilities that followed in chapter 5. Crown forces had conducted operations at Waikaremoana in April and July 1870 at the time of the pursuit of Te Kooti, which were directed at ‘Hauhau’ settlements on the lake and resulted in the destruction of kainga and crops in upper Wairoa and on the northern shores of the lake. The Ngati Kahungunu forces took no further part in the fighting from the end of 1870. Tuhoe submissions to the Crown began in July 1870; Te Waru and his people of upper Wairoa also surrendered in December 1870. Few of this hapu had survived. Those who had were sent to Te Teko and were later granted land by the Crown at Waiotahe. They did not return to their lands in upper Wairoa. The pursuit of Te Kooti extended to the Whataroa district of upper Wairoa in August 1871, and was followed by further destruction on the northern side. A redoubt was also established at Te Onepoto. After some months of negotiation, the Crown and Te Urewera leaders concluded peace in December 1871.

In the wake of this peace, Locke was authorised to conclude the Crown’s arrangements in the upper Wairoa, and to sign a new deed. On 3 August 1872, he met Maori at a large hui at Wairoa, and on 6 August the ‘Locke deed’ was signed by 18 chiefs, mostly Ngati Kahungunu. The signatories on this occasion included one chief of Tuhoe and Ngati Ruapani descent, Tamarau Te Makarini.4 Some but not all of the Ngati Kahungunu signatories had previously signed the Te Hatepe deed. The purpose of the agreement was to settle the question of what Locke described as ‘old confiscated lands’5 – he explained that after the Crown

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4. Te Makarini was known by several names, including Makarini Te Wharehuia and Tamarau Waiari.
5. Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 30
took possession of the Kauhouroa block in 1867; the rest of the area defined in the Te Hatepe deed, which was subject to the East Coast Land Titles Investigation Act, was returned to Maori. This land, he said, extended inland to Lake Waikaremoana. The Government had promised to divide the land into four blocks and decide who would have their names inserted in the Crown grants, but because of ‘the unsettled state of the district’ since that time, had not been able to carry out its promise. The agreement Locke entered into gave effect, in his view, to these promises. The ‘Lands retained by the Natives’ were to be subdivided into several blocks – in other words the land was now designated for the first time as four blocks: Te Waiau, Tukurangi, Taramarama, and Ruakituri. These blocks (when they were eventually surveyed) comprised 178,226 acres.7

The overall area with which the Locke deed was concerned in fact differed significantly from the area defined in the Te Hatepe deed. Despite Locke’s statement that the Te Hatepe deed area extended as far west as the shores of Lake Waikaremoana,

6. In the schedule to the Locke deed, a portion of the Taramarama block, identified as ‘Waikaretaheke’, has its own list of owners, a few of whom are also listed in the Taramarama block.

it included very little of this land; it actually extended eastwards as far as the coast. A significant portion of the four blocks also fell outside the boundaries defined in the schedule to the ECLTIA and its amendments. The Locke deed stated that the four blocks were to be inalienable. In another schedule to the deed, the names of those to whom the new blocks were to be granted by the Crown were listed. More than 200 people were listed, many in more than one block. The great majority were Ngati Kahungunu, though a small number were Tuhoe and Ngati Ruapani. The Crown was to secure two further blocks within the deed area, of 50 acres and 250 acres respectively, at Te Kopani and Onepoto.

7.3.3 The Native Land Court hearing, 1875

Soon after the Locke deed was signed, Tuhoe chiefs signalled their anger – both at the terms of the deed (which they interpreted as an alienation of the Waikaremoana lands, and contrary to Te Whitu Tekau policies of land retention) and at Te Makarini for signing it. In mid- to late 1873 leases of the four new blocks were granted to those who were listed in the schedules (mostly Ngati Kahungunu) to several Pakeha lessees. Tuhoe became more incensed when they discovered the land was being leased. Te Makarini initially withdrew his consent to the terms of the deed, but later signed one of the leases along with other Waikaremoana chiefs. In March 1874, Locke attended an important Te Whitu Tekau hui at Ruatahuna. Here he again advised (wrongly) that the current position with the four southern blocks was that the Government had returned to Maori lands that had earlier been confiscated. To settle the title to those lands, Tuhoe should take the blocks to the Native Land Court jointly with Ngati Kahungunu. Tuhoe filed applications for hearings of the four blocks in May 1874; each application was made on behalf of Tuhoe and Ngati Kahungunu.

In November 1874, and despite the terms of the Locke deed specifying that the blocks should be inalienable, the Crown formally decided to purchase the land. Officials began to buy out the Pakeha leaseholders from 1874, and also to make payments to some Ngati Kahungunu. By September 1875, just before the land court hearing of the four blocks began, most of their arrangements with Ngati Kahungunu had been completed (with the exception of those who had given military service to the Crown, and Te Waru Tamatea’s community living in exile in the eastern Bay of Plenty).

The land court opened at Wairoa on 28 October 1875. It then adjourned so that Locke could meet with those of Ngati Kahungunu, Tuhoe, and Ngati Ruapani who had gathered for the court hearing. Locke hoped that the parties could agree out of court about their respective rights to the land, and the court could then order its awards accordingly. He hoped the Crown would then be able to finalise its purchase of the blocks. A great hui was held at which Tuhoe, Ngati Ruapani, and Ngati Kahungunu chiefs discussed – in frank terms – their respective rights to the lands around Lake Waikaremoana. The outcome was that the iwi agreed to continue with title investigation by the land court.

The hearing that followed was an unusual one. From 4 to 6 November, representatives of Tuhoe and Ngati Ruapani presented their claims to Tukurangi and
Ruakituri blocks, while various Ngati Kahungunu groups appeared as counter-claimants. On 6 November, Tuhoe and Ngati Ruapani representatives stated that the evidence for Taramarama and Waiau blocks was identical, and the court stated that there was little point continuing. During the hearing the judge had raised the question whether the land before the court was confiscated; Locke replied that it was, but telegraphed McLean (who, by then, had become the Native Minister). McLean sent a telegram paraphrasing the opinion of the Solicitor-General on the point, stating that it ‘appears these lands have never been actually confiscated’. It was also stated that the determination by the land court of the rights of the parties ‘will . . . be subject to’ the special East Coast legislation then in force, the East Coast Act 1868. This Act required the land court to refuse to order a certificate of title to issue to anyone who had been in rebellion.

On 12 November, a week after the court had adjourned the four blocks cases, they were recalled, and Wi Hautaruke and Hetaraka Te Wakaunua appeared in court and stated that they would not pursue ‘Te Urewera claims’ further as they had reached agreement with Ngati Kahungunu. With the withdrawal of the claimants, the Ngati Kahungunu counterclaimants, represented by Toha Rahurahu, applied immediately for court orders in favour of the lists of owners which they submitted. The court ordered memorials of ownership to issue for all four blocks, thus recognising Ngati Kahungunu as the sole legal owners. On the same day, a deed of purchase was drawn up by which the chiefs and people of Tuhoe and Ngati Ruapani conveyed all their rights and interests in the four blocks to the Crown for £1,250, and were promised a permanent reserve of 2,500 acres. On 17 November, the Ngati Kahungunu owners listed on the memorials of ownership signed four separate deeds of conveyance to the Crown (one for each block) for £9,700. Provision was made in each of the deeds for the exclusion from sale of named reserves. These totalled 8,400 acres. In January 1876, a further deed signed by the ‘loyal’ chiefs, Ihaka Whaanga, and 400 others – none of whom was named on the court’s memorials of ownership – conveyed their rights in the four blocks in return for a smaller payment. They released the Crown from further obligation in respect of their ‘services rendered during the rebellion’. The Crown also entered into an agreement with Te Waru Tamatea and his hapu extinguishing their claims to the four blocks for £300, and completed the extinguishment of the rights of settler lessees. In August 1877, when the Crown had completed its transactions, the four southern blocks were proclaimed waste lands of the Crown.

7.4 The Essence of the Difference between the Parties
7.4.1 How and why did the Crown acquire the four southern blocks? How informed and willing was Maori participation in the process by which the blocks were acquired?
7.4.1.1 Why did Maori and the Crown enter into the Te Hatepe deed and what was its effect?

The first difference between the claimants’ and the Crown’s positions on ECLTIA, the confiscation legislation, relates to whether there had been a rebellion by land
owners in the area of the four southern blocks. The point is important in this context because the prerequisite for application of the East Coast legislation was that there had been a rebellion. And, although the Crown did not directly invoke the legislation, the Te Hatepe deed arrangements, and the later Locke deed, were based squarely on the assumption that it could do so. Crown counsel acknowledged that those arrangements ‘took place against the backdrop’ of the legislation.

The next points of difference relate to the meaning of the East Coast confiscation legislation and the impact of Crown agents’ statements to Maori, at Te Hatepe and later, about the effect of that law. Ngati Kahungunu claimants submitted that Crown agents’ misinformation about the operation of the confiscation law caused the signatories to the Te Hatepe deed to assent to its terms. This meant that the cession of Kauhouroa block was not made voluntarily but was, in effect, forced. In addition, the claimants submitted that at the time of the Te Hatepe deed, the East Coast legislation was defective so that, even if there had been a rebellion, the Crown could not have relied on it to confiscate any land.

The Crown’s submissions were based on the premise that the Te Hatepe deed arrangement (by which the Crown obtained the Kauhouroa block) was a legitimate alternative to the Crown invoking ECLTIA to confiscate ‘rebel’ land. It was submitted that the Te Hatepe deed arrangement was preferable for the Maori signatories, in part because it gave them more control over the situation than if the Native Land Court had applied the confiscation legislation. The Crown also argued that those who ceded the Kauhouroa block would have known that the East Coast legislation was designed to protect the land of ‘loyal’ Maori and so would not have been unduly threatened by the Act’s application. As a result, the Crown submitted that the Maori signatories to the Te Hatepe deed understood the arrangements and agreed to them sufficiently to place the cession at the ‘voluntary’ end of what the Crown called ‘the continuum’, from voluntary to forced, along which land cessions occur.

The parties differed on the reasons for the Crown’s failure to fulfil its promise, made at Te Hatepe to those Ngati Kahungunu who had fought alongside it, that they would obtain the land of ‘rebels’ in a defined area. Ngati Kahungunu claimants submitted that the Crown rendered the Te Hatepe arrangement unworkable, thereby seriously prejudicing the Maori signatories and other intended beneficiaries, by failing to provide a means by which the ‘loyal’ Maori could obtain ‘rebel’ land in the area. The Crown submitted that the problem stemmed from the Native Land Court’s unwillingness to ‘rubber stamp’ the 1867 cession arrangement.

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8. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 37–38
11. Counsel for Wai 621 Ngati Kahungunu, closing submissions, 30 May 2005 (doc N1), p 54
12. Crown counsel, closing submissions (doc N20), topic 6, p 8
13. Ibid, p 10
14. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 41
15. Crown counsel, closing submissions (doc N20), topic 6, p 9

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7.4.1.2 Why did Maori and the Crown enter into the Locke deed (1872) and what was its effect?

In respect of the Locke deed of 1872, claimant counsel submitted that it was in many ways deeply flawed. Counsel for Wai 36 Tuhoes said that the deed was negotiated ‘without adequate consultation with Tuhoes’. The most significant consequence of the Locke deed for Tuhoes was that they had ‘little option’ but to take the lands to the Native Land Court. Tuhoes and Ngati Ruapani claimants criticised the changes made, in October 1867 by amendment to ECLTIA, to the boundaries of the area within which the confiscation Act applied. The claimants submitted that it was improper for the area to be extended, and so to include their lands, for reasons unconnected to the hostilities that had inspired the legislation.\(^\text{16}\) Counsel for Wai 621 Ngati Kahungunu submitted that divisions between Tuhoes and Ngati Kahungunu were perpetuated by the Locke deed putting them together in large blocks the boundaries of which were natural features rather than tribal boundaries. In addition, ‘Locke displayed negligence in assuming the power to determine owners of lands, which were not wholly included in the boundaries of the East Coast confiscation area.’\(^\text{17}\)

The Crown did not address key claimant concerns about the Locke deed. It stressed the Government’s changed priorities in 1872: its wish to see peace firmly established in the region and to conciliate the chiefs who were considered former rebels. It submitted there was ‘limited evidence’ available to consider whether consultations leading to the agreement were adequate. But it considered the terms of the deed ‘relatively clear’, other than on the matter of implementation. Obviously, it said, the agreement would have to be implemented through Native Land Court investigation. It contended (without further comment) that Locke clearly considered the areas that became the four southern blocks were included in the schedules to the East Coast legislation and were the lands referred to in the Wairoa (Te Hatepe) deed of cession. It added that the agreement was ‘not formalised’, and was ‘effectively superseded by the negotiations for purchase of the four blocks.’\(^\text{18}\)

7.4.1.3 Why was there a Native Land Court hearing for the four southern blocks in 1875 and what was its outcome?

The key issues here are whether Ngati Kahungunu, Tuhoes, and Ngati Ruapani entered freely and without pressure into negotiations for the Crown’s purchase of the four southern blocks. Did Tuhoes and Ngati Ruapani freely consent to withdraw their claims from the Native Land Court? And were the prices paid by the Crown fair?

The Tuhoes and Ngati Ruapani claimants submitted, in broad terms, that the Crown interfered with the Native Land Court’s proceedings in order to force the withdrawal of their application, their acquiescence in the Crown’s purchase of the
blocks, and their acceptance of a payment worth less than their interests in the blocks. Counsel submitted that compelling ‘circumstantial’ evidence points to the conclusion that Tuhoe and Ngati Ruapani did not enter freely into purchase negotiations. Among the pressures on Tuhoe, counsel for the Wai 36 claimants argued, were the respective status of Tuhoe as ‘rebels’ and that of Ngati Kahungunu as ‘primarily loyalists’; Tuhoe were ‘outsiders’, whereas Ngati Kahungunu were not. Between 1866 and 1875, Crown officials clearly understood that the four southern blocks had been confiscated; no doubt this perception had been conveyed to Tuhoe; moreover Locke stated it clearly at the hui in 1875. Tuhoe’s withdrawal of their claim to the lands after the land court hearing had begun, but before judgment was given, was unique; on no other occasion did they do so. This can only be explained by ‘significant pressure from the Crown, manipulation of the Court process and collusion of the Court itself.’ Crucial to this pressure was the Solicitor-General’s opinion that the inquiry would be subject to the East Coast Act, which meant Tuhoe were now in the invidious position of not being able to gain recognition of their customary rights because of their perceived status as ‘rebels’. It was submitted that the land court hearing was adjourned to allow the Crown to continue to press for Tuhoe’s withdrawal of their claim; the Crown’s pressure was ‘unrelenting’. Counsel for Wai 945 Ngati Ruapani similarly argued that Ngati Ruapani withdrew from the court’s proceedings under threat of confiscation.

Counsel for Ngai Tamaterangi also pointed to the Crown’s acting as if the blocks had been confiscated and to ‘rebels’ being prevented from obtaining title in court; thus, so-called ‘rebels’ such as Ngai Tamaterangi would have been prevented from being awarded interests in the blocks and there was little point in their pursuing claims in the court. Counsel for Wai 621 Ngati Kahungunu argued that ‘Crown policy facilitated the forced sale of Kahungunu interests’ in the four southern blocks.

In light of this chain of events, and the ‘de facto’ confiscation of the four southern blocks, counsel for the Wai 36 Tuhoe claimants submitted that the question whether the Crown paid for all the land it acquired under the deed was ‘almost irrelevant’. It is clear, however, that the transaction was for an area of 157,000 acres, yet the actual area was found when a later survey was done to be 172,500 acres. The Wai 621 Ngati Kahungunu claimants submitted that the amounts paid to the various Maori groups for their interests in the blocks were inadequate.

The Crown denied any improper intervention in the court’s proceedings. It submitted that there is very limited evidence on which to base a judgment on the question of Crown pressure on Tuhoe to withdraw their claims to the land court, and to sell their interests in the blocks. The Crown did state, however, that ‘There is evidence that both Ngati Kahungunu and Urewera Maori felt under some

19. Counsel for Wai 945 and Wai 1033 claimants, closing submissions (doc N13), p 26; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)) pp 40–41
20. Counsel for Ngai Tamaterangi, closing submissions (doc N2), pp 41–42
21. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 73
22. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 41
23. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 62
pressure to sell to the Crown. The Crown was certainly presenting its purchase of the four southern blocks as an attractive alternative to address the significant boundary issues between the parties. But on the key question of whether the Solicitor-General’s advice to Government agent Locke led to a threat of confiscation in respect of the blocks, or part of them, the Crown stated that there was no direct evidence that this was the case. There was no evidence that the Native Land Court was acting under the East Coast legislation. The Solicitor-General’s advice was minuted after the court was adjourned. It would have to be inferred that his opinion was relayed to the parties, and that Government officials took a different approach in the negotiations after the land court’s deliberations to that taken in negotiations in 1872 and during the pre-land court meeting on 29 October 1875. Crown counsel suggested that there was another possible rationale for the actions of the Tuhoe and Ngati Ruapani claimants: given that the process of title investigation was not proceeding smoothly for either party, the Government’s agreement to allocate reserves south of Waikaremoana and thus recognise the customary interests of Urewera Maori may have been sufficient incentive.

7.4.2 What were the impacts of the Crown’s acts and omissions in its acquisition of the four southern blocks?

The impacts were ‘self evident’, submitted counsel for the Wai 36 Tuhoe claimants: ‘the fee simple was acquired by the Crown, and Tuhoe were reserved to a handful of enclaves within the four southern blocks.’ Tuhoe’s domain was ‘substantially undermined’. Tuhoe and Ngati Ruapani claimants submitted that the loss of the blocks denied them important and valuable forests, kainga, and rivers, as well as the opportunity to participate in the pastoral economy, and the exotic forestry industry, that were to occur in the area later.

The full range of socio-economic and political consequences suffered by the claimants as a result of land loss both by confiscation and by the Crown’s acquisition of the four southern blocks was summarised to include: the privation caused by food shortages, worsened by lack of access to traditional supplies; the loss of hapu authority, which adversely affected hapu values and economic development opportunities; and the damage to tribal relationships, internally and externally, and to the relationship between the peoples of Te Urewera and the Crown.

The Tuhoe and Ngati Ruapani claimants were particularly concerned about the impact of the outcome of the court hearing of 1875 on the recognition of their customary claims in the wider area. They argued that lasting prejudice arose because of the manner of Crown purchase of the interests of Te Urewera and Waikaremoana iwi and hapu, and because of the exclusion of those interests from the titles issued by the land court. In particular, there was prejudice to the

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24. Crown counsel, closing submissions (doc N20), topic 6, p 17
25. Ibid, pp 16–17
26. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 41
27. Counsel for Wai 144 Ngati Ruapani, closing submissions, 3 June 2005 (doc N19), p 167; counsel for Wai 945 and Wai 1033 claimants, closing submissions (doc N13), p 344
28. Counsel for Wai 945 and Wai 1033 claimants, closing submissions (doc N13), pp 341–342
recognition of customary interests to the bed of Lake Waikaremoana in later litigation. The Wai 621 Ngati Kahungunu claimants submitted that the Tuhoe and Ngati Ruapani claimants who withdrew their claims from the court had done so freely, and that there was no resulting prejudice to their interests in later litigation.\(^{29}\) The Crown’s position, in effect, was that the Crown had not drawn on the circumstances or judgment of the 1875 land court sitting in later proceedings about the bed of Lake Waikaremoana so as to prejudice the case of Tuhoe and Ngati Ruapani. Though the decision of the Native Appellate Court in 1947 is claimed to wrongly portray the circumstances of the Native Land Court sitting in 1875, and of the subsequent purchase of Tuhoe and Ruapani interests, the Crown had no role in this. The appellate court’s judgment appears to be based on its view of the facts and case put before it.\(^{30}\)

For Tuhoe and Ngati Ruapani, a key prejudice arising from the Crown’s acquisition of the four southern blocks was the inadequate reserves made at the time of purchase. Counsel for Wai 144 Ngati Ruapani claimants submitted that the reserves allocated by the Crown to Ngati Ruapani were ‘wholly inadequate for their present, let alone future, needs.’\(^{31}\) Counsel for the Wai 36 Tuhoe claimants stated that there was ‘clear evidence’ that those of Tuhoe and Ngati Ruapani who lived on the reserves ‘suffered significant deprivation because of the poor quality and quantity of the land.’\(^{32}\) Crown counsel submitted that the reserves were awarded to 45 individuals, which equates, in broad terms, to 236 acres per person. This, the Crown contended, was not unreasonable at the time, given that the formula then was 50 acres per head. ‘Subsequent events and population growth obviously qualify this statement.’ The Crown acknowledged also, responding to the statement of Wai 144 claimant Vernon Winitana that only 1,300 acres of the 2,500 acres reserved for Tuhoe and Ngati Ruapani were retained today, that ‘Ngati Ruapani do not appear to have significant land holdings elsewhere.’\(^{33}\)

### 7.5 Tribunal Analysis

#### 7.5.1 How and why did the Crown acquire the four southern blocks? How informed was Maori participation in the process by which the blocks were acquired?

##### 7.5.1.1 Introduction

The Crown’s acquisition of the four southern blocks (Waiau, Tukurangi, Taramara, and Ruakituri) in the wake of the fighting in the upper Wairoa and Waikaremoana regions is a major issue before us. We focus here on the circumstances in which the blocks were created in 1872, the Crown’s motives in later acquiring the blocks, and the processes by which it did so. The blocks were not

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29. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), pp 56–58
31. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 76
32. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 42
33. Crown counsel, closing submissions (doc N20), topic 6, pp 18–19
created until 1872, but the land included within them was affected (or thought to be affected) by an agreement reached in 1867 between the Crown and Crown-aligned Ngati Kahungunu chiefs. By this agreement at Te Hatepe – the pa of Ngati Kahungunu leader Piteria Kopu, located on the Wairoa River – the Crown secured from the chiefs a cession of Wairoa land for military settlement (see explanatory note). We consider why this cession was made, and why the Crown sought a cession rather than using the processes set out in custom-designed legislation (ECLTIA) which had recently been passed to facilitate confiscation on the East Coast, through the agency of the Native Land Court. This Crown decision would be crucial for the fate of the land nearer Lake Waikaremoana. The Te Hatepe deed invoked the boundaries of lands set out in the schedule to ECLTIA. The Crown’s view was that it gave up its rights to confiscate some of the land within the ECLTIA boundaries in return for the cession of a smaller block (also within those boundaries) by those chiefs who had supported its military operations. But, recognising obligations to the chiefs, the Crown promised lands beyond the ceded block to them. We consider how far these lands extended, their relationship to the ECLTIA boundaries, and why a further deed was signed with Ngati Kahungunu chiefs and one Tuhoe chief in 1872 by which the Crown promised to make to them grants of land extending to Lake Waikaremoana. This land was divided into four blocks. We examine the meaning of this second deed, the reasons why grants to the blocks were not issued (though the deed indicated they would be), and the circumstances in which Tuhoe sought a title investigation of the blocks in the Native Land Court. Finally, we examine the circumstances in which Crown officials bought up interests in the blocks both before and after the land court hearing, and completed its acquisition of the four southern blocks by 1875.

We address three subsidiary questions, namely:

- Why did Maori and the Crown enter into the Te Hatepe deed (1867), and what was its effect?
- Why did Maori and the Crown enter into the Locke deed (1872), and what was its effect?
- Why was there a Native Land Court hearing for the four southern blocks in 1875, and what was its outcome?

### 7.5.2 Why did the Crown and Maori enter into the Te Hatepe deed (1867) and what was its effect?

**Summary Answer:** The Te Hatepe deed arranged for the Kauhouroa block to be ceded to the Crown by those Ngati Kahungunu who had fought alongside the Crown in the 1865–66 hostilities. The most significant promise made in return was that the Crown would relinquish its claims to ‘rebel’ land in the remainder of the area covered by the deed. It was envisaged that ‘loyal’ Ngati Kahungunu would be granted that ‘rebel’ land. The arrangement was premised, first, on there having been a rebellion in 1865–66 and, second, on Government assertions that ‘rebel’ land in the entire area covered by the deed had been confiscated (or ‘as good as’ confiscated). This gave the Crown bargaining power to negotiate with the customary owners an arrangement for the ‘rebel’ land that suited its purposes. The Crown’s
purposes were to use confiscation to punish the ‘rebels’ in the 1865–66 hostilities, to create a sizeable block in a strategic position as a site for military settlement, and to enable grants of land to be made to reward the Ngati Kahungunu who had fought alongside the Crown in the 1865–66 hostilities.

In fact, the premises on which the Te Hatepe arrangement was based were false, yet Maori had no means to counter the Crown’s assertions about those matters. They therefore acquiesced in the Crown’s plans for the land covered by the deed because they saw no alternative. It seems that the Kauhouroa block passed to (or was assumed to have passed to) the Crown as a result of the Te Hatepe deed. This was despite the fact that there was no genuine consent by those whose lands were to be taken: those who had supported the Crown did not wish to give up land; and those who were considered to be ‘rebels’ did not sign the deed at all and, as the Crown has acknowledged, thus had their lands confiscated. In addition, the reciprocal arrangement for ‘loyal’ Ngati Kahungunu to obtain ‘rebel’ lands within the overall deed area was based on false premises. The Crown assumed that it could in fact bypass the procedures laid down in ECLTIA, so long as the land court approved the arrangements it made at Te Hatepe. It is not certain, however, that the court did approve the arrangements; and legally, it could not have. There had been no hearing to determine who among Ngati Kahungunu were rebels, and whose land could therefore be confiscated by the Crown, as laid down by the Act. The land in the Te Hatepe deed area outside the ceded Kauhouroa block thus remained in customary title.

These difficulties with the Te Hatepe deed were compounded by the failure of the Crown to record there its verbal undertakings to make over rebel lands within the deed area to Crown-aligned Ngati Kahungunu. Thus the lands designated at the time for return to Ngati Kahungunu were not clearly described in the deed. This left the way open for Crown officers to misinterpret the agreement, and to proceed on the basis that lands well outside the Te Hatepe deed area, and well outside the schedule of ECLTIA, extending even to Lake Waikaremoana, had been so designated. The Crown was thus poised to make its own arrangements to dispose of lands to the south-east of the lake where tribal rights were complex, and over which it had not purported to establish any authority at Te Hatepe.

7.5.2.1 Introduction

From the outset, the Crown was determined to take land in order to punish those who it considered to have been in rebellion in upper Wairoa and Waikaremoana – and to establish a military settlement. McLean had stated this publicly as early as May 1866 when he arrived at Wairoa to administer oaths of allegiance to those captured or surrendered: he was reported to have said ‘I hold your land in my hand’.

34 The land, he said, ‘must of course be confiscated, as it is well understood that all persons who rebel against the Queen must suffer the loss of their lands,

34. ‘Wairoa,’ Wellington Independent, 2 June 1866 (Mary Gillingham, supporting papers to ‘Maori of the Wairoa District and the Crown, 1840–1880: An Overview Report’, various dates (doc 15(a)), p 458)
which will be disposed of as the Government thinks proper'. At the end of May, he reported that he had made preliminary arrangements to locate military settlers at ‘the Wairoa’, and that the block he had in mind could be confiscated under the New Zealand Settlements Act. Subsequently, however, the Government passed new legislation, the ECLTIA 1866, which was intended to give it a more precise tool than the settlements legislation by which to effect confiscation throughout the East Coast region (see table 7.1). The Act was intended to enable the separation of rebel from loyal interests in customary land, so that only the former would be confiscated.

The Te Hatepe deed of 1867 was the first agreement entered into between Maori and the Crown in the wake of hostilities in upper Wairoa and Waikaremoana, by which the Crown secured the land it was determined to take and undertook to compensate ‘loyal’ Maori with other land. The surprising thing on the face of it is that it did not use the processes prescribed by its new East Coast legislation. Instead, Ministers attended a great hui with Ngati Kahungunu and reached an agreement with them. Ngati Kahungunu, by that agreement, ceded two blocks of land to the Crown, divided by the Wairoa River, which would become known simply as the Kauhouroa block.

As we have noted above, the Crown’s decision to secure land in this way would have long-term consequences for all those who had customary rights and interests in the lands extending to Lake Waikaremoana. We need to understand why this decision was taken, why Ngati Kahungunu chiefs signed the Te Hatepe deed, and the long-term consequences of the Crown’s later attempts to give effect to its undertakings to the chiefs at Te Hatepe.

The questions we ask are:

- Why did the Crown seek a cession of Wairoa land, instead of using ECLTIA processes?
- Why did Ngati Kahungunu agree to the cession? Was their agreement freely given, and well-informed; or was it to any extent coerced?
- What was the effect of the Te Hatepe deed, and the Crown’s undertakings given to Crown-aligned chiefs at Te Hatepe? What did Crown agents think the effect of the deed was?

### 7.5.2.2 Why did the Crown seek a cession of Wairoa land, instead of using ECLTIA processes?

We consider here the reasons for the Crown’s crucial decision to seek a cession at Wairoa early in 1867, rather than using the processes laid down in its own legislation, the East Coast Land Titles Investigation Act 1866. Its intention to take land there had been flagged in the early part of 1866, at a time when it would have

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36. McLean to colonial secretary, 30 May 1866 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 444–445)
had to use the New Zealand Settlements Act to confiscate land. Later in the year, however, Parliament passed the new legislation, specially designed for the entire East Coast region. The boundaries within which eclitia 1866 applied were badly described in the schedule to the Act (to the point that it was unclear where they were), and amending legislation in 1867 which clarified the boundaries also altered them to include more land (see explanatory note). Though the Crown did not use the eclitia processes, the legislation was nevertheless important in shaping its approach to securing land in Wairoa.

The origins of eclitia lay in events in Turanga, which were examined in detail by the Turanga Tribunal. We refer readers to that report, and here note only that

<table>
<thead>
<tr>
<th>New Zealand Settlements Act 1863</th>
<th>East Coast Land Titles Investigation Act 1866</th>
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<tbody>
<tr>
<td>The Act is of general application, anywhere in New Zealand.</td>
<td>The Act applies only to the East Coast lands described in the Act’s schedule. (This Act, being enacted later in time, ousts the application of the New Zealand Settlements Act to the East Coast lands.)</td>
</tr>
<tr>
<td>The Governor in Council is to decide whether there has been ‘rebellion’ in a ‘district’ (an area defined by the Governor in Council).</td>
<td>The Native Land Court, upon application or its own motion, is to identify the land of ‘rebels’, which term includes all persons described in section 5 of the New Zealand Settlements Act.*</td>
</tr>
<tr>
<td>Section 5 describes, by their conduct, persons to whom compensation is not payable for land confiscation: these are, in effect, ‘rebels’.</td>
<td></td>
</tr>
<tr>
<td>The Governor in Council decides which land within the district is to be confiscated. No distinction is drawn between the land of ‘rebels’ and others. All land within a district can be confiscated.</td>
<td>Only ‘rebels’ land can be confiscated. This is done by means of a Native Land Court certificate identifying ‘rebels’ as owners of certain lands, which are then deemed to belong to the Crown. (If land is co-owned by ‘rebels’ and others, the others are assigned their ‘just portion’ of the land.)</td>
</tr>
<tr>
<td>Land is confiscated by means of proclamation by Governor in Council.</td>
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</tr>
<tr>
<td>No compensation is due to persons who have committed acts identified in section 5; compensation is payable to others whose lands were confiscated.</td>
<td>No provision in the Act for confiscated land to be used for military settlement.</td>
</tr>
<tr>
<td>Provision is made for confiscated land to be used for military settlement.</td>
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* This is the effect of section 2 of the Act once the fundamental error in its drafting was corrected by the 1867 amendment Act.

Table 7.1: Key provisions of the New Zealand Settlements Act 1863 and the East Coast Land Titles Investigation Act 1866 contrasted
the Government was persuaded by the arguments of Whitaker, superintendent of Auckland province (who hoped to secure Turanga ‘rebel’ lands containing oil springs), that new confiscation legislation should provide a ‘level of precision’ in the treatment of ‘loyal’ and ‘rebel’ owners that was not provided by the New Zealand Settlements Act.\(^{37}\)

Whitaker’s proposals also had the advantage for the New Zealand Government of appearing to meet at least some of the grave concerns of the imperial government about confiscation. As we have seen in chapter 4, the Colonial Office in London expressed these concerns at the outset: among them was the danger of alienating Maori who had not ‘actively promoted or violently prosecuted’ rebellion but had been, by circumstance ‘unwillingly drawn into it’ or had ‘on the whole adhered to the British cause’.\(^{38}\) The possibility that the lands of these people could be confiscated was ‘calculated to alarm our friends’ and ‘drive to despair those who are but half our enemies’.\(^{39}\) Their lands should not be taken, even where they were joint owners with rebels, unless that was absolutely necessary – a decision to be taken with the greatest of care.\(^{40}\) And it would not be justifiable for the Government to appropriate land against the will of innocent persons merely because it was in the same district as rebel property, and could ‘conveniently be used for purposes of settlement’.\(^{41}\) For these reasons, Secretary of State Cardwell had, in 1864, urged Governor Grey and General Cameron that appropriation of

38. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, p 21
39. Ibid, p 20
40. Ibid, p 22
41. Ibid
land in the wake of rebellion should take ‘the form of a cession imposed by [the Government]’, and only if that course were ‘found impossible’ should the 1863 New Zealand Settlements Act be used. By 1866, as we saw in chapter 4, the Colonial Government was under further pressure from the Colonial Office: it was critical both of the Government’s extension of its confiscatory powers under the New Zealand Settlements legislation for another two years, and of new legislation (the Outlying Districts Police Act 1865) which provided new grounds on which Maori lands might be forfeit to the Crown. The Stafford Government thus had a further strong reason to contemplate a different approach to confiscation.

By the end of September 1866, Stafford was committed to new legislation to deal with the East Coast lands. Whitaker himself drafted the East Coast Land Titles Investigation Bill 1866. The Bill was passed through the House, without amendment, and virtually without debate, on 3–4 October, at the tail end of the parliamentary session. Under the Act, lands whose owners could include ‘rebels’ were to be dealt with by the Native Land Court, even though the owners did not seek a title hearing; a ‘just portion’ of the land was to be awarded to the ‘loyal’ owners while the portion certified by the court to belong to those ‘engaged in the rebellion’ would be deemed to belong to the Crown. Thus, the East Coast legislation was intended to protect the land of ‘loyal’ Maori and confiscate only ‘rebel’ land. In parliament in 1868, Richmond (the de facto Native Minister) stressed that the Act of 1866 was intended to be an improvement on the New Zealand Settlements Act, and to enable the Government to confiscate land in a way apparently less harsh as regarded [sic] those who had not been in any way concerned in rebellion than they could otherwise have done [sic]. The desire was that confiscation should extend to none but those who had actually participated in rebellion, and that we should not take away from friendly Natives and afterwards give them back other land, but merely take from those who were actually in rebellion...

Once the new legislation was passed, we might expect that it would have been used on the East Coast (including Wairoa). Section 3 of the 1866 Act empowered the Native Land Court to investigate and determine the title to ‘all and any land’ within the district to which the Act applied. That process could be initiated by the court itself: it did not require an application from an interested party. The Government in fact anticipated an early land court sitting; Chief Judge Fenton was instructed to take steps to proceed under the Act, and on 31 October issued notice of his intention to investigate titles within the Act’s schedule as soon as surveys were completed. In November 1866, the Government also appointed

42. Cardwell to Grey, 26 April 1864, AJHR, 1864, e-2, p 22
43. 4 October 1866, NZPD, 1864–66, pp 1039–1040
44. James Richmond, 3 September 1868, NZPD, vol 3, p 145
45. Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 143; Order in Council, 27 November 1866, New Zealand Gazette, 1866, no 61, p 440
Captain Reginald Biggs, who had settled at Matawhero after fighting with the colonial forces on the East Coast, to implement confiscation on the coast. Biggs was instructed to act as counsel for the Crown in the Native Land Court within the entire district described in the schedule to ecltia. He was also to conduct preliminary inquiries into the tribes and hapu owning land within the ‘block’ of land, and the names of individuals; and to oversee the preparation of a sketch plan of the whole block for the use of the court.46

But, despite these initial moves to implement ecltia, the Government rapidly changed its mind. There seem to have been several reasons for this crucial shift.

First, the Government concluded that ecltia was ‘not likely to work well in practice’ – as the Minister told the House in 1868; it would be much better to obtain cessions of land ‘to be afterwards confirmed under the Act’.47 The influence of Biggs, the man on the ground, seems to have been crucial to this decision. Biggs did not think ecltia would work, because it was based on the totally unrealistic assumption that the claims of ‘loyal’ and ‘rebel’ Maori could be separated out. Obtaining cessions of land from Maori, in his view, was a more practical proposition. Biggs’s most immediate concern was to secure land for the Crown at Turanga (Gisborne). In Turanga, he reasoned that the Government should decide what block of land it wanted before the land court sat, and define its boundaries; ‘loyal Natives’ with ‘indisputable claims’ inside those boundaries could then be compensated. Biggs hoped that Turanga Maori would, if pressed, agree – though in fact they objected to the size of the cession he sought, and would not cooperate.48 Nevertheless, Biggs’s strategy at Turanga would also shape his proceedings at Wairoa.

Secondly, cessions of extensive tracts would suit the Crown’s purposes better. At Wairoa, Biggs sought to acquire a large area of land for the Crown within which a block suitable for military settlers could be designated. Such an area was most unlikely to be obtained through the application of ecltia. Even if ‘rebel’ lands could be separated from ‘loyal lands’ and made over to the Crown, the result might be a patchwork of small areas of land. As Biggs put it to Wairoa leaders at the Te Hatepe hui, such small pieces would be ‘of no material value to any one.’49 It seems clear, however, that his concern was that the Crown should not be left with ‘small pieces.’ The Government wanted to be able to pick its own land. McLean had flagged the region he had his eye on in discussions with the chiefs at the end of 1866.50 The land he described, which he estimated was about 40,000 or 50,000 acres, was divided by the Wairoa River.51

46. Haultain to Captain Biggs, private memorandum, [circa November 1866] (Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p144)
47. James Richmond, 3 September 1868, NZPD, vol 3, p145
49. Hawke’s Bay Herald, 23 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p206)
51. Ibid, p79
James Richmond. From 1866 to 1869, Richmond served as the effective Native Affairs Minister, and in April 1867 he was the leader of the high-powered Crown delegation that negotiated the Te Hatepe deed with Wairoa Maori. The Government had decided that the new East Coast Land Titles legislation would not work well in practice because it would be too hard to separate the land of ‘loyal’ and ‘rebel’ Maori. The delegation was anxious to secure one large tract of land for military settlement and to seek a cession from ‘loyal’ (not ‘rebel’) chiefs, on whom it could exert moral pressure.

It was fortunate for the Government that the body of Wairoa rangatira who had aligned themselves with the Crown over the past two to three years were more inclined than Turanga leaders to listen to what the Government wanted. Thus, Kopu and Paora Te Apatu agreed, according to McLean, about which land would be confiscated:

they distinctly recognise the boundary of land to be confiscated as commencing at a place called Putahi on the left bank of the Wairoa River back to the Waka Puhake [sic] ranges inland, and up the river beyond Reinga.

Within the District referred [to] there can be no difficulty in selecting the land for the Military Settlers.\(^{52}\)

At the Te Hatepe hui, McLean reiterated, according to one newspaper account, that what was wanted was ‘a piece of land for the settlement of the soldiers who were engaged in suppressing the Hau Hau rebellion’; the matter had ‘long been talked of, and it was agreed that a place conveniently situated in the midst of the district should be selected for that purpose’ (emphasis added).\(^{53}\) When Government speakers were challenged at the hui to explain why the Crown had taken the good places for itself, Biggs responded that the locality had in fact been chosen to cut off communications between the ‘Hauhaus’ of Wairoa and those of Waikato and

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53. Wellington Independent, 20 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 371–372)
Te Urewera. Whether we accept this explanation or not, it is clear that the Crown sought a cession because it was the only way of securing a substantial block of suitable land for its own purposes.

Thirdly, the Crown sought a cession both because it evidently considered ECLTIA gave it certain powers over the lands delineated in the schedule, and because it saw no incompatibility between the processes laid out in the Act, and the agreement it made with Maori at Te Hatepe. That is, it believed it need not follow the exact processes outlined in the Act. This is evident from Richmond's statements, and Biggs's actions. Richmond referred in the House during the second reading of the East Coast Land Titles Act Amendment Bill, in September 1867, to an 'elaborate agreement' about the lands to be taken by the Crown made with the 'friendly Natives in Wairoa' which 'required to be carried out by order of the Native Lands Court' (emphasis added). As we will see, Biggs assumed that he could get the Te Hatepe deed rubber-stamped in the land court. We consider the Crown's assumptions later.

7.5.2.3 Why did Ngati Kahungunu agree to the cession? Was their agreement freely given and well-informed or was it to any extent coerced?

It is our view that Ngati Kahungunu agreed to a cession of land at Te Hatepe because they saw no alternative. McLean, as we have seen, had signalled at an early stage that rebellion would be followed by confiscation. This message was underlined at the 1867 hui: there had been rebellion at Wairoa; a Crown taking of land was not negotiable.

The Government, as we have seen, preferred to achieve this by cession. It chose to seek a cession from the Crown-aligned chiefs; and it was they who faced the Crown's moral pressure. This was despite the fact that it was those who were deemed rebels who, by the Crown's own criteria, should have felt that pressure first. Yet the Crown representatives addressed themselves at the hui to the chiefs who, with their men, had fought as part of its own forces – or who had on occasion largely constituted its forces. We note that it was a high-powered delegation that arrived at Te Hatepe – the Minister, James Richmond, McLean (superintendent of Hawke's Bay province), Lieutenant Colonel Whitmore (who headed the Napier militia at Omarunui), and Government officials Biggs, and Locke – underlining the Crown's anxiety to secure the agreement of the Ngati Kahungunu rangatira. Between 1,500 and 2,000 Maori were present. As O'Malley points out, the key chiefs of Ahuriri – Karaitiana, Tareha Te Moananui, and Te Hapuku – also led a large group at the hui; and Henare Potae (who had led Ngati Porou Crown forces at Waerenga a Hika) and Hirini Te Kani (who had tried to play a mediating role in Turanga) from Te Tai Rawhiti were present. It appears, from their various

54. *Hawke's Bay Herald*, 23 April 1867 (Gillingham, supporting papers to 'Maori of the Wairoa District' (doc 15(a)), p 206)
55. James Richmond, 3 September 1867, NZPD, vol 1, p 693 (O'Malley, 'The Crown and Ngati Ruapani' (doc A37), p 89)
Ahuriri rangatira Karaitiana Takamoana. Takamoana was one of the leading Ngati Kahungunu representatives at the Te Hatepe hui of April 1867. He, Tareha Te Moananui, and Te Hapuku all attended, seeing it as their role to support the Crown in achieving its aim of securing a cession of Wairoa land.

speeches, that they saw their role as supporting the Crown in achieving its aims. Te Hapuku, for instance, stated that ‘the Pakeha is right when he claims land, the owners of which he has conquered by his bravery . . . the country above [lower Wairoa] must be given in compensation for the killed of both Pakeha and Maori.’

Crown pressure was evident also in the refusal of Richmond, the key speaker for the Crown, to discuss whether confiscation was justified – despite the fact that it was evident at the outset that local Ngati Kahungunu wanted such a discussion. We have two newspaper accounts of the speeches made at the hui. From both, it is evident that when the key matter of the cession was raised (on 4 April) McLean spoke first. Each of the two accounts gives a different emphasis to McLean’s remarks. According to the Wellington Independent’s report, he spoke of the need to settle the ‘land question’, and the Government’s ‘wish’ to have land for military settlers; he asked the chiefs to ‘acquiesce’ in the boundaries of the land chosen. The Hawke’s Bay Herald, however, reported McLean as saying that he and Richmond ‘had determined that two blocks of land should be retained by the government; but that the other portions of Hau Hau land (which must be considered as all confiscated) should be returned to the loyal natives’. McLean told them that ‘at the deliberations of the government in Wellington it was decided that no more should be taken than these two blocks.’ (The reporter noted that McLean spoke at greater length, but such was the ‘buzz and comments’ made by those around him that he

57. Hawke’s Bay Herald, 23 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 203)
58. Wellington Independent, 20 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 371–372)
59. Hawke’s Bay Herald, 23 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 205)
7.5.2.3

Nga Whenua Ngaro

could not catch the rest.) The press reports both give similar versions, however, of Richmond’s speech – which followed Tamihana Te Huata’s response to McLean. The Wellington Independent recorded Richmond’s ‘agitation’ and evident anger as he replied: ‘The land is gone. It is too late. These questions have passed the assembly of New Zealand. We are not here to discuss the merits of the question as to the hau haus. Their land is gone absolutely, passed [sic] praying for.’ The Hawke’s Bay Herald report was on similar lines:

The Hon J C Richmond here said that there appeared to be a mistake in the native mind from beginning to end. . . . It had been decided by the government at Wellington that land should be taken; it might therefore be said that it was gone. We did not, he said, come here to consider the thoughts of men upon this question.

Richmond was not recorded as referring explicitly to ECLTIA; the thrust of what he said, however, was that Ngati Kahungunu were being offered the chance to assist in the settlement of the matter before the land went to the land court and ended up being ‘spotted over by small claims’. He added that the Government ‘did not wish, nor could they force any one to accept the proposal now made, with reference to these particular blocks’.61

Despite this disclaimer, however, the main thrust of Richmond’s speech was an uncompromising insistence that there was no room for debate about the Crown’s taking of Wairoa land. Biggs underlined this in his own speech, stating that ‘The

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60. Wellington Independent, 20 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 371–372)

61. Hawke’s Bay Herald, 23 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 205–206)

Where Was the 1867 Hui Held?

Contemporary accounts state that the 1867 hui was held at Te Hatepe – the kainga and pa of lower Wairoa leader Pitiera Kopu. Te Hatepe, it seems, was located on the banks of the Wairoa River just north of the current township of Wairoa. However, Richard Niania stated in his evidence that this was not the precise location of the hui: ‘we believe the korero and debate took place over towards what is today Campbell Street park, Rauwa, the river flats leading down to the river mouth’. According to Niania, the name ‘Te Hatepe’ became associated with the agreement because of the wider ‘event’ which occurred around the hui. This ‘event was hosted over a three week period and nearly exhausted all food supplies and stored crops.’

1. Richard Niania, brief of evidence, 22 November 2004 (doc 138), p 21
fact is (and there is no use disputing the matter) all the Hau Hau land in the river is gone. What we want now to do is to have an amicable settlement.’ And he added that if the chiefs would not agree to an arrangement such as the Government proposed, ‘it will be my business to take the whole of the Hau Hau land for the Government . . . leaving none behind’, and the land ‘would then be cut up into small pieces of no material value to any one.’ An arrangement must be reached, or it would be ‘worse for you’.62 This brings to mind the words of Hugh Carleton in Parliament in September 1868, when opposing the Government’s plan to introduce a Bill that would become the East Coast Act 1868. Carleton wanted to see ECLTIA repealed altogether. The Government’s plan, however, was to repeal it but then re-enact its central confiscatory provisions (and empower the Native Land Court to award ‘rebel’ land to ‘friendly’ Maori). Since the central provisions of the proposed Bill matched those of ECLTIA, Carleton’s colourful description of the Crown’s use of the new law could equally have been applied by him to the Crown’s role at Te Hatepe (see the sidebar above).

The land court – and the provisions of ECLTIA – were thus implicitly held up as a threat. Given that the new process in the land court was untried, and its purpose and outcome uncertain, this was doubtless effective. It is not surprising that when Biggs later sought instructions as to whether he should ‘portion off’ the rebel land himself, or leave it to the land court, he added that he thought it would be ‘better to let it go into Court all settled as it seems the Natives wish it arranged out of court’.63 Ngati Kahungunu did not know what the relationship was between

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62. Hawke’s Bay Herald, 23 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 205–206). The Wellington Independent report of these remarks of Biggs was very similar: Wellington Independent, 20 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 371–372).

63. Biggs to McLean, 12 August 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 553)
and the cession they were asked to make – or which process might have protected their interests better. They could not have known, because Crown agents did not understand that relationship themselves.

A cession at least offered certainty about which land the Crown was taking. But we cannot agree with Crown counsel’s argument that it also offered Ngati Kahungunu chiefs some control over the Crown’s land take. The Crown observed at our hearing that any cession of land obtained against the backdrop of confiscation law could be described as pressured or forced to some extent. It argued, however, that it would be unduly harsh for the Tribunal to conclude that a cession was forced, and so not voluntary, purely because it was made against the backdrop of such a law. Rather, the Crown contended, there is a continuum along which such cessions should be placed – ranging from voluntary to forced – and cessions at the ‘voluntary end’ of the continuum might well withstand challenge on legal and Treaty grounds. Counsel acknowledged that the Turanga cession was forced because, as the Turanga Tribunal found, it took place at a time when the Crown threatened to remove its protection from both Maori and Pakeha in the ‘climate of fear’ caused by Te Kooti’s killings at Matawhero and Oweta. But she argued that the cession effected by the Te Hatepe deed was at the voluntary end of the continuum for two reasons. The first was that the East Coast land title law protected the signatories’ interests, which meant that its potential operation did not pose a threat for them. The second reason was that the deed’s terms were beneficial to the Maori signatories.

From the accounts we have of the speeches at Te Hatepe, we cannot say that Ngati Kahungunu were given an explanation of the East Coast legislation that would have assured them it would protect the interests of ‘loyal’ Maori. Rather, there were oblique references to the role of the Native Land Court which, it was implied, could only be detrimental to the rights and interests of ‘loyal’ Maori. And Ngati Kahungunu were also given contradictory messages about the basis on which the Kauhouroa lands were taken. McLean said that ‘we only intend to take the Hau Hau lands’; then characterised ‘the whole of the land from this spot [Te Hatepe] to Waikari Moana’ as ‘Hauhau’ land, while adding that it ‘rests with the Government to return such portions as may belong to other men.’ In other words, he was at least prepared to admit the possibility that he might be wrong, and that some of the land might not belong to ‘Hauhau.’ Further, the general land confiscation law (the New Zealand Settlements Act 1863) did not operate to protect the interests of ‘loyal’ Maori either. By the time of the Te Hatepe hui, the 1863 legislation had been applied in several parts of New Zealand. Among the large gathering at Te Hatepe there would have been Maori who knew that its effect was to confiscate both ‘rebel’ and ‘non-rebel’ lands. Crown counsel accepted that, whatever Crown intentions were, Maori ‘who had remained loyal . . . elsewhere

64. Crown counsel, closing submissions (doc N20), topic 6, pp 8–10
65. Wellington Independent, 20 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc I5(a)), pp 371–372)
66. Hawke’s Bay Herald, 30 April 1867, p 4
did not have a very good tale to tell about how they had been unaffected by confiscation [under the Settlements Act]. We cannot agree with the Crown, therefore, that the signatories to the Te Hatepe deed would have known that the East Coast confiscation legislation posed no threat to their own landholdings.

The Crown argued that the terms of the Te Hatepe deed were beneficial to the Maori signatories because, as a party to an arrangement with the Crown about their lands, the signatories had some degree of control over the outcome. By contrast, it was said, they would have had no control if the Native Land Court had applied the East Coast confiscation law to their situation. Further, counsel suggested that it was beneficial to the Maori signatories, as well as to the Crown, that the Te Hatepe deed arranged for their respective land interests to be consolidated rather than being scattered across a much larger area. And the Government accepted that it had to recompense in land those loyal Maori whose interests fell within the Kauhouroa block; this would be the basis of their participation in the consolidation.

We are not persuaded by those arguments – which echo those put by Crown agents to Maori in 1867. First, as we have seen, at the Te Hatepe hui, Crown-aligned Ngati Kahungunu did not have a genuine choice either to refuse a cession or to influence the terms of the arrangement that was made, including the location and area of the affected land. (We note Richmond’s statement to the House, when he sought the passage of the CLTIA amendment Bill only a few months after the Te Hatepe deed had been signed, that ‘the temper of the natives in the district [Wairoa] was such, that if this agreement were broken it would be hard to make another equally satisfactory’; this seems to us an admission that the agreement had been pushed through in the particular circumstances of the hui.) Secondly, our finding that there was no rebellion means that there was no basis for the confiscation or cession of Maori land. It is thus an empty contention of the Crown’s that Maori would have more control over their land if one of those things occurred rather than the other. Similarly, we think the Crown’s argument that Maori signatories would benefit from having their land interests consolidated, so as to separate them from the Crown’s newly acquired interests, is a red herring. The point is that there was no justification for the Crown’s acquisition and thus no reason to change the customary ownership of the land. Further, even had there been a rebellion, that fact would not have altered the bargaining position of the Crown-aligned Ngati Kahungunu who signed the Te Hatepe deed.

67. Michael Belgrave, under cross-examination by Crown counsel, Rangiahua Marae, Frasertown, 29 November 2004 (transcript 4.12, p 89)
68. Crown counsel, closing submissions (doc N20), topic 6, p 10
69. Ibid, p 8
70. Michael Belgrave, under cross-examination by Crown counsel, Rangiahua Marae, Frasertown, 29 November 2004 (transcript 4.12, p 91)
71. Mary Gillingham, under cross-examination by Crown counsel, Rangiahua Marae, Frasertown, 1 December 2004 (transcript 4.12, p 213)
72. James Richmond, 3 September 1867, NZPD, vol 1, p 693
It is clear that because of the inflexible approach adopted by Crown representatives, and their determination to secure Ngati Kahungunu land, feelings ran high at the hui. The Wellington Independent’s reporter conveyed the deep concern of Kopu, and the agitation and forthrightness of the Reverend Tamihana Te Huata, an Anglican deacon. Both were critical of the Crown’s policy, and both pointed to the price Ngati Kahungunu had already paid in the fighting. As Kopu put it: ‘we had beaten our enemies, we made friends and lived together in concord and unity. But you . . . are not satisfied with the men, you must have the land also.’ The ‘Hauhaus’ who were present, he said, were no longer enemies. (This echoed what he had said to McLean in May 1866: ‘Those [whom they had fought] who were fated to die are dead and the remainder are here, and we wish to make them our friends and to live in peace hereafter.’) Te Huata also stressed the prominent role taken in the fighting by Ngati Kahungunu: ‘we fought and beat the Hauhaus at Waikare Moana, when but one or two of you, the whites, were present.’ Maori, whether ‘Hau Haus or Government natives’, had been the casualties of the fighting. Both speakers also challenged the need for a military settler presence among them.

73. Wellington Independent, 20 April 1867 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc I5(a)), pp.371–372)
74. Hawke’s Bay Herald, 23 April 1867 (Battersby, ‘Conflict in the Bay of Plenty’ (doc B2), p.75)
75. Ibid, 12 June 1866 (p.170)
76. Ibid, 23 April 1867
Kopu stated that there was no fear of further ‘Hauhau’ ‘outbreaks’, implying that there was no need for military settlers.\textsuperscript{77} Te Huata stated outright that the people did not want the settlers, but if the Government was determined to bring them in it had already acquired plenty of land on which it might locate them. (He referred, we assume, to the Wairoa and coastal land (including Mahia and Nuhaka) the Crown had bought in 1864–65 before the fighting in the region. Gillingham gives figures showing that Government purchases in that district amounted to 179,370 acres.\textsuperscript{78}) Or the settlers could be sent up to Waikaremoana. If the Crown proceeded with the taking, it would, in the words of Tamihana Huata, ‘pick the heart out of the country’.\textsuperscript{79}

Huata and his brother Hapimana Tunupaura also objected to the Crown’s choice of land. Tunupaura, denying that the ‘Hauhau’ had any land of consequence in the blocks, charged that the Crown, ‘our allies’, should have asked first which land belonged to the ‘Hauhau’. Te Huata urged that the land from Mangaaruhe to the Waiau was that of his ‘tribe and relatives’, and his brother stated that the ‘Hauhau’ had ‘no land of any consequence here’.\textsuperscript{80} McLean appears in fact to have made inquiries about those who had rights; he reported in December 1866 that Mary (Mere) Karaka and Te Waaka Turei were key claimants to the land who had not been involved in rebellion, and added that the Reverend Huata and his brothers were also claimants ‘to a small extent’ to some of the land.\textsuperscript{81} But whether his inquiries were well informed or not, the point is that whichever land the Government decided on in the vicinity, it was bound to include the interests of those who had fought either for the Crown forces, or against them – or who may not have fought at all. (One newspaper report referred to opposition to the block cession proposal by ‘those men who belonged to the Hau Hau tribes, but who had never taken any active part in the war.’\textsuperscript{82}) And chiefs who challenged the Government’s selection of land now found themselves in the uncomfortable position of being accused of minimising ‘Hauhau’ interests in the land simply in order to protect it. McLean’s response, as reported in the press, was that they would not be permitted to ‘ignore the Hau Haus altogether, and lay claims to the whole of their land’; in his view, all the land from Te Hātepe to Waikaremoana was ‘Hauhau’ land, and the Government was exercising restraint in seeking only two small blocks of it.\textsuperscript{83}

The impact of Government pressure at Te Hātepe is evident in the anger and disquiet expressed in the chiefs’ korero. This was perhaps not surprising. As we have seen, the policy of those who aligned with the Crown had all along been

\textsuperscript{77} Hawke’s Bay Herald, 23 April 1867
\textsuperscript{78} Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 115
\textsuperscript{79} Wellington Independent, 20 April 1867 (Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 176)
\textsuperscript{80} Hawke’s Bay Herald, 27 April 1867
\textsuperscript{81} McLean to Deighton, 7 December 1866, RDB, vol 136, pp 52,251–52,252 (O’Malley, “The Crown and Ngati Ruapani” (doc A37), p 77)
\textsuperscript{82} Hawke’s Bay Herald, 30 April 1867, p 3
\textsuperscript{83} Ibid, 27 April 1867
shaped by their assessment of the benefits of such an alignment, in particular the hope that it would protect their land.

It is clear from the way some of them spoke at Te Hatepe that they considered the Government had not taken their whole-hearted commitment to the Crown into account at all. Kopu made it clear at the hui that preserving the land was of the utmost importance to him. Evidently insulted by the tenor of at least part of Richmond’s opening remarks (which excused the Pakeha from responsibility for the decrease in Maori numbers and urged sobriety, refraining from promiscuity, and the importance of the education of their children), Kopu responded that these were not the questions at issue. He spoke poignantly of his own sickness (within a week he would pass away); ‘his sickness was a deadly one, an ailment of the heart . . . His sickness was the land.’ At Te Hatepe, Kopu had to come to terms with the fact that the Crown’s expectation was that Ngati Kahungunu should deliver the sizeable block of land it sought, whoever its owners were. Richmond put it to them that the ‘pieces taken were on account of the wrong doings of all the Hau Haus of each hapu.’ In other words, the land represented the price which had to be paid by Ngati Kahungunu, rather than the claims of ‘rebels’ themselves. Belgrave and Young state that Kopu was ‘subject to harsh criticism for agreeing to give up the land.’

In the end, however, the Crown-aligned rangatira agreed that in view of Government assurances to respect the claims of those who had been loyal, they would accept the cession. As they bowed to the inevitable, their assent was expressed in terms of the exercise of mana. The high-born chiefly woman Mere Karaka made the offer to the Crown, giving the boundaries of the blocks, and stating that many had claims to the land. She alone, however, possessed the power of surrendering it to the Pakeha – ‘and this she was about to do for the sins of her people.’ Kopu, the following day, gave his own acquiescence; he would give up his claims in the blocks ‘as a reparation for the evils committed by the Hau Haus.’ Mere Karaka also expressed the determination of her people to maintain their relationship with the Crown, even at the cost of the land in question. Her name headed those of the 153 ‘loyal signatories’ to the deed, and the Crown undertook to make a reserve for her and her hapu at Pakowhai.

Clearly, the rangatira wished the Government representatives to understand that the land was given to the Crown because they accepted responsibility for the ‘sins’ of the ‘Hauhau’ – rather than because it was necessarily the land where ‘Hauhau’ claims were concentrated.

There was one further reason why Ngati Kahungunu signed the Crown’s deed. In the midst of the Government threats, there were promises made to those who

84. Wellington Independent, 20 April 1867
85. Hawke’s Bay Herald, 27 April 1867, p 2
86. Michael Belgrave and Grant Young, ‘War, Confiscation and the “Four Southern Blocks”’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A131), p 31
87. Hawke’s Bay Herald, 30 April 1867, p 4
had aligned with the Crown: a thousand acres of reserves divided into 20 50-acre sections for those on the left bank of the Wairoa River; a payment and a 400-acre reserve for those on the right bank of the river; and an undertaking of recompense in land covered by the deed but outside the Kauhouroa block. The latter promise was crucial because without it, Crown-aligned Maori with customary interests primarily or solely in the 42,438-acre Kauhouroa block would have been disadvantaged compared with those whose interests were primarily or solely outside that block. With it, both groups stood to acquire further interests in land and thereby reach an outcome that was equitable as between the groups.

The fact that the promise was not explicitly mentioned in the Te Hatepe deed does not seem to have been a difficulty for those who signed. Claimant historians Belgrave and Young argued for the importance of an ‘oral agreement’ made between the Crown and Ngati Kahungunu; this ‘second part to the agreement . . . one not included in the written deed signed by the parties’ reflected the Government’s assertion that the lands of ‘rebels’ outside the Kauhouroa block were confiscated, and that those lands would be given to the ‘loyal’ signatories. Richmond’s final speech, for instance, dealt with the question of the rest of the land beyond the blocks ‘proffered’ by Ngati Kahungunu. All the hapu were entitled to land here, he said, and if the people agreed, Biggs would come back and arrange the claims ‘in just proportion’. Biggs’s communication to the Government soon afterwards, reporting the finalisation of the cession, echoed this: Maori were anxious for him to return to Wairoa and ‘portion off the rebel land to them as soon as it is surveyed’. Belgrave and Young suggested that ‘there is strong Maori evidence to support a Maori understanding of [the oral agreement]’. We accept this argument, and will return to it later in the chapter. There was an oral agreement also, Belgrave and Young argued, as to provision for ‘rebels’ whose land was taken; they would be entitled to the support of their relations. McLean stated that ‘the loyal natives . . . could invite the Hau Haus to live with them under their guardianship . . . – otherwise the government would fix localities for their residence’. Biggs suggested that land might be allotted to them at Mahia. The Crown, we note, had power under ECLTIA to make reserves for ‘rebels’ anywhere in the district which had become Crown land as a result of the operation of the Act. Mahia, however, was outside the ECLTIA boundaries.

88. O’Malley states that this was the approximate acreage of the block: O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), p 32.
89. Michael Belgrave and Grant Young, summary report of ‘War, Confiscation and the “Four Southern Blocks”’, November 2004 (doc 13), pp 7–8
90. *Hawke’s Bay Herald*, 30 April 1867, p 4
91. Biggs to McLean, 12 August 1867 (Vincent O’Malley, comp, supporting papers to ‘East Coast Confiscation Legislation and its Implementation’, various dates (doc A34(b)), vol 2, pp [15]–[18])
92. Belgrave and Young, summary report of ‘War Confiscation and the “Four Southern Blocks”’ (doc 13), p 8
94. Belgrave and Young, summary report of ‘War Confiscation and the “Four Southern Blocks”’ (doc 13), p 8
Crown counsel accepted that the promise to return land was made; she suggested that its existence and significance were in fact referred to obliquely in the deed, in the passage where one purpose of the arrangement is identified as being to consolidate the interests of ‘loyal’ Maori in the area outside the Kauhouroa block. On either view, it is clear to the Tribunal that the promise was essential to the Te Hatepe arrangement and that it induced the ‘loyal’ signatories to sign.

We conclude that the Crown’s offer of land outside the Kauhouroa block to those who had fought in its forces is evidence of some feeling of responsibility towards them. But the Government took a limited view of how that responsibility might be met. It did not extend to offering Crown-aligned Ngati Kahungunu the protections of the new legislation. Nor were they offered a choice as to which land might be ceded. On the contrary, Government representatives did not shrink from making quite explicit threats if the chiefs failed to cooperate in the course of action that had already been decided on. And the Crown failed, when it drew up the deed of cession, to record clearly its undertaking to make over to Crown-aligned Ngati Kahungunu lands outside the Kauhouroa block. There is no doubt that such an undertaking was given, and we are at a loss to account for its omission from the deed.

7.5.2.4 What was the effect of the Te Hatepe deed, and of the Crown’s undertakings given to Crown-aligned chiefs at Te Hatepe? What did Crown officers think the effect of the deed was?

If we are to understand the creation of the four southern blocks, it is crucial to understand the effect and significance of the Te Hatepe deed. Here we address two main issues. First, what was the legal status of the cession recorded in the deed given, in particular the terms of ECLTIA, and did Crown representatives believe it was lawfully made? Secondly, what were the Crown’s obligations in the wake of the undertakings its officers gave to Crown-aligned Ngati Kahungunu about land to be given to them as recompense for the cession of the Kauhouroa block? What did Crown officers understand those obligations to be in 1867?

First, was the cession recorded in the Te Hatepe deed lawfully made, given the terms of ECLTIA? We have already stated that we do not accept that there had been a rebellion justifying any confiscation, or cession, of land in the Wairoa and Waikaremoana areas. Yet the effect of the Te Hatepe deed was to punish Ngati Kahungunu: those who resisted the Crown, those who fought for it, and those who had done neither, for the alleged rebellion of some of them.

We consider the position of those deemed rebels first. Not only did the Crown acquire Ngati Kahungunu land without justification, but its insistence on a cession denied alleged rebels any protection of their rights. They were not party to the

95. Belgrave, under cross-examination by Crown counsel, Rangiahua Marae, Frasertown, 29 November 2004 (transcript 4.12, pp 89–90). The deed states that the purpose of the arrangement is ‘to consolidate the claims of Her Majesty under the said Act and of the several hapus to which the said undersigned Chiefs and natives [that is, those aligned with the Crown] belong.’
cession (even if at least some of them were present at the hui). The Kauhouroa block was ceded by some who had customary rights in the land – and, it seems, by some who may not have had any customary rights there at all. (It is difficult for us to reach a conclusion on this matter, as the Kauhouroa block is outside our inquiry district and we did not receive comprehensive tangata whenua evidence on customary rights in this land. In 1875, many more Ngati Kahungunu were named on a separate list of those whose service to the Crown entitled them to payment when the blocks were sold.) Crown counsel, considering the right of those who made the cession to do so, conceded that ‘rebels’ with interests in the Kauhouroa block did not consent to its cession and so their interests in the block were confiscated rather than ceded.

Not only this, but the cession denied the benefit of the Crown’s own legislation to ‘rebel’ Ngati Kahungunu. The land court – a creation of statute – could do only what it was authorised to do by legislation. The East Coast Land Titles Investigation Act 1866 set out very plainly what the court could do in the wake of rebellion. It prescribed a complex procedure, dependent on decisions of the land court, by which the Crown could confiscate Maori land in the district defined by the Act. The primary reason for the novel process was to protect Maori whose land rights were not liable to be confiscated: the legislation recognised that confiscation should only apply to Maori who had been in rebellion. In addition, however, by requiring the court (rather than the Governor, for example) to identify rebels and their land, an opportunity was provided to those who might otherwise have been deemed rebels, to participate in the court’s process and argue, and present evidence, against the court reaching that outcome. Crown counsel also suggested that there may have been advantages for rebels in court determination of the interests – as opposed to cessions of land – though she did not think the outcome would have differed greatly: ‘Either way, they were to be punished for their rebellion by losing their interests in lands.’

But Crown officers circumvented the procedures laid down in the Act. The Te Hatepe deed described a process very different from that prescribed by the Act, and the Crown’s aim was to reach an outcome very different from that which would be achieved by adhering to the Act. Despite those fundamental points of difference, however, key Crown officers involved in the Te Hatepe deed’s design and implementation seem to have believed (wrongly) that their new process was somehow authorised by ECLTIA and that the outcome of that process could be validated under the Act. Thus, the Te Hatepe deed referred to the Act and the powers of the land court under it, and officials spoke and behaved as if the court could use

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96. Te Waru Tamatea was present at the hui and spoke opposing the cession.  
97. We note Gillingham’s point that ‘loyal’ claimants who did not also have customary interests in the blocks were poorly represented in the Locke deed schedules. In 1873, Whaanga and 11 others complained that they were represented there by only one name: Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 243.  
98. Crown counsel, closing submissions (doc N20), topic 6, p 2  
99. Ibid, p 8
the jurisdiction given to it by the Act to approve the alternative arrangements that were being made. In this way, they relied on ecltia.

The question we must ask is what Crown officers understood to be the effect of the deed of cession at the time. When they promoted this alternative process, and told Maori, wrongly, that ‘rebel’ land in the district had already been confiscated – or must be considered as having been confiscated – were they deliberately misleading Ngati Kahungunu? When they threatened that the outcome of taking the land to the court would be unusable patchworks of land for Kahungunu who received awards, was this also misleading?

We note first that, at the time the Te Hatepe deed was signed, the defect in section 2 of the 1866 Act had not yet been corrected, so ecltia could not have been used by the Crown to achieve any sort of confiscation. Thus threats that confiscation by means of the court process would produce unusable patchworks of small pieces of land were empty. But even had that defect not existed, the Native Land Court would have struck serious problems, possibly insurmountable in the absence of Maori co-operation – as Crown counsel acknowledged – trying to distinguish the land of ‘rebels’ and ‘non-rebels’, which was the prerequisite to the confiscation of ‘rebel’ land. Therefore, had the land gone to the court and the Act been applied, it was likely either that no land would be identified as belonging to ‘rebels’, thus no confiscation would occur, or that the court itself would have had to make an arbitrary decision as to how to separate the land of those it found to be ‘rebels’ from those it found to be ‘loyal’.

If Crown agents had been aware at Te Hatepe in April 1867 that the 1866 Act was unworkable, it would have been dishonest of them, not merely wrong, to say that land had already been confiscated under the Act or that the Crown could rely on the Act to have the Native Land Court determine ‘rebel’ interests. But we have seen no evidence to suggest that Crown officers were aware at that time of the error in section 2 of the 1866 Act. Indeed, the Turanga Tribunal has recorded that Chief Judge Fenton of the Native Land Court pointed out the defect in June 1867, and it seems that the judge was the first to notice it.

It was after this, when Richmond was speaking during the second reading of the ecltia amendment Bill, that he told the House that the ‘arrangements’ had been made with the ‘friendly Natives’ in Wairoa at a time when the ‘flaw’ in the act – clearly a reference to section 2 – was not known.

The more far-reaching question, however, is, if Crown officers knew that the land court process was unlikely to deliver to the Crown a continuous swathe of ‘rebel’ land where they wanted it – and it seems certain that this was the case – why did they not abandon plans to confiscate land in the area and make that fact known to Maori? They could then have sought to negotiate with all who had customary interests in the land they wanted. Why instead did they inform Ngati Kahungunu

100. Crown counsel, closing submissions (doc N20), topic 6, p 7
101. Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 149
102. James Richmond, 3 September 1867, NZPD, vol 1, p 693
that land had already been confiscated under \textit{ecltia}, and that the only remaining issue was which land the Crown would retain and which it would return to loyal Maori? Did they genuinely not know that, under the Act, no land was confiscated until the land court reached a determination and certified particular land to be ‘rebel land’, at which point it was deemed to belong to the Crown? Or did they appreciate that fact but rely on Maori ignorance of it in order to gain leverage for their proposal that the Kauhouroa block be ceded?

Certainly, some of the Crown officers involved should have known that, before the court issued a certificate in respect of ‘rebel’ land, all the land in the district covered by the Act remained in customary ownership. That is what the Act says. Richmond, a lawyer, was in the House and was a member of the Government at the time of the Act’s passing. He should have been aware of the grave imperial concerns about the 1863 confiscation legislation, which the 1866 Act was designed to assuage. He later said, however, that he ‘very imperfectly appreciated the bearing of the \textit{[ecltia]} measure’, having just joined the Government after a ministerial upheaval. Nevertheless, it would be entirely reasonable to expect Richmond to have become conversant with the Act’s scheme by the time he authorised Biggs to make arrangements under it. Certainly, since Richmond attended the Te Hatepe hui, it would be reasonable to expect he would have read and understood the Act’s key provisions before Biggs signed a deed that indicated there was an important connection between the deed’s arrangements and the court’s powers under the Act.

On the other hand, there is evidence that the Crown agents involved genuinely did not understand the 1866 Act’s process and believed that ‘rebel’ land in the district had already been confiscated, or as good as had been, before the Te Hatepe hui. One example is Biggs’s report to the Native Secretary shortly after the Te Hatepe deed had been signed, about the proceedings at Wairoa ‘relative to the confiscation of hau hau land in that district under the “East Coast Land Titles Investigation Act 1866”’, as he put it. Although the Te Hatepe arrangement was an alternative to confiscation, Biggs’s description of the hui suggests he did not see it that way. We also have evidence of Richmond’s thinking on how the Government would proceed. In January 1867, he wrote a memorandum stating that Biggs should have a sketch made of the land described in the schedule to the Act, and make arrangements with ‘friendly Natives’ before he went to court. In court he should seek interlocutory orders for the award of blocks to ‘friendly Natives’, and those ‘to be handed over to the Crown’. Once such orders were secured, the Government would carry out surveys and seek final court awards. Again, in July 1867, when he gave evidence to the public petitions committee on a Turanga petition which complained of Biggs’s proceedings there, Richmond stated that ‘the Government had decided that, \textit{under the East Coast legislation}, arrangements should be made

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103. James Richmond, 3 September 1868, NZPD, vol 3, p 145
104. Biggs to Native Secretary, 16 April 1867, RDB, vol 131, p 50,377
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between the Government’s agent, Biggs, and the claimants to consolidate “the shares of the Rebels and the Loyal Natives” (emphasis added).\footnote{Evidence of James Richmond, 26 July 1867 (Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 151)} This approach, he added, had worked at Wairoa.

It is thus apparent that Crown officers believed that a cession of land such as was arranged in the Te Hatepe deed was perfectly legitimate as long as the Native Land Court approved it; and that they believed the court could perform that role under ECLTIA. There are repeated statements by those officers to that effect. The final words of the Te Hatepe deed – that the parties agree that the arrangement ‘may be made a rule of the said Native Lands Court’ – also indicate their belief that the lawfulness of the arrangement depended only on the court’s confirmation of it.\footnote{In our view, the word ‘rule’ (of the court) must have been intended to mean ‘ruling’ of the court.} Richmond told the House in September 1867 that under ECLTIA the Government had entered at Te Hatepe into an ‘elaborate agreement, which required to be carried out by order of the Native Lands Court’.\footnote{James Richmond, 3 September 1867, NZPD, vol 1, p 693} If the 1866 Act was repealed and nothing comparable was enacted in its stead, the Government might be unable to justify its ownership of the Kauhouroa block. And in September 1868, Richmond stated that the Kauhouroa block ‘was ceded, subject to the decision of the Lands Court’.\footnote{James Richmond, 3 September 1868, NZPD, vol 3, p 147}

Biggs’s actions bear out these statements. When the land court sat at Wairoa in September 1868, he appeared for the Crown and claimed the land named in the Te Hatepe deed for the Crown. Because the ‘Wairoa natives’ had agreed to ‘cede’ the land ‘he would not prefer [make] any claim on behalf of the Govt to any other land affected by the East Coast Titles Investigation Act South of a line from Paritu to te Reinga thence to Mangapuata, then along the range to Waikaremoana’.\footnote{Wairoa Native Land Court, minute book 1, 17 September 1868, fol 25 (O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), p 100)} (We return to the significance of this statement in the next section.) He read the agreement out in court. A number of signatories (including Tamihana Te Huata and Paora Te Apatu) were in court and expressed their satisfaction with the arrangement outlined in the deed. This is hardly surprising, as in the wake of the cession it was in their interest that the Crown’s undertakings be fulfilled.

Biggs believed he had obtained confirmation of the deed’s arrangement, although the court did not issue any order or make any record that would have borne out his belief. He sent a telegram to Richmond the following day which included the information that the ‘confiscated block of land at Wairoa’ had been ‘confirmed’ by the land court; Richmond read the telegram aloud in the House a few days later.\footnote{O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), pp 100–101} The Crown, in other words, was evidently confident throughout this period that the East Coast legislation empowered the court to approve an arrangement made out of court for land subject to the Act, even if the arrangement
was fundamentally different from that which the court could reach in the exercise of its powers under the Act. In our inquiry, Crown counsel made the same argument, submitting that the reason the Te Hatepe deed was not fully implemented was that the court failed to ‘rubber stamp’ it.\(^\text{112}\)

But the Crown was quite wrong. If it sought to confiscate land in the district covered by the East Coast legislation, it had to follow the prescribed procedure – which required key decisions to be made by the Native Land Court – and which was designed to be fair, especially to those whose lands were not liable to be confiscated. The 1866 Act did not provide that, as an alternative option more favourable to the Crown, the court could approve an arrangement by which the Crown made its own decision about who were ‘rebels’ and then dealt with their land in a manner that was completely different from anything that the court could order.\(^\text{113}\)

This was in fact pointed out at the time. The Auckland paper the *Daily Southern Cross*, which was critical of the Government’s confiscation policy generally, and queried whether the ECLTIA was even intended to apply to land in the Wairoa district, wrote:

> Even supposing that the East Coast Land Titles Investigation Act had been in force in the district, it is no part of the duty of a Minister of the colony, to interfere with the administration of the law. The Act itself (albeit a very arbitrary one) provides that the Native Lands Court shall *take evidence* as to the loyalty or otherwise of the claimants to certain lands, and not that any member of the Ministry, and a Superintendent of a province, might go down and take any land which would be most desirable in their eyes, deem the owners of it rebels, and consequently never let them rest until they had driven a bargain with them more by intimidation than anything else. [Emphasis in original.]\(^\text{114}\)

It is apparent that if the confiscation legislation proved difficult or impossible to implement to achieve the Crown’s purposes, the proper course would be for the Crown to secure amendments to it, enacted by the legislature. It would not be proper for the Crown to seek to achieve its intentions by a completely different process unless two conditions were met: the other process provided the owners with protections equivalent to those provided in the legislation; and the owners fully understood and agreed to the use of the other process. Neither of those conditions was met by the process that culminated in the Te Hatepe deed.

Lastly, we address the question of the Crown’s undertakings made to Crown-aligned Ngati Kahungunu in the deed of cession, and at the Te Hatepe hui. What lands did the Crown promise to make over to those chiefs in return for their cession of the Kauhouroa block? And what did Crown officers understand the

\(^{112}\) Crown counsel, closing submissions (doc N20), topic 6, p 9

\(^{113}\) We note that our view is at odds with the majority view of the 1927 Sim commission, which was that although the Crown obtained rebel interests in the Kauhouroa block unlawfully, this did not merit redress because the 1866 Act ‘practically confiscated’ the rebels’ land and all the Crown had to do to complete its title was obtain a certificate under section 4: AJHR, 1928, G-7, pp 4, 24–29, 36–40.

\(^{114}\) *Daily Southern Cross*, 26 April 1867, RDB, vol 89, p 34,395
Crown’s commitments to be at the time of the agreement? It is important that we distinguish between what the Crown officers involved thought the agreement meant at the time, and what other Crown officers came to believe the agreement meant as a result of understandings that emerged afterwards.

In our view, the nature and effect of the Te Hatepe agreement are quite clear, insofar as it related to the grant of lands to Ngati Kahungunu outside the Kauhouroa block (and that is our concern here). First, the agreement leaves no room for doubt that the Kauhouroa block was only part of the land involved in the overall transaction. As we have seen, Ngati Kahungunu were given oral undertakings about recompense in land covered by the deed but outside the block. Crown counsel suggested that the promise was in fact referred to obliquely in the deed. We note also that a press report of the meeting at the time stated:

It was arranged at the meeting that two blocks, containing about 30,000 acres, should be set apart for the location of military settlers and other purposes, and that the remainder of the rebel land should be made over to the friendly natives, who gave such valuable aid in suppressing the East Coast rebellion – the friendly natives to be also compensated, in land or otherwise, for any of their lands included within the boundaries of the rebel territory so taken.115

Secondly, there is in our view little doubt about which land outside the Kauhouroa block was designated for Crown-aligned Ngati Kahungunu, or about Crown understandings as to which land that was. The deed cited ecltia 1867 and its schedule, and stated that, except for the land that became the Kauhouroa block, the Crown withdrew its claims under the Act to an area within the Act’s schedule, and further specified in the deed, extending to the east and the west of that block. Any commitments the Crown made in the deed for disposal of lands beyond the Kauhouroa block to Crown-aligned chiefs could not have been construed as extending beyond the boundaries given in the schedule of the Act. Crown official Biggs, writing after the hui, is clear on that point:

The Hau Hau land without [outside] the block taken for the Government and contained within the boundaries named in the schedule to the ‘East Coast Land Titles Investigation Act 1866’ is to be divided amongst the friendly natives for their services during the war.116

(We note Biggs’s correct reference to ecltia 1866, and conclude from this that the reference to ecltia 1867 in the Te Hatepe deed was simply a mistake.117) Biggs’s

115. Hawke’s Bay Herald, 30 April 1867, p 3
117. The 1867 amendment Act had not been passed at the time of the Te Hatepe deed (April 1867). While it is possible that the amendment Act was expected to be passed (because it had been known for some time that the statement of boundaries in the schedule to the 1866 Act needed to be clarified and corrected), and that the reference to it in the deed is deliberate, we agree with those historians who consider it to have been a mistake.
statement seems to us unequivocal. In light of this, we must conclude either that Richmond and McLean also knew which land was to be made available to ‘loyal’ Maori, or that they were party on behalf of the Crown to an agreement which they barely understood.

The sketch plan attached to the deed, the Crown’s visual representation of the land involved in the agreement, is further crucial evidence of the Crown’s understanding at the time of the extent of that land, and of the eclitia boundaries. The deed area comprises land primarily in the Wairoa region, at the centre of which was the Kauhouroa block. The boundaries of the Te Hatepe deed itself are difficult to reconstruct on modern maps, but three pieces of information show which area was intended to be included:

- The deed itself stated that the deed area was all the land inside the eclitia boundary south of the Ruakituri River and a line from Te Reinga to Paritu on the East Coast.
- The boundary of eclitia defined both the southern and western boundaries of the Te Hatepe deed area: the southern boundary was the 39th parallel from the coast to ‘Maungaharuru’; the western boundary of eclitia ran from ‘Maungaharuru’ north-east to ‘Haurangi’; the Te Hatepe deed boundary followed this as far as the Ruakituri River.
- The sketch plan shows the southern boundary intersecting the Wairoa River near the junction of the Kauhouroa River, and the western boundary crossing the headwaters of the Mangakapua Stream; and Lake Waikaremoana is shown as being well outside the boundaries of the Te Hatepe deed area.

It is clear from this evidence that the Te Hatepe deed area extended inland from the eastern coast, and did not extend west and north as far as Lake Waikaremoana or its adjacent lands. The plan shows the area agreed to by the parties at Te Hatepe in April 1867. Despite the difficulties of reconstructing the Te Hatepe deed boundaries on a modern map, two possible reconstructions we have made show that the greater part of the land which later became the four southern blocks remains outside those boundaries. Readers are referred to our explanatory note at the end of this chapter.

But the Te Hatepe deed provided no protection for the Ngati Kahungunu signatories in respect of the lands which it had been agreed they were to receive outside the Kauhouroa block. That part of the agreement was not recorded in the deed. No mechanism was outlined for delivering the agreed lands to the signatories, which left them in a vulnerable position. Above all, the boundaries within which those lands were to be found were not recorded, which meant that there was no guarantee they might not subsequently be changed. In the next section, we examine how and why the boundaries did change and how these changes in the aftermath of the 1867 agreement came to impact on iwi who had not been involved at all at Te Hatepe.

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118. It is not entirely clear whether the sketch plan was attached to the deed at the time it was signed, or completed soon afterwards. The copy we reproduce however is that filed with the original of the deed.
7.5.3 Why did the Crown and Maori enter into the Locke deed and what was its effect?

**SUMMARY ANSWER:** The Crown entered into the Locke deed in 1872 in an attempt to meet its obligations under the Te Hatepe deed to provide land to ‘loyal’ Maori in compensation for their loss of rights in the ceded Kauhouroa block, or for their service to the Crown. By this time, Crown officials had come to assume, mistakenly, that the area referred to in the Te Hatepe deed as coming under the provisions of eCLTIA stretched as far as Lake Waikaremoana. This meant that lands claimed by Tuhoe and Ngati Ruapani were also considered to have been included in the Crown’s confiscation. Samuel Locke evidently acknowledged this, and the Crown’s new relationship with Tuhoe following the peace, since the leading Tuhoe chief at Waikaremoana signed the deed alongside the Ngati Kahungunu signatories. In the deed, the Crown agreed that lands to the south and east of Lake Waikaremoana – in an area substantially different from that dealt with in the Te Hatepe deed – would be ‘retained’ by ‘loyal’ Maori, subdivided into four named blocks, and made inalienable; the names of those to receive Crown grants were appended to the deed. The Crown would ‘retain’ two small blocks within the Locke deed area, amounting to some 300 acres: one at Waikaremoana, and one at Te Kopani.

The Locke deed, however, created more problems than it solved. Locke, assuming that he was dealing with confiscated land, imported into the deed features of a quite different arrangement made for Mohaka lands which had in fact been confiscated under the New Zealand Settlements Act. These fundamental errors and anomalies make the deed’s purpose unknowable and its effect unfathomable. Accordingly, the different Maori groups involved in the arrangement cannot have understood what benefits the Crown would actually deliver to them. Crown officials evidently did not know either. The Locke deed promises of Crown-derived titles to those listed as owners could not be and were not implemented, and those who had signed the deed remained uncertain of their rights in the land. Despite the Crown’s undertaking that the four blocks would be inalienable by sale, the deed turned out to be only a stepping stone to the Crown’s eventual purchase of individual interests, followed by a land court hearing of the blocks, and finally the Crown’s acquisition of all the land.

7.5.3.1 Introduction

Five years after the signing of the Te Hatepe deed, a new deed was signed between Maori leaders of the Wairoa and Waikaremoana region, and the Crown. This deed dealt with lands extending substantially beyond the boundaries of the Te Hatepe deed lands, as far as Lake Waikaremoana, which were divided into four named blocks (Waiau, Tukurangi, Taramarama, and Ruakituri), using the rivers as boundaries (see explanatory note). Here we consider the reasons why the Crown decided a new deed was necessary, why Maori were prepared to accept it, to what extent it achieved the Crown’s aim of fulfilling the obligations to Ngati Kahungunu that it had entered into at Te Hatepe, and how it impacted on all those who had rights in the southern Waikaremoana lands.
7.5.3.2 Why did the Crown decide on a new deed in 1872?

We lack a copy of the instructions given to Crown agent Samuel Locke for the Wairoa negotiations; in fact, we lack any record of official discussions of the decision to enter into a new agreement with Maori. We must therefore deduce the Crown’s motives from the circumstances in which it found itself in 1872, from the meagre details in Locke’s subsequent report on his negotiations, and from the wording of his deed itself. (We note that the Mohaka Tribunal made a very similar complaint about lack of information regarding the 1870 Mohaka deed which Locke also negotiated; we refer to this deed further below.\footnote{Waitangi Tribunal, \textit{The Mohaka ki Ahuriri Report}, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 231})

In the first place, it is obvious that the situation in the region had greatly changed since 1867. As we have seen, Te Kooti’s escape from Wharekauri with all those detained there by the Crown, his eventual attacks on settlers at Matawhero, and on his own whanaunga in his home Turanga had led to the siege of his people by Crown forces at Ngatapa, his defeat, and his retreat into Te Urewera. The Crown had mounted military expeditions from 1869 to pursue Te Kooti and punish those who had sheltered him and joined in attacks outside Te Urewera. The process of peace-making had begun in 1870, and peace was finally achieved at the end of 1871. In the meantime, a number of military expeditions had been mounted from Wairoa into Waikaremoana. The 1869 Wairoa expedition to Onepoto – the third column involved in the assault by Crown forces of Te Urewera – became bogged down and was withdrawn without hitting its intended targets across the lake. In 1870, however, a column under Hamlin and Witty attacked Waikaremoana and, though it met with little resistance, destroyed all pa, kainga, and food supplies in the lake region – starting in the Whataroa/Ohiwa region, and eventually crossing to the northern side of the lake. And in August 1871, after Te Kooti returned briefly to the Waikaremoana district, Crown forces searched for Te Kooti in the Whataroa district; later Rapata Wahawaha moved to the northern side of the lake, sacking a pa there and destroying houses and cultivations (see chapter 5 for more details).

By the end of 1871, the Crown and Tuhoe leaders had reached agreement on terms under which the last Crown forces under Wahawaha were to withdraw from Te Urewera, and, it seemed, on the basis of a relationship which might underlie a lasting peace. In the wake of the peace, Tuhoe formed Te Whitu Tekau, the runanga of the ‘Seventy’, in June 1872. The determination of Tuhoe leaders to safeguard their mana motuhake and restore the people in the wake of war led them to adopt policies of resistance to roads, and the leasing and sale of land. Those policies would shape Tuhoe reaction to Crown moves affecting the lands to the south-east of Lake Waikaremoana.

By 1872, the New Zealand Government was anxious to put the wars of the past 12 years behind it. As Belgrave and Young pointed out, under Vogel it had already embarked on a period of large-scale development, based on a massive increase in immigration and the expansion of infrastructure. In that context, Associate
Professor Belgrave suggested, 'The last thing the government actually wants is references to warfare and conflict.'

This was the broad context in which the Government approached the unfinished business of its Wairoa confiscation. The more immediate trigger was the growing impatience of the Ngati Kahungunu chiefs who had been promised land in return for their military assistance, and their surrender of the Kauhouroa block to the Crown in 1867. Biggs's appearance in the land court in September 1868, accompanied by the chiefs, and his advice to the Government that the deed had been 'confirmed' by the court, had not been followed by any action on the part of the Crown. Ihaka Whaanga, Te Apatu, and others had been concerned about this in October 1869, when Samuel Locke (resident magistrate for Taupo, and Wairoa, Waiapu-Poverty Bay) reported that, according to the 1867 arrangements, 'the portion of the confiscated block not taken by Government should be returned with the Government certificate, to those loyal chiefs who fought for us at the Wairoa.' This comment seems to indicate that Locke thought, since the court had 'confirmed' Biggs's deed, that the Crown could issue a grant or grants for the land. McLean had replied in November 1869 that after three years had passed the matter ought to be settled 'without further delay.' We may accept that events overtook the Government at that time; in fact, it would not reopen the matter till peace in the region seemed well assured. O'Malley suggests that an application by people of Ngati Hinehika hapu of Ngati Kahungunu for investigation of title to the 'as yet undefined Ruakituri block' lands in October 1870 may have prompted the Government again, along with its wish to establish a garrison at Onepoto and its interest in establishing settlers in the region. But the further delay after this suggests that the Government preferred to wait until the safety of settlers could be assured.

Thus when peace was established, it was decided in mid-1872 to finally complete the arrangements signalled at Te Hatepe five years before. The Government sent in Locke – who had already been involved in renegotiating the terms of the Mohaka-Waikare confiscation with Maori. Locke's involvement there was important because, as we will see, it influenced what he did at Wairoa.

The Government evidently hoped to achieve several aims with a new deed. In particular, it would enable it to honour its 1867 promises for recompense in land to those Ngati Kahungunu who had fought for it in 1865–66, and who had been involved in the cession of the Kauhouroa block. But because – as we shall see – Crown officials had come to assume that the lands within the Crown's power to dispose of extended as far as Lake Waikaremoana, one purpose of the deed was also to recognise that Tuhoe, 'the people of the Urewera tribe', had interests in the

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120. Belgrave, under cross-examination by counsel for Wai 945 and Wai 1033 claimants, Rangiahua Marae, Frasertown, 29 November 2004 (transcript 4.12, p 109)
122. McLean to Ormond, 18 November 1869 (O'Malley, 'The Crown and Ngati Ruapani' (doc A37), p 107)
southern Waikaremoana lands. According to Locke’s later report, a key purpose of the deed was to carry out the Government’s promise ‘to subdivide the land and decide on persons to appear in [the] grants.’ But it is evident that grants were no longer to be restricted to those who had been promised land in 1867. In the new circumstances of the early 1870s, Tuhoe and Ngati Ruapani – and Ngati Kahungunu who had previously been regarded as unfriendly, or ‘rebels’ – were to be accommodated, at least to some extent.

7.5.3.3 What was the significance of the Locke deed?
On 6 August, the ‘Locke deed’ was signed by 18 chiefs, nearly all of whom were Ngati Kahungunu, some of whom had previously signed the Te Hatepe deed. There was one signatory of Tuhoe and Ngati Ruapani descent – Tamarau Te Makarini. The complex and even impenetrable provisions of the deed are matched by the nebulous and often erroneous factual and legal assumptions on which it was based. Locke, as we noted above, later described the deed as settling the question of ‘old confiscated lands’ in the Wairoa district. He outlined the taking of the Kauhouroa block in 1867, and stated that the ‘remainder of the block then brought under consideration, under the provisions of the East Coast Land Titles Investigation Act’, which he described as extending as far as Lake Waikaremoana, was returned to Maori. The Government promised at the time to divide the land into blocks, and decide which persons would have their names put in the Crown grants for the blocks. But because of the subsequent hostilities, it had not been able to carry out its promise until now.

The new deed recorded in four separate schedules:

 › First, the original description of the Kauhouroa block, that is land retained by the Crown in 1867 at the time it withdrew all claims to land comprised in the schedule to the East Coast Land Titles Investigation Act 1867.
 › Secondly, the lands ‘retained by the Natives’ (or, as worded elsewhere, ‘conveyed to the loyal claimants’) in accordance with the earlier agreement, which was now reiterated in 1872; it was ‘finally agreed’ that all the lands described in the schedule (which extended as far as Lake Waikaremoana) would be retained by ‘loyal claimants of the said lands’.
 › Thirdly, the land which would be ‘retained’ by the Government from the lands it described as being ‘retained’ by Maori; the Government lands were two blocks within the deed area, of 50 acres and 200 acres respectively, at Te Kopani and Onepoto. (We discuss the Crown’s retention of this land in question 3 of this chapter.) The Government also reserved the right to enter on ‘any portion of the whole block’ (that is, of the four southern blocks) to fell and remove timber which it might need for road, telegraph or other purposes.
 › Fourthly, with the exception of the land ‘retained’ by the Government, the rest of the land was to be subdivided into four blocks, as described in the

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124. Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 30
125. Te Makarini was known by several names, including Makarini Te Wharehuia and Tamarau Waiari.
fourth schedule. This schedule specified the block names for the first time – Te Waiau, Tukurangi, Taramarama, and Ruakituri – and listed the ‘names in Crown grants’, that is, the names of those whom the new blocks were to be granted. More than 200 people were listed (many named in more than one block). The great majority were Ngati Kahungunu, though a small number were Tuhoe and Ngati Ruapani. The whole of the land would be made inalienable, and would be held in trust ‘in the manner provided, or hereafter to be provided, by the General Assembly for Native lands held under trust’.

In fact, as we noted above, the Te Hatepe agreement included very little of the land which Locke stated was subject to the provisions of the East Coast Land Titles Investigation Act. A significant portion of the four southern blocks also fell outside the area defined in the schedule to ECLTIA and its amendments.

We consider here what the provisions of the Locke deed may actually have meant, and why they are so difficult to unpack. We focus on three questions:

- Why was it assumed that the four southern blocks, extending to Lake Waikaremoana, were confiscated land that the deed could return to Maori?
- What were the Maori signatories’ expectations of the Locke deed, and was their decision to sign informed?
- What rights did the Locke deed secure to the signatories, and to those named in the lists for Crown grants?

7.5.3.3.1 Why was it assumed that the four southern blocks, extending to Lake Waikaremoana, were confiscated land that the deed could return to Maori?

This question raises two issues: how the Crown’s agreement with ‘loyal’ Maori came to involve the southern Waikaremoana lands, and how it came to be assumed that these lands had been confiscated (but Maori might henceforth retain the greater part of them). The deed states that with the exception of ‘Land retained by Government’, the whole block described in the schedule would be ‘retained by’ or ‘conveyed to’ loyal Maori; both terms are used. Either way, the wording of the deed, and of Locke’s report on his proceedings, makes it clear that the Crown believed it was already possessed of the land, and thus chose to keep some, and to return the rest.

The four southern blocks were not in fact confiscated land. They were, moreover, lands that fell only partly within the Te Hatepe deed area, which had been designated by the Crown in 1867 for ‘loyal Maori’. We have shown in the previous section that the land affected by the provisions of the Te Hatepe deed was primarily in the Wairoa region, extending inland from the eastern coast to a western boundary defined by the schedule to ECLTIA 1866, running from Maungaharuru north-east to ‘Haurangi’ and a northern boundary along the Ruakituri River, and

126. In the schedule to the Locke deed, a portion of the Taramarama block, identified as ‘Waikaretakehe’, has its own list of owners, a few of whom are also listed in the Taramarama block.
127. Deed of agreement, enclosed in Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, pp 31–32
128. Enclosure in Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 31
a line drawn between Te Reinga and Paritu; the sketch plan attached to the deed shows the western boundary crossing the headwaters of the Mangakapua Stream (see, also, our explanatory note about maps). Yet the Locke deed purported to be dealing with the unfinished business of the Te Hatepe agreement. The Crown did not, and could not, state explicitly in 1872 that it was giving effect to the promises set out in the Te Hatepe deed to grant land outside the Kauhouroa block to ‘loyal’ Maori because, as we have noted, no such promises were set out there. This underlines the significance of the Crown’s failure to record its promises in 1867: the switch to recompensing loyal Maori in largely different lands did not need to be recorded or explained.

On the face of it, this new focus in the Locke deed on lands largely outside the boundaries of the Te Hatepe deed area, and its assumption that the Crown had secured the right through earlier confiscation to treat with Maori about their disposal, is inexplicable. It was a shift crucial to the history of the southern Waikaremoana lands which (with the benefit of hindsight) can be seen as a precursor of their alienation from Maori ownership. We consider here whether it can be explained as the outcome either of a simple mistake, or series of mistakes, or of a more deliberate assertion of Crown authority over lands nearer the lake. Either way, by 1872 it is clear that Locke himself was quite certain that the lands extending to the lake had been confiscated.

Some evidence – in particular the activities of surveyors in the district – seems to suggest that Crown officers may have acted on the assumption, soon after the signing of the Te Hatepe deed, that Crown authority extended to the lake. Claimant historians suggested that Crown officials assumed right from the time of Te Hatepe that the boundaries of the confiscated land extended as far as Waikaremoana, that surveys conducted to the lake soon after Te Hatepe reflected this belief, and that these lands were to be transferred to ‘loyal’ Maori. But we do not think the evidence on this matter is conclusive.

It seems to us, for instance, that McLean’s statements at Te Hatepe are ambiguous. He outlined the boundaries of the ‘two pieces’ of land ‘chosen’ for the purpose of military settlement (that is, the Kauhouroa block), then stated that ‘the remainder of the lands will go to the chiefs of the district who have served the Government’. He did not say which lands these were. He stated:

The Hau Haus have gone and their land must follow them. It rests with the Government to return such portions as may belong to other men. In my opinion the whole of the land from this spot to Waikari Moana is Hau Hau land. The two pieces which we claim I consider to be very small indeed.
In the context of the Te Hatepe deed (with its attached plan), these statements do not seem to us to amount to assertions of confiscation as far as the lake. (Our reasons for reaching this conclusion are explained more fully in our explanatory note.)

Nor do we think the evidence of the activities of Crown surveyors is persuasive:

- O’Malley suggested that Government surveyors were working before the end of 1866 on ‘what they refer to as the confiscated lands as far back as Lake Waikaremoana’. This appears to be a reference to a statement in a letter from Haultain to Captain A.C Turner instructing him to complete a sketch survey of the block ‘recently brought under ECLTA’ and noting that there was already a ‘partial survey of Wairoa as far back as the Lake Waikare Moana, and the country between Waiaipu and Poverty Bay’ which he could draw on. O’Malley concluded from this statement that the Waikaremoana lands ‘had already been earmarked for confiscation’. But we do not think Haultain’s statement need be read in this way. It does not necessarily indicate that all the land included in what was evidently an earlier survey was earmarked for confiscation – though it may have been undertaken to assist the selection of such land.

- Further evidence about surveying may, however, lend more weight to claims of early Crown extension of the Te Hatepe deed boundaries. We note some letters from George Burton, a local settler, to McLean, written after the Te Hatepe deed had been signed. Binney stated that Burton, ‘a surveyor who also managed McLean’s herds in the Hawke’s Bay and was in his personal employ, was instructed to carry out the survey of the “external Boundaries of all the confiscated land” up to Waikaremoana’. On 1 May 1867, Burton stated that he had ‘taken in hand to carry out all the native surveys in this district’. In July 1867, he wrote that, as there was no hurry to finish the military settlers’ sections, he was ‘busy with the survey of the external Boundaries of all the confiscated land which will I hope not take long’. He added that he would write as soon as he returned from Manga Haruru and Waikare Moana Lake. At the same time, one G Worgan reported to McLean that Burton had given his son (GB Worgan) a ‘very extensive piece of country to survey extending many miles up the river[s] permeating the Urewera country’; it would take several months.

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134. O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), p 76. These instructions were cancelled when Richmond made alternative arrangements.
135. Binney, ‘Encircled Lands, Part i’ (doc A12), p 183
137. Burton to McLean, 26 July 1867 (object 1024540), ms-papers-0032–0192, Alexander Turnbull Library
138. Worgan to McLean, 30 July 1867 (object 1014709), ms-papers-0032–0657, Alexander Turnbull Library
In August 1867, W A Richardson, a military settler, recorded:

> The position of the Uriwera is imminently hostile in the Waikaremoana. Burton the Surveyor has been warned not to cross any portion of their land. The Waiau natives urged him not to go & Captain Biggs also strongly advised him not to attempt it at present, but he is an obstinate character and intends running all risk in getting the back line of the confiscated country carried through.\(^{139}\)

In November 1867, however, Biggs reported to McLean that Burton had acted in a ‘most stupid manner’ by ‘taking more land for the government than was agreed upon on’ and causing considerable Maori dissatisfaction; he had told both Ngati Kahungunu and Burton that the Te Hatepe agreement would be ‘strictly adhered to’.\(^{140}\) Tamihana Te Huata complained in the land court in September 1868:

> all [had] agreed to cede the block of land described in it, but that a mistake had been made by Mr Worgan the Surveyor in setting off the West boundary. It should run to the source of the Mangapuaka [Mangakapua] stream and not along the range as shewn on the map.\(^{141}\)

And Biggs, explaining the ‘disputed boundary at the Wairoa’ to McLean shortly afterwards, wrote that it was caused by ‘Burton having gone to the top of a hill’ where he ‘struck a line from the junction of the Waikaretaheke with Waiau instead of taking the line from the source of a creek’.\(^{142}\) Biggs thought the change might affect one (settler) section.

It is difficult to know what to make of the series of letters relating to the surveys. On the one hand they may be read as indicating no more than survey activity which we might have expected following the Te Hatepe deed and the proposed extension of ECLTIA boundaries in 1867. Burton’s ‘external boundaries’ might have been those of the Te Hatepe deed, and he might have been at Maungaharuru and Waikaremoana simply in the course of establishing the lie of the land. His letter of 24 July 1867, cited by Binney, does not in fact state that he had been instructed to survey the boundaries of the confiscated land as far as Waikaremoana;\(^{143}\) that is her inference. Richardson’s reference to Burton’s determination to get ‘the back

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140. Biggs to McLean, 6 November 1867 (object 1016504), MS-papers-0032–0162, Alexander Turnbull Library
142. Biggs to McLean, 28 September 1868 (object 1015186), MS-papers-0032–0162, Alexander Turnbull Library
143. Burton to McLean, 26 July 1867 (object 1024540), MS-papers-0032–0192, Alexander Turnbull Library
line of the confiscated country carried through’ may be a reference to work undertaken to assist clarification of the ECLTIA 1866 boundaries.

On the other hand, the letters taken overall may indeed indicate that Burton was pushing the surveys further inland than he should have, as Marr suggested. Biggs’s comments about Burton’s taking more land for the Government than had been agreed on, and about the ‘disputed boundary’ at Wairoa, certainly indicate that he was not averse to doing this – though our reading of Biggs’s letters suggests that Burton’s stretching the boundaries, on what was either one or two occasions, may be counted more a localised problem (though this is not to diminish its importance to Ngati Kahungunu). Biggs’s references to the source of the Mangakapua Stream, and to the junction of the Waikaretahaheke and Waiau Rivers, echo the Kauhouroa block boundaries, and it appears that he was referring to survey errors either at the western boundary of the Kauhouroa block, or at the western boundary of the Te Hatepe deed area (the two are fairly close at that point – see explanatory note). What is interesting is that Biggs himself kept a close eye on Burton, and told him to take greater care not to stray over the agreed boundaries. The other evidence referred to above, however, may be read as suggesting a more wide-ranging extension of the surveys. If so, it may have been because Burton hoped to substantially extend the Te Hatepe boundaries, or because he considered he had license to survey as far as the lake because the ‘Hauhau lands’ that far inland might be needed by the Government, or indeed had been promised to friendly Ngati Kahungunu. Biggs told McLean that he had written to Locke, whom he referred to as the ‘responsible person’, about Burton’s errors – which raises the question whether Locke had been encouraging Burton in extending his surveys. (We have no direct evidence that this was the case.) It is possible that the Government was anxious to get better surveys made of a largely unknown district, and took the opportunity presented by Burton’s being on the ground. It is also possible, however, that the surveys did mark the start of a process of expansion of the area claimed to be under the Crown’s authority by virtue of the Te Hatepe agreement, including the oral undertaking to Ngati Kahungunu. If so, was this a deliberate distortion of the Te Hatepe deed agreement, or was it the result of a confused reading of the deed? We were unable to reach a conclusion on this point.

What we can say is that the revision of the ECLTIA boundaries towards the end of 1867 may have been crucial in official misinterpretation of the Te Hatepe deed boundaries. The amending Act was passed in October 1867. At the same time, the boundaries in the schedule were extended (as had been flagged from the start of the year, when the Minister became aware that they did not include all the East Coast land that had been intended). (See our explanatory note.) Biggs himself appears to have revised his view of the boundaries by 1868, which is somewhat perplexing, given his criticisms of Burton. Subsequently, he referred to the Te

7.5.3.3.1

Hatepe boundaries in terms which echoed the 1867 (rather than the 1866) ECLTIA boundaries. When he appeared in the land court in September 1868 to present the Te Hatepe deed, he reported the Crown's agreement with the Wairoa natives in respect of a portion of land within the boundary given in the Schedule to the 'East Coast Titles Investigation Act', by which they agreed to cede a block of land to the Government[,] the boundaries whereof were described in the Deed . . . that in consideration of the cession he would not prefer any claim on behalf of the Govt to any other land affected by the East Coast Titles Investigation Act South of a line from Paritu to te Reinga thence to Mangapuata, thence along the range to Waikaremoana. [Emphasis added.]

Only part of this boundary (the line from Te Reinga to Paritu) is named in the Te Hatepe deed. Why was the rest different? It seems probable that Mangapuata is Maungapohatu, while the mention of the range extending to Waikaremoana (the Huiau Range) references the boundaries in the ECLTIA 1867 schedule. In our view, Biggs may have been referring not to the actual ECLTIA 1867 boundaries, but to what he thought they were. We note that Biggs used Maungapohatu as a marker in survey sketch plans that he prepared to indicate the extent of the Turanga cession he proposed in 1867 (his primary concern at the time); he also suggested it to the Government as a marker in January 1867 when he put forward revised ECLTIA boundaries. What is also important in Biggs's statement to the court is his mention of Waikaremoana. However we construe the geography of the statement he made, Waikaremoana had now made its appearance in an official statement about the Te Hatepe deed boundaries. Soon afterwards, Biggs – who had been primarily responsible for seeing the Te Hatepe arrangements carried out – was killed by Te Kooti's kokiri at Turanga, and the task of interpreting the Te Hatepe deed and its boundaries passed to others.

We return now to the Locke deed. The deed begins by citing the ECLTIA 1867, and its schedule, as if it was the Act which had always been intended to apply to the Te Hatepe agreement. But the deed itself, and Locke's report, makes a further leap. The report defines the block which is the subject of the deed 'under the provisions of the East Coast Land Titles Investigation Act' as 'lying between the Waiau and the Wairoa River and Ruakituri Stream, stretching inland to Waikaremoana Lake.' Yet, it is clear from a mapping at that time of the ECLTIA 1867 boundaries in relation to the Locke deed boundaries that only a portion of the four southern blocks lies within the ECLTIA 1867 boundaries – both in terms of the actual geographical features as we understand them today, and as officials understood the

146. Biggs himself spelt the name Maunga Powhatu; but the statement he made in court was recorded by a clerk.
147. See, for instance, the map 'Biggs' Proposed Cession', reproduced in Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 146.
148. Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 30
boundaries at the time. (See our explanatory note at the end of this chapter for further discussion of these issues.)

Despite this, from 1872 Locke consistently referred to the lands stretching to the lake as ‘confiscated’, as Belgrave and Young point out. At the Wairoa hui in 1875 (which we refer to below) he stated:

This land – that is, up to Waikaremoana Lake – was confiscated during the time of the rebellion . . . On the restoration of peace, some little time elapsed, when the Government relinquished its hold to a large tract of country so confiscated, in favour of the Natives of the district who had throughout preserved their allegiance to the Crown. [Emphasis added.]

And, as he put it in a later speech at the same hui:

This land was first confiscated after the first fight at Waikare. A meeting was held at the Hatepe for the purpose of coming to a final settlement of the interest of the Government Natives in the land confiscated . . . payment was made to them in liquidation of their claims to the portion taken over by the Government. The Government then became sole proprietor of that land . . . The remainder of the land, being that which is now under discussion, was returned . . .

Both these statements, it will be noted, refer to an earlier confiscation, but a subsequent return to loyal Maori of the land beyond that ‘taken over by the Government’ (the Kauhouroa block). This raises further questions. Why did Locke think there had been an earlier confiscation – and why, if he thought that the Crown had already returned land beyond the Kauhouroa block, did he assume the Crown still had rights to dispose of such land as it thought fit?

Belgrave and Young, addressing the first issue, considered the possibility that Locke ‘deliberately used the idea that the land had been confiscated and was therefore Crown land to be returned as a major bargaining tool’, but initially rejected it on the grounds that Locke was simply confused. Though his confusion may have misled Maori, he did not deliberately mislead them.

Under cross-examination, professor Belgrave seemed to resile from this position, agreeing with counsel for the Wai 36 claimants that there was not enough evidence to be certain either way.

In our view, however, the evidence points either to Locke’s simple failure to understand the past history of the Crown’s dealings with Wairoa lands, or the status of the lands; or the fact that he was not properly instructed. We think, first, that he was certain he was dealing with confiscated lands; after all, he referred in his report to Ormond to issues arising from the ‘old confiscated lands’ at Wairoa.

149. Locke to McLean, 17 December 1875, AJHR, 1876, G-1A, p1
150. Ibid, p8
151. Belgrave and Young, summary report of ‘War, Confiscation and the “Four Southern Blocks”’ (doc 13), p10
152. Belgrave, under cross-examination by counsel for Wai 36 Tuhoe, Rangiahua Marae, Frasertown, 29 November 2004 (transcript 4.12, p101)
that he had been sent to resolve.\textsuperscript{153} It is likely that this phrase reflected McLean's phrasing in (as yet undiscovered) written instructions, or an oral briefing. Or it may have reflected instructions from Ormond (perhaps passed on from McLean). McLean, of course, should have known what the Te Hatepe agreement said; Ormond may not have. As we have seen, even Biggs was revisiting the Te Hatepe boundaries by the time he got to the land court late in 1868. In such circumstances, what Locke needed were very clear instructions. Either he did not get them (and so relied on his own understanding of the situation), or he did (and they were either minimal – as had happened at Mohaka – or were wrong).

Secondly, however, we think that Locke was certain that the Crown retained the right to make arrangements for lands which it had earlier 'returned' to Maori. As he put it in his report after signing the 1872 deed:

\begin{quote}
The remainder of the block [that is, beyond the Kauhouroa block retained by the Government] then brought under consideration, under the provisions of the East Coast Land Titles Investigation Act, lying between the Waiau River and the Wairoa River and Ruakituri Stream, stretching inland to Waikaremoana Lake, was returned to Natives, with the promise that the Government would divide it into blocks . . . and also decide on the persons to be inserted in grants for the same.\textsuperscript{154}
\end{quote}

It is also our view that Locke's understanding of the situation was shaped by his experience with the Mohaka confiscation. This confiscation had a complex history. Following the taking of Mohaka lands in January 1867 by proclamation under the New Zealand Settlements Act, the Crown decided on an approach not dissimilar to that used at Wairoa. The Mohaka confiscation had been followed not by Compensation Court hearings but by Government negotiation of out-of-court settlements with Maori over which land should be retained by the Crown, and which should be returned to Maori. Two successive Mohaka deeds were signed – the second following negotiations conducted by Locke in 1870.\textsuperscript{155} There was thus a precedent for the renegotiation of the terms of a deed of this kind. (We discuss this further below.)

An out-of-court settlement was to be reached about which lands the Crown should retain and which lands might be returned to Maori. In December 1867 (eight months after Te Hatepe), the Under-Secretary for the Native Department, William Rolleston, advised Hamlin (who was appointed to make the settlement) that 'a deed or deeds of the same character as the Wairoa deed would meet the case. That deed as you are aware was an agreement on the part of the natives to withdraw all claims to one part of the block in consideration of the gift by the Government of another part'.\textsuperscript{156} McLean himself then conducted the negotiations,

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\textsuperscript{153} Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 30
\textsuperscript{154} Ibid
\textsuperscript{155} Waitangi Tribunal, \textit{The Mohaka ki Ahuriri Report}, vol 1, pp 227–241
\textsuperscript{156} Ibid, p 228
\end{flushright}
resulting in a deed signed in May 1868. But the deed was not implemented before Te Kooti arrived in the district. The details of the deed, and the reasons why it was renegotiated in 1869–70, do not concern us here. But it is important that Locke was sent to do the job.

In the absence of a copy of Locke’s instructions for Wairoa, we note that at Mohaka he had to negotiate without a copy of the previous agreement negotiated by McLean – despite being told to complete the arrangements outlined there. McLean’s instructions to him for Mohaka were confined to an exhortation to finally adjust and dispose of questions arising from the confiscation, to effect as ‘equitable a settlement with the Natives as possible’, and to make ‘large Reserves’ for their use. At Mohaka, as at Wairoa, Locke was left with a large discretion.

Locke concluded the Mohaka Waikare agreement in November 1869. And several elements of it were echoed in, or imported into, the Wairoa 1872 deed (see the sidebar over).

Some of the mysteries of the Locke deed are thus better understood in the context of the Mohaka deed: at Wairoa, Locke drew on what he had done at Mohaka. He said so himself to Ormond when he wrote enclosing a tracing of the Wairoa district, showing Government reserves and the deed of agreement, ‘with names of persons to be inserted in grants attached thereto, by which you will perceive it has been dealt with in a similar way to the Mohaka Waikare Block’.158

But Wairoa was different from Mohaka in one crucial respect: the Mohaka Waikare lands had been confiscated under the New Zealand Settlements Act; the Wairoa lands had not. The Mohaka lands were thus Crown land; the four southern block lands were not. Locke simply failed to observe that distinction. He was aware that at Wairoa the provisions of ECLTIA, rather than the New Zealand Settlements Act, applied. But we have to assume that he read the provisions of ECLTIA, which he recited at the head of his deed, to mean that because of rebellion by Wairoa and Waikaremoana Maori, their lands had become Crown land. He doubtless knew that Biggs had been to the land court in 1868 and had reported that the Te Hātepe deed was ‘confirmed’, which would have strengthened his belief that the provisions of the Act had been complied with. We must assume that he either concluded or had been told that the Wairoa and Waikaremoana lands had thus all become Crown land. Thus even if those lands had been ‘returned’ to Maori in a general sense, the Crown retained rights to ensure their final disposal.

Ultimately, then, the Crown’s agent entered in 1872 into an arrangement with Wairoa and Waikaremoana Maori based on the false premise that the lands both including Kauhouroa and stretching well beyond that block had been confiscated, which entitled the Crown at that time to make final arrangements respecting the lands it had earlier promised to ‘loyal’ Maori. He wrongly assumed that the Crown had the right to dispose of these lands, and to settle their ownership.

157. Ibid, p 232
158. Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 30
7.5.3.3.2 What were the Maori signatories’ expectations of the Locke deed and was their decision to sign informed?

The deed was signed by 18 Maori signatories. The list was headed by Ihaka Whaanga, Hamana Tiakiwai, Tamihana Huata, Ihakara Horoeata, and Hapimana Tunupaura (of Ngati Kahungunu); and the final signatory was Te Makarini Te Wharehuia of Tuhoe. Nine of the Ngati Kahungunu signatories had signed the te hatepe deed. Two (in addition to Te Makarini) would later be described as rebels.159 The most notable absence from the signatories was Mere Karaka; Pitiera Kopu, it will be remembered, had passed away shortly after the te hatepe deed was signed.

Given our conclusions above, it is obvious that the decision of Maori to sign the deed cannot have been an informed one. The Crown’s agent himself, as we have seen, was misinformed about the status of the land which he designated by four block names in the deed; he was certain that it was confiscated land being returned to Maori. The whole basis of his explanations to Maori therefore was wrong. And – as we shall show – Locke cannot have understood how some crucial terms of the deed relating to the future tenure of the land were to be given effect to

159. This was at the time of the Sim commission: see Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 76.

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Key Clauses in the Mohaka–Waikare Agreement, November 1869

Key clauses in the Mohaka–Waikare agreement of November 1869 were as follows:

- Blocks of land to be retained by the Crown were listed, including two sites of redoubts.
- The rest of the land (with the exception of land already purchased) was to be ‘conveyed to the loyal claimants’.
- The whole area was to be subdivided into several ‘portions’ (shown on tracings); 13 blocks were named.
- The Government was to grant certificates of title for those portions to the Maori who were listed in an accompanying schedule (many more Maori were listed in the block lists than signed the 1868 or 1870 agreements).
- The whole of the land was to be made inalienable ‘both as to sale and mortgage’, and was to be held in trust ‘in the manner provided, or hereafter to be provided by the General Assembly for Native Lands held under Trust’.
- The Government reserved the right to enter any other returned land to take timber required for roading, telegraphic, or other purposes.¹

(even if he thought he knew). The terms of the deed remain difficult to understand today. The explanations Locke gave Maori about the grants they would receive can only have been misleading.

We face considerable difficulties in determining Maori expectations of the deed. We do not know what was said at the hui. We certainly have no reports of the speeches such as we have for the Te Hatepe hui. (The Hawke’s Bay Herald reporter was foiled in his intention of giving an account of Locke’s speech by the departure of the mail.) Locke’s report is singularly unhelpful; it sheds little light on the important discussions that must have taken place. He simply states that the arrangements were settled ‘[a]fter a full explanation and careful consideration.’

We note that a very large number of people had gathered in Wairoa, knowing that Locke was expected – the newspaper reported 1,000 Maori. On 31 July, a ceremony was held at which Ihaka Whaanga was invested by Locke with a sword, in honour of his ‘unswerving loyalty.’ The Armed Constabulary were present, and Whaanga, in moving to the table to receive his sword, walked over ‘a large Hau Hau flag’ captured at Kairomiromi pa on the East Coast in 1865, which lay on the ground. Major Cumming, who paid tribute to Whaanga’s service, added that his standing on the flag ‘illustrates the inevitable downfall of anarchy and wrong when antagonistic to order and right’. The discussions about the new Crown agreement took place shortly after this, on 3 August – the same day that the deed was signed.

We consider first why Crown-aligned Ngati Kahungunu – those who had been promised recompense for their customary rights in the Kauhouroa block, and those who had been promised reward for their military service – may have entered into the agreement with Locke. On the face of it, it seems that the Crown delivered less to all of them than it had promised. In submissions later presented to the Sim commision, it was argued by counsel for loyal groups that 120 Ngati Kahungunu ‘rebels’ (as opposed to about 86 ‘loyal people’) had been included in the block lists, designating those who would receive Crown grants; some Tuhoe and Ngati Ruapani, of course, were also included (though we now know that there were relatively few). We cannot comment on the number of Ngati Kahungunu who had earlier been deemed to be rebels; nor do we know whether the inclusion of Ngati Kahungunu ‘rebels’ in the block lists was at the instigation of Locke – or was at the suggestion of their Crown-aligned whanaunga. It was suggested by the chairman of the Sim commision that as the great majority of those who signed the Locke deed were Ngati Kahungunu ‘loyalists’, they ‘must have consented to their “rebel” kin being included in the schedule of owners’.

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160. Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 30
161. Hawke’s Bay Herald, 13 August 1872
ancestral right, [and] use the Crown labels of owner to avoid the labels then of loyalist and rebel. Getting the lists of owners right, in customary terms, we take it from his comment, was more important to Ngati Kahungunu in 1872 than their various alignments during the period of hostilities. This seems to suggest that tensions within Wairoa Ngati Kahungunu may have abated by 1872 – though Mere Karaka and also Paora Te Apatu were said to have refused to sign because ‘rebels’ were included among the signatories (and in Mere Karaka’s case, because ‘rebels’ were also listed among the grantees). It is not clear whether Paora Te Apatu did refuse to sign, since one of the signatories’ names is recorded as Ipora Apatu – which may be a transcription mistake. But there were complaints from Mahia Ngati Kahungunu within a couple of years that they were not well enough represented in the Locke deed block lists, which are evidence of their disappointment.

We assume, however, that the Ngati Kahungunu chiefs who signed the deed did so on the basis that it was an acceptable resolution of their claims on the Crown stemming from the Te Hatepe deed – or that they hoped it would be. The designation by boundaries of the blocks to be granted to them, and the drawing up of lists of names for each block, must have assured them that they might soon derive tangible benefits of ownership – whether in compensation for lost rights in Kauhouroa, or for military service. Marr suggested that the Crown’s ‘unilateral withdrawal of the boundary back from Maungapohatu and the Huiarau to Erepeti and then across to the Lake’ must have been an ‘unpleasant surprise’ for the Ngati Kahungunu chiefs. We are not convinced that this would have been so. The evidence Marr cites is a statement by Hapimana Tunupaura at the 1875 hui to the effect that Ngati Kahungunu were uncertain about the boundaries of the ‘second’ confiscation, and were not aware of the extent of land taken by the Government. They had now discovered that ‘the land was no longer ours.’ This may be read more as a statement of surprise that the Government claimed to have confiscated all the land to the lake. Tunupaura’s brother Tamihana Huata had, after all, earlier acknowledged the western boundary of the Te Hatepe deed area as being well south of Lake Waikaremoana, rather than a more far-flung boundary point.

If the deed seemed to afford Ngati Kahungunu some comfort – in that it was a positive Government move after a long period of inaction – it is less immediately apparent why Tamarau Te Makarini, a ‘senior chief of Tuhoe and a member of Te Whitu Tekau’ should have put his name to the agreement. He found himself in difficulty with other Tuhoe leaders soon afterwards for doing so. We have been unable to establish the circumstances in which he attended the hui – but it seems most probable that Locke invited him to come. Belgrave and Young note that ‘it is likely’ that the meeting was well publicised, given Locke’s ride over the land before

164. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), pp 45–46; Richard Renata Niania, brief of evidence, 22 November 2004 (doc I18), p 27
165. Sim commission, minutes of evidence, 22 November 2004 (doc I18), p 27
166. Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 143
167. ‘Notes of a Meeting Held at Wairoa’, 29 October 1875, AJHR, 1876, G-1A, p 7
Tamarau Te Makarini Te Wharehuia of Tuhoe and Ngati Ruapani. The principal leader at Waikaremoana, Te Makarini was the only Tuhoe rangatira to sign the Locke deed. It seems probable that he and other Tuhoe from Waikaremoana had been invited by Locke to attend, following the making of peace between Tuhoe and the Crown, and that he was very concerned to protect Tuhoe interests in Waikaremoana in the context of a major Government hui with Ngati Kahungunu about the lands to the south-east of the Lake. Te Makarini would become a leader of Te Whitu Tekau.
the meeting as he looked for suitable boundaries for the blocks. They state that ‘Tuhoe from Waikaremoana’ were present at the meeting – based on the inclusion, and self-identification, of Tuhoe owners in the block lists. This seems a reasonable deduction; the less likely alternative is that Te Makarini himself inserted the names. Professor Binney suggested that Te Makarini was ‘dragooned into signing’. He might have been pressured at a time when he was ‘isolated in the company of influential government-allied chiefs’; or persuaded by promises of benefits such as a road, the military presence at Onepoto, and a school; or threatened by direct confiscation if he did not sign, without receiving any benefits at all. Or, as he said himself later, he might have been concerned to ensure that the ‘Urewera’ were acknowledged as being owners of the lands.

We think Te Makarini’s own explanation should be accorded considerable weight. He later said that ‘The land was confiscated, but the Government returned it to us. The basis of our claim, therefore, depends upon the gift made to us of the land.’ Professor Milroy, Te Makarini’s direct descendant, gave it as his view that Te Makarini would have signed the agreement because he thought ‘he was deriving a deal beneficial to his hapu/iwi . . . [and] was keeping his hapu/iwi interests maintained in areas where Kahungunu were being listed as claimants.’ The mana of his Tuhoe hapu and iwi interests in Waikaremoana, as well as other parts of the Tuhoe Rohe Potae, was paramount to him. ‘The four blocks, we add, were now defined for the first time, and Te Makarini’s concerns would immediately have been aroused. Mr Nikora also interpreted Te Makarini’s words to mean that ‘under the 1872 deed, the Government had acknowledged Tuhoe’s interest in what Te Makarini had believed was confiscated land, and moreover, had ‘returned’ it to them. He also implied that Ngati Kahungunu, in signing the 1872 agreement, had at least acknowledged Tuhoe interests.’ In other words, it was important to Te Makarini that both the Crown and Ngati Kahungunu recognised Tuhoe rights.

Such recognition was afforded not only by Te Makarini’s signature on the deed, but by the inclusion of the names of a number of Tuhoe and Ngati Ruapani people in the ‘schedule of names in Crown grants’ appended to the deed. Professor Milroy stated that he could identify with certainty 13 names on the block lists as ‘Tuhoe and either Ngati Hinekura, Ruapani, Te Whanaupani, Ngai Te Riu, Te Urewera and Ngati Tawhaki’: these were Te Whenuanui, Ani Wairama, Tuahine Tuahie, Makamaka, Erueti Te Whareparoa, Tamati Tipuna, Te Koari, Rewi Tipuna, Wi Tipuna, Te Hapimana, Hori Wharerangi, Te Makarini Wharehuia, and Wi Hautaruke. The block under which most of these were listed was Ruakituri, a

169. Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 69
170. Ibid, p 71
172. Ibid, p 285
173. ‘Notes of a Meeting Held at Wairoa’, 29 October 1875, AJHR, 1876, G-1A, p 4
174. James Wharehuia Milroy, written answers in response to questions, 3 May 2005 (doc H71), p 3
175. Ibid, pp 2–3
177. Milroy, written answers (doc H71), pp 4–5
smaller number were in Tukurangi, and one each were under Taramarama and Waikaretaheke. For the Ruakituri and Tukurangi blocks, therefore, the Tuhoe evidence is that Tuhoe names were about one seventh of the total on the lists.

It may well be the case that the Crown's agent Locke was anxious to secure a Tuhoe signature to the deed – since there was evident Crown recognition of Tuhoe rights in the south-eastern Waikaremoana lands now the subject of the deed – for the sake of completeness, lest any doubt be cast on the Crown's title now that peace had been made – and that he was either very persuasive (perhaps stressing that the deed afforded recognition of Tuhoe's interests), or (as Binney implied) was not entirely scrupulous in the arguments he used. We are aware that later, at the 1875 Wairoa hui, Locke told the 'Urewera Natives' that had the Crown acquired the land before peace had been made with them, their claim would not have been recognised at all:

The Government were evincing no small consideration for the Urewera Natives in sanctioning at all the investigation of the claim put forth by them, considering the grounds upon which they assert their right, being as they were at the time in rebellion when the land was confiscated and dealt with.178

It is possible that Locke used similar arguments in 1872, when (given that peace had just been made with Tuhoe) they could have seemed intimidating. Te Makarini may have feared that Tuhoe could yet be left out of the Government 'gift' ('return') of the land. Tuhoe and Ngati Ruapani were not of course ‘in rebellion’ in 1867. They had not committed any breach of the peace. They had done no more than defend themselves when Crown troops arrived in upper Wairoa and Waikaremoana – at the cost of heavy casualties. The official view was that they were rebels, and we think it likely that Te Makarini's fears – whether or not fanned by Locke – may have been a factor in his signing. This would be consistent with the view that he was anxious to protect his people's rights.

**7.5.3.3.3 WHAT RIGHTS DID THE LOCKE DEED SECURE TO THE SIGNATORIES, AND TO THOSE NAMED IN THE LISTS FOR CROWN GRANTS? WERE THE SIGNATORIES TO BE TRUSTEES?**

A key question before us is what the Locke deed actually delivered to those who signed it. What arrangements were made for the grant of land in the four southern blocks to them?

The deed sets out complicated arrangements for the land to the south-east of the lake (the four southern blocks) that are very different from the arrangement described in the 1867 Te Hatepe deed. The problems begin with the categorisation of the parties to the deed. The two parties to the Te Hatepe deed (153 Ngati Kahungunu who fought with the Crown's forces, and the Crown) become one party to the Locke deed. The other party to the Locke deed, Wairoa Maori generally, includes those whom the Crown earlier regarded as 'rebels'. The term 'rebel',

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178. 'Notes of a Meeting Held at Wairoa', 29 October 1875, AJHR, 1876, G-1A, p8
however, is not used. We note also that while in the body of the deed ‘loyal claimants’ to the confiscated lands are distinguished from Wairoa Maori generally, the signatories themselves are not differentiated in any way. Presumably, Locke would have considered this impolitic, given the Crown’s overall aims in concluding the deed. Given that the lands are to be returned to ‘the loyal claimants’, however, this increases the confusion over the status of the signatories.

The deed specifies that all the land (the ‘whole block’ designated in the schedule) was to be ‘subdivided into several portions [4 blocks] to the Natives mentioned in the . . . schedule.’ The land was to be held in trust in accordance with legislative provisions.\textsuperscript{179} This brings us to one of the more baffling aspects of the deed. Ms Marr suggested that the chiefs who signed the deed may have thought they were agreeing to transfer the land to themselves and other loyal chiefs ‘as both trustees and owners’ – at least half of the signatories, after all, were also named in lists of owners. But, as she notes, there is no mention in the appended names for Crown grants that those listed were to be subject to ‘trusts.’\textsuperscript{180}

Nor, in fact, is there any provision in the deed of agreement that the signatories were to be trustees for those listed for Crown grants. It simply states that ‘the whole of the land shall be . . . held in trust in the manner provided, or hereafter to be provided, by the General Assembly.’\textsuperscript{181} It is likely, however, that the signatories thought they were to be trustees – if that is what Locke told them. It is very possible that he did. McLean told a hui of Ngati Kahungunu leaders in Napier in November 1873 (when he was under some pressure from Hamana Tiakiwai as to the rights of the ‘Hau Haus’ in the lands), that ‘The land is vested really in you, the chiefs. The names of Hau Haus are inserted, but you hold that land for their benefit.’\textsuperscript{182} And at the 1875 Wairoa hui, Locke stated that the ‘remainder of the [confiscated] land had been returned earlier,’ ‘with the proviso that the principal chiefs on the side of the Government be appointed to look after the land.’\textsuperscript{183} We note that the Crown had foreshadowed the idea at Te Hatepe of ‘loyal’ Maori landowners acting as ‘guardians’ by allowing their ‘rebel’ kin to live with them on the land. Seventeen of the eighteen signatories were in fact Ngati Kahungunu – which may have meant that the later official explanations seemed plausible. At the same time, it is also likely that those named on the lists thought they were to receive Crown grants (and thus become owners, rather than beneficiaries). But the deed itself did not resolve the manner in which the ‘conveyed’ lands were to be held. We return to this point shortly.

The reference to how the trust would operate is perplexing. We have seen that it was copied from the earlier Mohaka deed that Locke had negotiated. As Belgrave and Young note, the clause invokes existing or future legislative provisions, suggesting that Locke had specific arrangements in mind. But none of the provisions

\textsuperscript{179} Deed of agreement, enclosed in Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 31
\textsuperscript{180} Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 150
\textsuperscript{181} Deed of agreement, enclosed in Locke to Ormond, 19 August 1872, AJHR, 1872, C-4, p 31
\textsuperscript{182} ‘Notes of Native Meetings’, 29 November 1873, AJHR, 1874, G-1, p 2
\textsuperscript{183} Locke to McLean, 17 December 1875, AJHR, 1876, G-1A, p 8
of existing native reserve legislation would have fitted the circumstances outlined in the Locke deed.\textsuperscript{184} The Crown could not help us in identifying relevant legislation; nor could we find any.\textsuperscript{185}

We conclude that if the signatories thought their rights as trustees were secured to them, this was clearly not the case. This was not even spelt out in the deed; and the reference to legislation to create a trust was at best the result of Locke’s being poorly informed. If, however, he had no real basis for suggesting that the law provided or would soon provide a basis for the kind of trust he had in mind, it was entirely misleading to refer to it in the agreement he put before Maori.

As we have noted, the drawing up of lists of people who would receive Crown grants further confuses the issue of the role of trustees. We do not know what process there was for drawing up the lists. We do not know why some names were included and others excluded. We cannot agree with the Crown that the naming of people on the Crown grants indicates that a ‘reasonably detailed exploration of those with interests in the blocks was conducted.’\textsuperscript{186} The lists of owners subsequently put in by both Tuhoe and Ngati Kahungunu at the land court hearing in 1875 were much longer. We do not know what he thought himself. Since he doubtless knew that Biggs had reported that the Te Hātepe deed had been confirmed by the land court, he may have assumed that because of the East Coast legislation his own deed could be similarly confirmed. Or perhaps he assumed that special legislation could be passed for Wairoa, as it had been in Mohaka. The Mohaka and Waikare District Act 1870 validated the Mohaka agreement, and empowered the Governor to cause Crown grants to be issued to the persons entitled by that agreement.\textsuperscript{187} Whatever the case, the clause in the Locke deed about the issue of Crown grants was ineffective. The Crown made no attempt after 1872 to take the Locke lists to the land court to secure the grants for which lists of names had been drawn up.\textsuperscript{188}

We conclude that, at the very least, Locke’s superiors took little care to apprise him of the legal position – and the legal difference between the Mohaka and Wairoa lands – before he was sent to make a final agreement about the four southern blocks. The result was that he entered into what can only be described as unworkable, indeed meaningless, arrangements. Yet to Maori, the deed must have seemed a solemn agreement.

\textsuperscript{184} Crown counsel, closing submissions (doc n20), topic 6, p 13
\textsuperscript{185} It is possible that Locke knew a new law was pending – the Native Reserves Act 1873, which contained broader provisions for reserve land. But this seems an unlikely interpretation, especially since Locke had used exactly the same clause in the Mohaka deed, two years earlier.
\textsuperscript{186} Crown counsel, closing submissions (doc n20), topic 6, p 12
\textsuperscript{187} If this was what he relied on, it was not a good precedent. It seems that by 1881 Crown grants still had not been issued to Mohaka Maori. (A provision was included in the Native Land Acts Amendment Act 1881 to enable the land court to determine who was entitled to the land, and to order certificates of title accordingly so that the Governor could issue Crown grants.) See Waitangi Tribunal, \textit{Mohaka ki Ahuriri Report}, vol 1, p 241.
\textsuperscript{188} Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), pp 153–154
7.5.4 Why was there a land court hearing for the four southern blocks in 1875, and what were its outcomes?

**Summary Answer:** Hearings to determine the ownership of the four southern blocks began in the land court in October 1875, after Tuhoe applied for title determination. Their decision to apply to the court, surprising on the face of it (given Te Whitu Tekau policies), was the result of developments following the Locke deed. Many Ngati Kahungunu whose names were recorded as owners in the appendix to the Locke deed, and some who were signatories, entered into leases of the newly designated blocks to settlers, which angered the wider Tuhoe leadership. Given the choice Locke offered them in 1874 between agreeing to the leases or going to the land court, Tuhoe chose the court; perhaps because they trusted Locke and his arrangements with Ngati Kahungunu less, and hoped the court might protect their rights in the blocks. Tuhoe suspicions of Locke were increased when the Crown – despite the guarantee in the Locke deed that the land should be inalienable – began to buy up Ngati Kahungunu interests in the blocks, even though the court had not yet determined who the owners were. Right up until the beginning of the hearing, they resisted Crown attempts to get them to agree an out-of-court settlement with Ngati Kahungunu, and to take their share of Crown purchase money.

Ngati Kahungunu sold because they were under pressure, or were concerned about future returns from the land. There was widespread indebtedness among them – such that a local storekeeper, RD Maney (a lessee of two of the blocks), had already been able to start buying interests. Those Ngati Kahungunu to whom promises had been made in the Te Hatepe deed had waited a long time for some tangible return – and had only recently begun to receive lease money. A looming court hearing meant that their returns might not be secure. Some – notably the Mahia chiefs whose rights seem to have derived solely from their assistance to the Crown – were unhappy anyway about the share of the lease money they received; to them, the promise of the Locke deed and the leases had not been fulfilled.

Ngati Kahungunu were also under pressure because of growing tension with Tuhoe and the insistence of Crown officials that they should draw a straight boundary line between them to settle what officials erroneously believed was an age-old ‘boundary dispute’. Faced with this odd proposition, the two iwi – each feeling backed into a corner – were unable to agree on where such a line might be drawn. Instead, each claimed a boundary which represented the furthest reach of their interests. Officials failed to perceive that the increased tension between the iwi arose from Crown acts: the delineation of four blocks in the Locke deed which cut across the complex pattern of rights of all the affected communities, followed by leases which angered those whose rights were not recognised. By the end of 1874, officials, realising that Maney had started to buy up interests (which he could lawfully do, despite the court not yet having determined the owners), moved to retain Crown control of the purchasing process. Purchase, in officials’ view, would solve the ‘boundary dispute’, and solve the disputes within Ngati Kahungunu about the distribution of lease rentals, as well – as well as facilitate Pakeha settlement. At the end of 1874, officials made an agreement with Maney that he should continue...
to buy on behalf of the Crown, and embarked on determined purchase of Ngati Kahungunu interests up till the hearing began.

The 1875 court hearing unfolded in a most unexpected manner. It resulted in the revelation (after a question from the judge, and a resulting opinion from the Solicitor-General) that the four southern blocks’ land had never been confiscated, and that the hearing should proceed under the East Coast Act 1868. This was the first time a legal opinion on the status of the land had been sought. Under that Act, the lands of those the court found to be rebels would be confiscated, if the court should also find that they were owners. Subsequently, the ‘Urewera’ withdrew their claims from the court, and it ordered memorials of ownership to issue to those whose names were put in by the Ngati Kahungunu ‘counter claimants’ (the only remaining claimants before the court). The Crown immediately purchased the interests of Tuhoe and Ngati Ruapani and signed separate deeds of purchase with those Ngati Kahungunu whom the court had found to be owners. It entered into a further agreement with those Ngati Kahungunu who had assisted it in the Upper Wairoa/Waikaremoana fighting, made a small payment to Te Warutamata’s people (by then living in exile), and completed its purchase of the rights of the settler lessees.

Tuhoe and Ngati Ruapani representatives, who before the hearing had been determined not to sell, signed the Crown’s deed of sale because of the threat that the East Coast Act posed to their rights (they feared they could not escape being found to be rebels). They therefore sold under pressure, in order to retrieve something from a situation which should never have arisen. First, the East Coast Act, with its confiscation provisions, had not been enacted so that there could be new confiscations in the region after 1868. Secondly, given the instructions of the imperial government, the Act should not have been in force in 1875. Thirdly, the greater part of the southern lands (nearest the lake) was in fact outside the area to which the Act applied. Officials did not even attempt in 1875 to clarify those boundaries or to explain them to Te Urewera leaders; for Tuhoe and Ngati Ruapani, the court hearing which they had hoped would protect their interests ended instead in a Crown purchase which they had tried to avert. But in the end they saw it as the only way of securing some recognition of their rights. The purchase also extinguished all their customary rights in the four southern blocks, leaving them with four reserves totalling 2,500 acres.

**7.5.4.1 Introduction**

We turn here to the final events which culminated in the alienation of the four southern blocks: the leasing of the blocks following the signing of the Locke deed, the start of Crown purchasing of interests of those it deemed owners, the subsequent investigation of title to the blocks in the Native Land Court, and the circumstances in which Tuhoe and Ngati Ruapani withdrew from the proceedings before they had been completed. In the wake of the Tuhoe withdrawal, the court issued its judgment in favour of Ngati Kahungunu, and the Crown completed its purchase of the blocks from all parties. Ngati Kahungunu claimants stated they were...
pressured to sell their interests in the wake of the signing of the Locke deed. Tuhoe and Ngati Ruapani claimants, as we have noted, are critical of the circumstances in which the blocks were purchased. Specifically, they argued that they withdrew from the land court hearings under threat of the application of the confiscation legislation. The Crown submitted that the evidence is ‘very limited’ for forming a judgement on the issues.

7.5.4.2 Why did Tuhoe and Ngati Ruapani apply for a land court hearing?
In the wake of the signing of the Locke deed, there were two key developments which precipitated Tuhoe’s decision to apply to the court for title investigation. First, Tuhoe chiefs Kereru Te Pukenui and Hetaraka Te Wakaunua protested to the Government on 15 September 1872 about Te Makarini’s signing the deed. Binney states that the chiefs were ‘deeply angered’, and expressed their opposition in strong terms. \(^{189}\) The signing of the Locke deed followed shortly after the formation of Tuhoe’s governing council, Te Whitu Tekau, in June 1872 (see chapter 7). At that time, Tutakangahau wrote to the Government stating Te Whitu Tekau’s objects, which were ‘to ban the Land Court, surveying of lands and claiming of lands.’ \(^{190}\) Te Makarini, who was on the spot, had understood the possible value to Tuhoe of its participation in the negotiations, but we are not surprised that more distant chiefs had difficulties with the significance of the agreement. In particular, they seem to have thought that Te Makarini had parted with Waikaremoana, and had compromised Tuhoe rights rather than protected them. Te Pukenui stated: ‘I am objecting to this disposal of Waikaremoana as I know that it is still mine.’ Te Wakaunua wrote of ‘Te Urewera’ dissatisfaction with Te Makarini ‘for his having parted with Waikaremoana’ (‘Ko te raruraru o te Urewera ki a te Makarini mo te tukuna a te Makarini i Waikaremoana.’). \(^{191}\) It was another year, however, before a Government agent (Ferris) was sent to talk to Tuhoe – and it was mid-1874 before he reported that at hui he had attended he had explained to Tuhoe ‘all the clauses of the [Locke] deed, viz timber, trust &c.’ \(^{192}\)

In the meantime, there had been a further development. Some Ngati Kahungunu decided to enter into leases of the newly designated blocks. The listing of owners in the schedule to the Locke deed, as Marr explains, gave certainty to settler lessees, providing ‘a very good basis on which to make a lease.’ \(^{193}\) In total, there were four lease agreements – one each for the Tukurangi and Waiau blocks with the same group of lessees, and one each for the Ruakituri and Taramarama blocks with one lessee. These leasing arrangements, following so soon after the signing of

\(^{189}\) Judith Binney, statement in response to statement of issues 3, 4, 6, and 7, 17 November 2003 (doc B1(a)), p.48


\(^{191}\) Kereru Te Pukenui to Ormond, 15 September 1872, and Te Wakaunua to Ormond and the Government, 15 September 1872 (Binney, ‘Encircled Lands, Part I’ (doc A12), pp 285–286)


\(^{193}\) Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p.154
the Locke deed, aroused Tuhoe opposition further and, ultimately, led to Tuhoe’s application to the court.

### 7.5.4.2.1 Waiau and Tukurangi Block Leases

The details of the various leases are important for understanding why Tuhoe came to make this application. The first lease agreements were signed nearly a year after the signing of the Locke deed. On 28 July 1873, Percival Barker, Allen McDonald, Henry Cable, and Duncan Drummond leased the Tukurangi block (estimated at 37,000 acres), but excluding a 500-acre reserve for the lessors ‘their Successors and their respective Hapus’ for 21 years at £100 per annum.\(^{194}\) On the same date, they also leased the Waiau block, similarly for 21 years at £100 per annum.\(^ {195}\)

The lease documents for the Waiau and Tukurangi blocks were set out with some formality. It was recorded that each of the deeds (which were in English) had been translated and explained to groups of lessors ‘in the presence of J P Hamlin Lic’d Interpreter’ and in each case this was attested by a witness. Despite this, the leases were void under the native land legislation, because title to the blocks had not been determined by the land court, and no title documents had been issued.\(^ {196}\)

The Native Lands act 1865, which was in force at the time the leases were entered into, provided that every transfer or conveyance of native land made before a certificate of title was issued should be void (section 75). This did not mean, however that such transactions were illegal, as the Turanga Tribunal has found in its consideration of the similar provisions of the 1873 act. Nor were such transactions discouraged. Settlers could take the risk of making payments to Maori for leasing or purchase, anticipating that Maori would not renge once their land came to be considered by the court.\(^ {197}\)

Marr states that ‘it is not clear who actually negotiated and authorised’ the deeds, or who received the rentals. She suggests that the ‘trustees’ – meaning those who were signatories to the Locke deed – took the leading role, since the ‘loyal’ chiefs had been most anxious to lease the land.\(^ {198}\) The lease documents for the Waiau and Tukurangi blocks provide some clues. The Waiau block document contained a list of 37 lessors. Their names match the 37 designated owners (‘names in Crown Grants’) listed in the schedule to the Locke deed.\(^ {199}\) Of these, 36 signed the lease document or attached their mark, as did a further 15 who were not listed at the head of the deed as ‘lessors’.\(^ {200}\) We note that two of the Waiau block lessors,

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194. Deed of lease – Tukurangi block; Toha Rahurahu and others, 28 July 1873, deed AUC 838-D
195. Deed of lease – Te Waiau block; Paora Rerepu and others, 28 July 1873, deed AUC 838-F
(Cathy Marr, comp, supporting papers to ‘Crown Impacts on Customary Interests in Land in the Waikaremoana Region in the Nineteenth and Early Twentieth Century’, various dates (doc A52(a)), pp 20–24)
197. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 441
199. Schedule to Locke deed, AJHR, 1872, C-4, p 32
200. Only 35 signed or marked the lease, but Toha was said to have signed for Katarina Tupato. The missing signatory was Ahipene Taumara.
Maraki Kohea and Te Pirihi Paata, were also signatories to the Locke deed. An addition was made to the lease document in October 1873 – a sworn statement by JP Hamlin – that he had been 'present' with 25 of the signatories on 28 July 1873 and had ‘carefully read over interpreted and explained to them the Deed of Lease’. Hamlin's statement was witnessed. Thus, even though the lands had not yet passed through the court, it seems there was an attempt to ensure the lease conformed at least in part with section 62 of the newly enacted Native Lands Act 1873 (which came into effect on 1 January 1874); it required the terms of a lease to be explained to the lessors by an interpreter. Hamlin went on collecting signatures well after the lease had come into effect. Another of his 'declarations' was added to the lease in April 1874. This stated that on four dates in March 1874 he had interpreted the terms of the Waiau block lease to eight lessors, who executed the lease deed in the presence of witnesses. The remainder of the signatures to the lease were probably gathered at this time. Evidently, not all of the lessors had signed the lease when it was said to have come into force on 28 July 1873. Potential lessors may have been unaware of the lease, or absent from the region, or may have refused to sign at the time. But by the following March, all but one had put their names to the lease.

The Tukurangi block lease document was similar to that for the Waiau block, but differed in several crucial respects. Forty names were listed at the head of the document as 'lessors' of the block. Of those, 36 were the owners of the Tukurangi block as listed in the schedule to the Locke deed. Of the additional four lessors, two were signatories to the Locke deed: Ihaka Whaanga and Hamana Tiakiwai. The other two did not appear either as owners on the Tukurangi block list or as signatories to the Locke deed. At least 45 people signed or made their marks on the Tukurangi lease deed. Eight of those listed as lessors did not sign, and 13 who did sign were not listed as lessors. As with the Waiau block, additions were made to the document. The first (in October 1873) stated that 10 of the signatories had been present in July 1873 when Hamlin interpreted the terms of the lease. Another addition in January 1874 indicates that Hamana Tiakiwai executed the lease in July 1873 – though there is some doubt on this score as the lease document itself shows the date 31 December 1873 pencilled next to his signature. A further addition, in March 1874, stated that 11 individuals had signed the lease, after it had been interpreted and explained to them, over five dates in January and March 1874. These included Ihaka Whaanga on 10 March and Te Makarini on 14 March. These later

201. Section 62 of the Native Land Act 1873 provided that no lease was valid unless all owners assented. The court was to satisfy itself of this and of the 'fairness and justice' of the transaction. A specimen form appended in the schedule to the Act setting out a memorandum of lease included a provision, signed by a judge or resident magistrate and any other 'male credible witness', that 'the contents [of the lease] had been explained to them [the lessors] by an Interpreter of the Court', and that they had appeared 'clearly to understand the meaning of the same': Native Land Act 1873, s 62, schedule, form 3.

202. The uncertainty on this point arises because the signatures are listed without dates on one page of the lease, and the attestations on the following page.

203. These were Toha Rahurahu and Heremia Wakatoko.

204. An additional two of the signatures are illegible, so we are unable to comment on these.
additions proved to be significant: the Tukurangi block lease was thus approved by the Mahia section of Ngati Kahungunu and at least one section of Tuhoe.

7.5.4.2.2 TARAMARAMA AND RUAKITURI BLOCK LEASES

Further leases for the remaining two southern blocks were entered into at this time. By November 1873, the Frasertown storekeeper Richard Maney had acquired a lease of the Ruakituri and Taramarama blocks (totalling an estimated 82,000 acres) for £500 per annum. We have not sighted the lease documents but assume that each block was leased separately. It is possible that officials were not as involved in facilitating these leases as they were with those of the other two blocks, and that the documents were less formal. The extent of the Crown’s later intervention in Maney’s leasing arrangements – specifically, its efforts to acquire his leases – would suggest that officials had been unaware of their terms. It is likely that Maney had access to the lists of owners for the two blocks in the schedule to the Locke deed, either through his local contacts or because they had been published in the AJHRS, and that these were the basis of his leasing arrangements. Officials who later discussed the terms of Maney’s leases (namely Burton, JHH St John, and JD Ormond) did not specify which individuals, hapu, or iwi were the lessors. But subsequent events would suggest that the leases were negotiated with a section of Wairoa Ngati Kahungunu – to the exclusion of Tuhoe and Ngati Ruapani, and of Mahia Ngati Kahungunu chiefs.

7.5.4.2.3 THE AFTERMATH OF THE SOUTHERN BLOCKS LEASES – GROWING TENSION WITHIN NGATI KAHUNGUNU, AND WITH TUHOE

Maney’s leasing arrangements appear to have been the cause of tensions among the Ngati Kahungunu leaders. In November 1873, Ihaka Whaanga and 12 other chiefs complained about the unfair division of the rentals derived from the leases. In a letter to McLean, the chiefs requested payment for services to the Crown in armed combat – a fulfilment of the terms of the Te Hatepe deed. George Burton, McLean’s agent, explained that ‘the Mahia section consider themselves wronged in as much as they have only one [designated person] in the grants [lists of owners in the Schedule to the Locke deed] while the Wairoa section have over two hundred.’ Clearly he was referring to Wairoa names across all the blocks. Gillingham states that the single designated Mahia owner was probably Te Otene Tangihiaere, a chief listed in the deed’s schedule as an owner in the Waikaretahaheke

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205. Burton to McLean, 13 November 1873 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 817–819); St John to Clarke, memorandum, 25 November 1874, MA-MLP 1 3/1874/483, National Archives, Wellington (O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), p110); counsel for Wai 621 Ngati Kahungunu, copy of 18 November 1874 agreement between RD Maney and JD Ormond, 14 April 2005 (doc L31)

206. Ihaka Whaanga and others to McLean, 10 November 1873 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p791)

207. Burton to McLean, 10 November 1873 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p790)
What the Mahia chiefs’ letter shows is that they had expected some kind of benefit from the leases. Ihaka Whaanga, who signed the Locke deed but was not a listed owner, had received nothing. And, as we have seen, Whaanga did not sign the Tukurangi block lease until March 1874. Burton commented to McLean that ‘the govt [sic] has nothing to do with the matter’ – the only alternative being to place the blocks ‘on equal tenure’. This presumably meant that all the parties to the Locke deed – both those listed as owners and those who were signatories – would be considered owners of the land entitled to derive an equal share of the rentals.

The tensions within Ngati Kahungunu were evident when McLean met with Ihaka Whaanga, Hamana Tiakiwai, and other Ngati Kahungunu chiefs at Napier in late November 1873. Tiakiwai complained about their rights under the Locke deed, as opposed to those of Hapimana Tunupaurā’s people: ‘Hapimana got all his people, who were chiefly Hau Haus, inserted in the deeds, he alleged; ‘while only four of us, Ihaka, Maraki, Paora, and myself, were nominally inserted in the deeds.’ McLean reassured Tiakiwai of their rights under the deed (as McLean understood them): ‘The land is vested really in you, the chiefs. The names of Hau Haus are inserted, but you hold that land for their benefit.’ In response, Whaanga suggested that each party should have received an amount of land proportionate to the number of men who had fought alongside the Crown (as opposed to a suggestion by Burton that the chiefs should receive a greater share). McLean replied that as Whaanga’s party comprised 319 men, they should receive £2,942 15s 6d (at £9 4s 6d each).

These exchanges, as we have already noted, demonstrate the confusion that persisted in the wake of the Locke deed. Ngati Kahungunu signatories to the deed had clearly misunderstood their entitlements; now this was causing friction between various sections of the iwi. And while McLean made his reassurances to the chiefs, he was beginning to contemplate a payment to the Mahia contingent to settle their claims to the land.

News of the four southern block lease arrangements also caused renewed opposition from Tuhoe. Charles Ferris, sub-inspector in the Armed Constabulary, wrote to Locke following a hui at Ruatahuna in November 1873 at which Tuhoe anger had surfaced. Wi Hautaruke had read out a letter to the Wairoa people in which he advised them he had completed a ‘ngakinga kai’ (‘a plot of land for food cultivation’, according to Binney) near Tukurangi, and that the Wairoa people were to remove their tupapaku (their dead). According to Binney, Hautaruke’s ‘statement [to his own people] announcing the violation of tapu was intentionally provocative’ – he was anxious to rouse Tuhoe to defend their rights. In this he succeeded. The following day Tuhoe penned a ‘formal complaint’ (as Ferris put it) about the leases, but this time about the ‘opposite side of the Waikare Taheke’ – the

209. Burton to McLean, 10 November 1873 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 790)
210. ‘Notes of Native Meetings’, 29 November 1873, AJHR, 1874, G-1, p 2
211. Binney, ‘Encircled Lands, Part I’ (doc A12), p 288
Taramarama block – which had only recently been leased to Maney. Ferris wrote that the complaint concerned the leases granted by the ‘Wairoa people’ which had ‘taken in a great portion of what the Urewera’s call their land’. The letter was signed by Te Makarini – whose name had been included in the lease deed for the Tukurangi block but who, at this point, had not signed the lease. According to Binney, ‘[h]e had withdrawn his consent’ to the Locke deed. Ferris then advised Tuhoe to apply for a land court hearing. He told them:

> to take no further notice of it [the lease], [other] than to simply make a complaint that any lease now made would not hold good, as the land is not yet settled, and that if the present lease even did come into the boundary which might hereafter be fixed for them, it would not then hold good unless they so desired it, they are satisfied with this.

This was the first time an official had mentioned the land court in connection to the four southern blocks – and he made the suggestion to Tuhoe, not to Ngati Kahungunu.

The leases, therefore, had been the catalyst for a host of problems. Crown officials, passing over the underlying causes, put the problems down to what they called ‘the disputed boundary’ between Tuhoe and Ngati Kahungunu. (We address this matter further in the next section.) In November 1873, McLean ‘appointed’ the Hawke’s Bay Ngati Kahungunu chief Tareha Te Moanunui as a mediator between Wairoa Ngati Kahungunu and Tuhoe. McLean stated that he wished Tuhoe and Ngati Kahungunu to ‘settle’ the ‘boundary’ between the two iwi. Tareha facilitated a hui at Waiohiki in January 1874 in which (according to Locke) the ‘disputed boundary between Ngatikahungunu and Uriwera [sic] at Wairoa’ was discussed. Locke wrote that the hui ‘ended satisfactorily’ and they would resume their discussions at Ruatahuna. Tareha later wrote a letter to Tuhoe seeking to delay their intended meeting to the end of March so that Locke and Ngati Kahungunu could attend. And Ngati Kahungunu leaders did accompany Locke when he travelled to Ruatahuna to meet with Te Whitu Tekau leaders at the beginning of April.

There was some evidence at this time that difficulties over the leases might in fact be easing. Firstly, Ihaka Whaanga and other Ngati Kahungunu chiefs signed the Tukurangi block lease deed; Hamana Tiakiwai (as we noted above) may have signed in December 1873. This suggests that the opposition of the Mahia chiefs had been overcome. Secondly, the Tukurangi block lease had received at least some support from the Waikaremoana leaders. Te Makarini – who did not attend the Te Whitu Tekau hui of late March and early April 1874 – also signed the lease

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212. Ferris to Locke, 3 November 1873 (Judith Binney, comp, additional supporting papers to ‘Encircled Lands, Part 1’, various dates (doc A12(b)), pp 639–641)
214. Ferris to Locke, 3 November 1873, p 3 (Binney, additional supporting papers to ‘Encircled Lands, Part 1’ (doc A12(b)), p 641)
215. ‘Notes of Native Meetings’, 29 November 1873, AJHR, 1874, G-1, p 2
216. Locke to McLean, 10 January 1874, MS-papers-0535-027, folder 90, Alexander Turnbull Library
at this time, along with the Tuhoe and Ngati Ruapani leaders Wi Hautaruke and Hori Wharerangi. (Of the four Tuhoe leaders who were listed as lessors on the Tukurangi block lease, only Te Whenuanui did not sign the lease. We can confirm, from other evidence submitted to us, that Te Makarini’s signature on the deed is in his hand.)217) Binney says the ‘marked absence’ of the Waikaremoana chiefs from the March and April Ruatahuna hui was due to the ‘running argument over the southern Waikaremoana land’.218 It is possible that the chiefs saw some benefits that could be derived from leasing, whereas the majority of Te Whitu Tekau remained steadfast in their opposition.

But the wider Tuhoe leadership remained concerned about the impact of Ngati Kahungunu activities on their own rights in the four southern blocks’ lands, and they took the matter up with Locke when he attended the Ruatahuna hui at the beginning of April. The result was that Locke, like Ferris, suggested that Tuhoe take their concerns to the land court. In his view, the dispute between the two iwi was about ‘division of the rents’. Locke, according to a record of the hui made by Richard Price, suggested ‘two ways of settling the matter’: ‘either to lease the land and come to an arrangement for dividing the money, or take the lands through the Native Lands Court, and there divide it’.219 In other words, if the court found they had rights in the land, a boundary might be drawn, and Tuhoe might partition out the land to which they were granted title. In his own subsequent report, Locke said that he had found Tuhoe suspicious that ‘the desire of the Europeans is to get possession of their lands’. They wanted to secure the return of their lands ‘included in the confiscated blocks’. But Locke told them that this would not happen and that, ‘to settle the disputed title’ to the land at Wairoa and Waikaremoana ‘handed back’ by Biggs, ‘they and the Ngatikahungunu had better take it through the Native Lands Court’.220

It appears, therefore, that by early 1874 the Crown had tacitly acknowledged some of the difficulties with the Locke deed, but still hoped to facilitate an outcome that saw the main provisions of the deed maintained. Officials had not yet admitted that the deed was fundamentally flawed. They appeared to have met with some success with the Waikaremoana leaders and with reducing the tensions within Ngati Kahungunu. But they had not been able to reconcile the wider Tuhoe leadership to the leases which were the outcome of the deed; and they saw the origins of the lease problems simply in disputes over customary rights. They failed to acknowledge the divisive effect of the Crown’s actions over the past nine years, and Locke’s creation of four blocks with arbitrarily defined boundaries on lands with a very complex history. The officials’ solution was to suggest that Tuhoe took the land to the court. The court could arbitrate differences between the iwi. At the same time, court-awarded title would also have the advantage of replacing

217. See, for example, Te Makarini to Cumming, 22 September 1871 (Binney, additional supporting papers to ‘Encircled Lands, Part i’ (doc A12(b)), pp366–368).
220. Locke to the Native Minister, 30 May 1874, AJHR, 1874, G-2, p 20
the unworkable arrangements embodied in the Locke deed for ‘names in Crown grants’.

Officials’ concerns about Tuhoe opposition may explain why they made the first suggestion to Tuhoe rather than Ngati Kahungunu that applications for the four blocks be proceeded with; in the circumstances, this may have been deemed a politic move. But they cannot have taken such a step without contemplating various outcomes. They may have thought it possible that Tuhoe claims would be dismissed. This would mean that the Crown could keep its promises under the Te Hatepe deed, allowing Ngati Kahungunu to lease the land unimpeded. But there was also a possibility that Tuhoe might be awarded part of the land (as Locke had already admitted), secure a partition in the court, and disrupt the carefully arranged leases. Or they might be awarded all the land. Either of those latter outcomes would jeopardise the Crown’s ability to fulfil its promises to various groups of Ngati Kahungunu – unless it began purchasing Tuhoe interests. There was a further danger, too. If Ngati Kahungunu claimants were awarded title, this would imperil the recent arrangements whereby Hamana Tiakiwai and Ihaka Whaanga would receive a share of the Tukurangi lease returns. A court award of all or part of the blocks to the customary owners – similar to the lists in the schedule to the Locke deed – would presumably have excluded them. In November 1873, as we have seen, McLean maintained the fiction of the Locke deed by assuring the loyal Ngati Kahungunu chiefs that the land was really held by them; but he was also contemplating other options, suggesting that they might instead receive a payment for their services. It is likely, therefore, that even if the Government had not begun active planning for purchasing the land at this point, it was already contemplating purchase as a potential solution to various problems.

7.5.4.2.4 The Tuhoe Application to the Land Court

In what was a remarkable turn of events, Tuhoe decided to accept the advice of officials and make an application to the court. On 5 May, four separate applications for investigation to the Ruakituri, Taramarama, Tukurangi, and Waiau blocks were lodged.\(^{221}\) The applications were gazetted in the Kahiti on 5 October 1874. Each was stated to have been made on behalf of Ngati Kahungunu and Tuhoe. They show that the named applicants for each of the blocks (with the exception of Wi Hautaruke, who appeared as a claimant in both Tukurangi and Ruakituri) were different; that the tribes listed in each case were Ngati Kahungunu, and Tuhoe; and that the descriptions of the boundaries were unusually spare, referring simply to the two rivers which bounded each block.\(^{222}\) Wi Tipuna, one of the chiefs who identified as Ngati Kahungunu, and who was listed as an applicant, later publicly stated that he had not consented to his name being included in the application by Wi Hautaruke.\(^{223}\) It is possible, therefore, that other Ngati Kahungunu names had

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222. Kahiti o Niu Tireni, 5 Oketopa 1874, p.40
223. ‘Notes of a Meeting Held at Wairoa on 29 October 1875’, 17 December 1875, AJHR, 1876, G-1A, p.7
been inserted in the applications; but no other objections were made. By the time of the court hearing, Ngati Kahungunu parties appeared as counterclaimants.  

Whatever the case, it is clear that the applications were instigated by Tuhoe. And they were made not only by the Waikaremoana chiefs, but by a broad range of the Tuhoe leadership, including Te Pukenui, Te Makarini, Tamaikoha, Hori Wharerangi, Wi Hautaruke, and Tutakangahau.

This decision by the wider Tuhoe leadership was all the more remarkable given Te Whitu Tekau’s policy opposing the operation of the Native Land Court in their rohe. How then might we explain it? We have seen that there was continuing discussion among Tuhoe about how to resolve the situation: the Waikaremoana leaders decided to give their consent to the leases in return for promised benefits, whereas other Tuhoe leaders remained steadfast in their opposition. Locke presented them with an option of either simply agreeing to the leases or going to the court. Both options were in conflict with Te Whitu Tekau’s policies. But if Tuhoe agreed to the leases they would be putting their trust in Locke, whom they viewed primarily as an ally of Ngati Kahungunu. They mistrusted Locke, it seems, more than the court; caught between a rock and a hard place, they chose the court, which might at least give them a fair hearing. Hori Wharerangi later gave other reasons for making the application: because of concerns over the various boundaries laid down by the Government, Tuhoe desired to have their rights clarified by an independent body. ‘Judging from the many interests apparently involved, we deem it advisable to have the matter dealt with by the Court.’

Tamati Kruger addressed the dilemma Tuhoe faced in his evidence: ‘No matter where you turn there is trouble. If trouble was to befall you, that is a Tuhoe saying; the suspending of the patu. That is why they were so vociferous in talking to the “Maori Land Court” to carefully scrutinize the ownership of those lands.’ Tuhoe was not uneasy simply about the leases Ngati Kahungunu had initiated; their wider concern was to protect their rights in the land. We agree with counsel for Wai 36 Tuhoe, who said that the Tuhoe application was ultimately the result of the flawed terms of the Locke deed. Tuhoe had ‘little option’ but to take the lands to the court.

The applications to the court, however, did not reduce tensions. Tuhoe opposition to the leases remained, and officials continued to apply pressure for them to cooperate with the Government. In July 1874, Charles Ferris travelled through Te Urewera to discuss matters with the leaders. In a subsequent letter, he stated

224. Napier Native Land Court, minute book 4, 4 November 1875, fol 66
225. Other speeches from a hui held at Wairoa in October 1875 (discussed below) suggest this was so. Toha Rahurahu, for example, said that it was ‘the Urewera’ who had ‘decided that the matter should come before the Land Court, to which course I will acquiesce’: ‘Notes of a Meeting Held at Wairoa on 29 October 1875, 17 December 1875, AJHR, 1876, G-1A, p 4.
226. ‘Notes of a Meeting Held at Wairoa on 29 October 1875; 17 December 1875, AJHR, 1876, G-1A, p 2
227. Tamati Kruger, transcript of addition evidence at Waikaremoana (English), no date (doc H72(a)), p 6
228. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 39
that ‘the Urewera’ were ‘very bitter’ toward Ngati Kahungunu due to ‘land leasing’, and ‘threatening language had passed’ between the iwi. ‘They are anxious that the boundaries should be adjusted as speedily as possible.’ Ferris reported further:

After a great deal of explanation I managed to get them to understand the difference between the land at Waikaremoana and papatipu [land under customary title], I explained to them all the clauses of the [1872] deed, viz timber, trust &c, and told them that if the Govt had desired they could have given the land to any other tribe, and ignored both them and Ngatikahungunu, so that instead of quarrelling about it they ought at once to drop into the Government’s views concerning it. I hope to have something very satisfactory to report to you after their next meeting.  

Despite the Tuhoe application to the court, officials seem still to have hoped that an alternative solution would be reached and that the wider Tuhoe leadership could be pressured into agreeing to the leases.

7.5.4.3 Why did the Crown decide to purchase the land?
By the end of 1874, however, officials changed tack, and embarked on the purchase of the blocks. They had decided not to wait for the land court process to take its course. They had also evidently decided that the Crown’s guarantee to Maori in the Locke deed, that the land was to be inalienable by sale, could be ignored. Officials now began to buy up interests even though they were not certain who the owners were, and knew that a court hearing to determine ownership was imminent. As the Turanga Tribunal observed, section 87 of the Native Land Act 1873 made pre-court individual dealing void for private purchasers, but it did not bind the Crown.  

Such pre-title negotiations were common Crown practice at the time. Previous Tribunals have condemned the practice on a number of grounds, among them the fact that it left purchase agents to identify and negotiate with those they identified as having rights in the land ‘without the benefit of any independent ascertainment of their interests’. One of the reasons why the land court had been established was precisely to ensure that Government agents could not pick their own owners, so to speak, and ignore those who might not wish to sell.

Our reading of the evidence is that the Crown made the decision to purchase the blocks in late 1874 – and not before. We do not accept Binney’s view that the Crown adopted a deliberate strategy from as early as 1866 that led to alienation, and that from 1873 McLean was intent on forcing the purchase. In October, 1874 Burton had changed his mind about how the Mahia chiefs’ complaint over the division of lease rentals should be handled. Earlier, he had suggested that

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229. Ferris to Locke, 21 July 1874 (Binney, additional supporting papers to ‘Encircled Lands, Part I’ (doc A12(b)), pp 562–564)
230. Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 441
231. Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claims, Stage One, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, pp 591–592
232. Waitangi Tribunal, He Maunga Rongo, vol 2, pp 463, 466
McLean ‘do nothing’. Now he recommended that McLean purchase the blocks for the sum of £8,000 or £9,000, so as to avoid further ‘unpleasantness’ among Ngati Kahungunu.234 (Although this followed Te Waru Tamatea’s offer to sell his interests in the blocks in August 1874, we cannot think that Te Waru’s offer influenced Burton, or that it triggered the Crown purchases. Te Waru’s people were in exile at Waiotahe and, as we will see, the Government finally made them a small payment only when it had paid all others whose rights it recognised.) This was despite what appeared to be a solution to this problem in March, when Ihaka Whaanga signed the Tukurangi block lease. It is possible that disagreements persisted, and Burton took the view that the only solution was to begin purchasing.

McLean, the Native Minister, subsequently visited the region in November 1874, and adopted Burton’s recommendation. The reasons for the Crown’s decision to start purchasing the blocks were spelt out in a memorandum recording McLean’s arrangements for land purchases in Hawke’s Bay.235 We comment on each point in turn.

First, it referred to the ‘unsettled state of the Wairoa natives’ which was attributed to ‘complications connected with their lands’ but also, interestingly, to the influence of the so-called ‘repudiation movement’. This was a Hawke’s Bay-based movement which led resistance to the land court in the wake of the bad reputation it had achieved in the district, and the extent of land alienation which had followed its work.236 The movement was led by Henare Matua, who travelled to hui throughout the wider region and gathered support among Maori. The memorandum drew a direct link between ‘uneasiness as to the future tranquillity’ of Wairoa, and the need for Government intervention to keep the peace before further negotiations took place between private individuals and Maori. It is unclear to us why officials thought that land purchase would counter repudiation – though they may have wished to buy before the movement got any stronger.

Secondly, the memorandum referred to further ‘jealousy’ within Ngati Kahungunu, between those who had assisted the Government in the recent fighting and had lands assigned to them, and the original owners of the lands. As we have seen, this particular tension eased, but perhaps not entirely – and the land court hearing risked reviving them. McLean would hardly have needed Locke’s reminder, once the land court hearing started, about the position of ‘loyal east coast natives [to whom promises had been made] . . . who have no ancestral claim . . . on the land[,] therefore their names will not appear in the grantees or memorial of ownership’.237 The approaching court hearing would make it impossible to maintain the Locke deed fiction of the status of the ‘trustees’.

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234. Burton to McLean, 17 October 1874 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 787)
236. Gillingham, ‘Maori of the Wairoa District’ (doc 15), p 249
237. Locke to McLean, 5 November 1875, MA 1 1915/2346, box 172, Archives New Zealand, Wellington
Thirdly, the memorandum emphasised the mutual antagonism between ‘the Uriwera’ and the ‘Wairoa natives’ over what was said to be ‘the undefined state of the boundary’ between them. Officials had already tackled this by suggesting that Tuhoe go to the land court – but they were aware that an award of part or all the blocks to Tuhoe posed dangers, from the Government’s point of view, to the leases of the blocks – and thus to its relationship with some groups of Ngati Kahungunu.

Fourthly, the memorandum recorded what seems to us a crucial trigger: that a ‘large extent’ of the lands at the centre of the ‘complications’ had been leased or partly purchased by RD Maney, the storekeeper at Frasertown. The Native Minister decided, therefore, that Maney’s interests in six blocks (including the four southern blocks) should be bought out. (We consider Maney’s purchases below.)

The memorandum concluded by expressing the hope that ‘the Government having once obtained possession of that part of the Country will be enabled to deal equitably with the natives interested, and to acquire, with due regard to the claims of native owners, a large extent of Country for the purposes of settlement.’ What was missing in the Crown’s account was any acknowledgement that Crown acts and policies underlay the ‘unsettled state’ of the Wairoa people referred to in the memorandum. Although officials may have believed that the problems with the four southern blocks which they identified were real, and could only be resolved by purchase, they painted a very incomplete picture. Despite the reference in the Crown’s memorandum to the importance of settling the land, we do not think this explains the Crown’s decision to embark on its purchase. The overwhelming reason, in our view, was that through the Te Hatepe deed and the Locke deed arrangements, and through officials’ assumption that the confiscated lands extended as far as the shores of Lake Waikaremoana – that is, into lands claimed by Tuhoe and Ngati Ruapani – the Crown had created a raft of problems which would not go away. Purchase must have seemed an ideal solution to officials because all those with rights and interests could be paid. And from November 1874, McLean and other officials made various arrangements to expedite the purchase of the blocks.

Maney’s purchasing activity was a new factor in the situation – and it seems probable that it tipped the balance for the Crown. His activity appears to have been primarily in the Hangaroa block – to the north-east towards Turanga – but was also conducted in two of the four southern blocks. Since the blocks had not yet been before the court, Maney’s purchasing was void, but not illegal. Section 87 of the Native Land Act 1873, as the Turanga Tribunal pointed out, ‘made pre-court individual dealing unenforceable, but did not ban it.’ In fact, the section was not intended to stop individual dealing. Like other settler purchasers, Maney took the risk that those whom he paid for their interests might not be awarded title, or that if awarded title they might renege on the sale – but it was clearly a risk he believed would pay off. When he was ready, he could have gone to the court with a majority of owners who had sold their interests and subsequently received title to some or all of the land. His purchasing activity therefore constituted a significant danger to the Crown and the promises it had made to Maori of the region.

238. Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 441
The Crown’s first step was to buy out Maney’s leasing arrangements and other interests, and to turn him into an agent for the Crown to assist in the land purchases. A formal agreement signed with J D Ormond on 18 November 1874 set out the terms by which the Government would ‘purchase all the estate interest and goodwill’ of Maney in the four southern blocks and in the Hangaroa and Waihau blocks.\(^{239}\) The agreement shows that officials were willing to take advantage of the situation to achieve their aim of acquiring the blocks. Maney was not simply removed from the picture so that Crown purchasing could begin; rather, by the terms of the agreement, he was to be brought into the Crown’s employ to conduct purchase negotiations. The knowledge acquired by Maney through his purchase and leasing arrangements would thus be used to the Crown’s advantage in its acquisition of the blocks.

The agreement had six clauses. The first clause dealt only with Maney’s advance purchase payments. In essence, it provided that, upon Maney supplying a full statement of the sums he had advanced to native proprietors, the Government would purchase, for £3,000, all the ‘proprietary rights’ Maney had so acquired. Although the schedules to the agreement indicate that Maney had made advance purchase payments only in the Hangaroa block,\(^{240}\) other evidence shows that he had also begun advancing sums in the Ruakituri and Taramarama blocks.\(^{241}\) The second clause dealt with Maney’s leases of the Waihau block, and of two of the four southern blocks – Ruakituri and Taramarama.\(^ {242}\) He was to ‘convey and assign’ to persons appointed by the Government ‘all his estate, interest and goodwill whatsoever’ in those blocks, and hand over ‘all leases agreements and other documents in his possession’ relating to them. Thus, Maney was to transfer to the Government all his rights under the leases. The third clause of the agreement stated that Maney would assist the Government in negotiating with the native proprietors for the lease or purchase by the Government of all the lands subject to the agreement. The payments to Maori would be made not by Maney but by a Government officer, to be appointed. Clause four then provided that, in return for transferring his rights under the leases, and for assisting in the Government’s lease and purchase negotiations, Maney was to be paid a commission on the completion of any lease ‘containing a purchasing clause to the government’, and on every ‘conveyance’ to the Government of any portion of the lands. The amount of the commission was to be proportionate to the area of land involved, to a maximum of £3,000 in the

\(^{239}\) Counsel for Wai 621 Ngati Kahungunu, copy of 18 November 1874 agreement between R D Maney and J D Ormond (doc L31)

\(^{240}\) The third schedule stated: ‘Lands not passed the Native Lands Court and not held under any lease but on which advances have been made by R D Maney’. The schedule identified the Hangaroa block (exclusive of the Waihau block, which was said to be within the Hangaroa block), and estimated at 170,000 acres.

\(^{241}\) St John to McLean, 23 April 1875 (Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 99)

\(^{242}\) The Tukurangi and Waiau blocks were said to have been ‘leased to McDonald’: counsel for Wai 621 Ngati Kahungunu, copy of 18 November 1874 agreement between R D Maney and J D Ormond, sch 2 (doc L31).
event that the whole of the lands dealt with in the agreement were leased or conveyed to the Government. The fifth clause of the agreement allowed Maney to keep sheep on land subject to the agreement for two years, free of charge, unless the Government gave him notice that it needed any portion of the land for settlement. The final clause contained the Government's promise to pay Maney for any permanent improvements he had made to the land, their value to be determined by arbitrators.

The complexity of the November 1874 agreement and of Maney's involvements in the lands to which it applied was such that subsequently there was considerable confusion about what had in fact been agreed. There was a clear distinction in the schedules to the agreement between three areas: the Hangaroa block lands (170,000 acres), in which Maney had purchased interests; the Ruakituri and Taramarama blocks (82,000 acres), which were 'leased to RD Maney at an aggregate yearly rent of £500'; and lands in Tukurangi and Waiau (75,000 acres) which were 'leased to McDonald'. Despite this distinction, officials said they only discovered after the agreement was signed that Tukurangi and Waiau were leased to others (that is McDonald, Barker, Cable, and Drummond). In April 1875, after a meeting between Maney, JH H St John, Locke, and Hamlin, St John reported to McLean that Maney insisted he had no interests in Tukurangi and Waiau and so had not agreed to sell them to the Government. When St John had put to Maney that the agreement recorded he had interests in those blocks, Maney had replied that such a reference must have been included in error.\(^{243}\) In fact, it appears that St John was confused: the agreement contains no reference to Maney having interests in Tukurangi or Waiau.

It is not entirely clear how the Crown's payments to Maney were resolved. St John had evidently hoped that the Crown would get, for £3,000 under clause 1 of the agreement, all Maney's interests in Hangaroa and in all four (not just two) of the southern blocks. Therefore, unless Maney could prove he should receive £3,000 for what he had actually purchased (outside Tukurangi and Waiau), the amount paid to him should be reduced. By April 1875, however, Maney had not supplied the details of the moneys he had advanced to Maori. Then, in May 1875, Maney wrote to McLean asking that the 'balance' of his commission payment be paid as soon as the boundaries of reserves were marked off.\(^{244}\) Maney was reminded by RJ Gill, the Under-Secretary for Native Affairs, that the maximum amount of commission (a further £3,000) was payable only upon the Government obtaining clear title to all four of the southern blocks and to Hangaroa and Waiau – an area of 327,000 acres. It had been discovered, however, that two of the southern blocks (Tukurangi and Waiau), totalling 75,000 acres, were leased to Cable and McDonald. Since the Government was negotiating separately to purchase

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\(^{243}\) St John to McLean, 23 April 1875 (Belgrave and Young, 'War, Confiscation and the “Four Southern Blocks”' (doc A131), pp 98–99)

\(^{244}\) Maney to McLean, 22 May 1875 (Belgrave and Young, 'War, Confiscation and the “Four Southern Blocks”' (doc A131), p 99)
those blocks, Maney’s commission would be reduced.\footnote{245} In July 1875, Maney was reported to be substantially in debt, and pressing for another £7,000 to be advanced to him – evidently to recover the debts Māori owed him. But Ormond told Maney the Government would insist on paying Māori directly; and the storekeeper must wait until they paid him themselves.\footnote{246}

In the wake of Ormond’s agreement with Maney, the Crown signed a further agreement to buy out the lessees of the Waiau and Tukurangi blocks, Barker, MacDonald, Cable, and Drummond, in May 1875. For the sum of £1,500, Barker and his co-lessees were to ‘execute assignments’ of those blocks to the Queen for all the ‘interests’ they had acquired by virtue of the deeds of lease (though they could purchase 5,000 acres in the vicinity of their homestead once the native title had been extinguished).\footnote{247} In 1877, they were paid a further sum of £1,500 in extinguishment of the promise that they could repurchase 5,000 acres.\footnote{248} Thus, as O’Malley pointed out, Barker and his co-lessees had secured £3,000 for lands ‘to which they held no legal title, and on which they cannot have paid more than a few hundred pounds in rent’.\footnote{249}

These transactions – and particularly Ormond’s formal agreement with Maney – show how determined the Government was by this time to acquire the four southern blocks. It was able to take advantage of advance payments already made by Maney; and at once offered him a commission to assist the Government in its aim to acquire, by lease (with purchasing clause) or purchase, all the land.

At the end of 1874, Josiah Hamlin was commissioned to arrange purchases of the land at Wairoa, under the direction of agent for the general government J D Ormond.\footnote{250} As well as £2 2s a day, he would receive a commission of a halfpenny per acre on all lands handed over to the Government with ‘a clear title’. In his instructions to Hamlin, Clarke stated that he was ‘not to enter into negotiations for blocks of land, or make advances upon them without having first reported upon them stating their quality and price, and obtained the approval of the Government to the purchase.’\footnote{251} Hamlin’s instruction makes it clear that officials...
saw the circumventing of the land court’s title investigation functions in this way as quite unremarkable.

The Crown’s strategy during 1875 was to make payments to Ngati Kahungunu first, and then to tackle Tuhoe and Ngati Ruapani. By the end of May 1875, Hamlin had paid £302 7s to Maori for their interests in Ruakituri and Taramarama; and the same amount on advances for interests in the Waiau and Tukurangi blocks. Although he did not specify to whom the advances had been paid, O’Malley states it is clear that the money had gone to Ngati Kahungunu, who had ‘consented to the alienation of the lands’. But Hamlin understood that these were not the final payments to be made to Ngati Kahungunu. In mid-June he visited Waikaremoana where he talked with a number of ‘Urewera’ chiefs and arranged for them to travel to Wairoa. Subsequently, he asked McLean whether he should ‘settle about the price for [the] blocks with the other natives’ should he fail to come to an agreement with the ‘Ureweras’. Although no response has been uncovered, he met with the chiefs in Wairoa in early July. The reports of this meeting and those that followed indicate that pressure was being applied to Tuhoe and Ngati Ruapani. Hamlin told a settler, J G Kinross, that the ‘Uriwera’ were ‘very troublesome in disowning all alienations of their lands which the Wairoa natives had parted with.’

Hamlin then accompanied the chiefs to Napier, where they met with Ormond. On 8 July, Ormond reported to McLean:

> The last two or three days I have been engaged with the natives about the Wairoa purchases & the Urewera have pretty well given in. They were rather inclined to bounce when they commenced the talk & asked what right you had to deal for the Blocks with Ngatikahungunu without their presence & assent. I walked into them & told them they owed everything to your clemency – now they only ask a little time to explain matters to the Tribe & the survey of the reserves is to be made at once.

In other words, Crown recognition of Tuhoe and Ngati Ruapani rights to lands in the south-eastern lands – evident in Te Makarini’s participation in the Locke deed, the inclusion of Tuhoe names in the block lists in 1872, the discussions with Tuhoe and Ngati Ruapani over a sustained period, and the encouragement they had received to seek a land court hearing – was conditional. When the Crown was ready to impose its own solution to the dilemmas it had created, Tuhoe and Ngati Ruapani could be reminded of that fact: they might be entitled to take their case to the land court, and to receive payment but, they were told, this was a concession on the part of the Crown. In fact, this was quite wrong: the land was customary land. Only the Crown’s mistaken extension of the so-called confiscation

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boundaries into the district by the Locke deed had resulted in its assumption of authority over the land, and had placed Tuhoe and Ngati Ruapani in a vulnerable position.

7.5.4.4 Was there an intractable ‘boundary dispute’ between Tuhoe and Ngati Kahungunu?

The Crown argued before us that its offer to purchase the land provided an ‘attractive alternative’ to Ngati Kahungunu and Tuhoe, who were struggling to resolve their ‘significant boundary issues’. Here we pause to consider this argument in the light of events as they unfolded after the Crown’s decision to purchase the land, and before the land court hearing.

The land court hearing of the four blocks was set down to begin on 28 October 1875, and was advertised in the Kahiti of 18 October by notice dated 14 September. By this time, Hamlin had reported to his superiors that he had settled the price for the purchase of the blocks with those Ngati Kahungunu the Crown considered to be owners. On 9 October, he reported that the price for the Waiau and Tukurangi blocks would be £4,700, plus 2,000 acres of reserves in each block. Three days later he reported having settled the Ruakituri and Taramarama blocks for £5,100 and 3,000 acres of reserves. Ormond then requested funds from McLean – an advance of £9,800 – and told him that Hamlin and Locke were attending the land court on 28 October ‘to see Wairoa blocks passed through the Court and then to complete purchase.’ McLean approved the request.

By this time, Crown officials simply hoped to wrap up the purchase of the blocks. Yet there was one major outstanding matter – despite Hamlin’s suggestions that the arrangements for the purchase had been completed. As we have seen, the Government had hoped that Tuhoe had ‘given in’ and would take their payment. But this did not happen, and the court hearing approached without a resolution to their issues. As Tuhoe and Ngati Ruapani arrived in Wairoa en masse, officials still wanted the question of ownership resolved out of court; the court might then rubber-stamp the arrangements. When the case was called on Thursday 28 October, Hamana Tiakiwai (probably on Locke’s advice) applied for an adjournment. The following day, a major hui took place between Locke, Ngati Kahungunu, and ‘Tuhoe or Urewera tribes’. According to a reporter, the meeting was held on a large expanse of grass in front of the drill shed where the court sat. Some 700 to 800 Maori were assembled, with Locke, Ormond, and Hamlin, among others, seated on forms in the middle.

Locke looked upon the hui as an opportunity to resolve the issue of ownership and so hasten the purchase of the blocks. His official notes of the meeting stated

256. Crown counsel, closing submissions (doc N20), topics 8–12, p 17
257. Ko Te Kahiti o Niu Tireni, 18 Oketopa 1875, no 15, p 120
259. Ormond to McLean, 21 October 1875 (Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 101)
260. Hawke’s Bay Herald, 9 November 1875
that it was called ‘with reference to land claims and disputed boundaries at the Upper Wairoa’, before being brought before the land court for ‘final settlement’.  

And in making his opening address to the hui, Locke reduced the question to be decided to one of sale: ‘With whom rests the power of legally conveying the land to the Government?’ Given the arrangements finalised with Ngati Kahungunu, it might seem that what he was really asking was whether ‘the Urewera’ were to be paid at all. Locke hoped that the parties would be able, as a result of their discussions, to ‘relieve the Court of any further action, beyond ordering a memorial of ownership in favour of those persons acknowledged to be entitled to the land’.  

In other words, he wanted to present the court with a fait accompli. The goalposts had been shifted some distance since Ferris advised Tuhoe to clarify their title in the court. Given the pressure earlier applied to Tuhoe and Ngati Ruapani, it is not surprising that they resisted such an approach, and insisted on a hearing in the court.

The hui lasted for many hours. We have reports of a number of the key speeches, but it is clear that these cannot be full reports. (The Hawke’s Bay Herald reporter, in giving his own summary, noted frankly that it was only a ‘skeleton’ of very ‘voluminous’ proceedings, ‘rendered in far too rapid and pure Maori’ to allow him to do more.  

The korero was spirited and to the point: Ngati Kahungunu, Tuhoe, and Ngati Ruapani speakers debated their respective rights to the land encompassed by the blocks, couching their korero in terms of:

- The identification of boundary points and the assertion of tribal boundaries based on these points. Tuhoe speakers identified Mangapapa, in the south-east of the Tukurangi block, as their southernmost boundary point; Ngati Kahungunu speakers identified the Huia Range as their northern boundary.  
- The establishment by ancestors of boundary posts (often referred to as ‘rahui’ in the meeting notes).  
- The assertion of rights based on ancestry; both in general terms and by reference to specific ancestors.  
- The assertion of rights based on conquest; both in general terms and by reference to specific battles; and counter-assertions of conquest.  
- Denial of the opposing party’s rights; and denial of the opposing party’s stated tribal boundary.  
- Challenges to the opposing party to identify claims based on ancestry or conquest.  
- Statements of ownership of particular lands.  

The hui concluded without resolution; both sides agreed to take their cases before the court the following day.

\[261. \text{‘Notes of a Meeting Held at Wairoa on 29 October 1875’, 17 December 1875, AJHR, 1876, G-1A, pp1–2}\]  
\[262. \text{Ibid, p 2}\]  
\[263. \text{Hawke’s Bay Herald, 9 November 1875}\]
The ‘boundary dispute’ between Tuhoe and Ngati Kahungunu – ‘classic debatable lands’?

Our comments on this hui focus in particular on the light it sheds on the so-called ‘boundary dispute’ between Tuhoe and Ngati Kahungunu. (We do not refer specifically here to Ngati Ruapani because they were seldom mentioned in the sources separately before 1875; but we do not assume from this that they did not play a role in discussions at this time. They are referred to by name at the 1875 Wairoa hui, and in the purchase deed of November 1875. The generally used Government term was ‘the Urewera’, and we assume from the contexts in which it was used in 1875 that the term included Ngati Ruapani.) As we have seen, the Crown had a range of motives for opting to begin purchasing the blocks in late 1874. But the boundary issue was high on its list, and it was the primary issue for discussion at the Wairoa hui. The korero at the hui is crucial because of the importance that the boundary issue assumed – both then, and subsequently. It underlay a general view held by officials that the dispute between ‘the Urewera’ and Ngati Kahungunu was insoluble. It has often been assumed that the ‘boundary’ was a long-disputed one.

We think it is important, however, to consider the debates at the Wairoa hui in the broader historical context. We referred in chapter 2 to the important evidence of Young and Belgrave. Though their focus was the customary rights of Ngati Kahungunu, they also discussed the relationship between Tuhoe and Ngati Kahungunu. As we have seen, they couched their overall argument in terms of what they called ‘classic debatable land’: land that had been subject to contestation over many generations between two powerful competing iwi – each of whom asserted absolute and exclusive claims. ‘Classic debatable land could never be conquered, either in reality or in narrative.’ The long history of military conflict and resolution between the two iwi continued into the colonial period, where these competing histories informed the nature of the claims argued in fora such as the Native Land Court. Such claims were not just disputed; rather, each iwi completely rejected the claims of the other. Iwi and hapu asserted tribal boundaries: these boundaries were not a line cut in the ground, but rather a ‘negotiated space’ which reflected generations of debate between the iwi. Over time, layers of different boundaries formed which reflected the essential nature of classic debatable land. The ‘essence of custom’, they argued, was an ongoing relationship: thus it was impossible to find a final or ‘correct’ narrative. In reality, groups had rights to use and occupy classic debatable lands, but use-rights were subject to change and occupation was often marginal. In reply to a Tribunal question, Professor Belgrave stated that classic debatable lands was ‘not incompatible’ with Professor Mead’s ‘whenua tautohetohe’, or the concept of a buffer zone, similar to a ‘no man’s land’. The Waikaremoana lands, Young and Belgrave said, were ‘classic debat-
able lands’: disputed between Tuhoe and Ngati Kahungunu over a long period, from traditional times up to 1840, through the Wairoa hui and the Native Land Court hearing in 1875, and on to later fora such as the Urewera commission and the appellate court.  

7.5.4.4.2 EARLY CONFLICT IN THE SOUTHERN LANDS

Although the concept of ‘classic debatable lands’ may be applicable to other areas in New Zealand, we are not convinced that it applies to the Waikaremoana lands.  

We do not think Young and Belgrave have shown that conflict between Tuhoe and Ngati Kahungunu was endemic over generations, or that the debates at Wairoa were a simple continuation of traditional disputes. Though the evidence they cite is full of accounts of hostilities, the great majority of their examples come from the 1820s. They come, in other words, from a period when there was dramatic conflict in many parts of New Zealand; when large scale taua, some multi-iwi, ranged over great distances, often armed with muskets. As elsewhere in Aotearoa this involved taua both from neighbouring iwi and from distant parts. Utu was exacted for recent or for long-unavenged injuries; many captives might be taken (to expand the labour pools of those who were victorious, and thus their capacity to trade); on occasion, new coastal bases were established for the same purpose.  

The examples cited by Young and Belgrave – reflecting the examples given by Tuhoe and Ngati Kahungunu speakers in fora from the Wairoa hui of 1875 onwards – focus on a series of conflicts which are known to have occurred over a decade from 1819. Our analysis of the battles recorded by Elsdon Best and Thomas Lambert from the oral traditions relayed to them reveals that over 30 battles took place in this period in which Tuhoe and Ngati Kahungunu fought on opposing sides. We refer readers to the sidebar over detailing some of these battles, both as described by speakers at the Wairoa hui and other fora, and as later recorded and dated by Best and Lambert.  

Although speakers may have disagreed about the details of the battles, and particularly who emerged as victor, it is clear that the battles they spoke of occurred in one somewhat narrowly defined period, rather than across generations. In our view, therefore, these hostilities may be seen less as an episode in a long-continued conflict between two iwi, and more as part of a pattern of widespread upheaval across Te Urewera in the early nineteenth century.  

This regional conflict was brought to an end by the tatau pounamu negotiated between Tuhoe and Ngati Kahungunu, dated variously at 1828 and 1830. The tatau pounamu, as we noted in chapter 2, involved the selection of two maunga (Kuha-Tarewa and Turi-o-Kahu) as symbols of the peace. This provided for the restoration of balance in relationships so that the iwi could resume normal interactions with one another, and normal exercise of rights to land. A tatau pounamu
Was there Intergenerational Conflict between Tuhoe and Ngati Kahungunu?

Elsdon Best and Thomas Lambert record some 33 battles between Tuhoe and Ngati Kahungunu that occurred between 1819 and 1828 or 1830. The first battle appears to have been in 1819, following an apparent insult when the Ngati Kahungunu chief Te-Kahu-o-te-Rangi did not receive a gift of preserved birds, which he had expected. This incident led to a series of reprisals on both sides.1

At around the same time, a series of conflicts occurred in the Te Papuni region, which followed the killing of Mahia by Whakatohea and the breaking of a rahui placed on the region by Mihikitekapua. We have detailed these events, which resulted in several battles between Ngati Kahungunu and Tuhoe, in chapter 2. Tutakangahau referred to these conflicts at the 1875 Wairoa hui and again before the Urewera commission in 1901, and they were later recorded by Best, who dated the first round of battles in the Te Papuni region at 1819 and 1820.2

Conflict appears to have intensified around 1824. At the 1875 Wairoa hui and in the Native Land Court, some speakers located the origins of the conflict between Tuhoe and Ngati Kahungunu in events from this time. Speakers referred to the killing of Toroa – a Waikato tohunga – and battles that ensued. Tutakangahau stated at the Wairoa hui that ‘warfare became initiated among us’ in consequence of the murder of a woman, involving Waikato who sought vengeance. ‘One war brought another until we found ourselves embroiled with Ngati Kahungunu.’ Tutakangahau described the battle at the pa Te Rahui-a-Mahia (presumably named after the earlier battles) as an outcome of these events. Best dates Te Rahui-a-Mahia as occurring in 1824.3

Tamihana Huata gave a Ngati Kahungunu perspective on these events in the 1875 land court hearing: ‘Formerly the Urewera and Kahungunu lived on peaceful terms, latterly they quarrelled. The fights occurred principally in the days of our fathers, the cause was murder. Ngatikahungunu committed the murder. Toroa was killed he belonged to the north, fighting then commenced about the land, and continued till the time of the quarrel with the Mohaka people, about three generations ago. We have fought all over the inland part of this country as far as Huiarau, and Maungapohatu. Peace was made before the Missionaries arrived.’ Best explains that Toroa and a party of Tuhoe followers were killed by Ngati Kahungunu.

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3. ‘Notes of a Meeting Held at Wairoa on 29 October 1875’, 17 December 1875, AJHR, 1876, G-1A, p 7; Best, *Tuhoe*, vol 1, pp 484–487
at Orangiamoa (in the valley of the Waikaretaheke River) in 1824. Tuhoe launched a series of reprisal attacks, including the battle at Te Rahui-a-Mahia.\footnote{4}

Although these battles do not appear to have marked the beginning of the broader series of conflicts between Tuhoe and Ngati Kahungunu, they did mark a watershed in the hostilities. Their significance in oral tradition (as recorded in the korero of Tutakangahau and Tamihana Huata) might be explained by what followed. It was after the death of Toroa, and the resulting intensification of fighting, that Tuhoe sought alliances with several tribes (notably Ngati Maru and Ngapuhi) who possessed muskets. Until this time, guns had not been a feature of the fighting. Tuhoe lacked access to coastal traders who supplied guns to other iwi in exchange for goods. But with the assistance of these tribes, Tuhoe launched attacks on Ngati Kahungunu that did not see a proper resolution until peace between the iwi was reached between 1828 and 1830 (see below).\footnote{5}

More importantly, the korero of Tutakangahau and Tamihana Huata confirm the broader point that by and large there was no sustained conflict between the tribes before this time. They were, in Huata’s words, ‘on peaceable terms’ before the ‘days of our fathers’. Hukanui Watene of Ngati Kahungunu made the same point giving evidence to the Native Land Court in 1916: ‘There was no clash between N’Kahungunu and Tuhoe about [the] lake till shortly before the advent of the Pakehas.’\footnote{6}

marked a lasting peace; it could not be broken. And though the peace may not entirely have erased the tensions that erupted in fighting over the preceding years, it did hold. Between 1828 and the arrival of Crown forces in December 1865, over 35 years passed during which Tuhoe, Ngati Ruapani, and Ngati Kahungunu had lived side by side without fighting. Hapimana Tunupaura, for example, stated (at the Waipaoa block hearing in 1889) that there was no fighting after peace had been made.\footnote{268} When tensions flared again in 1863, the considerable efforts made to defuse them were successful.\footnote{269} These decades, in our view, may be interpreted not as a lull in the inevitable and endless conflict between two large tribes, but as

\footnote{268. Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 251
a time of readjustment following an end to an unusual period of constant battles and upheaval (sometimes involving outside iwi).

**7.5.4.4.3 CUSTOMARY RIGHTS AND THE SOUTHERN LANDS**

Because of the importance placed by Maori speakers on locating a ‘tribal boundary’ – both at the 1875 Wairoa hui, and in later fora where title was investigated – we need to consider what the tatau pounamu might have meant in the context of those discussions. The tatau pounamu has been seen as establishing one type of boundary between iwi ‘in accord with the level of tolerance of the parties and their influence or mana in the area’, as Tama Nikora put it. Mr Nikora told us that although the Tuhoe and Ngati Kahungunu tatau pounamu did not constitute a boundary in the surveying sense, ‘it did most certainly signif[y] a boundary’ which both iwi acknowledged.

Tama Nikora, written answers to questions from Crown counsel, 30 March 2005 (doc H26(a)), p1

Land, and land-markers’, he said, ‘had enormous significance to Maori and the placing of a tatau pounamu in a certain place or the marrying of certain mountains was meant to have not only symbolic significance but also significance on the ground.’ This raises a broader question: how did customary rights operate in these lands, both before the tatau pounamu and after? When Maori at the Wairoa hui and in later title inquiries spoke of other ‘boundary points’, what did they mean and what was the significance of such boundary points in relation to the exercise of customary rights?

In various fora, from the time of the Wairoa hui, speakers often revealed how rights operated on the ground in the Waikaremoana region. When not presenting evidence in support of a regional claim on behalf of their iwi, which in these late nineteenth century title inquiries inevitably featured assertions of ‘tribal boundaries’, kaumatua spoke about how rights operated as between hapu. They might well acknowledge the rights of those they seemingly opposed when broader tribal rights were debated. Such acknowledgements challenge the accepted view of tribal communities who were at loggerheads with one another. Instead, the evidence suggests that, on the ground, communities constantly negotiated their rights with one another in the normal course of events. Although this evidence, as Young and Belgrave acknowledge, was likely to have reflected the impact on regional occupation of the conflicts with Crown forces that occurred from 1865 to 1866 and then again from 1869 to 1871, it still vividly portrays customary rights in action.

Generations of settlement and the exercise of authority over resources built up a pattern of rights in the land south of Waikaremoana – the land that was later designated as the four southern blocks. Speakers before the land court referred to settlement and cultivation in particular locations within these lands. Ngati Kahungunu witnesses before the court in 1875, for example, identified quite different places of residence and cultivation in the Tukurangi block from the Tuhoe and

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270. Tama Nikora, written answers to questions from Crown counsel, 30 March 2005 (doc H26(a)), p1

271. Nikora, written answers (doc H26(a)), p2
Ngati Ruapani witnesses.\(^{272}\) The specificity of this evidence suggests land that was intimately known. Tuhoe and Ngati Ruapani place names tended to be towards the north and west, whereas Ngati Kahungunu names were towards the south and east. This suggests that, within the blocks, different rights were acknowledged in different areas. Tamihana Huata, for example, acknowledged the place of the ‘Urewera’ on the southern shores of Lake Waikaremoana (at the pa ‘Tukutuku o te Heihei’ and in cultivations from Kuha back to the lake), even though he denied their exclusive claim to the Ruakituri block.\(^{273}\) And even allowing for the steep terrain of the land south of Waikaremoana, it is remarkable that the places where different rights were recognised might be only a matter of a few kilometres apart.

Some places, such as Te Papuni in the Ruakituri block, were common hubs of activity – central locales that were the meeting points between hapu. The acknowledged rangatira of the region, Wi Tipuna, who spoke for Ngati Kahungunu but who also had kin links to Tuhoe, revealed as much at the Ruakituri block hearing. Despite the adversarial setting of the court, he stated that he had seen ‘some of Te Urewera there at Te Papuni, not as a tribe but [as] individuals’\(^{274}\) Although Wi Tipuna may have considered Te Papuni as primarily a place of residence for Ngati Kahungunu, it accommodated whanau from a range of iwi. And although the lands south of Waikaremoana may not have been as heavily settled as others in the region, they were certainly the homes of several communities who moved seasonally between resources but who also maintained several central areas of settlement. These places could be found on the southern shores of Lake Waikaremoana (in the area around Onepoto); in the south of the Tukurangi block near the maunga Tukurangi; in the upper reaches of the Mangaaruhe River (around Ohiwa and Whataroa); and further to the east on the Ruakituri River (where Erepeti, Te Papuni, and Te Reinga were located). The communities accessed the resources they needed, which seem to have been located throughout the blocks, from these main areas of settlement. (We consider the types of resources available to them later in this chapter).

This pattern of settlement and resource use can be explained by the nature of kinship-affiliation and the extent of intermarriage among kin groups over successive generations. Wi Tipuna himself was a product of this history. His grandmother was the famous Tuhoe leader Mihikitekapua. But his primary affiliations, according to the East Coast leader Wi Pere, were with the hapu Ngati Hingaanga, Ngati Hinemanuhiri, and Ngai Tapuae.\(^{275}\) Wi Hautaruke – who was born at

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\(^{272}\) For Ngati Kahungunu, see evidence of Ihakara Tuatar, Hapimana Tunupaura, Toha Rahurahu, and Kiri Paura. The kainga and cultivations they identified included: Pikaungaehe, Whatarangi, Ahi Kuha Kuha, Mangamaukau, and Kahotea. For Tuhoe and Ngati Ruapani, see evidence of Hori Wharerangi and Tamarau Te Makarini. They identified Te Reinga o Whero, Whekenui, and Mekenui as specific places within the block, along with other areas of cultivation described in general terms: Napier Native Land Court, minute book 4, 4 November 1875, fol 74–78.

\(^{273}\) Napier Native Land Court, minute book 4, 5 November 1875, fol 82

\(^{274}\) Ibid, fol 83

\(^{275}\) Young and Belgrave, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), p 55
Waikaremoana, and who identified himself in 1875 as belonging to ‘the Urewera’ – was another rangatira with wide-ranging kin links. Hautaruke was Tipuna’s cousin – even though they spoke on opposing sides at the 1875 Wairoa hui and in the land court. Hapi Tukahara of Ngati Ruapani (who was related to both Tunupaura and Wi Tipuna) told the court that Hautaruke’s ‘mother belonged to Heretaunga and his father to the Uriwersas.’ In the context of the Waipaoa block hearing, Tuhi and Hautaruke were adversaries – arguing the respective cases on behalf of the iwi of their primary affiliation. Paora Kingi, similarly, was a significant Tuhoe leader; but Wi Pere also claimed him as a leader of Ngati Hinaanga. Te Waru Tamatea was another notable leader with multiple lines of descent. He was one of the principal leaders of upper Wairoa Ngati Kahungunu over a long period before his exile to Waiotahe, but he also had Tuhoe whakapapa through his father’s side. These individuals were key cultural mediators and negotiators of customary rights. Affiliations went both ways: Tuhoe could be found at Te Papuni as Ngati Kahungunu could be found at Maungapohatu. Evidence suggests that many Ngati Kahungunu were buried at Maungapohatu; many Tuhoe were also buried at Te Papuni. And this pattern of intermarriage appears to have been established before the major conflicts of the 1820s. As the Tuawahenua report explains, Mahia (the father of Wi Tipuna) had been raised to be a leader of both Tamakaimoana and Ngati Hingaanga.

Leaders such as these, whose whakapapa connected them to many hapu, were crucial to the patterns of customary rights in the region. As we explained in chapter 2, rights to land and resources were held at hapu level. Speakers appearing in the court sometimes discussed their rights in relation to specific hapu, often referring to particular areas, and to ancestors from whom they drew their tribal identity and their rights. Tamihana Huata, for example, gave evidence on places occupied in the Ruakituri block by the hapu Ngati Hinaanga, Ngati Tamaiourarangi, Ngati Poa, and Ngati Kohatu. Each, he said, had its own ancestor. Although some hapu were primarily associated with one iwi, the extent of intermarriage in these border areas meant that there were others that identified with more than one iwi. For example, Hapimana Tunupaura was recorded as saying of Ngati Hika that ‘part belonged to Uriwera side & part to our side.’

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276. Wairoa Native Land Court, minute book 3B, 1 April 1889, fol 108; Napier Native Land Court, minute book 4, 5 November 1875, fol 79
277. Young and Belgrave, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), p 68
278. Wairoa Native Land Court, minute book 3B, 12 April 1889, fol 149 (Young and Belgrave, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), p 69)
281. Tuawahenua Research Team, ‘Te Manawa o Te Ika, Part 1’ (doc B4(a)), p 115
282. Napier Native Land Court, minute book 4, 5 November 1875, fols 80–81 (Young and Belgrave, ‘Customary Rights and the Waikaremoana lands’ (doc A129), p 44)
283. Wairoa Native Land Court, minute book 3A, 8 March 1889, fol 386 (Young and Belgrave, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 122)
In this context, we return to the concept of ‘boundaries’. Speakers at the Wairoa hui and other fora spoke of particular boundary points established by their ancestors, which also established the rights of the tribe in the land. These points were often advanced as part of a larger ‘tribal boundary’. Hurae Puketapu stated before a later commission that an ‘ancient boundary’ had traversed the western side of Lake Waikaremoana and north to the Huiaarau Ranges. He noted that since that time long ago, new ancestral rights had been established through the acts of various tupuna (Pakatoe, Hinewhao, and Pukehrere).\(^{284}\)

The term used for these points was ‘pou’ – translated in court minutes as ‘posts’. Often, more than one pou was set up by an ancestor, or several ancestors. Thus, rights could be established across a broad extent of land, and across successive generations. Hori Wharerangi, in response to Wi Pere’s assertion that a tribal boundary between Tuhoe and Ngati Kahungunu ran along the Huiaarau Range, stated that the tupuna had only ever set down specific points, not a continuous boundary; and that these points were named for a variety of purposes, such as to warn off war parties and to mark special events.\(^{285}\) Pou rahui, which warned against the use of resources in particular areas and at particular times, were assertions of rights by the group who placed them. The breaking of rahui might well trigger retaliation. This occurred in the southern lands in the 1810s, with tragic consequences, when a rahui set by Mihikitekapua, following the death of her son, was broken by Ngati Hinaanga. In other words, these pou denoted specific rights, at specific times. Pou could also be renewed by a descendant of the original ancestor, as one witness before the second Urewera commission explained.\(^{286}\)

Conflict, however, was the exception, not the norm. Within Maori communities, relationships were sustained through whakapapa, and discussions and understanding of one another’s rights. In times of peace, they negotiated their rights in potentially disputed areas, including the use of resources, and the rules for their use. Our point is not that there was no concept of tribal boundaries in customary terms. In the land court era of surveys and blocks, the term ‘boundaries’ masked the operation of rights in border areas at hapu level. But in customary terms, boundaries, or rohe, could never be strictly defined or located on the ground. Rohe were indicators of a tribe’s understanding of the extent of its rights. But in this context, tatau pounamu may be seen as such a boundary, indicating a separating space. To this extent we accept Mr Nikora’s assessment about its having significance on the ground. But the Tuhoe and Ngati Kahungunu tatau pounamu, it seems to us, was more about the restitution of relationships – as symbolised in the marriage of the mountains and reinforced by a series of chiefly marriages. It certainly did not create a no man’s land where people feared to tread. Following the tatau pounamu, communities were able to resume their normal exercise of

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\(^{284}\) Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 318

\(^{285}\) Ibid, p 324

\(^{286}\) See the evidence of Hori Wharerangi, summarised in Young and Belgrave, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), p 116.
rights to the land. This had to be carried out with due regard to other communities of the region, with the appropriate acknowledgements of those communities’ areas of occupation.

The evidence before us leads to several clear conclusions about the operation of customary rights in the lands to the immediate south and east of Lake Waikaremoana, both before and after the tatau pounamu. The tatau pounamu both restored relationships between the iwi, and also marked the emergence of a new set of relationships among the various communities in relation to these lands. This was undoubtedly a border region between two large iwi, with the added presence of another strong and distinctive tribal group, Ngati Ruapani. Each had known areas of settlement and cultivation within the southern Waikaremoana lands. But there were also shared areas, where rights to resources were mediated. Many of these points were acknowledged by Young and Belgrave in their evidence. They underlined the importance of ‘complex relationships between different kinship groups within the three tribes [Ngati Kahungunu, Tuhoe, and Ngati Ruapani] which arose out of interaction over land’\(^\text{287}\). They acknowledged the importance of relationships, and their complexity in practice: ‘Maori customary rights to land were fundamentally about relationships: how people interacted with each other over access to resources and land’.\(^\text{288}\) Even between two large tribes ‘there would exist groups whose level of intermarriage would have for some purposes promoted an association with Tuhoe and for others with Ngati Kahungunu.’\(^\text{289}\) In other words, relationships on the ground – and at hapu level – were dynamic, and were influenced by changing circumstances in successive generations. Consequently, they said, it was ‘impossible to establish clear boundaries between different kinship groups on land because their interests were shared and overlapping based on occupation, use rights and whakapapa.’\(^\text{290}\)

But Belgrave and Young, in our view, while acknowledging dynamic relationships on the ground, did not show how this was consistent with their argument that Waikaremoana land was largely uninhabited as a consequence of its being a border region between two iwi. They argued that one of the characteristics of ‘classic debatable land’ was sparse occupation:

People had rights to use and occupy classic debatable land, but those use-rights were always subject to change as the relationship between two tribal groups developed through a regular and constant cycle of conflict, peace-making, and intermarriage. However, occupation was often marginal for these very reasons and this is another important characteristic of classic debatable land.\(^\text{291}\)

\(^\text{287.\ Young \ and \ Belgrave, \ ‘Customary \ Rights \ and \ the \ Waikaremoana \ Lands’ \ (doc A129), \ p \ 203}\)
\(^\text{288.\ Michael \ Belgrave \ and \ Grant \ Young, \ summary \ of \ ‘Customary \ Rights \ and \ the \ Waikaremoana \ Lands’, \ November \ 2004 \ (doc \ 12), \ p \ 5}\)
\(^\text{289.\ Ibid, \ p \ 15}\)
\(^\text{290.\ Michael \ Belgrave, \ Grant \ Young, \ and \ Anna \ Deason, \ answers \ to \ questions \ of \ clarification \ from \ counsel, \ November \ 2004 \ (doc \ 123), \ p \ 20}\)
\(^\text{291.\ Young \ and \ Belgrave, \ ‘Customary \ Rights \ and \ the \ Waikaremoana \ Lands’ \ (doc A129), \ p \ 21}\)
The ‘vast majority’ of kinship groups found it difficult to demonstrate ‘regular and constant occupation’.

We infer from this that customary rights in these lands were less significant compared with other regions because of the nature of occupation. Young and Belgrave qualified their argument, stating first that not all of the Waikaremoana lands (including land to the north, east, and west of the lake) were ‘classic debatable lands’, and secondly that hapu still ‘had rights to areas through occupation that gave them a superior claim to others, despite the exclusive claims and competing narratives over tribal boundaries’. But they appear to have made their comment on the sparse occupation of ‘classic debatable lands’ with the four southern blocks lands in mind. This picture of marginal or unsupported occupation of those lands does not accord with our analysis of the evidence. Because we cannot agree that the history of the region was characterised by endless cycles of conflict and peace making, we cannot agree either that tribal ‘use rights’ were accordingly subject to constant change.

Customary rights in the lands south of Waikaremoana were established over many generations. Young and Belgrave described this in terms of ‘[l]ayers of different boundaries’. We prefer to understand the history in these regions in terms of layers of rights. If not classic debatable lands, then these were certainly what we might call classic negotiated lands. Nowhere in the four southern blocks could a clear, hard-line boundary be established. Such a boundary was not compatible with the way customary rights were understood and exercised. As Young and Belgrave acknowledge themselves, Maori customary rights to land were fundamentally about relationships.

7.5.4.4.4 THE EMERGENCE OF A TRIBAL ‘BOUNDARY DISPUTE’ IN THE WAKE OF CROWN ACTS AFFECTING WAIROA AND WAIKAREMOANA LANDS

We are left, after our discussion, with a further issue. If, as it seems to us, relations between Tuhoe and Ngati Kahungunu were not characterised over many generations by conflict, and if hard-line boundaries were not a feature of customary rights, how do we explain the kind of debates that took place at the Wairoa hui? It is our view, in light of our understanding of the history of relationships among the communities of upper Wairoa and Waikaremoana, and of Crown actions from the 1860s, that the nature of the debate at the hui – and in particular the emphasis placed on defining a boundary between the iwi – was shaped by more recent events. Of most importance were the boundaries that had recently been laid down in the region: namely, the Te Hatepe deed and Locke deed boundaries. These boundaries, and their implications for customary rights, had created continuing concerns among the iwi about those rights. This was particularly the case after the Locke deed’s extension into the southern Waikaremoana lands. These concerns

292. Ibid, p 91
293. Belgrave and Young, summary of ‘Customary Rights and the Waikaremoana Lands’ (doc 12), p 6
294. Ibid, p 5
295. Ibid, p 21
placed immense pressure on the tatau pounamu. Developments from 1865 seem to us to underline the fact that the so-called ‘boundary dispute’ between Tuhoe and Ngati Kahungunu emerged in the form it did because of recent events, rather than reflecting cyclical traditional disputes over rights to the Waikaremoana lands.

We point first to Tuhoe and Ngati Kahungunu discussions in the wake of the 1865–66 conflict and the Te Hatepe deed about the impact of war and the arrangements made with the Crown. Leaders from both iwi considered how recent events might impact on their respective rights. In November 1867, the Tuhoe leader Paerau Te Rangiwaitaupeke travelled to Napier to make peace with Donald McLean. Although the Government rejected these overtures (see chapter 5), it appears that Tuhoe and Ngati Kahungunu conducted their own discussions at this time about the impact of the Te Hatepe deed. As Tamihana Huata explained in 1875, Ngati Kahungunu assured Tuhoe that the Te Hatepe agreement did not affect Tuhoe customary interests:

> after the fight at Kopani, and when a proclamation of peace was issued, then it was that you, the Urewera, travelled through the country to Mangapapa on your way to Napier. At a meeting held subsequently thereto, Paerau Te Rangi went to Whenuanui and said to him that Ngatikahungunu could retain the confiscated land, and give back to him (Paerau) the land that was not seized. To this I assented, but no further action was taken.  

Mangapapa, as Tama Nikora told us, is directly between the maunga Kuha-Tarewa and Turi-o-Kahu – and therefore was of great significance in terms of the 1828 tatau pounamu. It was also located very close to the north-western border of the Te Hatepe deed area. Eria Raukura later (in 1915) referred to the agreement between Tuhoe and Ngati Kahungunu, which he said was made in the presence of McLean in 1867, where they agreed to a ‘boundary’ between the tribes. But Huata added that a meeting was held subsequently at Onepoto and the arrangements that were formerly agreed to were annulled: ‘The subject devolved upon the Government, for among ourselves we evinced no ability to satisfactorily dispose of the difficulty, even when we sought to abide by our own ancient customs.’

It seems to us that, given his reference to Government involvement, Huata probably meant the Locke deed arrangements. Paerau appears to have mentioned the agreement between the iwi leaders again after the signing of the Locke deed. Te Makarini wrote at that time to the Wairoa chiefs – Tamihana Huata, Hapimana Tunupaura, and Paora Te Apatu – stating that Paerau was ‘coming to turn away these Europeans through Mr Locke's and your talk.’ And to Armed Constabulary Inspector Cumming at Onepoto, Te Makarini wrote:

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296. ‘Notes of Meeting at Wairoa on 29 October 1875’, 17 December 1875, AJHR, 1876, G-1A, p 2
297. Nikora, written answers (doc H26(a)), p 2
298. Young and Belgrave, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), pp 158–159
299. ‘Notes of Meeting at Wairoa on 29 October 1875’, 17 December 1875, AJHR, 1876, G-1A, p 2
300. Te Makarini to Tamihana Huata, Hapimana Tunupaura, and Paora Apatu, 13 September 1872 (Binney, additional supporting papers for ‘Encircled Lands’ (doc A12(b)), p 371)
He kupu ke tenei e ra a Paerau e haere mai ki wai kare nei te take he peki i nga pakeha nei mo te kore a Raka. Te kupu a paerau he rohe ano kei roto o wai kare taheke puta atu ki ona wahi katoa me tuku ano atua nei o te rohe kia hau atu ana o te rohe kia kahu.\textsuperscript{301}

Here is another word. Paerau is coming to Waikaremoana to turn away the Europeans because of Mr Locke's talk. Paerau's word is that there is a boundary line at Waikaretaheke extending to all is [sic] parts this side of the boundary is to be turned over to me the other side to Kahu[ngunu].\textsuperscript{302}

The so-called 'boundary line' was not the Waikaretaheke River itself – which at that point had become the dividing line between the Tukurangi and Taramarama blocks – but rather cut through the Waikaretaheke and across the southern land. Thus Paerau seems to have been referring to the boundary line that was the north-western border of the 'Te Hatepe deed area. This 'boundary' also seems to have informed the Te Whitu Tekau boundary laid down at this time. As given in 1872, the southern Te Whitu Tekau boundary named pou rahi at Nga Tapa; Kahotea (a point on the junction of the Waihi Stream and the Waiau River); the maunga Tukurangi; and Te Ahu-o-te Atua (to the south of Whataroa, near the Mangaaruhe River).\textsuperscript{303} It thus was very near Mangapapa.

When he replied to Paerau on this occasion, Te Huata also referred to their earlier agreement. And he stated that the 'confiscated lands taken by the Government are returned' (reflecting Maori understandings of the Locke deed, and the 'return' of 'confiscated lands'):

Friend I am not objecting to the claim of the Urewera here as I told you at Matiti and I was quite clear about it. There was no particular rule to be adopted. The only thing was we were all Maoris or our being Maoris together and we were united as one. Our bodies were one and therefore ours and Ureweras claims is clear. All I have to say to you.\textsuperscript{304}

These letters, and the tribal discussions they referred to, show tribal leaders struggling to deal according to tikanga with the impact on their respective rights – of Government acts – and boundaries, which had introduced difficult new factors into the equation.

The growing tensions between Tuhoe and Ngati Kahungunu must be understood above all in the context of the Crown's assertion of authority over the lands extending to Lake Waikaremoana and Locke's statement of the 'government boundary' in 1872, his laying down of the boundaries of the Government blocks,

\textsuperscript{301} Te Makarini to Cumming, 13 September 1872 (Binney, additional supporting papers for 'Encircled Lands' (doc A12(b)), p 337)
\textsuperscript{302} Ibid, pp 372–373
\textsuperscript{303} Binney, 'Encircled Lands, Part 1' (doc A12), pp 273–277, 393
\textsuperscript{304} Tamihana Huata to Paerau and Te Whenuanui, 27 September 1872 (Gillingham, supporting papers to 'Maori of the Wairoa District' (doc 15(a)), pp 793–794)
and his record of (incomplete) lists of owners, for those blocks. Counsel for Wai 621 Ngati Kahungunu pointed out to us that Tuhoe and Ngati Kahungunu were thus put together in large blocks, whose boundaries were natural features rather than tribal boundaries.\textsuperscript{305} We accept his general point that tribal rights in these lands were complex and layered, and that Locke's proceedings, asserting – out of the blue – the right to draw boundaries through the southern Waikaremoana lands, as well as the Government's involvement in deciding owners, made things very difficult for all those with rights there – particularly because the recent fighting had shattered normal patterns of settlement and the exercise of rights.

The Crown, however, oblivious to the impact of its own intrusions into the district, saw this as a traditional dispute that could only be resolved by drawing a line on the ground between the iwi. As we have seen, this began with Ferris' comments on a hui at Waikaremoana in November 1873, where Tuhoe had complained about the Tukurangi and Taramarama block leases. This filtered back to McLean, who told an assembly of Ngati Kahungunu chiefs in November 1873 that '[t]here is one question which ought to be settled, that is, the boundary between you and the Urewera; it ought to be done, if possible, this summer.'\textsuperscript{306} He appointed the rangatira Tareha Te Moananui to assist (as he had on other occasions), evidently hoping that this would expedite matters. Te Moananui did attend hui with the Wairoa and Urewera leaders, with Locke – which were reported to have started off well.\textsuperscript{307} But Tuhoe concerns remained, and in July 1874 Ferris reported that Tuhoe were bitter against Ngati Kahungunu and were 'anxious that the boundaries should be adjudicated as speedily as possible.'\textsuperscript{308} In November 1874, the memorandum outlining the Government's reasons to begin purchasing the blocks stated that there was a 'feeling of irritation on account of the undefined state of the boundary between the Uriwera [sic] and the Wairoa natives.'\textsuperscript{309} This culminated in the Wairoa hui of late 1875, where the official stated purpose was to settle the 'disputed boundary'.

Over this period, then, the inter-tribal boundary was constantly referred to. In these circumstances, it does not seem surprising that at the instigation of Crown officials Tuhoe and Ngati Kahungunu leaders dealt with the escalating tribal tensions by calling for the definition of a strict, straight-line iwi boundary – like the Crown boundaries defined in the Te Hatepe and Locke deeds. By the time of the Wairoa hui, the discussions between the iwi leaders revolved around settling a boundary between the iwi. Kereru Te Pukenui picked up this theme at the hui, calling for a boundary to be laid down: 'We desire the line dividing the land of the Urewera from that of Ngatikahungunu being clearly laid down.' He then immediately stated his objection to the purchase of land beyond Mangapapa, because this was his (Tuhoe) land. Hori Wharerangi of Tuhoe, giving the reasons why Tuhoe had applied to the land court to have the title settled, stated: 'first on account of

\begin{itemize}
\item \textsuperscript{305} Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc n1), p 46
\item \textsuperscript{306} 'Notes of Native Meetings', 29 November 1873, AJHR, 1874, G-1, p 2
\item \textsuperscript{307} Locke to McLean, 30 January 1874, ms-papers-0032–0090, Alexander Turnbull Library
\item \textsuperscript{308} O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), p 115
\end{itemize}
the Government boundary, then on account of the Ngatikahungunu boundary, and furthermore owing to the boundary which we, Tuhoe, had ourselves laid down. These statements were also influenced by a Tuhoe concern that Ngati Kahungunu leaders who ‘occupy the country towards the coast’ (doubtless a reference to chiefs like Whaanga who had signed the Locke deed – with its promise of land – on the basis of their assistance to the Crown), were becoming involved in land matters at Waikaremoana, where Tuhoe regarded them as having no rights. Ngati Kahungunu, on the other hand, reacted to such concerns by asserting that the tribe was one, and that ‘all have the same right’.

The result was that both sides began discussing their rights in increasingly stark terms. Tuhoe set the southernmost point of their ‘tribal boundary’ at Mangapapa. Marr pointed to the later evidence of Hurae Puketapu of Ngati Ruapani and Tuhoe (given before the Barclay commission in 1907) about a hui held at Mataatua marae in Ruatahuna where in 1874 where possible Tuhoe and Ngati Ruapani boundaries were discussed. Some Ngati Kahungunu chiefs were also present. It was decided then, according to Marr, that Tuhoe would establish a southern boundary taking in their interests in the northern part of the blocks. This was designed to protect all land within this boundary from being sold or surveyed so that “mana Maori” should continue within it.

In other words, this was a line within which Tuhoe interests fell. Speakers at the Wairoa hui asserted this tribal boundary based on ancestry and conquest, and specifically the acts of tupuna in the 1810s and 1820s. Ngati Kahungunu, similarly, bridling at their challenge, set their own line across the lake, at the Huiarau Range. This they based on ancestral rights: the travels of the tipuna Hinganga, Makoro, and Tamaterangi. In the circumstances of the time, both Ngati Kahungunu and Tuhoe were seeking recognition of a line so that their interests might be protected.

But there were also indications in the discussions of the origins of this proposal: speakers discussed their concerns about the relationship between the ‘government boundaries’ and their own rights. Te Makarini, for example, stated early in the hui that he would ‘eschew any comment on the action of the Government with regard to the boundaries fixed upon by them’. He urged the removal of Ngati Kahungunu’s boundary, and he wished to confirm his own boundary, ‘irrespective of the Government lines’.

Hapimana Tunupaia later said that ‘The government boundary is at Waikare; mine is at Huiarau’. Towards the end of the hui, the main subject for discussion moved away from the tribal ‘boundary’ to the Government’s role in the events of previous years. The Ahuriri Ngati Kahungunu leader Karaitiana Takamoana inquired about where the ‘disputed boundary’ was located. Tunupaia stated that ‘The Government defined their own boundaries when they confiscated the land.’ The concern that emerged over the ‘boundaries’

310. ‘Notes of Meeting at Wairoa on 29 October 1875’, 17 December 1875, AJHR, 1876, G-1A, pp 2–3
311. Ibid, p 3
312. Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 167
313. ‘Notes of Meeting at Wairoa’ on 29 October 1875, 17 December 1875, AJHR, 1876, G-1A, p 2
314. Ibid, p 6
315. Ibid, p 7
defined by the Government saw Locke draw the hui to a close, stating that the Government was ‘endeavouring to amicably settle the long outstanding dispute between these contending tribes that have been for generations at war’.

This was, of course, a mistaken assumption; and it obscured his and the Crown’s role in shaping the dispute.

It is because of this history of the impact on Maori understandings of Crown statements and acts in respect of the Waikaremoana lands that we cannot interpret the korero at Wairoa in 1875 as a continuation of a generations-old dispute. As we have suggested, the Waikaremoana lands were not ‘classic debatable lands’. Thus, we cannot agree that in the 1870s the Crown intervened in a generations-old dispute, as Young and Belgrave appear to argue. And we cannot agree with the Crown’s position – then and now – that such intervention in the form of Crown purchase of the rights of all owners offered Tuhoe and Ngati Kahungunu a helpful solution to an intractable dispute. Rather, the debate was shaped by tribal concerns over the north-western boundary of the Te Hatepe deed area, and knowledge of the boundaries that had been laid down for the four southern blocks. These debates remained unresolved, and we return to consider the aftermath of this in the impacts section.

In sum, the 1875 land court hearing of the four southern blocks proceeded in the wake of the Locke deed arrangements which purported – on the basis of a wrongly asserted confiscation – to mark block boundaries in the south-eastern Waikaremoana lands and decide the owners of these blocks. The lands were in fact in customary title. The majority Ngati Kahungunu listed owners then leased the lands, arousing Tuhoe anger. Tuhoe were advised by Crown agents to seek a land court hearing – which they did. Crown agents, seeing the developing tensions between Tuhoe and Ngati Kahungunu, initially sought a solution in marking a boundary between them. Iwi leaders, themselves preoccupied with securing recognition of their rights in the new circumstances of Government intervention in the lands, also turned to setting boundaries as a solution. The Crown, in the meantime, rather than waiting for the land court hearing, began to buy up Ngati Kahungunu interests, asserting that purchase would end the tribal dispute. Crown purchase, the Government asserted, was the only way forward. This was in our view a self-serving position which entirely ignored the tensions caused by the Crown’s own unwarranted intervention in delineating blocks on the southern Waikaremoana lands and purporting to confer rights on designated owners, then – once leases had been entered into by Ngati Kahungunu (to the anger of ‘the Urewera’) – buying out the leaseholders and embarking on the purchase of interests from the (very largely Ngati Kahungunu) lessors before Tuhoe had their day in court. Tuhoe, further angered, insisted on continuing with the land court hearing. Given the proceedings of Crown purchase agents, they evidently saw the court as their hope of securing a fair outcome.

We turn now to proceedings in the court.

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316. ‘Notes of a Meeting Held at Wairoa’ on 29 October 1875; 17 December 1875, AJHR, 1876, G-1A, p 8
7.5.4.5 How did the Native Land Court hearing (October–November 1875) proceed?

The hearing of the four southern blocks is one of the stranger cases in land court history. This reflected the unusual circumstances in which the cases came before the court – a product of tensions arising from Crown attempts to make good its ill-thought-out promises to ‘loyal’ Maori. The immediate outcome of the hearings was the withdrawal of Tuhoe and Ngati Ruapani from court proceedings, and the sole award of the blocks to Ngati Kahungunu, the only claimants left in court. This was hardly what Tuhoe and Ngati Ruapani had expected at the outset; they had been anxious for a full investigation of their claims. Tuhoe and Ngati Ruapani claimants argued that they withdrew from the court and sold their interests under threat of confiscation; the Crown, in contrast, argued that evidence for such a threat is limited.

What happened in court? When the parties returned after the hui, evidence was given for only two of the four blocks. From 4 to 6 November, Tuhoe and Ngati Ruapani representatives presented their claims to the Tukurangi and Ruakituri blocks. Ngati Ruapani claims were represented in the court by Hori Wharerangi, who identified himself as ‘the head man alive of Ngatiruapani’. He and Tamarau Te Makarini gave evidence of Ngati Ruapani occupation. Witnesses from a number of Ngati Kahungunu-affiliated hapu spoke as counterclaimants.

On the first day of the hearing, Wharerangi introduced the Tuhoe and Ngati Ruapani take (claim) to the Tukurangi block through ‘our ancestors and conquest’ and submitted a list of 216 owners. The list appears to have included a broad range of Ngati Ruapani and Tuhoe names; including many of the key Te Whitu Tekau rangatira. The counterclaimants outlined their cases, briefly. The following day (5 November) Hori Wharerangi presented his case, supported by Tamarau Te Makarini and two other witnesses. Their evidence also was brief, and the Ruakituri case was called on immediately afterwards. ‘The evidence of the claimants and counterclaimants continued for the rest of the day.’

On 6 November, Wi Hautaruke put in a list of 61 owners for Ruakituri, and Tutakangahau gave further brief evidence for ‘the Urewera’. At this point, the court stated that ‘the two statements made by the claimants and counter claimants were totally at variance with each other and were exceedingly contradictory’.

Privately, as O’Malley explained, Judge Rogan informed McLean – his close friend and colleague over many years – that either the ‘Urewera’ or the Wairoa people ‘lie with the effrontery unparalleled even in a Native Land Court’. This seems a rather dramatic overstatement, a result also of the judge’s being uninformed of the history of conflict in the early nineteenth century, and relationships among

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317. Napier Native Land Court, minute book 4, 4–5 November 1875, fols 65–83 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), pp 297–315)
318. Napier Native Land Court, minute book 4, 6 November 1875, fol 86 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 318)
the iwi since that time – not to mention the recent conflicts in 1865–66 and again in 1869–71, which had played havoc with established occupation. While the parties challenged one another’s occupation, particularly on the Ruakituri lands – at Erepeti, Mangaruruhe, Whataaroa, and Ohiwa – it may be concluded from other evidence given in court that rights were exercised in a number of discrete locations on the blocks; and that there was also some mutual admission of rights (as discussed above).

The case was recorded as closed. The Taramarama and Waiau blocks were then apparently called together, at which point the parties stated that their claims to the two blocks were ‘identical with the last’. This was an odd statement in itself. The Ngati Kahungunu claimants had claimed the Tukurangi and Ruakituri blocks under different ancestors; so also had Tuhoe. And while Tuhoe claimed Tukurangi through ancestry and ancestral conquest, Tutakangahau – who gave evidence for Tuhoe regarding the Ruakituri block – claimed those lands through a particular defeat of the people he called Ngati Kotore who lived at Te Papuni, and through gift from Te Mihi, who married Hikawai.\footnote{320} The basis of the Tuhoe claim to the lands in these two blocks was different (as we would expect), and it is hard to explain why the parties might have said their take to two other blocks was ‘the same’ as in Tukurangi and Ruakituri (though we might assume that the nature of their dispute over their respective rights was the same). The court nevertheless responded that there was little point in ‘going over the same evidence again’, and that because the evidence was so conflicting ‘some one’ should go over the ground. But in any case, no judgment could be given till a survey had been made and a plan put in. This raises the question why a survey had not been undertaken before the court proceeded to hearing, as required by law – given that there had been a long wait before it took place. It is true that it was not unusual for claimants to go to court with only a sketch plan, but the boundaries of the four blocks that were listed in the gazetted notice of the court hearings were so minimal that we might wonder that they had not attracted the judge’s attention. It is possible that the Tuhoe claimants were not properly advised – and that perhaps this reflected the fact that the Crown continued to hope the cases never got to court. As events turned out, as we shall see, the judge ended up issuing orders for memorials of ownership even though he had no survey plan.

We turn now to a remarkable development during the court hearing. At the end of the first day’s hearing on 4 November, the court asked Locke, as district officer, whether the land before the court was confiscated land.\footnote{321} Locke said that it was – though it had been ‘abandoned by the Government to the original owners’. As O’Malley pointed out, Locke’s reply was not consistent with what he had said at the Wairoa hui shortly before the hearing. Then he said that the land was returned to

\footnotesize{\begin{tabular}{l}
\begin{itemize}
\item[320] Napier Native Land Court, minute book 4, 6 November 1875, fol 85 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc 15(a)), p 317)
\item[321] Ibid, 4 November 1875, fol 76–77 (pp 308–309)
\end{itemize}
\end{tabular}}
those who had been loyal to the Crown; in court, he said it had been ‘abandoned . . . to the original owners’.

We assume that once he was in the land court, which could only determine customary title, he thought more carefully about his terms. But this small shift underlines the problems a land court hearing posed for the Crown.

Despite this seemingly confident statement to the court, Locke then sent a telegram to McLean. We have been unable to find a copy of Locke’s telegram, but we assume that he requested clarification of the status of the land. McLean’s reply, dated 5 November, was copied into the minute book at the end of proceedings on 8 November, and a note to that effect was made in the margin beside the relevant statement of Locke to the court in the minutes of 4 November. McLean paraphrased an opinion he had received from the Solicitor-General stating that it ‘appears these lands have never been actually confiscated’. It was also stated that the land court’s determination of the rights of the parties would be subject to the East Coast Act 1868. This was a statement of great significance. The 1868 Act had replaced ECLTIA and had continued not only the key confiscation provisions of the 1867 Act but also the schedule defining the area within which rebels’ land could be confiscated. The general assumption at the time was that all the land within the four blocks fell within the schedule to the Act. Therefore, were the land court to proceed under the 1868 Act, the land of those found to be rebels would be confiscated.

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McLean to Locke on the Status of the Four Southern Blocks

Donald McLean’s reply to Samuel Locke on the status of the four southern blocks on 5 November 1875 was as follows:

Your request about proclamation of Wairoa blocks will be duly attended to. I have taken the opinion of the Solicitor General as to the jurisdiction of Native Lands Court over the lands comprised in the Schedule to the East Coast Act 1866, subsequent Act [sic] it appears these lands have never been actually confiscated. The object of the Acts seem thereby to have been to give the Native Land Court a further jurisdiction than it possessed. In fact a sort of inquisitorial jurisdiction so that it might distinguish between the titles of local natives [?]loyal] and of those who had been in rebellion. This being so I think the NL Court [sic] has jurisdiction to inquire into the title of the lands mentioned. Such enquiry will of course determine the rights of the parties claiming the land and be subject to the East Coast Act 1868. I have given you almost verbatim the opinion of the Sol R General [sic] and will send you fuller information tomorrow.  

1. Locke’s request led to a proclamation under the Immigration and Public Works Act Amendment Act 1871, permitting the Government to negotiate valid purchases of the four blocks before an award by the Land Court, and to exclude private parties. (See text below.)
2. The word ‘loyal’ has been written above ‘local’ in another hand, with a query. It seems clear that this is what McLean meant.
3. Napier minute book 4, 5 November 1875, p 90

It is not clear when McLean’s telegram arrived at Wairoa. O’Malley says 5 November – which was certainly when it was dated. 323 Given, however, that Locke’s telegram may not have been received in Wellington till 5 November and that McLean then referred it to the Solicitor-General, it may have been 6 November before his own reply was delivered. The minutes do not state that McLean’s telegram was read out in court. We note, however, that it was on 6 November that the parties showed a lack of interest in giving further evidence on the two blocks that had not yet been heard, and the court stated that ‘it was needless going over the same evidence again.’ On Monday 8 November, the court went on with other cases.

On 12 November, a week after the court had adjourned the hearing, Wi Hautaruke and Te Wakaunua reappeared in court and stated that they had
withdrawn ‘on the part of Te Urewera’ their claims to all four blocks; ‘we have arranged our disputes with Ngati Kahungunu.’\textsuperscript{324} Immediately afterwards, Toha Rahurahu of Kahungunu applied for court orders in favour of the named owners, and put in lists of names for all four blocks. He gave 10 names for Waiau, 10 for Tukurangi, 13 for Taramarama, and 23 for Ruakituri. The judge issued no judgment, but ordered memorials of ownership to issue for all four blocks ‘as per lists above written’; then adjourned until the survey should be completed, for later subdivision.\textsuperscript{325} We note that there were a number of differences in the names given, in each case, from those recorded in the Locke deed block lists. In both the Native Land Court list and the Locke list, most names were given for Ruakituri. But the land court lists were generally short, and we assume that, as happened elsewhere, this was done to ease the completion of the purchase process. On the same day that Tuhoe and Ngati Ruapani withdrew their claims to the court, they sold their rights and interests to the Crown.

\textbf{7.5.4.6 How did the Crown complete its purchases of the blocks?}

The Crown completed its purchase of the blocks through a number of transactions. From the Crown’s point of view, the main transaction was with those Ngati Kahungunu who were found to be owners by the Native Land Court. But because of the unique circumstances surrounding the origins and purchase of the blocks – beginning with the Te Hatepe and Locke deeds – the Crown also had to follow a number of steps before it could acquire title. It had to extinguish the rights of groups other than those listed on the memorials of ownership who were considered to have ‘interests’ in the blocks. As it turned out, this meant three separate transactions with Maori and one with the group of lessees of the Tukurangi block whose interests had not been fully extinguished at the point of sale. The reserves specified in the deeds of purchase then had to be surveyed. The final step was to declare the blocks ‘waste lands’ of the Crown. A chronology of these steps is as follows:

- On 12 November, the same day that the ‘Urewera’ claim was withdrawn from court, a deed of sale was drawn up, by which the ‘Chiefs and people of the tribes of Tuhoe, Urewera, Ngati Ruapani and of those people related to the Urewera tribe, who appeared as claimants before the Native Land Court’ sold to the Crown all their ‘right, title and interest in all of the said lands’ – that is in all four blocks. Waiau was estimated at 38,000 acres, Tukurangi at 37,000 acres, Taramarama at 30,000 acres, and Ruakituri at 52,000 acres, making a total estimate of 157,000 acres. The vendors were to be paid £1,250, and they were promised a reserve of 2,500 acres (see the sidebar on page 689). The signatories (some 60 in all) were headed by Hetaraka Te Wakaunua, Kereru

\textsuperscript{324} Napier Native Land Court, minute book 4, 12 November 1875, fol 94 (Gillingham, supporting papers to ‘Maori of the Wairoa District’ (doc I5(a)), p 319)

\textsuperscript{325} Ibid, fols 94–96 (pp 319–321)
Te Pukenui, Tamarau Te Makarini, Tamihana Rangiaho, Wi Hautaruke, Te Whenuanui, Teihana, and Te Kauru.\footnote{326}

On 17 November, the Ngati Kahungunu owners listed on the memorials of ownership signed four separate deeds of conveyance – one for each of the blocks – to the Crown for a total of £9,700.\footnote{327} To the Crown, these were the key transactions in the transfer of ownership of the blocks. They conveyed the Taramarama block (some 30,000 acres) for £2,400, excepting a number of named reserves amounting to 1,700 acres\footnote{328}; the Tukurangi block (some 37,000 acres) for £2,350,\footnote{329} excepting 3,800 acres of reserves; the Ruakituri block (some 52,000 acres) for £2,600, excepting 2,920 acres of reserves;\footnote{330} and the Waiau block (some 38,000 acres) for £2,350.\footnote{331} In each block except Waiau, the reserves were individually named, and the acreage of each given.

On 15 January 1876, the Ngati Kahungunu chiefs Ihaka Whaanga, Hamana Tiakiwai, Karauria, and some 440 others entered into a memorandum of an agreement ‘for, and on behalf of their respective Hapus’ with the Queen, by which they conveyed ‘all their right, title and Interest’ in the Waiau, Tukurangi, Taramarama, and Ruakituri blocks, and agreed ‘to release Her Majesty the Queen from any further Claims for services rendered during the Rebellion’ from 1865 to 1876. They received £1,500. Only one of these signatories (Maraki Kohea) was listed in the court memorials of ownership for the blocks. Those who put their name to the agreement were grouped by hapu or by their main settlement.\footnote{332}

In mid-August 1877, Te Waru Tamatea and his people negotiated with George Preece to sell their interests in the blocks. The circumstances of these negotiations are explained below. The document formalising this agreement (headed ‘Whakaaetanga’ in the te reo version) was not signed until 6 September 1877, after the blocks were declared waste lands of the Crown. It is clear that the signing of the agreement was timed to coincide with the ‘waste lands’ proclamation, and it is possible that delays prevented its signing.

\footnote{326}{Deed 841 – Tuhoe, Urewera, and Ngati Ruapani purchase deed, 12 November 1875 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), pp 36–39)}
\footnote{327}{We have compared the lists of memorials of ownership with three of the conveyance deeds and can confirm that for two of the blocks (Tukurangi and Taramarama) the names are the same. The deed of conveyance for the Ruakituri block included one extra name than on the equivalent memorial of ownership.}
\footnote{328}{Deed 840 – Taramarama block purchase deed, 17 November 1875 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), pp 33–35)}
\footnote{329}{Deed 838 – Toha Rahurahu and others Tukurangi block purchase deed, 17 November 1875 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), pp 25–27)}
\footnote{330}{Deed 839 – Ruakituri block purchase deed, 17 November 1875 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), p 30)}
\footnote{331}{O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), p 136}
\footnote{332}{These were: Ngati Puku, Ngati Hine, Ngati Maewhare, Matawhaitini, Ngati Kapuamatotoru, Ngati Mihi, Ngati Iwikatea, ‘Nuhaka Natives’, ‘Nukutaurua Natives’, Ngati Pahauwera, and Ngati Kurupakiaka: memorandum of agreement between the Crown and Ngati Kahungunu, 15 January 1876 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), pp 43–58)}
before the proclamation was made. The ‘Whakaaetanga’, made on behalf of Te Waru Tamatea and ‘other chiefs also of the hapu of Tamatea a section of Ngati Kahungunu’, was, however, not stated to be with the Crown, as the other transactions were. Rather, the signatories acknowledged their receipt of £300 from the Government, and in return they gave up ‘all their claims’ in the four blocks, as well as to certain portions of Hangaroa marked on an attached plan.333

- The purchase of the four southern blocks was concluded with the final transactions with the lessees. On 4 August 1877, a deed was signed by Henry Cable on behalf of the Waiau and Tukurangi block lessees (that is, Cable, Drummond, Barker, and MacDonald).334 As we explained earlier, the deed extinguished the right of these lessees to purchase 5,000 acres in the Tukurangi block.

- On 30 August 1877, the four blocks were proclaimed ‘waste lands’ of the Crown.335 The proclamation was issued under the Immigration and Public Works Act 1871, which provided for the exclusion of private buyers where the Crown needed land for certain specified purposes. However, none of them covered the Wairoa situation. We assume that the Government must have relied on the stated purpose of ‘special settlements’, despite the fact that there is no evidence that special settlements were planned, and none was subsequently established. The proclamation was also issued retrospectively, despite the requirement in the legislation that the Crown publicise its intent before beginning negotiations. In other words, the Crown’s proclamation did not meet the requirements of the legislation. It was, however, evidently sufficient to keep private purchasers away.

In summary, the immediate outcomes of the court hearing were thus as follows:

- A legal opinion was sought, evidently for the first time, on whether the lands before the court had in fact been confiscated. The response from the Solicitor-General, reported by McLean and copied into the Native Land Court minute books, was that the land had not been confiscated, but remained subject to the provisions of the East Coast Act 1868. This Act outlined a process by which the court would inquire into customary ownership, award title, and identify who of the owners had been in rebellion. Those considered ‘rebels’ would have their land confiscated.

- The Solicitor-General’s opinion was totally at odds with Locke’s understanding of the position, and with what he had consistently told Ngati Kahungunu, Tuhoe, and Ngati Ruapani.

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333. Te Waru and others of Ngai Tamatea southern blocks purchase deed (and Hangaroa), 6 September 1877, deed 841 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), pp 40–42)

334. Deed of conveyance, 4 August 1877 (Moore, supporting papers to submission on Patunamu State Forest (doc A45(b)), pp 50–52)

335. ‘Lands Declared to be Waste Lands of the Crown’, 30 August 1877, New Zealand Gazette, 1877, no 78, pp 928–929
The cases for the four blocks were closed on 6 December, despite the fact that no evidence had been given for two of the blocks. The court adjourned but did not deliver a judgment, pending a viewing of the land and the production of a survey plan.

On 12 December, some six days after the telegram conveying the Solicitor-General’s opinion to Locke had been received in Wairoa, and before judgment had been given, Tuhoe and Ngati Ruapani withdrew from the hearing, citing an arrangement they had reached with Ngati Kahungunu.

The four blocks were all awarded to those Ngati Kahungunu counterclaimants who lodged claims and appeared in court.

Tuhoe and Ngati Ruapani immediately entered into a transaction by which the Crown purchased all their rights in the blocks; and five days later, the Crown and the Ngati Kahungunu owners listed on the court’s memorials also entered into a formal deed.

Though the Crown would later make further payments to other parties it considered to have rights in the land (including Maori, and Pakeha lessees), it had, to all intents and purposes, acquired the four southern blocks by the end of 1875.

7.5.4.7 What was the significance of the Solicitor-General’s opinion?

The question we consider in this section is whether the Solicitor-General’s opinion altered the course of the land court investigation into the titles of the four southern blocks. Answering this question is crucial to understanding whether the Crown acted in good faith in respect of the land court hearing, and particularly whether Tuhoe and Ngati Ruapani were pressured to sell their rights and interests in the land. Counsel for Wai 36 Tuhoe claimants and counsel for Ngati Ruapani argued before us that the arrival of the Solicitor-General’s opinion after the court’s proceedings were under way – and the threatened application of the East Coast Act and its confiscatory provisions – was the key factor that saw them withdraw from the court. Only because of this was the Crown able to complete the purchase of Tuhoe and Ngati Ruapani rights to the land. Counsel for Ngai Tamaterangi argued that a similar threat applied to those Ngati Kahungunu who fought against the Crown.

Crown counsel, on the other hand, submitted that there was little direct evidence that indicates the effect of the Solicitor-General’s opinion. We address these arguments in this section, before turning to consider the broader question of whether Tuhoe and Ngati Ruapani were pressured to sell.

We must ask first whether it is possible that the unfolding of events before and during the court sitting were choreographed by the Crown. In other words, did Crown officials know before the hearing began that the East Coast Act 1868 (which replaced the East Coast Land Titles Investigation Act) would apply, and that claimants whom the court deemed rebels thus faced the possibility of being

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336. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)) pp 40–41
337. Counsel for Ngai Tamaterangi, closing submissions (doc N2), p 42

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cut out of any court award? This was because, under the provisions of the Act, all the land recognised as belonging to ‘rebels’ could be declared Crown land or awarded to ‘loyal’ Maori (see the sidebar above). Crown counsel suggested to Ms Marr in cross-examination that at the Wairoa hui of 1875 there was ‘no indication’ in what Locke said that the Government was ‘intending to exclude Urewera from title in respect of those four southern blocks in this meeting, at least’. Marr agreed that there was no such indication. We take it from Marr’s answer that she had considered the possibility that Locke might, at least immediately before the court sitting, have had an ulterior motive in encouraging Tuhoe to take their claims to the court. It is clear that she rejected the possibility.

We reject it too. As we have said, Locke clearly believed that the lands had been confiscated and then returned to Maori. That is what he told them. At the hui he

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339. Marr, under cross-examination by Crown counsel, Rangiahua Marae, Frasertown, 30 November 2004 (transcript 4.12, p128)
spoke several times of the role the land court would play in deciding the ‘boundary’ dispute between Tuhoe and Ngati Kahungunu, and investigating title to the land. It is true that he hoped the leaders of the two parties might resolve the matter outside court, and leave the court only with the task of ‘ordering a memorial of ownership’ in favour of those deemed to be the owners. But Locke knew that even if an agreement was reached outside the court, it would not be one which saw Tuhoe giving up all their claims to the blocks. Thus we do not entertain the possibility that after the two iwi had failed to reach agreement, he looked around for another weapon to use against Tuhoe in court, in the hope of seeing their claims defeated there. And we note that he clearly considered the court would order a memorial under the 1873 Native Land Act (rather than operating under the East Coast Act 1868, as the Solicitor-General subsequently said must be the case). The claimants drew attention to this; and none argued that Locke was acting duplicitously when he expressed his wish for the land court hearing to proceed, or that he might have suggested to the court that a well-placed question on the status of the land would assist the Crown. In any case, we must assume that the Solicitor-General’s opinion must have come as a shock to Locke, who had so often publicly stated the opposite – that the land had been confiscated, but returned to Maori. And he had encouraged ‘the Urewera’ to proceed with a court hearing.

The claimants’ main argument focused instead on the pressure under which Tuhoe and Ngati Ruapani found themselves following the judge’s question about the status of the land, and the arrival of the Solicitor-General’s opinion that the hearing must be held under the East Coast Act. Counsel for the Wai 36 Tuhoe claimants emphasised to us that McLean’s telegram to the Native Land Court was a ‘critical piece of evidence confirming the Crown’s intervention to convince Tuhoe to withdraw its claim’. The claimants and the Crown were at odds, as we have seen, on whether Tuhoe and Ngati Ruapani withdrew their claims from the court as a result of their discovery that if they were heard under the East Coast Act, they would find themselves deemed rebels, and thus lose their land to the Crown – or to loyal Maori. They thus differed on whether Tuhoe entered freely into negotiations for the purchase of their land. The Crown argued that there was no direct evidence that the telegram led to a ‘threat of confiscation in respect of the southern blocks or parts of them’ in the subsequent negotiations.

But we have to agree with the claimants that the circumstantial evidence is ‘compelling’. It seems clear that there was no reason for anyone to think when the cases were first called that they would be heard under the East Coast Act. Despite the requirements of the law, there is no evidence that other cases within the East Coast legislation schedule had in fact been heard under the Act – other than in

340. ‘Notes of a Meeting Held at Wairoa on 29 October 1875’, 17 December 1875, AJHR, 1876, G-1A, p 2
341. Counsel for Wai 36 Tuhoe, closing submissions, pt A, overview, 31 May 2005 (doc N8), p 29
342. Crown counsel, closing submissions (doc N20), topic 6, p 16
343. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 39
Turanga (a special case because Maori had ceded the land there to the Crown). Judge Rogan did not state at the outset that the Wairoa court was proceeding under the East Coast Act (as he had when he presided over the brief Turanga hearing involving the Act). In Turanga, the court’s jurisdiction had been challenged on the grounds that the land before it was not customary land – and proceedings were abruptly adjourned. This is doubtless why the judge was anxious to clarify the status of the land, once he became aware that it was generally regarded as confiscated (but returned to Maori).

On this point, we cannot consider the timing of the judge’s request for clarification as sinister. We might be surprised that the judge’s doubts as to the status of the four southern blocks lands had not surfaced till the end of the first day’s hearing; he might, after all, have sought clarification during the previous adjournment of the cases. But it may have been that he was not alerted to a problem with his jurisdiction until reports of the hui (which was held right outside his courtroom) reached him, and that he took some time to consider the matter. His question as to whether the land before him was confiscated was a valid one, given that he may by then have been as confused as anyone about whether a confiscation had in fact occurred – and therefore about his jurisdiction.

In any case, there was a general understanding at the outset that the court was conducting a full investigation of title to the blocks; and Tuhoe and Ngati Ruapani were anxious for this to proceed because they clearly hoped that the court would recognise their rights. We thus consider that McLean’s answer to Locke, conveying the opinion of the Solicitor-General that the court should determine the rights of the parties subject to the East Coast Act, must have come as a bombshell. We assume that the parties were made aware of the contents of the telegram and the implications of the 1868 Act’s application. It is very probable that the court was in possession of the telegram before the case was closed on 6 November. If that were so, we assume that the judge found himself in an awkward position. If he had read the telegram out, he would then have had to state that he was now proceeding under the East Coast Act. In this scenario, he would have been obliged to alter the direction of his inquiry when the hearing was well advanced. Given the universally held official view that Tuhoe and Ngati Ruapani had earlier been in rebellion, the judge would then expect the hearing to proceed, and if they were found to have rights, their lands would be confiscated. This sudden change of direction would not have reflected well on the court – particularly given the context in which the four blocks came before it; nor on the Government. Peace had

344. The Turanga cases were mainly heard by a special body, the Poverty Bay commission; the 1870 land court hearing proceeded after the Government was advised by the Attorney-General that the court could hear claims to the ceded lands under the Act: Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 348.

345. Parliament passed special legislation, the Poverty Bay Land Titles Act 1874, to validate Crown grants issued in the wake of the hearing, after doubts were raised about them: Waitangi Tribunal, Turanga Tangata, Turanga Whenua, pp 347–348.
been made, peaceful relations with the iwi restored, and their engagement with the court encouraged. Out of the blue, they were now to face the very real possibility of inquiry into their acts during hostilities of the past decade, and of confiscation. The judge’s alternative was to ensure that the news was passed on to the parties informally; which would give Tuhoe and Ngati Ruapani more options. This would also have been the case, had the telegram arrived after the court adjourned.

Counsel for the Wai 36 Tuhoe claimants submitted that ‘Whether the content was disclosed in Court or otherwise is not of any great moment.’ 346 We agree that the point was whether people knew what the telegram said – and what it meant for their cases. Crown counsel stated that ‘An inference must be drawn that the facts relating to the Solicitor-General’s opinion were relayed to the parties’, and that Government officials then took a different approach in their negotiations. 347 In the context of these submissions, this was a concession; and we proceed on the basis that the telegram was disclosed.

But the Crown would go no further than this. In counsel’s view, ‘There is no direct evidence from the period when the negotiations were conducted’ that there was a threat of confiscation in the subsequent purchase negotiations. 348 We take a very different view, however. We consider that Tuhoe and Ngati Ruapani, and any Ngati Kahungunu claimants before the court who might have faced allegations of rebellion, had every reason to fear they faced the threat of confiscation. We say this for two reasons. The first is that, if proceedings continued, the court would determine their cases under the East Coast Act. This was, after all, the opinion of the Solicitor-General. This meant that the court would be unable to make orders for certificates of title until it had inquired into who among the claimants might be considered ‘rebels.’ (In the Native Land Court hearing under the Act in Turanga, claimants were challenged either by other claimants or by a Crown agent on the grounds of alleged rebellious acts; if challenged they had the right to speak in court, and they were examined by the court, which then decided whether to strike their name off the lists of titleholders submitted. 349) The Act, as we have seen, specified what should happen if the court found that land under custom belonged to those it deemed rebels: they stood to have their lands either granted to ‘loyal’ Maori, or declared Crown land.

The second reason is that Tuhoe, Ngati Ruapani, and those Ngati Kahungunu who had fought against the Crown were well aware that they were considered ‘rebels’ by officials of the region. Locke, as we have seen, had told the Wairoa hui just before the land court hearing that ‘This land – that is, up to Waikaremoana Lake – was confiscated during the time of the rebellion, the principal owners of the land having allied themselves with the enemy of the Government.’ And later the same day, he added:

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346. Counsel for Wai 36 Tuhoe, closing submissions in reply, 9 July 2005 (doc N31), p 6
347. Crown counsel, closing submissions (doc N20), topic 6, p 16
348. Ibid
349. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 1, pp 361–362
Had the Government acquired and retained this land before the restoration of peace with the Urewera, no claim of theirs would have ever been heard of to the land in question. The Government were evincing no small consideration for the Urewera Natives in sanctioning at all the investigation of the claim put forth by them, considering the grounds upon which they assert their right, being as they were at the time in rebellion when the land was confiscated and dealt with.\(^{350}\)

Maori must have been advised what the significance of the telegram was: that under the East Coast Act, claimants before the court could still be held accountable for earlier rebellious acts, despite the fact that peace had been made with Ngati Kahungunu in 1867, and with Tuhoe in 1871. If the contents of the opinion were divulged then its significance must also have been conveyed. It strains credulity – given that the opinion was of such moment, that the judge had publicly sought an answer from Locke about the status of the land, and that the receipt of that answer was recorded in the minute book – to assume otherwise.

We accept the possibility that the contents of the telegram may not have been made known till after Tuhoe and Ngati Ruapani agreed not to give evidence on the Taramarama and Waiau blocks – that is, on 6 November. It is much more likely, however, that the news influenced their decision not to proceed with this evidence. It was most unusual for claimants in the court to make such a decision. Either way, the position on 6 November was that the court stated that no judgment would be given until the land was viewed and a certified survey plan had been produced. This is the only reason recorded in the minutes for the court’s decision to delay giving judgment. The implication was that the delay would be of some duration. Locke in fact believed that the surveys would take at least three months.\(^{351}\) But six days later, Tuhoe and Ngati Ruapani leaders returned to court to state that they would proceed no further. They thus forfeited their opportunity to hear the court’s judgment on their claims. But they also avoided being subjected to a process of inquiry into their past role in the wars, knowing that their ‘rebellion’ would be a given, whatever the circumstances in which they had fought in 1865 and 1866 or after 1869. And they removed the risk that, if their claims were upheld, they would see title to the blocks pass either to ‘loyal’ Maori (in this case, Ngati Kahungunu) or to the Crown.

The receipt of the Solicitor-General’s opinion epitomises the haphazardness of the Crown’s approach to the four southern blocks, and its complete disregard for the interests of the Maori owners. The East Coast Act 1868, which had suddenly materialised – at centre stage – was not enacted so that future confiscations could take place and, in light of the imperial government’s instructions that confiscation legislation must be short-lived, should not still have been in force in 1875 (see the sidebar over).

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\(^{350}\) ‘Notes of a Meeting Held at Wairoa’, 29 October 1875, AJHR, 1876, G-1A, pp 1, 8

\(^{351}\) Locke to Native Minister, telegrams, 6 and 7 November 1875 (O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), p130)
Why Was the East Coast Act 1868 Passed?

The East Coast Act 1868, which repealed and replaced ECLTIA 1867, had been enacted for two main reasons. First, it was hoped it would be an improvement on the 1867 Act for achieving the goal of rewarding, with ‘rebel’ land, the ‘friendly Natives’ who had assisted the Government in putting down ‘rebellion’. The need to implement the Crown’s promises in the Te Hatepe deed was in James Richmond’s mind when he announced in Parliament his intention to introduce the Bill that would become the 1868 Act. His opening comments are remarkable: the subject of the proposed legislation, he said, was one that the House ‘is already very much tired of’ and ‘which unhappily, after all our efforts, we have never been able to make otherwise than obscure’.

Richmond explained that the main difference between ECLTIA and the 1868 Bill (which had been drafted by Chief Judge Fenton) was that the new law would empower the Native Land Court to award ‘rebel’ land not only to the Crown but, as an alternative, directly to ‘friendly’ Maori. This new power, it was thought, would remove from the Native Land Court the stigma of being the agent of Crown confiscation.

The Court is not called upon to hand over, unless it sees fit, any land whatever to the Government. The Government does not appear in the transaction at all, unless it should be the opinion of the Court that some cases exist where the rebellion of the mass of the tribe makes it expedient that their property should be transferred to the Government.

Richmond had misgivings about the 1868 Bill. He thought a better way of achieving the Government’s purpose of ‘rewarding their allies, and punishing their enemies’ was to finalise the cessions that the Government was attempting to obtain from Maori. But the second reason he gave Parliament for the new law was the one that had convinced him of its necessity. He explained that if ECLTIA was repealed and not replaced with other legislation that authorised confiscation, the Government would have to pay the ‘friendly Natives’ otherwise than in ‘rebel’ land, and it would be unable to defend its ownership of lands that had been ceded to it:

I do trust that the House will see that it is inexpedient to repeal the Act [ECLTIA] without making other provisions in its place. To do so, must entail further expense on the Colony which it can ill afford. It would be impossible

1. James Richmond, 3 September 1868, NZPD, vol 3, p 145
2. Ibid, p 146
3. Ibid
to repeal the law without paying money to those who supported us in the campaign of 1865, and besides that, I do not see how we could get out of paying a large sum for the block at Wairoa [Kauhouroa]. If we do not give the Natives there their own terms, the only alternative will be to compensate the one hundred and fifty military settlers now occupying it. Between these two stools we sit.

In answer to a question about the Kauhouroa land, Richmond spelt out his understanding of the situation:

It was ceded, subject to the decision of the Lands Court, and there is no security for the Government, if the Act is repealed, that the Court will recognise our title at all. It is a mutual cession – on the part of the Government of claims which they have under the Act, and on the part of the Natives, of their original claims to the land; but if the Act is repealed, the claims of the Government lapse altogether, and, therefore, the Native Lands Court would have no right to certify in favour of the Government, and there would be no titles whatever. The Court would have no alternative but to declare that the Government title was not a good one, for want of consideration for the cession.

Our analysis earlier in this chapter reveals that Richmond’s concerns were misdirected: the cession should never have occurred and the Native Land Court had no role under ECLTIA to approve it.

The point here, however, is that the East Coast legislation should not still have been in force in 1875, years after peace had been established in the region. The imperial government’s firm view that confiscation legislation should be short lived was well known. Lord Cardwell had informed Governor Grey in April 1864 that the New Zealand Settlements Act 1863 could have been disallowed because of its harsh terms and lack of a ‘sunset clause’. It was only because circumstances in New Zealand were so critical at that time, he said, that Her Majesty’s Government had decided to allow the Act to remain in force ‘for the present’. But a time limit on its operation had to be put in place immediately:

A measure should be at once submitted to the Legislature to limit the duration of the Act to a definite period, not exceeding, I think, two years from its original enactment – a period long enough to allow for the necessary inquiries

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4. Ibid, p 147
5. Ibid
6. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, p 22
In the result, it was a cruel irony that the 1875 court hearing provided the opportunity for the 1868 East Coast Act to be applied to disentitle those whom the Crown had regarded as ‘rebels’ in the past. The Act had been passed as an aid to implementing the Te Hatope deed cession, but had not been invoked by the Government for that purpose in the intervening years. Now, seven years later and in the wake of the Locke deed – itself an effort to implement the Government’s promises at Te Hatope – the 1868 Act was presented, out of the blue, as holding the key to the course of the court proceedings.

The Solicitor-General’s opinion that the 1868 act would apply to the land court’s investigation of title to the four southern blocks did not make reference to the boundaries defined in the schedule to the act. We assume, given the importance of the question before him, that he would have sought clarification of the respectimg the extent, situation, and justice of the forfeiture, yet short enough to relieve the conquered party from any protracted suspense, and to assure those who have adhered to us that there is no intention of suspending in their case the ordinary principles of law.”

As a result, the New Zealand Parliament legislated in December 1864 to put a time limit on the Act, to 3 December 1865, and then had to legislate again, to extend the Act’s operation to 3 December 1867. It was anomalous, therefore, in light of the established principle that confiscation legislation should be short lived, that the East Coast Act 1868 was still in force in 1875. (In fact, it was not repealed until 1891.) The reason that the Act was not given a limited life, we consider, derives from the ongoing confusion about the effect of ECLTIA. It was widely thought among Government officers that the 1867 Act had already confiscated the East Coast lands. In light of that, Parliament would have regarded the 1868 Act as a ‘mopping-up’ measure, enacted in the wake of a confiscation that had already occurred, rather than as a confiscation law in its own right. The fact that the 1868 Act conferred power on the court to award ‘rebel’ land directly to ‘loyal’ Māori could have seemed to support the view that the Act merely provided a means to give effect to post-confiscation arrangements. Certainly, Richmond explained the intent of the proposed legislation in terms that gave no hint that it would authorise a future confiscation of East Coast lands. The reason that he gave for continuing ECLTIA’s confiscation provisions was that the Crown’s retention of Kauhouroa depended on it.

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7. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, p 22
8. New Zealand Settlements Amendment Act 1864, s 3; New Zealand Settlements Amendment and Continuance Act 1865

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The Solicitor-General’s opinion that the 1868 Act would apply to the land court’s investigation of title to the four southern blocks did not make reference to the boundaries defined in the schedule to the Act. We assume, given the importance of the question before him, that he would have sought clarification of the
relationship between the boundaries of the four blocks, and the boundaries of the district within the schedule. It appears from the evidence before us that if he had, he would have drawn a blank. There was no up-to-date plan. Had the ‘Chapman map’ of 1870 (see explanatory note) been put in front of the Surveyor-General, he would have noted the limits of the ECLTIA boundaries as they were understood then; they did not, of course, extend to Lake Waikaremoana. But this was 1875, and official knowledge of the district had substantially increased in the past few years. The Locke deed had created four new blocks, and surveyors had been operating in the area. Yet, despite the fact that the East Coast Act remained of such importance on the East Coast, and might result in the confiscation of land before the court, the Crown had failed to map the district within which it applied. Thus, at a crucial moment, the Solicitor-General had (we must assume again) to leave it to the judge in the case to clarify the various boundaries involved. His opinion, as relayed by McLean, related to the jurisdiction of the court over the land delineated in the Act’s schedule. He did not comment on the boundaries himself. But the judge, in turn, would have to make a decision in the absence of an up-to-date map. The judge assumed (or was advised) that all of the southern blocks fell within the boundaries. But, as we have seen, a substantial part of the land did not.

These successive failures to clarify the status of the land or the court’s role in determining ownership to land in the region thus seriously compromised the position in court of Tuhoe and Ngati Ruapani. We consider the position of those Ngati Kahungunu who had not supported the Crown, or had fought against it during the conflict, below. Officials had encouraged claimants into the land court without carefully ascertaining the legal status of the land (which only they were in a position to ascertain), or the complications that must arise for claimants because of an outmoded piece of legislation which nevertheless gave the court its jurisdiction. The result was that Tuhoe and Ngati Ruapani – having heard Locke’s repeated statements that the Crown had returned the land to them, after confiscating it – now found themselves in the position where the land court could confiscate any lands in which they were found to have rights. This was a turn of events which can only be described as bizarre. It is impossible to believe that the claimants would have entered into the court had they known of the full ramifications of the process under the East Coast Act. As Professor Belgrave rightly put it, referring to the land court hearing: ‘what kind of process are people going to be involved in where the outcome is to have one’s lands confiscated?’

7.5.4.8 Were Tuhoe and Ngati Ruapani pressured to sell?

Our next question is whether Tuhoe and Ngati Ruapani were subject to pressure to sell over this period, in light of their understanding that the East Coast Act would be applied by the court. We conclude that there is no other credible explanation for their withdrawal from the court case and immediate acceptance of payment from the Crown, and reserves, for their interests in the four southern blocks.

352. Belgrave, under cross-examination by counsel for Wai 36 Tuhoe claimants, Rangiahua Marae, Frasertown, 29 November 2004 (transcript 4.12, p 105)
Thus far we have detailed the proceedings inside the court. But it is clear that at the same time there was considerable activity relating to the four southern blocks outside the court – and that the court itself played a role in events beyond its doors. O’Malley has outlined a number of developments which show that the Crown’s immediate response to the court’s adjournment was to offer to pay Tuhoe and Ngati Ruapani for their rights and interests in the land, and to suggest one or more reserves. On 7 November, Locke reported to McLean that he had been ‘trying to compromise’ with Tuhoe and Ngati Ruapani by offering them between £1,500 and £2,000. He had ‘consulted’ with Judge Rogan ’who says comprise [com- promise] if you possibly can’.533 The following day, Locke was more specific:

re adjournment of court[.] the delay would cost large extra cost to govt and then settlement doubtful, so I have been trying to compromise. this could be done by giving uriwera [sic] one of the reserves and two thousand pounds . . . this would run price of the land up to fourteen thousand pounds[.] neither urewera or Govt Natives have been considered in Hamlin’s arrangement[.] neither are they in any way named in his agreement. The matters might be settled completely and for ever now perhaps for one thousand less than above named. By delay it will cost much more. Please let me get answer in the morning as urewera are returning.534

We share O’Malley’s uncertainty as to why an adjournment of the court would lead to a ‘large extra cost’ to Government, and agree that perhaps Locke was referring to a possibly increased cost of settling the claims of the ‘Uriwera’ if it were not attended to at once.535 But it is clear that Locke’s immediate reaction to the events in court was to put an offer on the table. Ormond thought a total of £14,000 was too high, and later told McLean that Locke was authorised to go £3,000 above the terms Hamlin had offered Ngati Kahungunu, taking the total price to £13,000. (It is likely this sum included the amount to be paid to the ‘loyal’ Ngati Kahungunu who were being considered for payment at this time for their military services, and who later signed the January 1876 memorandum of agreement.)536 It is also clear that ‘the Urewera’ were concerned (as they were reported to be ‘returning’), and that the judge himself had a view on what should be done. On 9 November Ormond reported that ‘Rogan strongly advises settlement of question by purchase as the two tribes very hostile over it’.

According to Ormond, Judge Rogan had adjourned the court on 6 November after the reported ‘great difference’ between ‘Urewera & Wairoa natives’; and Rogan had then adjourned

357. Ormond to McLean, 9 November 1875 (Vincent O’Malley, responses to questions of clarification, 11 October 2004 (doc H64), p26)
‘giving as reason imperfect survey’. We take it from this that Ormond, based on what Locke told him, thought the survey was not the actual reason for adjournment; rather, the judge had ground to a halt because he did not know what to do with evidence which he had decided was highly disputed, and was looking for a reason to buy some time. We take it from Ormond’s statement of 9 November that the judge thought the time would be best spent finalising a purchase. By then, Locke, according to his own statement, had ‘the Wairoa question . . . thoroughly in hand’, and expected to bring it to conclusion within a few days.\(^ {358} \) And indeed, on 12 November, Tuhoe and Ngati Ruapani signed a deed, as we have seen. Hori Wharerangi and Kereru Te Pukenui wrote to the judge informing him that they had (according to O’Malley) ‘yielded all their interests’ in the four blocks to the Government.\(^ {359} \) They also appeared in court.

Ormond’s account makes no reference to the use of the East Coast Act. It is possible Locke had not referred to it in the account he sent Ormond. It might have been considered impolitic to draw attention to the fact that the judge was trying to find a path through the difficulties that the Solicitor-General’s opinion had created for him, and for the Government. Alternatively, Locke might have preferred to gloss over the fact that he himself did not come out well of events in the court. He might have left it to McLean to decide how to explain what had happened to Ormond.

What is clear is that the judge was free with his own views on what should now be done: he advised that the Government should push ahead with purchase. Had he done so simply on the basis of disputed evidence before him, in a hearing held under the native land legislation, this would have been an extraordinary move. The Native Land Act 1873 did not require the court to order that the blocks be awarded to one group of claimants or the other; rather, it was to enter on a memorial of ownership the names of all those found to be owners. Moreover, the Act provided for the claimants and counterclaimants to enter into voluntary arrangements in respect of the shares to be granted to each, and partitions of the land – and for the court to take account of such arrangements.\(^ {360} \) Why, then, could the judge not have proceeded to order that Tuhoe, Ngati Ruapani, and Ngati Kahungunu names all be entered on the memorials? He might then have left it to the Crown agents to attempt to complete their purchases from Tuhoe and Ngati Ruapani; or, under the Act, he might have partitioned the blocks if all the owners did not wish to sell.\(^ {361} \) Partitioning would not necessarily have been easy, particularly in a block such as Ruakituri, but there was no reason why it could not have been attempted.

But once the judge had been notified that he must proceed under the East Coast Act – an Act whose application would result in the confiscation of the rights of the claimants before him in lands within its boundaries – the stakes were significantly raised. He then found himself in a position where he must either pass over

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359. Ibid, pp 134–135
360. Native Land Act 1873, ss 46, 47
361. Ibid, s 65
the 'Urewera' (as rebels), refusing to issue them a certificate of title; or divide the land between loyal and rebel owners and determine whether the Crown or the loyal owners should be awarded the 'rebel' land. He might have feared at that point that he would be unable to separate the interests of 'rebels' and 'loyals' as the Act required (particularly perhaps in Ruakituri), such that he could confiscate the former without prejudicing the latter. The matter was complicated by two factors, the first of which we consider particularly worrying. The judge might have realised that in fact part of the blocks – the part nearer Lake Waikaremoana – fell outside the East Coast Act schedule, which would have complicated his task greatly. How would he explain to the claimants before him that because of a line drawn on a map (which he could not show them) they might face confiscation of some of their land, but not the rest? How indeed could he properly apply the Act, if he did not know himself where the boundary fell? Secondly, there were the Crown's payments already made to Ngati Kahungunu before ownership was determined. This meant that if the court chose to grant a large part of any block – or all of it – to Tuhoe, the land would effectively become Crown land, and the Crown might forfeit the monies it had paid to Ngati Kahungunu (unless it sought to retrieve them from those who had been paid.)

Such remarkable circumstances, in our view, do explain the judge's willingness to urge purchase of the land – that is to say, completion of the Crown purchase – where other circumstances do not. And it is hard to avoid the conclusion that the judge's view must have carried considerable weight with the Crown's agents – and strengthened their resolve to try and bring Tuhoe and Ngati Ruapani to a sale. Whether his view was also conveyed to Maori we do not know. We must assume that it was, alongside the information claimants were given about the East Coast Act and its effect, if the agents thought it would help their cause. And doubtless they considered that the judge's view of a suitable path out of the dilemma 'rebel' Maori now found themselves in would carry weight.

For Tuhoe and Ngati Ruapani also, the unforeseen circumstances in which they found themselves after a few days' hearing also explain an otherwise inexplicable reversal of their earlier position on sale of the land. As the claimants pointed out, Tuhoe had been adamant up till the time when the hearing began that they did not wish to sell it. Locke stated before they arrived at Wairoa that he expected the 'Urewera' to 'object in every way to dealing with any rights they may have.' Kereru Te Pukenui admitted at the hui on 29 October that they had received some money 'paid on account of the purchase of our land,' but he had come to return it. Tuhoe would accept no money for land inland of Mangapapa which, he said, was theirs. Hori Wharerangi spoke to the same effect, adding that he would 'not part with the land.' Yet two weeks later, they had both changed their minds.

We might, of course, accept McLean's official explanation that the 'Urewera,' whom he described as 'considerable owners' in the blocks, brought their claims into the land court 'with some hesitation.' They were, he wrote, 'well satisfied

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363. 'Notes of a Meeting Held at Wairoa,' 29 October 1875, AJHR, 1876, G-1A, pp 3–4
with the result; and yielding to the persuasion of the co-claimants of other tribes, joined in the sale, and received their share of the money’.\textsuperscript{364} Or we might wonder whether McLean’s account has any internal consistency: how could the claimants be described as ‘well satisfied’ if – being ‘considerable owners’ – they left the court without the legal recognition of their rights which they had come to secure? Payment, of course, did afford them some recognition, but in their earlier statements Tuhoe had been consistent in their wish to secure a land court decision. Instead, they saw Ngati Kahungunu secure both legal recognition and a larger payment than was made to them. We might wonder too why, when McLean had himself conveyed the Solicitor-General’s opinion to Locke that the East Coast Act must be applied – which would have the effect that rebels’ land would be confiscated – he made no mention of this in his report.

We conclude that Tuhoe and Ngati Ruapani must have been informed about the consequences of the Solicitor-General’s opinion (because we do not see that the opinion could have been withheld from them), and that they then undoubtedly found themselves in an unanticipated and very difficult position. We are struck also by the point made by claimant counsel that ‘This is the only time that Tuhoe chiefs ever collectively withdrew a claim in the Native Land Court.’\textsuperscript{365} The choice they faced on this occasion was whether to risk returning to court in the hope of securing a favourable judgment, and successfully defending themselves against charges of rebellion; or to withdraw and take the Crown’s offer on the table: a payment and 2,500 acres of reserves. The risk of being declared rebels, however, must have been considered too high.

Two later statements by Tuhoe leaders attest to the pressure Tuhoe felt themselves under in 1875. Hurae Puketapu stated to the Urewera commission in 1906:

\begin{quote}
In the year 1875 Tuhoe & N Kahungunu arose & sold all the lands to the south and east of Waikaremoana. The Tuhoe chiefs endeavoured to prevent this sale, the chiefs who made the attempt to prevent it were Te Wakaunua, Te Whenuanui, Kereru te Pukenui, & ors; Paerau stood up & slapped his knees [in a haka] and sang a song to the effect that the sale wd be proceeded with, & the land was sold, even though the Urewera generally did not desire the sale to take place.\textsuperscript{366}
\end{quote}

And, in 1917, when speaking for Tuhoe, Eria Raukura (a contemporary of the 1875 settlement, as claimant counsel pointed out) spelt out the reason for the sale in these terms:

Tuhoe & Ruapane got blocks within the area enclosed by these boundaries of a total area of 157000 acres. The Govt told us we would have to sell or else it would be taken

\textsuperscript{364} D McLean, ‘Statement Relative to Land Purchases, North Island’, AJHR, 1876, G-10, p 3
\textsuperscript{365} Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 29
\textsuperscript{366} Barclay Urewera commission, minute book 1, 18 December 1906, fol 61 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), p 677; Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 314–315
from us. Tuhoe & Ruapane agreed to sell. There were 60 persons who signed the deed of sale. We got £1250 and 2600 [sic] acres were set aside as reserves. The deed was signed 12-11-1875. Hamblin was interpreter & agent.

But in all of this we are bothered most by the fact that the general official assumption – and therefore the assumption conveyed to Tuhoe and Ngati Ruapani – was that the application of the East Coast Act would mean the confiscation of any land found to be theirs within the four blocks. Yet, there was no up-to-date map available which demonstrated that that was the case.

All of this evidence, albeit circumstantial, adds up to a compelling case for Tuhoe and Ngati Ruapani’s acceptance of a payment for their interests under threat of confiscation. Their application for a court hearing occurred in extraordinary circumstances, but their determination to see the hearing through from that point cannot be doubted. It follows, then, that their sudden withdrawal from the court and sale of their interests to the Crown could also only have been the result of extraordinary circumstances. Informed of the Solicitor-General’s opinion (either inside or outside the court) they went away to consider their options – knowing full well that if they were to proceed with the hearing, their land would be confiscated. At this time, Locke was on hand to take advantage of the situation in a way that expedited the finalisation of purchase negotiations. The Solicitor-General’s opinion showed up Locke’s ignorance of the significance of Crown agreements with Maori – in one of which he was the key player – but it certainly played into his hands as far as resolving the situation was concerned. Under considerable pressure, and with no other options left to explore, Tuhoe and Ngati Ruapani accepted the offer of £1,250 and reserves totalling 2,500 acres.

It is almost redundant to add that the amount of money they received was inadequate; but the point should be made. A payment of £1,250 and four reserves was paltry, especially in comparison to the amount of money paid to the lessees.

**7.5.4.9 Were Ngati Kahungunu pressured to sell?**

The Ngati Kahungunu owners also sold their interests in the blocks, as we have explained. Purchase of the land by Crown agents began before the court hearing with advance payments to individuals in early 1875, and finished with a series of deeds and agreements between November 1875 and August 1877. Counsel for Wai 621 Ngati Kahungunu and Ngai Tamaterangi both argued that Ngati Kahungunu were pressured to sell for a variety of reasons, including: the faulty process established from the Te Hatepe and Locke deeds; the Crown’s assumption that the land was confiscated; the threat of further confiscation under the East Coast Act 1868; and the purchasing of interests which began before proper investigation of title had occurred. Counsel for Wai 621 Ngati Kahungunu argued that ‘Crown policy

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368. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), pp 55, 59–60, 73; counsel for Ngai Tamaterangi, closing submissions (doc N2), p 41
The Creation of the Tuhoe and Ngati Ruapani Reserves

The deed alienating the ‘rights and interests’ of ‘Tuhoe, Urewera, [and] Ngati Ruapani’, signed on 12 November 1875, included an undertaking from the Crown to establish for ‘the Chiefs and people of the tribes’ with whom the deed was made ‘a permanent reserve for us on part of the abovenamed blocks of an area of two thousand five hundred acres (2500)’.

These were the only terms in which a reserve was mentioned. We note that:

- The reserve was to be created by the Crown, on land over which native title had been extinguished; it was not land withheld by the sellers.
- The essential character of the reserve is indicated by its intended beneficiaries: ‘the Chiefs and people of the tribes of Tuhoe, Urewera, Ngati Ruapani’. In the te reo Maori version of the deed, this was recorded as: ‘nga iwi me nga rangatira me nga tangata katoa o Tuhoe ara o te Urewera o Ngati Ruapani’. In other words, the reserve was to be for the tribal community. Some kind of tribal title could therefore have been expected by the Tuhoe and Ngati Ruapani people who signed the deed.
- The reserve was to be ‘permanent’ (‘whakatuturutia’); in other words, inalienable.
- The deed implied that only one reserve of 2,500 acres was to be set aside for Tuhoe and Ngati Ruapani. This was stressed in the te reo Maori text of the deed: ‘tetahi wahi o ana whenua kua whakahuatia a konei’.
- No mention was made as to the location of the reserve or the process by which its location would be determined.

Although the deed indicated that only one reserve would be established, it seems that four reserves were contemplated either at the time of its signing or soon afterwards. In the English version of the deed, the four figures 300, 800, 300 and 1,100 have been written in the margin next to the description of the promised 2,500-acre ‘reserve’. These figures correspond to the size in acres of the four reserves that were later established. It is unclear when the four figures were added to the deed, or whether Tuhoe and Ngati Ruapani chiefs were consulted about the change.

Four reserves were finally marked out:

- Te Kopani (800 acres), in the Tukurangi block, about two miles from the lake on the south bank of the Waikaretaheke River;
- Whareama (300 acres), also in the Tukurangi block, the only one of the reserves located on the lake shore;

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1. Deed 841 – Tuhoe, Urewera, and Ngati Ruapani southern blocks purchase deed, 12 November 1875, AUC 841-A (Cathy Marr, comp, supporting papers to ‘Crown Impacts on Customary Interests in Land in the Waikaremoana Region in the Nineteenth and Early Twentieth Century’, various dates (doc A52(a)), pp 36–37)
7.5.4.9

The four reserves were surveyed over the course of 1877; all had been ‘marked off’ by July.2

On 30 August 1877, shortly after the surveys were completed, the four southern blocks, excepting 28 ‘native reserves’, were proclaimed ‘waste lands of the Crown’. The notice was published in the Gazette of 13 September 1877.3 The proclamation listed the number of native reserves ‘excepted’ in each block, together with their area ‘as delineated on the plan of the block in the office of the Chief Surveyor of the Provincial District of Auckland’. There were 12 reserves in the Ruakituri block (totaling 2,975 acres); eight in Taramarama (totalling 2,800 acres); seven in Tukurangi (totalling 4,427 acres); and one in the Waiau block (300 acres).4 The 28 reserves included the four for Tuhoe and Ngati Ruapani, though tribal names were not specified in the proclamation.

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4. ‘Lands Declared to be Waste Lands of the Crown’, 30 August 1877, New Zealand Gazette, 1877, no 78, pp 928–929

facilitated the forced sale of Kahungunu interests’ in the four southern blocks.569 Historians offered other reasons, notably the debt incurred by Ngati Kahungunu.370

In the case of Te Waru Tamatea and his people, who had been exiled after the wars, counsel submitted that they were not party to meaningful negotiations and merely received a small payment after the sale had been virtually completed.371 Crown counsel accepted that there was pressure to sell, but submitted that this derived solely from ‘significant boundary issues’ between Ngati Kahungunu and ‘Urewera Maori’. In these circumstances, counsel argued, the Crown's purchase of the blocks was presented as an ‘attractive alternative’ to address the boundary issue.372

Belgrave and Young, summarising the issues, suggested that the Tribunal

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369. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 73
371. Counsel for Ngai Tamaterangi, closing submissions (doc N2), p 43
372. Crown counsel, closing submission (doc N20), topic 6, p 17
should decide ‘whether these four blocks were acquired from their customary owners through some degree of coercion or whether they were, on the other hand, a sale between willing sellers and a willing purchaser.’

We examine the question by looking at the three groups within Ngati Kahungunu who sold their interests:

- First, those Ngati Kahungunu who had earlier signed leases of the blocks in 1873 (those listed in the Locke deed schedule as ‘owners’), who sold their interests before the court hearing, and those who were listed on the memorials of ownership, whom the Crown then bought out after the court hearing in four separate deeds of purchase.

- Secondly, those Ngati Kahungunu who had served the Crown and had been promised land as part of the Te Hatepe agreement for military services. This included Ihaka Whaanga’s people of Mahia and other coastal peoples, who were assumed by the Crown not to have customary interests, and whose names (with one exception) were not included in lists of owners in the schedule to the Locke deed.

- We also consider those Ngati Kahungunu who had interests in the blocks but who were not party to the main negotiations. We look at the history of one of these groups – Te Waru Tamatea and his people who were by this time exiled from upper Wairoa to Waiotahe, and who sold their interests in 1877 – in a separate sidebar.

We have referred above to the leases which Ngati Kahungunu entered into with various settlers in 1873: those of the Tukurangi and Waiau blocks (Barker, MacDonald, Cable, and Drummond) and later of the Taramarama and Ruakituri blocks (Maney). Although these leases raised the ire of Tuhoe and Ngati Ruapani, Ngati Kahungunu took this course for their own reasons. Many of their leaders had been waiting for several years to derive some tangible benefit from the promises made in the Te Hatepe deed. Leasing the land provided a significant income, totalling £700 per annum across the four blocks. But within a year the Crown had begun negotiating to purchase the land from the same people who were receiving these rentals. Why, having finally established a significant annual income from this land, did Ngati Kahungunu contemplate permanently alienating their interests in the land only a year later? In our view there are several reasons.

First, many Ngati Kahungunu were heavily in debt. This explains why they were desperate to enter into leasing arrangements soon after the signing of the Locke deed. But it also goes some way to understanding why they were willing to offer their interests for sale the following year. Ms Gillingham pointed us to startling evidence of the debts Wairoa peoples had accumulated by this time. Her summary of this evidence is worth quoting in full:

> the amount of debt carried by Maori and the apparently easy credit arrangements with some storekeepers appears to [have] made indebtedness among Maori widespread by the second half of the 1870s. In 1877, Dr Ormond estimated that every Maori in the

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373. Belgrave and Young, summary report of ‘War, Confiscation and the “Four Southern Blocks”’ (doc 13), p 2
Wairoa district was £10 in debt, with some individuals owing £200 to £500. Those living around Te Reinga, Ngati Kohatu, had also run up debts with Poverty Bay storekeepers. Ormond commented that their debts were so great ‘it seems difficult to see how they are to pay them, £2,000 being put down as one chief’s liabilities alone’. During the 1870s, many of these debts resulted in civil prosecutions of the Maori debtors in the Resident Magistrate Court. In one sitting of the Resident Magistrate's Court at Mahia in October 1877, for instance, Walker and Bendall claimed amounts from Maori defendants for goods supplied varying from £3 14s to £20. According to Dr Ormond, Maori invariably found the money to pay such debts, ‘[w]hen forced to do so.’

Here, the complicated undertakings between the Crown and Maney in 1874 are significant. According to Belgrave and Young, ‘By 1875 Maori in the region were very substantially in debt to European store holders and, in particular, to R D Maney, the major beneficiary from the sale of the blocks.’ As we have explained, by 1874 Maney was said to have acquired ‘interests’ in the blocks. This did not merely mean the leases he had acquired for the Taramarama and Ruakituri blocks; he had also been actively involved in buying out the individual interests of those listed in the Locke deed schedule. The Crown then paid Maney sums of money in exchange for his leasing arrangements, proprietary interests, and assistance to the Crown in further purchasing of the blocks. But why had Maney begun purchasing Maori interests? Clearly the debt incurred by Ngati Kahungunu was such that his rental did not cover all of their debts. He had been able to advance purchase payments for the Ruakituri and Taramarama blocks, and he would have felt confident that he could continue to purchase customary interests. After the sale of the blocks had been completed, Ormond acknowledged that ‘leaders had come off badly because they did not have enough funds to cover their debts.’

In these circumstances, we are not surprised that Ngati Kahungunu also later contemplated the alienation of their interests to the Crown. As Marr pointed out, ‘Even if they had been reluctant to sell, many of those approached must have felt considerable pressure to do so or risk losing out altogether.’ Belgrave and Young considered that because of the ‘major problem’ of debt, ‘Ngati Kahungunu were selling land to meet their responsibilities.’ For Ngati Kahungunu, they stated, it was a ‘much more significant factor’ in the decision to alienate their interests than the ‘conflict’ over customary rights that had arisen.

The second reason was the apparent disputes that arose between various Ngati Kahungunu groups because of the division of the rentals. As we have seen, this emerged as an issue in November 1873 when Ihaka Whaanga and 12 other chiefs

375. Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 13
376. Ibid, p 104
378. Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 100
379. Belgrave and Young, summary report of ‘War, Confiscation and the “Four Southern Blocks”’ (doc 13), p 10
complained to McLean about the pitiful amount they received due to the fact that only one of their people was a listed owner. For these chiefs, the terms of the Te Hatepe deed had gone unfulfilled. The uncertainty surrounding the rentals derived from the leases, both for those Ngati Kahungunu who initiated the leasing arrangements and those who were initially left out, would have certainly contributed to general anxieties about debts. If the rentals had to be spread more widely, the return to the original lessors would be smaller. A further factor which must have made sale seem a better option to both groups of Ngati Kahungunu was the looming land court hearing. For Ngati Kahungunu Wairoa leaders, it was an unwelcome development – particularly because of the so-called ‘boundary dispute’ that had become such an issue. The decision of Tuhoe and Ngati Ruapani to oppose the leases was, as we have seen, framed by officials as a long-standing traditional dispute which the court could resolve. Only a few months after negotiating the leases, therefore, Ngati Kahungunu were suddenly faced with the prospect of proving their title before the Native Land Court and, potentially, losing their long-sought-after income from the rentals. O’Malley argued that Ngati Kahungunu were selling lands ‘to which they had at best disputed . . . title’ in order to clear their debts to Maney 380 – an argument disputed by Belgrave and Young 381. We agree that it cannot be shown that Ngati Kahungunu saw an opportunity to clear their debts by taking the opportunity to sell land they knew did not belong to them. Ngati Kahungunu’s customary rights in the blocks, as we have seen, were considerable – of this there is no doubt. But it seems clear that the dispute over title must have influenced the thinking of Ngati Kahungunu Wairoa leaders. Given their indebtedness, the uncertainty created by the ‘boundary dispute’, and the continuing tensions with Tuhoe, the prospect of a land court hearing must have weighed on them and increased the pressure to sell. And for coastal Ngati Kahungunu, the looming court hearing would also have been an unexpected threat. Those who had no customary rights in the four southern blocks land, or who feared their rights might not be recognised by their whanaunga when the lists of owners were drawn up, would have felt increasingly insecure.

381. Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p100
Finally, Ngati Kahungunu believed – because they had been told as much – that the land had been confiscated. Counsel for Ngati Tamaterangi drew our attention to this point in his discussion of the circumstances in which the blocks were sold. Counsel implied that these circumstances tainted the sale of the blocks. \(^{382}\) Indeed, because they had been told the land had been confiscated (as if confiscation had proceeded under the New Zealand Settlements Act 1863) and then had been ‘returned’, Ngati Kahungunu were placed at a distinct disadvantage when it came to negotiating with the Crown. Given that they were therefore under the impression that they held the land because of a magnanimous act of the Crown, they may have felt at a distinct disadvantage in challenging the Crown’s decisions about the land – even after its ‘return’.

Given all these circumstances, we conclude that there were significant pressures on Ngati Kahungunu to sell their rights to the four southern blocks. Although there is no evidence of direct official pressure, officials quickly sought to convert the situation into an opportunity to purchase the land. This was land which the Crown had promised only a few years before should remain inalienable. Officials took the easy way out; they did nothing to investigate alternatives by which the land could remain in Maori ownership. Purchase was presented as the only solution, not only for Ngati Kahungunu indebtedness and for tensions arising as a result of the rental distribution, but also for the ‘boundary dispute’ that officials themselves wrongly diagnosed in the wake of the Locke deed and the inter-iwi tension over leases. They did so by offering cash advances before a proper investigation of ownership in the Native Land Court, tactics employed elsewhere in the country that have come in for heavy criticism by other Tribunals. The amounts received by various Ngati Kahungunu groups in four deeds of sale totalled £9,600. Counsel for Wai 621 Ngati Kahungunu argued that the land was acquired ‘at less than fair value (less than 1s 8¾d an acre), given that some of the lands were at that time being leased for 700 pounds per annum’. \(^{383}\) A total of 42 names appeared on the memorials of ownership, which appear to have been by and large the same names that appeared on the deeds of sale. Based on this, each individual would have received, on average, £228. But we do not know how the money was distributed – or how widely. There were considerably more names on the lists of owners in the schedule to the Locke deed. It is likely, therefore, that the money was spread across a rather larger number of those with interests in the land. As mentioned above, Ormond commented that the amounts were not adequate to cover all the leaders’ debts. It is disquieting to compare the amounts paid to the settler lessees with the payments made to Maori. We note that the Crown paid to the Ngati Kahungunu owners of the Waiau block an additional £540 in 1892. That payment was for an extra 7,200 acres (over and above the acreage estimated in 1875) that were shown by survey to be in that block. No other payments were made for additional acreage in the other blocks. But – as we observed above in our discussion of the amount received by Tuhoe and Ngati Ruapani – the sum received

\(^{382}\) Counsel for Ngai Tamaterangi, closing submissions (doc N2), p 41

\(^{383}\) Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 62
by Ngati Kahungunu is, we believe, incidental to the main point about the way in which the land was alienated. The land should never have been purchased at all. Rather, the Crown should have respected its own guarantee that the land would be inalienable.

The second group of Ngati Kahungunu to receive payment at this time were those 'loyalists' who had been promised land in the Te Hatepe deed in exchange for their military assistance to the Crown. This was a substantial group – 441 Maori, who were listed by hapu or place of residence in the ‘memorandum of agreement’ that was signed on 15 January 1876. This group was generally considered to have no customary rights in the four southern blocks – and, indeed, only one of the signatories to this agreement (Maraki Kohea) was listed in the memorials of ownership. But some of them may have had rights in the Kauhouroa block, and would have been due compensation for their loss of land as well as their military service. Despite this, leaders of this group had had to push to get a larger share of the rentals from the leases. And once a land court title investigation went ahead, they faced exclusion altogether. Ultimately, the Crown could not fulfil its promise to them made at Te Hatepe. Ihaka Whaanga appears to have accepted this in November 1873, when he suggested a money payment. McLean told him at that time that as their party comprised 319 men they should receive £2,942 15s 6d (at £9 4s 6d each). But the £1,500 they did receive, therefore, was almost half of this suggested payment, and with an additional 122 people added to the list, this came to £3 10s per person. Ngati Kahungunu were paid off at what was clearly a low rate for the time, judging by the offer made informally by McLean. We might conclude that the size of the payment was less important to the leading signatories of this deed than ensuring that all who had fought for the Crown were recognised, and their names recorded.

It is possible that some Ngati Kahungunu were excluded from negotiations, and therefore were unable to secure even a small payment for their rights in the blocks. Counsel for Ngai Tamaterangi argued that there were many Ngai Tamaterangi who were considered to be ‘rebels’ by the Crown but who did not pursue their interests in the land court because of threats of confiscation under the ECLTIA and subsequent legislation. We are not inclined to accept this argument. As we have seen, all parties including officials and Maori from the time of the Locke deed up until the land court hearing believed the land had been legally confiscated but had been ‘returned’. There may have been some Ngati Kahungunu who participated in the land court hearing who, as we have noted, were placed under pressure following the Solicitor-General’s opinion regarding the status of the four southern blocks land. Those who may have been deemed ‘rebels’ had they been required to give evidence to a court exercising its jurisdiction under the East Coast Act 1868 may

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384. Memorandum of agreement between the Crown and Ngati Kahungunu to convey interests in southern blocks, 15 January 1876 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), p 44)
385. ‘Notes of Native Meetings’, 29 November 1873, AJHR, 1874, G-1, p 2
386. Counsel for Ngai Tamaterangi, closing submissions (doc N2), pp 41–42
have felt their rights in jeopardy, and may have withdrawn their names from the lists of owners entered onto the memorials of ownership anyway.

Finally, we note the particular case of Te Waru Tamatea. Te Waru and his people, without a doubt, sold because as exiles from their homes in upper Wairoa, they had no real choice at all; and the payment they received in 1877 – last of all those made by the Crown – was the smallest sum it paid to any group. Yet, they had strong customary rights in the land.

Because their exile from the Wairoa region to the eastern Bay of Plenty was the outcome of a wider set of circumstances – Te Waru’s turning to Te Kooti following the Crown’s actions in upper Wairoa from the end of 1865 – we address the events
Te Waru Tamatea Relinquishes the Rights of his Hapu in the Land

Te Waru Tamatea and his people were exiled to land in the eastern Bay of Plenty following their surrender at Fort Galatea in December 1870. They were taken initially to Te Teko, where they resided under the surveillance of Ngati Awa, before being sent to Maketu and finally, in June 1874, to Waiotahe. The idea of relocating the hapu permanently to land in the eastern Bay of Plenty appears to have originated with Te Waru himself. In 1877, he told G A Preece, ‘It was on my request to Sir D M [McLean] that this land was given to me here [Waiotahe] and I have remained quiet since.’ As Te Waru referred to meeting McLean at Whakatane, it was likely that this request was made at the April 1872 hui where McLean instructed the exiles to return to their home lands (see chapter 5). But it was not until March 1874 that this proposal was acted upon, when the official Brabant recommended that the community be relocated to Waiotahe. It is likely that Te Waru sought relocation because of lasting tensions between his people and other Wairoa Ngati Kahungunu in the wake of war and land loss in the district. These tensions appear to have been real: Te Waru did not attempt to return to Wairoa before he died in 1884. But one of the chiefs of his hapu, Hukanui, said in 1877 that while they had moved to Waiotahe because of the tensions, this occurred at the Crown’s initiation. ‘[T]he Govt have decided to keep us here on account of the ill feeling between us and Ngatikaha Nganga [sic].’ Although the weight of evidence suggests Te Waru suggested the relocation to Waiotahe, the move also certainly suited the Crown’s aims at this time. Although purchasing the blocks had yet to be proposed in 1874, officials had witnessed much of the confusion that had ensued following the leases, and were beginning to deal with the fallout from this. It was in the interests of these officials that Te Waru and his people did stay away.

Te Waru was reported to have offered to sell his interests in the blocks in August 1874 – only a few months after he and his people were relocated to Waiotahe. This was the first time the possibility of sale of land in the blocks was raised.

Mary Gillingham suggested that in offering his interests for sale, Te Waru may have been asserting his ‘mana whenua over lands in the Wairoa interior’ and the

1. G A Preece, notebook, no date (Judith Binney, comp, additional supporting papers to ‘Encircled Lands, Part 1: A History of the Urewera from European Contact until 1878’, various dates (doc A12(b)), p 804)
3. Preece, notebook (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), p 803)
4. Brabant to Native Department, 12 August 1874 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 308)
lower Wairoa chiefs.\textsuperscript{5} In other words, he made the first offer \textit{because} he was in exile, to remind both Ngati Kahungunu and the Crown of his unquestionable rights. Professor Judith Binney, however, argued that the circumstances in which Te Waru made this offer shows he had been placed in an ‘invidious position’, and felt pressured to sell his interests in the land.\textsuperscript{6} She noted the circumstances in which Te Waru and his people came to be at Waiotahe and argued that this was not a move of their own choosing: they had been forced away in war and had been offered land to cultivate in the eastern Bay of Plenty where they had no customary associations or knowledge of the resources that could be utilised. She also directed our attention to the record of letters Brabant sent, in which he noted that bullocks, seed potatoes, and tools had been given to the community, thereby making it self-sufficient.\textsuperscript{7} According to Binney, ‘it is no coincidence’ that the letter in which Brabant indicated he had organised tools for the community was sent on the same day as Te Waru’s offer to sell his interest in the land.

The broader circumstances surrounding the finalisation of the purchase, which did not occur until three years after Te Waru’s initial offer, explain to us why Te Waru accepted payment at this time. By the middle of 1877, Te Waru’s people, who had by then taken the name Ngati Tamatea, had about 50 acres under cultivation at Maromahue in the Waiotahe Valley. According to Binney, they were awarded lots 19, 386, and 388 Waiotahe, which totalled 324 acres. The smallest lot was a fishing station at the mouth of the Waiotahe River.\textsuperscript{8} Binney notes that Te Waru had been excluded from negotiations with other Ngati Kahungunu to sell the blocks, and in this context he ‘insisted that a government representative be sent to him’ in January 1876, though for what purpose she does not state. Finally, in August 1877, G A Preece travelled to Waiotahe and ‘pressed Te Waru and his brother Reihana to endorse the sale of the four southern blocks’.\textsuperscript{9}

We learn about Te Waru’s view of the sale primarily from the record of this hui with Preece. This hui probably took place sometime in mid- to late August, before the deed of sale was signed on 6 September 1877. Although Preece’s notes are difficult to follow, it appears that Te Waru began the korero by acknowledging Preece, stating that it was fitting he had come to ‘settle’ their land questions, as it was Preece to whom Te Waru had surrendered in December 1870. He stated that it had been his idea to resettle at Waiotahe. He discussed the sale of the land as a fait

7. Brabant to Native Department, 16 July 1874; Brabant to Native Department, 12 August 1874 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 308)
9. Ibid, p 318}
accompli, but asserted his own mana: ‘let the Wairoa natives sell the land but that my mana over it may be kept over it that the land may go but I must retain my influence.’ Thus Te Waru harked back to the political balance in the Wairoa district before Government forces arrived there at the end of 1865: ‘it was Kopu at the coast and Te Waru inland in the old days before fighting.’ Thus, he said, things had taken the course they did in the Native Land Court (in 1875) only because he – whose mana was so widely acknowledged – was not there: ‘If I was in the Court the other natives would have nothing to say.’ Although he accepted that the four southern blocks were now gone, he strove to retain his interests in the land to the north and west: namely, Waikareiti and Waipaoa ‘up to Maungapowhitu [sic]’. And he made one further request: ‘All I ask for is let me go for the bones of my children and bring them here or take them on to my other land’.10

Preece returned to Waiotahi to sign the deed with Te Waru and his people on 6 September. As we have already noted, this was after the proclamation declaring the blocks ‘waste lands’ of the Crown. The agreement was signed by 30 people, headed by Te Waru and his brother Reihana Horotiu. Many who made their mark were women; few men of the community had survived the war.

As payment for their interests in the four southern blocks and the Hangaroa block, Preece had offered £200. By any standards, this was a questionable amount. The customary interests of Te Waru and his people spanned the eastern regions of the blocks. This offer was rejected: instead a counter offer of £400 was made.11 Ultimately, a final figure of £300 was reached, which Preece reported that he had paid ‘in full satisfaction’ of their claim.12

In our view, Te Waru had no alternative but to accept the Crown’s money. Although he managed to negotiate an increase in the Crown’s initial offer of £200, both that and the counter-offer of £300 demonstrated how little the Crown believed it had to take account of his rights – as he would have been acutely aware. When Te Waru departed Wairoa for the final time in 1869, it is likely he knew he would never return. Relationships with lower Wairoa peoples had been shattered over the previous four years of fighting. In 1865–66, he had fought against Crown forces when they marched from Wairoa into the interior, despite having successfully maintained the peace with lower Wairoa chiefs over the previous year and a half. Upon surrendering in May 1866 he believed he had arrived at peace with honour, only to discover Ngati Kahungunu land was to be confiscated. This was surely foremost in his decision to join Te Kooti, which had disastrous consequences for both peoples of upper and lower Wairoa. The Crown had done little in the intervening

10. Preece, notebook (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 803–804, 806)
11. Ibid, p 803
years to mend its fences with the peoples of upper Wairoa and Waikaremoana against whom it had fought. Instead, it actively encouraged divisions among Ngati Kahungunu, beginning with its decision to quash Pai Marire in late 1865 through to its pursuit of Te Kooti which employed lower Wairoa Ngati Kahungunu among its forces.

On top of this, Te Waru and his people were left out in the cold when the Locke deed was negotiated in 1872. By the time the Locke deed was signed, Te Waru and his people had already left their homes. At that crucial moment in the history of the land, they were unable to protect their interests. Though so much of their land lay within the Locke deed boundaries, the list of customary owners given to Locke excluded the entire hapu. They had thus been totally marginalised by 1872.

In summary, while Te Waru initiated the sale of his interests in the mid-1870s, he was indeed – as Binney says – in an ‘invidious position’. He and his community had been relocated to land that they were unfamiliar with and where they had few resources to develop. At the hui with Preece, Reihana summarised the feelings of resignation and despair which led them to participate in the sale of their ancestral land in return for a very small payment: ‘I wish to sell my whole interest in all land in Wairoa both surveyed and unsurveyed let me eat the proceeds’.

By 1877, Te Waru and his people could do little more than secure some small recognition of their rights in their ancestral lands.

At some point during the hui, the women of Ngati Tamatea sang a waiata tangi, or apakura, grieving over the loss of their ancestral lands:

Go my lands go to
the sea go
Taramarama
go Waiau go
Ruakituri, go
Tukurangi go
Like our hunters
of old – gone for
ever like the
wind which strikes
Maunganui

As Binney aptly said, ‘Their song echoes other lamentations in Te Urewera.’
leading to the sale of his people's interests in the blocks separately (see the sidebar opposite).

In summary:

- Events following the signing of the Locke deed clearly increased tensions among Ngati Kahungunu; notably, there were difficulties over rent distribution (a product of the Crown's inept attempts in the deed to give effect to its promises in the Te Hatepe deed). The leases also led to increasing tensions with the Tuhoe leadership, who saw them as a challenge to their own rights in the land.

- Although there is no evidence of direct official pressure upon the various Ngati Kahungunu groups to sell, officials exploited divisions within Kahungunu, high levels of debt, and Ngati Kahungunu apprehension as the land court hearing approached that their economic return from the leases might be in jeopardy, to embark on purchase of the land. Ngati Kahungunu were under heavy financial pressure. The impending court hearing carried risk that they were not in a position to take. These factors certainly coerced them, and made them vulnerable to the encouragement and inducements of the Crown. While we cannot call this a 'forced sale' we do not think they were 'willing sellers'. Rather, the various groups within the iwi found themselves in a situation where sale seemed by far the best way out of their dilemmas.

- The Crown's argument, that purchase was presented as an 'attractive alternative' to resolve the 'boundary issues' between Tuhoe and Ngati Kahungunu, does not sufficiently account for its role in embarking on acquisition of this land through a process that was highly dubious and in circumstances that were extremely unfair. We do not believe that purchasing these blocks was the only avenue available to the Crown to resolve problems it had created.

**7.5.5 Conclusions on the Crown's acquisition of the four southern blocks**

**7.5.5.1 Why and how did the Crown and Maori enter into the Te Hatepe deed (1867) and what was its effect?**

The signing of the Te Hatepe deed, and the terms on which the cession of the Kauhouroa block was made, ultimately proved to be the first stage in the complex history of the creation and alienation of the four southern blocks.

The basis of the Te Hatepe deed was that, in return for the Maori signatories' cession of the Kauhouroa block, the Crown would not press its claims to confiscate 'rebel' land in an area believed to be subject to the East Coast confiscation legislation. The underlying assumption of the deed was that there had been a rebellion which justified the Crown’s confiscation, which was a fait accompli – or virtually so; Crown officers had gone to Te Hatepe only to discuss which lands would be taken. That this was the Crown's view was made very plain to Maori at the hui that preceded the deed's signing. Faced with the Crown's insistence, Ngati Kahungunu had little bargaining power. By the Crown's own word, any opposition to its desire to obtain the Kauhouroa block by means of a cession from its ‘loyal’

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387. Crown counsel, closing submission (doc N20), topic 6, p 17
owners could be overridden by the operation of the law. And who better than the Crown to know its own legal right to confiscate?

Our analysis has revealed that the Crown’s assumptions were wrong. There was no rebellion and so there was no basis for invoking East Coast confiscation legislation. Since those same wrong assumptions underlay the negotiations for the Te Hatepe deed, the arrangements made by that deed also lacked any basis. Quite simply, the Maori signatories were not correctly informed about the context for those arrangements and the misinformation they received was fundamental. We believe that if it had been known by Maori that the Crown could not confiscate any land in the area and yet wanted a large tract of land for a military settlement, the Maori signatories would not have agreed to part with the Kauhouroa block on the terms set out in the Te Hatepe deed. Maori participation in the Te Hatepe deed was, in short, seriously compromised by the Crown’s own conduct.

More than that, however, even if the Crown had been correct in its assumption that there had been a rebellion justifying its reliance on the East Coast legislation, our analysis has revealed that the legislation was ineffectual to achieve the Crown’s purposes. Quite apart from the defect in section 2, which would have prevented any use of the 1866 Act before its amendment in October 1867, the task the Act set for the court – to separate out ‘rebel’ and ‘loyal’ land – was very likely incapable of performance. As the Turanga Tribunal pointed out,

> the legislation laid bare the false premise on which the Crown’s confiscation policy was based: namely, that it was possible to separate the interests of ‘friendly’ and ‘rebel’ Maori, and take the lands of the latter without inflicting injustice on the former. The advantage of cession was that it removed all the risks of experimental legislation including, as we saw from the crucial error in the 1866 Act, simple incompetence.\(^{388}\)

Thus, at the time of the Te Hatepe deed, the Crown had no leverage at all to obtain a cession of land in lieu of invoking the confiscation legislation.

And more than this, even if the Crown believed (wrongly) that it had confiscatory rights which it could ‘trade off’ for a cession of land, in all conscience it would at least need to protect ‘non-rebels’ who did not consent to the cession, just as they were protected by the law. The East Coast confiscation law provided that only ‘rebel’ land, as identified by the Native Land Court, could be confiscated. The principle of protecting ‘non-rebel’ land was fundamental to the novel scheme of the East Coast legislation – as Richmond spelt out in 1868: the Government’s wish was that only the lands of those who had rebelled should be confiscated, ‘and that we should not take away land from friendly Natives and afterwards give them back other land’.\(^{389}\) In those circumstances, any alternative or negotiated arrangement could not ignore the law’s protection of the land of those who could not be shown to be ‘rebels’ and achieve a taking of such land unless there was genuine consent by those whose lands were to be taken. We have already found that no such con-

\(^{388}\) Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 1, p 166

\(^{389}\) Richmond, 3 September 1868, NZPD, vol 3, p 145
sent was possible, or given, in the circumstances surrounding the Te Hatepe deed. Moreover, McLean’s initial investigation of the land to be taken indicates that he was, at the end of 1866, already making decisions as to who held the key interests there, and which of them were ‘rebels’, though no formal investigation had been held. This bypassing of the Crown’s own newly legislated processes characterised subsequent Crown actions at Te Hatepe. To some extent, Crown officers misled Ngati Kahungunu, implying concern for the fragmentation of their lands should they be brought before the land court when it is clear that the overwhelming Crown concern was to avoid fragmentation of the lands it might be granted. But in our view, those officers were also confused about the law’s meaning – and pressed their misguided views of it upon Maori. They consistently expressed the view that a cession was consistent with the provisions of ECLTIA, as long as the land court confirmed it.

In all the circumstances, the Crown’s conduct at Te Hatepe could justifiably be described as ‘begging with a bludgeon’. Our analysis has revealed that the Crown’s bludgeon was unlawfully wielded, but that the Crown did not believe that, and the signatories to the Te Hatepe deed had no way of discovering it. Overborne by the Crown’s claim to a far superior bargaining position, Ngati Kahungunu who had assisted the Crown were persuaded to assent to the proposal that they cede one substantial tract of land to represent the ‘rebels’ interests in the entire area to which the Crown said it was entitled. In return, they would acquire the ‘rebels’ interests in the rest of the lands described in the Te Hatepe deed. For this, the Ngati Kahungunu signatories were dependant on the good faith of the Crown. We note that, despite Ngati Kahungunu statements that the Kauhouroa block would represent all the ‘hauhau’ interests, those who had fought against the Crown (or had not fought at all) and had rights in the block not only lost their rights there, but also stood to lose their rights outside the block in the broader Te Hatepe deed area.

The outcome of the 1867 agreement was the Crown secured the land it wanted (the Kauhouroa block). From the time the court supposedly approved the deed, the Crown treated the Te Hatepe deed as valid to transfer the block to Crown ownership – as if it were fully entitled to do so. But to meet its reciprocal obligations to those Ngati Kahungunu chiefs who had agreed to the cession, the Crown had to recompense them in land within the broader Te Hatepe deed area. We are at a loss to explain why this crucial part of the agreement, outlining which land would be given to ‘loyal’ Ngati Kahungunu, was not written into the deed; Biggs, after all, articulated it clearly in his report. But because it was not, there was no apparent or actual mechanism to implement the Crown’s promise. And above all, there was no official statement of those designated lands to guide Crown agents who, in subsequent months and – as it turned out – years, were charged with implementing it. As we will see in the next section, the lack of certainty on this point meant that other views were asserted – and accepted. This was the origin of the four southern

390 Hugh Carleton, 3 September 1868, NZPD, vol 3, p158
blocks – created on lands to the south-east of Lake Waikaremoana, where tribal rights were complex.

A number of fundamental Crown errors generated the confusion surrounding the negotiation of the Te Hatepe deed. Primary among them was the Crown’s mistaken assumption that it could ignore the processes prescribed by its own confiscation legislation in order to achieve a result entirely different from the one authorised by that law. Having misinformed Crown-aligned Ngati Kahungunu about the effect of the confiscation law, Crown agents then pressured them to atone for the rebellion of their kinsmen by ceding to the Crown a well-located tract of land. It promised, in return, money, reserves, and the award of ‘rebel’ land in a part of the district subject to the East Coast confiscation legislation. But there was no legal mechanism to give effect to that last promise. The Crown thus obtained the land it wanted (which is outside this Tribunal’s inquiry district) without delivering on its major promise to those who signed the Te Hatepe deed.

The Crown conceded that the effect of the deed was to confiscate the land of ‘rebel’ owners in the Kauhouroa block, for they did not consent to its ‘cession.’ The deed’s adverse consequences were much further reaching, however. Whereas the East Coast confiscation law was designed to protect non-‘rebel’ Ngati Kahungunu from losing their land as a result of the rebellion of their kin, the Crown achieved the opposite outcome in the Te Hatepe deed but promised to make it up to the Maori signatories with other ‘rebel’ land. Its subsequent ineffective efforts to make good on that promise served not only to compound the injustice of the situation for Ngati Kahungunu, but to ensnare Tuhoe and Ngati Ruapani without reason, but with grave and enduring consequences. The lasting legacy of the Te Hatepe deed – besides the loss of the Kauhouroa block – was that it created the first in a series of misunderstandings that ultimately culminated in the loss of the four southern blocks.

7.5.5.2 Why did the Crown and Maori enter into the Locke deed, and what was its effect?

The Locke deed was, as the claimants argued, a deeply flawed Crown arrangement which was the result of a Crown attempt to meet obligations to Ngati Kahungunu chiefs which it had entered into five years earlier. Samuel Locke, the agent sent to negotiate the agreement, was either inadequately or wrongly briefed. It is not clear whether Crown officers acted on the assumption, soon after the signing of the Te Hatepe deed, that Crown authority extended to the lake. The evidence of surveying activities after May 1867 is ambiguous; it may be read as indicating the start of a process of expansion of the area claimed to be under the Crown’s authority by virtue of the Te Hatepe deed, but we cannot say that for certain. It seems, however, that revision of the ECLTIA boundaries in October 1867 may have been crucial in official misinterpretation of the Te Hatepe deed boundaries. The inland boundaries in particular were so vaguely described in the schedule to ECLTIA that it is hard even today to be certain where they are. At the same time even Biggs, who had been quite clear about the limited extent of the Te Hatepe deed area in 1867, seems to have revised his view of those boundaries by September 1868 when he...
appeared in the land court. In presenting the Te Hatepe deed to the court, he referred for the first time to a boundary of the Te Hatepe deed area which appears to include Maungapohatu, as well as Waikaremoana – these were not boundaries in the \textit{ECLTIA 1867} schedule, but Biggs may have thought they were. Biggs’s murder shortly afterwards by Te Kooti, at Turanga, meant that the task of interpreting the Te Hatepe deed fell to others.

After the war in Te Urewera of 1869–71, the Government renewed its attention to the chiefs of Wairoa and to its arrangements for the lands in the district, and at this time it is clear that the original terms of the Te Hatepe deed had been lost sight of. Locke asserted Crown authority over lands stretching to the shores of Lake Waikaremoana where the Crown in fact had no rights at all. These were confiscated lands, he said – though they had never been confiscated, and remained in customary ownership. They were lands quite outside the terms of the Te Hatepe agreement. They were also lands in which iwi who had no part in the Te Hatepe agreement had rights, yet they found their lands caught up in the Crown’s arrangements. The very fact that Locke included one Tuhoe rangatira, Te Makarini, as a signatory to the deed is evidence that he admitted those rights; yet few Tuhoe and Ngati Ruapani names appear in the lists of block owners appended to the deed.

We are surprised that the Crown made no concession before us in respect of these actions of its agent. It did acknowledge that ‘Locke was wrong in his statements concerning the confiscation,’ but qualified this by adding that he ‘also made it clear that in the Government’s mind the time was past for an application of that policy.’\textsuperscript{391} This was a reference to the fact that Locke agreed to ‘convey the block to the people.’\textsuperscript{392} But the Crown stated without further discussion that Locke considered that the four southern block lands were included in the schedules – evidently of both the 1866 and 1867 East Coast Land Title Investigation acts – and were also the lands referred to in the Wairoa deed of cession.\textsuperscript{393} Nor did the Crown make much comment on the shortcomings of the deed itself; it stated only that there was ‘limited evidence to show what mechanism was intended for implementing the Deed of Agreement.’\textsuperscript{394}

If the Crown assumed that the deed did not matter because it was not implemented, we cannot agree. Locke’s actions in designating four blocks in the southern Waikaremoana lands, and laying down boundaries in a district where tribal rights were complex and where sustained conflict with the Crown in 1865–66 and 1869–71 had played havoc with community occupation, were to have long-term effects (as we shall see). And while we remain uncertain as to how Locke took the boundary of these lands to Lake Waikaremoana, we are certain that he thought the Crown could assert authority over them as if they had been taken under the New Zealand Settlements Act (even though his deed cited the provisions of \textit{ECLTIA}). We think that this confusion arose because of Locke’s experience

\textsuperscript{391} Crown counsel, closing submissions (doc N20), topic 6, p 17
\textsuperscript{392} Ibid, p 12
\textsuperscript{393} Ibid, p 11
\textsuperscript{394} Ibid, p 13
with the Mohaka-Waikare lands, where he had earlier negotiated a settlement with Maori in the wake of a different confiscation. He drew attention himself to the fact that he had been guided by the Mohaka deed. And in fact, a number of features from that deed were imported into his Wairoa deed (including ‘retention’ by the Crown of blocks of land, including redoubt sites; and subdivision of the rest of the land into blocks to be granted to Maori whose names were listed in a schedule).

But for Maori, the deed forced their acceptance of the Crown’s wrongheaded view that the southern Waikaremoana lands had been confiscated, and that the Crown had the authority to decide who might henceforth be designated their ‘trustees’ and their owners. It purported to confer rights on those ‘trustees’ and owners, without in fact doing so. No mechanism was available to the Crown by which it could confer such rights. Tuhoe and Ngati Kahungunu were each left with different expectations of the agreement, and before long there would be tension between them. Ultimately, the Locke deed laid the basis for the alienation to the Crown of the four southern blocks it created. This was especially ironic, as the deed stated categorically that the lands were to be inalienable by sale.

It was the fundamental deficiencies in the Crown’s arrangements at Te Hatepe that created the context in which serious mistakes were made later by Crown agents as to the whereabouts of the ‘rebel’ land that had been promised to Crown-aligned Ngati Kahungunu. The East Coast confiscation district was not clearly defined, and never surveyed; and the Te Hatepe deed did not specify precisely the location of the ‘rebel’ land that had been promised. Thus, by the time of the 1872 Locke deed, the Crown had come to believe that it had confiscated, and could dispose of, land extending all the way to the south-eastern shores of Lake Waikaremoana. This went far beyond the area over which the Crown had purported to establish authority at Te Hatepe, and into an area where tribal rights were particularly complex. It was at this time that lands of Tuhoe and Ruapani became embroiled in the Crown’s plans. The Locke deed’s definition of the four southern blocks, using rivers and other natural features as block boundaries, was an arbitrary division of an extensive area in which there were no clean divisions of rights, let alone divisions along the expedient lines drawn by the Crown on a map. So garbled are the terms of the Locke deed, however, that to this day its exact objective is bewildering. It did, however, result in further layers of confusion (adding to those created by the Te Hatepe deed) that ultimately resulted in the Crown’s decision to acquire the land for itself.

**7.5.5.3 Why was there a land court hearing for the four southern blocks in 1875 and what were its outcomes?**

The last unhappy stages of the four southern blocks story were played out from 1872 to 1875. The Locke deed, as we suggested above, set the scene for the final alienation of the blocks. It formalised the Crown’s position – which had evolved since 1867 – that its ‘confiscation’ under the East Coast legislation had extended all the way to Lake Waikaremoana; hence also its right to ‘return’ the southern lands to those whom it deemed entitled. This false assumption drew the lands of
Tuhoe and of Ngati Ruapani into the Crown's arrangements. As a result of this, and the leases of the blocks which Ngati Kahungunu entered into (read by Tuhoe as an assertion of their authority over them), tension between Tuhoe and Ngati Kahungunu increased.

In this context, Crown officials took the mistaken view that an age-old (and insoluble) dispute over customary rights was the problem, and that it could be solved by setting a straight line boundary between the iwi. Iwi leaders, concerned to protect their respective rights in the new situation that the Crown’s Te Hatepe and Locke agreements (each with their own new boundaries) had produced, also increasingly spoke of a boundary line. But the Crown’s proposition was an odd one, which did not sit comfortably with the complex pattern of customary rights in the region, and the iwi were unable to agree on where the line might be drawn. This issue also increased tension between them. It came to dominate the discussions held up till the time when the blocks were heard in the land court. In our view, it was also an underlying theme in the evidence given in the court itself.

At the same time, Crown officials Ferris and Locke sought to defuse Tuhoe anger over the leases by advising their leaders to go to the land court for a determination of their rights. Tuhoe did not trust Locke, but, finding themselves between a rock and hard place, evidently decided the court might be the better option, and filed applications for a hearing of the blocks. Despite this, however, and despite its undertaking to Maori that the four blocks would be inalienable by sale, the Crown decided towards the end of 1874 to buy up Maori interests without waiting for the title hearing. There were several reasons for this decision. Underlying the Locke deed had been a Crown assumption that it could control decisions about the four southern blocks (because of its asserted confiscation and the authority it thus had over the lands). It had hoped that the leases to settlers would bring some returns to those who signed the Locke deed, or were listed in the block lists of owners, and thus discharge its obligations under the Te Hatepe deed. But it became apparent toward the end of 1874 that this could not happen. Disputes within Ngati Kahungunu about the distribution of the rents – between those who had been promised recompense for their customary rights in the Kauhouroa block, and those who had been promised rewards for their military service – were stilled for a time, but did not go away. Officials must also have considered that if Tuhoe were awarded title to all or part of the blocks by the court, the leases would be destabilised. Nor would the court award title to those Ngati Kahungunu, such as the Mahia people who had fought alongside the Crown in the wars, who might not be able to prove customary rights to the land. Even if some Ngati Kahungunu were awarded title to all or part of the blocks, the coastal leaders would forfeit their share in the rents. Finally, in the latter part of 1874, officials discovered – or thought they had discovered – that RD Maney, the Frasertown storekeeper, had begun to acquire interests in six blocks in the district, including at least two of the four southern blocks. Such purchases before title was determined in the land court were possible – and were widespread in many districts – because of the Crown’s own legislation (which provided that such transactions were void,
but not illegal). A private buyer might gain title to a block of land if his sellers subsequently secured an award of title in the court. The Locke deed, moreover, had no legal force, so Maney could ignore it.

In these circumstances, the Crown decided to move to begin purchase of the blocks itself – and thus retain sufficient control to enable it to attempt to pay all those to whom it had given undertakings. We have endeavoured to show why we do not accept that the Waikaremoana lands were ‘classic debatable lands’, contested between powerful iwi over generations. We therefore do not accept the Crown’s position that purchasing the blocks was the only option available in the face of an intractable customary dispute. The Crown’s first move, after removing the settler lessees from the picture, was to make payments to all those Ngati Kahungunu who would sell, then to apply pressure to ‘the Urewera’ – Tuhoe and Ngati Ruapani. Ngati Kahungunu, many of whom were known to be heavily in debt, were under considerable pressure as they faced the court hearing, and the possible loss of their rentals. By the time the court hearing began, officials reported that they had bought all their interests. Some Tuhoe evidently accepted payment too – but the chiefs stated before the court hearing that they had come to return that money, and did not wish to sell. Thus matters stood at the time the hearings began.

The hearings of the four blocks in court were brief – and, in fact, evidence was presented for only two of them. After the first day’s hearing, the judge raised the question whether the lands had been confiscated – and by that very question cast some doubt on the Crown’s long-established position, and its assumptions that it had retained the right to manage the land, and thus its alienation. Doubtless because of this, and because he was also aware that the Crown had yet to finalise its purchase arrangements with those Ngati Kahungunu who had agreed to sell, Locke’s immediate reaction was to protect the Crown’s position. Thus, when he telegraphed McLean seeking an answer to the judge’s question, he also asked for a proclamation to exclude private buyers from the four blocks. McLean got such a proclamation signed almost at once, although the reasons for it, and its timing, were not within the terms of the relevant legislation.

As things turned out, this turn of events was very useful. The Solicitor-General’s opinion that the land was not confiscated (without specifying which land) and that the East Coast Act should apply, must have come as a bombshell. The Act required the court to inquire into the status of those before it – whether or not they were rebels – and to refuse to issue certificates of title to rebels. It created difficulties for the court (which had already heard evidence without signalling that it was exercising jurisdiction under the confiscation legislation), for the Government (which had consistently said the land had been confiscated, hence its exercise of rights over it), and most of all for ‘the Urewera’, who stood to lose the opportunity of being granted title to the lands (they were well aware that they were generally labelled ‘rebels’). We note that there is no evidence that the Solicitor-General’s opinion was read out in court; and that a loud silence in the records followed its receipt at Wairoa. Nevertheless, given the judge’s public posing of the confiscation question in court, the recording of the Solicitor-General’s opinion in the land court minutes, and the interest of all parties in that opinion, we must
assume that Maori were advised of it. The alternative would be to assume that the Government’s agent was quite irresponsible in keeping it to himself.

The significance of the opinion is nevertheless open to question. Though the East Coast Act remained on the statute books, and was the origin of the court’s jurisdiction whenever sittings were held affecting land within the Act’s schedule, the Crown had still not surveyed the boundaries of the scheduled district. Given that the Act was still in force (although it should not have been by 1875, several years after peace had been made in the region), a survey plan of its district boundaries should at least have been available to the judge. Nor had the four blocks themselves been surveyed before the cases were heard (despite the legal requirement that they should have been surveyed). The result was that the judge cannot have been clear as to how much of the land within the blocks fell within the East Coast Act district. The Solicitor-General evidently left it to the sitting judge to decide the finer points of the application of the Act, in light of his presumed knowledge of the various boundaries; but the judge must have found himself hamstrung. To apply the Act, he would have had to inquire in court into the rebel status of the claimants before him. But because he had no survey plan of the East Coast Act district, he would have been unable to explain to the claimants how their lands might be affected by the results of such inquiries. He might have suspected that some of the lands toward Lake Waikaremoana fell within the boundary of the Act’s district, and that some – perhaps the greater part – did not. In these unique circumstances, it is perhaps not surprising that the judge took a course of action which can only be described as inappropriate, and urged the Crown’s agent to try to complete purchase of the land.

Tuhoe were not, of course, the only party before the court who risked being deemed rebels if the hearings continued. Those Ngati Kahungunu who had fought against the Crown, or who had not fought at all, and who might otherwise have expected their names to be inserted on lists of owners for the southern blocks if the court’s judgment favoured or included Ngati Kahungunu, would doubtless have been nervous. If they were aware that any lands in which they might be found to have interests could be awarded to their ‘loyal’ kin under the Act, they might not have found that reassuring. Te Waru Tamatea and the remnants of his community, in the wake of the wars, had been removed from their lands altogether and, despite their undoubted rights in the blocks, were not even a party before the court. Tuhoe, however, were the claimants in the cases, and their position was an exposed one. We have no record of what was said to them in the negotiations that undoubtedly followed the receipt of the crucial telegram from Wellington – which in itself is telling. We would expect the Crown’s agent to have recorded the circumstances in which an offer was made, and accepted. We know only the outcome: the Tuhoe and Ngati Ruapani decision to withdraw from the court, and to take the Crown’s payment for their rights in the land – an outcome they had previously made it clear they were anxious to avoid. They had come to Wairoa to seek recognition of their rights by the court – and had intended to retain any lands they were awarded.

We must conclude that the Tuhoe change of approach was the result of a totally...
unexpected development: that the court was required to sit under confiscation legislation, and that this would undoubtedly affect their position before the court. We further conclude that had the Crown's official, and the court, been in possession of better information about the boundaries of the East Coast Act in relation to the four southern blocks, Tuhoe might have been informed that the impact on their case was not as great as they might at first have feared. The Crown, because of its own negligence over preceding years, was however unable to give them such an assurance. In any case, it had decided well in advance that its best course of action was to purchase all the lands; and we have to think that the new developments would have suited it. They could certainly be turned to Crown advantage. The purchase of all the interests in the blocks would be seen to mean an end to a messy political situation as between Tuhoe and Ngati Kahungunu: there would be no further need to delineate a 'boundary' between them; and potential difficulties because of Tuhoe's wish to avoid sale of the lands would be avoided. In addition, the Crown’s completion of the purchase on its terms would allow it to make payments to those Ngati Kahungunu whom it wished to reward for their services to the Crown.

But Tuhoe (and with them, Ngati Ruapani) should not have been put in this position; nor should Ngati Kahungunu, some of whom stood to be accused as rebels if the court sat under the East Coast Act. Given that peace had been concluded some years since, they should not without warning have found themselves facing confiscation of their lands when cases which they had been advised to take to the land court by Crown officials were well advanced. Crown officials should have clarified the position in respect of their lands before they went before the court. Their failure to do so was in keeping with the lack of care that had characterised all the Crown’s dealings with the upper Wairoa and Waikaremoana lands since the first take of land at Te Hatepe in 1867. Ironically, that failure included the neglect to repeal the East Coast Act, which – had it been understood by Parliament to be an Act under which future confiscations could be made – should have been repealed years earlier.

We note finally that in the rush to finalise the arrangements for the purchase of the four blocks after Crown officials moved to capitalise on the uncertainty of Tuhoe and Ngati Ruapani, the estimates of the acreage of each block were taken as the basis for payment to all with whom the Crown dealt. The Crown did not wait for the surveys to be completed (which by law should have been done even before the cases were heard). The payment itself was no more than 1s 6d per acre. Later, the surveys would show that three of the blocks were substantially larger than the estimates, though one (Ruakituri) was smaller. The overall difference was 15,581 acres. Ngati Kahungunu later complained about 7,500 acres of the Waiau block for which they had not been paid, and the Crown made an additional payment for 7,200 acres. (The 300 acres deducted was for a reserve in the block – which was a Tuhoe and Ngati Ruapani reserve.) No further payment was offered to Kahungunu. Tuhoe and Ngati Ruapani did not receive any further payment at all. The exact amount of land the Crown acquired over and above the arrangements
made with Ngati Kahungunu, and with Tuhoe and Ngati Ruapani, varies according to whether the 28 reserves are included in the calculations or not. However the sums are done, however, the Crown's failure to account for all of the difference between the estimated and surveyed acreage of the four blocks does not reflect well on it.

The greater wrong to Tuhoe and Ngati Ruapani, however, was the pressure they came under to choose between pursuing their cases – and risking the loss of lands they claimed without any compensation or reserves – and accepting the Crown's offer, which at least gave them something tangible. In the face of this pressure, they gave up the opportunity of securing a judgment from the land court, and possible inclusion in the lists of owners. Instead, they surrendered their rights to the blocks themselves, selling them to the Crown.

For Tuhoe and Ngati Ruapani, the result has been particularly unfair. Indeed, it has marked similarities to Tuhoe's experience of raupatu. They became caught up in others' issues, but lacked the legal knowledge or political power necessary to challenge the situation and the Crown's position. Then the Crown's position shifted, without good cause and to the further disadvantage of Tuhoe and Ruapani and, ultimately, they lost the land they had consistently vowed to retain. Their particular experience explains why Tuhoe and Ruapani claimants referred to the four southern blocks as being lost by means of ‘raupatu’ or ‘de facto confiscation’, and why they seek redress from the Crown on that basis.

7.5.6 The Tribunal’s Treaty findings

The complex and protracted chain of events that culminated in the purchase of the four southern blocks was riddled with fundamental misunderstandings on the part of the Crown agents involved. As a result, neither the Crown nor Maori understood the basis or the effects of the various arrangements that the Crown sought to make. The inconsistencies and illogicalities that characterise those arrangements explain the confusion and sense of grievance that has been left, ever since, in their wake. In our experience of the history of Te Urewera, unravelling the events that explain the Crown's acquisition of the four southern blocks has been the most convoluted of tasks. And it has yielded very little of which the Crown can be proud.

Central to our consideration of the Treaty principles' application to this series of events is the fact that an extensive tract of land was, ultimately, removed from Maori ownership. To the extent that the customary owners of the four southern blocks wished to retain their rights in the land but Crown conduct was instrumental in causing its alienation, the Crown will have acted inconsistently with the Treaty principle of active protection. This principle, it will be recalled, assures Maori of their tino rangatiratanga over their land and other taonga for as long as it is their wish to retain that control. Crown conduct that aims, or serves, to undermine tino rangatiratanga cannot be consistent with the principle of active protection. And more than that, to the extent that Crown agents' conduct was inconsistent with the law or careless of Maori customary property rights, the Crown will
very likely have breached the Treaty principle of good government. It requires the Crown’s approach to issues of importance to Maori to be developed, and implemented, with care. This is of particular importance when Crown policy and conduct affects Maori land, which is a basis of Maori society.

Our analysis reveals that the Crown’s conduct in connection with the events that led to the alienation of the four southern blocks was repeatedly in breach of Treaty principles.

The Crown failed signally to meet its Treaty obligations to the tribal communities of upper Wairoa and Waikaremoana. It breached the principles of good government and active protection in that it:

- failed to ensure that an official sent to conclude a major agreement with Maori leaders in the region in 1872 was familiar with the terms of the earlier agreement (the Te Hatepe deed) to which he was to give effect by awarding ‘rebel’ land in a part of the district defined by the East Coast legislation, as compensation to those who had ceded land (the Kauhouroa block) at Te Hatepe;
- failed to define or survey the area within which its East Coast confiscation legislation applied, and simply assumed that it extended to Lake Waikaremoana, when it did not;
- failed to scrutinize the agreement Locke entered into and to censure him, though he asserted that the Crown had confiscated a major tract of land when it was in fact still in customary title and his agreement purported to confirm the ‘return’ of the greater part of the land to Maori;
- on the basis of this wrongful assertion of authority, created four blocks in the lands south and east of Lake Waikaremoana while the lands were still in customary title, and purported to decide owners, though customary rights in the lands were complex, thus exacerbating tribal tensions; and
- failed to inquire into the confusing, ambiguous, and unenforceable terms of the Locke deed, and to take steps to remedy its deficiencies.

The Crown further breached the principles of good government and active protection and the plain meaning of the guarantees in article 2 of the Treaty in that it:

- encouraged Tuhoe to apply to the court for title determination without taking account of the fact that its own legislation, the East Coast Act 1868, was still in force (despite peace having been made), that the court would proceed under the Act, and that the outcome of such a hearing, given the official assumptions that the four southern blocks were within the Act’s schedule, would be the confiscation of the lands of the applicants;
- embarked on the pre-title purchase of the land in the four southern blocks from many of those Ngati Kahungunu it considered owners when a land court investigation was imminent, hoping to pressure the Tuhoe and Ngati Ruapani claimants to abandon their claims to the court and sell their interests so that the Crown purchase could be completed;
- pursued this course of action for a range of reasons deriving from the terms of the flawed Locke deed, including tension within Ngati Kahungunu (between those who had been promised recompense for their customary
rights in Kauhouroa block, and those who had been promised rewards for their military service) about the distribution of rents from the lands; and tension between Tuhoe and Ngati Kahungunu over the same leases, reflecting Tuhoe suspicion of the Locke deed and the rights it seemed to bestow on Ngati Kahungunu;

- failed to consider any solution to these tensions, particularly those between Tuhoe and Ngati Kahungunu (which it wrongly characterised as a 'boundary dispute') other than purchase of the land, which served its own interests but sacrificed those of all the communities whose land it was;

- failed to repeal the East Coast Act by 1875 even though the period within which its confiscation provisions could be justified had long since passed;

- having failed to define or survey the area within which its East Coast legislation applied, was unable to advise the court on this matter when it sought clarification of the status of the land during the 1875 hearing, so that the court remained unaware that much of the land was in fact outside the boundaries of the legislation;

- left Tuhoe and Ngati Ruapani to assume that because the court must proceed under the East Coast Act they faced confiscation of lands awarded to them; thus immediate sale to the Crown was the only way of securing some recognition of their rights, and some reserves; and

- thus secured its purchase from Tuhoe and Ngati Ruapani under threat of confiscation.

We turn now to consider the prejudice that the claimants have suffered as a result of these serious Treaty breaches.

7.5.7 **What were the impacts of Crown acts and omissions in its acquisition of the four southern blocks?**

**Summary Answer:** The loss of the four southern blocks had marked social, cultural, economic, and political impacts on Tuhoe, Ngati Ruapani, and Ngati Kahungunu.

The way in which the Crown acquired the blocks caused significant damage to relationships among iwi of the region. The events from the signing of the Te Hatepe deed, rather than reopening a generations-old 'boundary dispute' over the land, ignited a new dispute between Tuhoe and Ngati Kahungunu. Leaders of each iwi couched the defence of their rights in the language of custom, but this disguised tensions that had in fact emerged in the wake of the Crown's assertion of authority over the four southern blocks' lands, as spelt out in the Locke deed. The terms of debate set at this time had enduring effects on the terms in which claims were advanced about other Waikaremoana land – and the lake bed itself – in all subsequent title inquiries. Some court decisions about Tuhoe and Ngati Ruapani rights in particular were influenced by complete misunderstanding of the circumstances in which the Crown acquired the four southern blocks. The hurt arising from the resulting denial of their customary rights is still evident today. The loss of the blocks, and the circumstances in which they were lost, had a range of consequences for customary relationships in the region – notably for those of the border...
people, Ngati Ruapani, with both Tuhoe and Ngati Kahungunu. They had consequences not only for all those involved in the events of the 1860s and 1870s, but also for their descendants.

The disruption to Maori settlement caused by the military conflict of 1865–66, and exacerbated by the Crown's military operations between 1869 and 1871, was made permanent through the alienation of the blocks. Alienation severed long-standing customary associations with the land and its resources. Although the region had not been as densely populated as some others in traditional times, there were numerous settlements and mahinga kai sites, all of which were lost when the blocks were alienated. Their loss was deeply felt. For Tuhoe and Ngati Ruapani, the allocation of reserves did little to compensate for this loss. The loss of the four southern blocks also had significant economic impacts. Although the land was not of the highest quality in the region, it presented some opportunities for development in the late nineteenth and twentieth centuries, particularly in pastoral development. In the context of other alienations in the Wairoa region, the loss of this land left a number of Ngati Kahungunu groups with a considerably diminished land base. For Tuhoe, this loss followed the northern raupatu in the eastern Bay of Plenty in 1866, and was another blow to the economic resources of the iwi. This loss was even more severe for Ngati Ruapani, who were confined to a smaller rohe in the vicinity of Lake Waikaremoana. The reserves that were allocated to Tuhoe and Ngati Ruapani were subsequently whittled away and did little to meet their economic needs in the long term.

Through its impact on the relationship between iwi of the region and the Crown, the loss of the blocks also had political consequences. For many Ngati Kahungunu, there was little in the events leading to the loss of the blocks that helped build a positive relationship with the Crown after the arrival of Crown forces in 1865–66, and the Crown's securing of a 'cession' from those who had fought alongside its forces. One of the causes of Te Waru Tamatea's commitment to Te Kooti was the effective confiscation of his land through the Te Hatepe deed and its aftermath. His people's lasting exile at Waiothe is symbolic not only of the distance of many upper Wairoa Ngati Kahungunu from their land, but also the distance between them and the Crown. In short, the decade from 1865 was fraught with consequences for many Ngati Kahungunu in the region. Some had negotiated with the Crown in an attempt to protect their land, but were pressured into selling their remaining interests. Others – who had been labelled as 'rebels' and attacked in their homes – were ultimately forced into exile. This was the worst possible beginning for a relationship with the Crown.

The relationship between Tuhoe, Ngati Ruapani, and the Crown, severely damaged by the military operations in the upper Wairoa and Waikaremoana (1865–66), which extended conflict into their lands without justification, was further harmed by the alienation of the four southern blocks, and the manner of that alienation. But the creation and alienation of the four blocks also occurred at a time when Tuhoe and the Crown were beginning to develop a relationship after the war of 1869–71. Tuhoe's governing council, Te Whitu Tekau, established policies against leasing, the Native Land Court, and sale of land. In the short term, the
events leading to the Crown’s purchase of the land would only have strengthened their commitment to these policies. The loss of the blocks contributed to a notable cooling in the relationship between Te Whitu Tekau and the Crown in the late 1870s, though tribal leaders determinedly revived it during the 1880s.

As with the military operations it conducted in the upper Wairoa and Waikaremoana in 1865–66, the Crown has failed to acknowledge the extent of prejudice to the peoples of Te Urewera arising from its acts and omissions in acquiring the four southern blocks. This, too, has had a lasting effect on the relationships among the various parties down to this day.

7.5.7.1 Introduction
We have established the Crown’s Treaty breaches in the preceding section, and turn here to consider the impacts on the claimants of those breaches. In what ways were they prejudiced by the Crown’s conduct? We examine the social, cultural, and economic effects of the loss of the blocks on Tuhoe, Ngati Ruapani, and Ngati Kahungunu, before turning to look at the broader political impacts.

7.5.7.2 Social, cultural, and economic impacts
Crucial to our consideration of prejudice flowing from the loss of the four southern blocks is an understanding of customary rights in the upper Wairoa and Waikaremoana lands, and the impacts of Crown acts and omissions on those rights. We consider first the impact on contests over rights in later title inquiries, and how these impacted on iwi relationships. The Crown’s various acts from 1865 also had a profound and lasting effect on the exercise of customary rights in the land and people's relationships with it. We look at the impact on these rights in a separate section. We then consider the economic impacts of the loss of the blocks. Finally, we turn to the four Tuhoe and Ngati Ruapani reserves made in the wake of the Crown’s purchase.

7.5.7.2.1 Impact on subsequent title inquiries and decisions and tribal relationships
One of the lasting impacts of the loss of the lands to the south and east of Lake Waikaremoana, and the manner in which they were lost, is evident in the continuing contest over rights between Ngati Kahungunu, Tuhoe, and Ngati Ruapani, conducted in a number of subsequent title inquiries as lands to the north, the west, and the east of the lake – and finally, the bed of the lake itself – were investigated. Sometimes these contests have been fraught, and they have left their mark on relations between the iwi.

Counsel for Wai 36 Tuhoe submitted that the effects of events culminating in the Crown's purchase of the four southern blocks were felt primarily in terms of the tribe’s ability to secure recognition of their rights in later title inquiries. The circumstances in which Tuhoe lost ‘title to the land’ and the fact that the ‘issue of the Tuhoe and Ngati Kahungunu tribal boundary remained unresolved’ would have ramifications in Native Land Court hearings, the Barclay commission, and the Native Appellate Court. For Tuhoe, he said, the hostilities of the 1860s, the
‘strategic alliance of Ngati Kahungunu with the Crown’, and the events of 1875 – the withdrawal of Tuhoe from the court proceedings, and the purchase of their rights by the Crown under threat of confiscation – led to the ‘Tuhoe domain being substantially undermined’.\textsuperscript{395} Tuhoe regard all those events, from the time of the war, as having undermined their ability to defend their rohe.\textsuperscript{396} Counsel for Ngati Ruapani also argued that by withdrawing their claims to the four blocks in 1875, ‘following the threat of losing all their rights’, Ngati Ruapani ‘ended up losing their rights in years to come’ because their withdrawal was seen as weakening their claims to lands.\textsuperscript{397}

It is clear that tension over where the tribal boundary between Tuhoe and Ngati Kahungunu was reverberated through subsequent generations in the hearings before various bodies charged with title determination. We have indicated our own view above – that we do not have evidence before us of prolonged hostilities between Tuhoe and Ngati Kahungunu over generations, that hostilities occurred only during a brief period in the early nineteenth century (in the context of a widespread regional upheaval), to be followed by a peace which was maintained until the arrival of Crown troops in the region in late 1865. The Crown’s actions between 1865 and 1875, we found, were crucial in shaping the context within which the tribal communities of the district sought subsequently to defend their rights. These actions included:

\begin{itemize}
\item the disruption of settlement and the exercise of customary rights by the Crown’s forces;
\item the Crown’s assertion of authority over lands stretching to the lake and its mistaken extension of the confiscation boundary there;
\item the Locke deed’s demarcation of the four southern blocks in 1872 in lands where customary rights were complex and overlapping – and at a time when there had been little chance of re-establishing settlement and the exercise of rights after a period of turmoil; and
\item the Crown’s insistence upon setting a hard line boundary between Tuhoe and Ngati Kahungunu.
\end{itemize}

The degree of uncertainty about rights led, in our view, to determined insistence upon them, and denial of the rights of others. At one level, this was simply a human reaction to a period in which the normal exercise of rights had not been possible; but it was also a reaction to very considerable Crown pressure on the lands after the war, and its insistence on demarcating those lands. In these fraught circumstances – with the parties poised to enter the land court for title determination – the first korero about the southern lands since the creation of the four southern blocks took place among iwi. From this time, there was an increasing tendency to express the extent of tribal rights in stark terms – although speakers from both sides continued to acknowledge the rights of others when discussing specific areas. The Tuhoe boundary was asserted at Mangapapa, and that of Ngati

\textsuperscript{395} Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 41, 43
\textsuperscript{396} Ibid, pp 43–44
\textsuperscript{397} Counsel for Wai 144 Ruapani, closing submissions in reply, 8 July 2005 (doc N30), p 14
Kahungunu at Huiarau; and the role of tribal tipuna in laying down boundaries was emphasised. In the Native Land Court hearing of the four southern blocks, which followed immediately after the Wairoa hui, Tamarau Te Makarini spoke of ‘the boundary between the Urewera and Kahungunu’, running from Tukurangi to Waihi and then along the Waihau Stream.\(^\text{398}\) Ihakara Tuatara and Tamihana Huata both argued that a ‘boundary’ existed between Ngati Kahungunu and ‘Te Urewera’, which was located at the Huiarau Range, or along a line from Ruakituri to Maungapohatu.\(^\text{399}\) The positions adopted by tribal speakers at this time would be echoed in the courts and commissions over the decades that followed.

These included the Tahora 2 and the Waipaoa block hearings in the Native Land Court in 1889, and the Ngati Kahungunu appeals to the Barclay commission against the Urewera commission’s finding on the Maungapohatu and Waikaremoana blocks. These bodies also couched their decisions in terms of the location of the ‘tribal boundary’ – often as if this were the defining issue in understanding tribal rights in the region. In the original litigation over ownership of the bed of Lake Waikaremoana, Judge Gilfedder referred in his interim decision (1917) to the ‘main question in dispute’ being the boundary line between Ngati Kahungunu and Tuhoe. He decided, however, to avoid the issue.\(^\text{400}\) Recognising the complexity of tribal relationships among Tuhoe, Ngati Ruapani, and Ngati Kahungunu, and the extent of intermarriage between them, he avoided committing himself on a tribal boundary and instead decided to receive lists of owners based on occupation.\(^\text{401}\) A majority of Tuhoe and Ngati Ruapani shares were awarded. Thirty years later, the Native Appellate Court would be critical of his decision, and decide that the boundary between Tuhoe and Ngati Kahungunu – as found by the 1906 commission – was at the Huiarau Range.\(^\text{402}\)

A further outcome of the unusual circumstances in which Tuhoe and Ngati Ruapani withdrew from the court in 1875, and of the purchase of the blocks by the Crown, was that some later court decisions proceeded from an incorrect understanding of these events. For Tuhoe and Ngati Ruapani, the result was further denial of their customary rights in the four southern blocks lands, compounding their forced withdrawal from the court, and inability to secure recognition of their rights by the court. The Barclay commission, in making its 1907 recommendations on the inclusion of certain groups of Ngati Kahungunu in the Waikaremoana block, referred to ‘the sales to the Crown [by Ngati Kahungunu] of the lands immediately outside this land’ – that is, the four southern blocks (outside the Waikaremoana block) – among those which it took into account when making its recommendation.\(^\text{403}\)

In some ways, the 1946 decision of the appellate court on the lake bed (about Ngati Ruapani appeals relating to lists of owners) epitomises the legacy of the four

\(^{398}\) Napier Native Land Court, minute book, 4–5 November 1875, fol 79

\(^{399}\) Ibid, fols 74, 81–82

\(^{400}\) Young and Belgrave, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), p 164

\(^{401}\) Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 165

\(^{402}\) Decision of Native Appellate Court, Wairoa, 22 April 1947, p 7, RDB, vol 59, p 22,410

\(^{403}\) ‘Report of the Urewera District Native Reserve Commissioners’, AJHR, G-4, 1907, pp 11–13
southern blocks court case, its aftermath, and the alienation of the land to the south-east of the lake. We do not revisit the decision insofar as it relates to mana whenua issues, but we make the following comments.

The court dwelt specifically on the significance of the circumstances of the sale of the four southern blocks in 1875. It was critical of the decision of the lower court (in 1917) for having been mistakenly influenced by ‘taking it to be a fact that the Tuhoes were permitted to sell to the Crown some 157,000 acres to the South of the Lake in which four reserves were set apart for them.’ This, the appellate court said, was not the case. The judge had not had the relevant official papers before him. These showed that in fact Ngati Kahungunu had made the sale. They negotiated to sell the blocks, and then arranged to put the blocks through the court to secure title, and enable the sale to go ahead. Only after this had ‘certain members of the Tuhoe tribe arrived and demanded inclusion in the titles’ – a demand which Ngati Kahungunu had resisted, ‘refusing to associate Tuhoe with the sale.’ The court considered the payments made to Tuhoe and the reserves set aside in 1875 were simply a way of avoiding a contested hearing in the land court that ‘would have delayed a matter which the Government was keen upon completing.’ It referred to a ‘deed of arrangement’ signed by Tuhoe and Ngati Ruapani as buying off the personal opposition of individuals, rather than an acknowledgement of tribal rights.

We appreciate that the appellate court (in its turn) may have had limited evidence on 1875 in front of it. But the result was an outline of the events of 1875 which – as our analysis has shown – was entirely at odds with the facts. For Tuhoe and Ngati Ruapani, the court decision, and the manner of its expression, clearly added insult to injury: their tipuna had been forced out of the court in 1875; yet, 60 years later that fact was still being used against them. And the court also denied Ngati Ruapani claims to be a separate tribe from Ngati Kahungunu, stating that the Kahungunu boundary extended to the Huia Rau Range, and that Ngati Ruapani were a ‘powerful hapu’ of Ngati Kahungunu.

Crown counsel, addressing this issue in our inquiry, stated only that the Crown had no part in influencing the court’s decision, which is claimed to ‘wrongly portray the circumstances of the Native Land Court sitting in 1875 and the subsequent purchase of Tuhoe and Ruapani interests, and the allocation of reserves.’

Sir Rodney Gallen, who was, he told us, the last surviving member of the committee involved in negotiating the lease of the bed of Lake Waikaremoana, commented on one of the impacts of this decision. (The lease to the Crown would be implemented by the Lake Waikaremoana Act 1971.) At the time the lease was being discussed, Tuhoe representatives were opposed to the suggestion of the Ngati Kahungunu representatives that a new trust be set up with all Waikaremoana owners as beneficiaries. There were concerns, he said, that Kahungunu members might ‘dominate’ any trust formed, arising from a feeling that ‘previous Court proceedings in the Land Court had been dominated by Kahungunu.’ Many people

404. Native Appellate Court, Gisborne, minute book 27, 22 April 1947, fols 4–6
405. Ibid, fol 7
406. Crown counsel, closing submissions (doc N20), topic 6, p 18
who lived at Waikaremoana had not found the decision of the appellate court acceptable. (He went on to say that the court’s decision that Ngati Ruapani was a hapu of Ngati Kahungunu and its decision on the nature of the tribal boundary were particularly resented.) All of this explained why two trusts, the Tuhoe-Waikaremoana Maori Trust Board, and the Wairoa-Waikaremoana Maori Trust Board were eventually nominated to receive the rentals.\textsuperscript{407}

Tama Nikora wrote compellingly about the impacts on the lake bed lease negotiations of the appellate court’s decision, in the context of the post-1875 contests over title to the lake, and Waikaremoana lands, and tribal relationships.

The Committee and the owners faced enormous difficulties due to the tensions that existed between Tuhoe and Ngati Kahungunu. By 1969 Tuhoe and Ngati Kahungunu had spent almost 100 years arguing over customary interests at Waikaremoana. Title to land had been disputed in the Native Land Court and the Urewera Commissions, and title to the Lake had been disputed in the Native Land Court and in the Native Appellate Court. It had only been a little over 20 years since the case in the Native Appellate Court had been run which had determined the final list of owners at Waikaremoana. Those arguments were fresh in everyone’s minds. Many of the meetings were very heated and tense and at times it was difficult to see how the discussion could progress to agreement between the Tuhoe and Ngati Kahungunu owners.\textsuperscript{408}

In his view, the negotiations thus had a dual significance: Tuhoe and Ngati Kahungunu were attempting to achieve a reconciliation. ‘The [Lake Waikaremoana] Act represented a “treaty” between Tuhoe and Ngati Kahungunu, as much as a “treaty” with the Crown.’\textsuperscript{409} That seems a remarkable comment on the tensions between Tuhoe and Ngati Kahungunu which were the legacy of the disputes generated by the four southern blocks.

We noted above the appellate court’s decision on the identity of Ngati Ruapani – which directly contradicted what Ngati Ruapani themselves told the court. The contested position of Ngati Ruapani at the lake since the nineteenth century – the outcome of the history of their interaction with Tuhoe and Ngati Kahungunu, as well as of the Crown’s acts from 1865 on – is evident in the snapshots available to us in title investigation hearings from different periods. It is no part of our brief to impose our own interpretation of the history of relationships between Tuhoe, Ngati Kahungunu, and Ngati Ruapani. We note simply that key leaders of Waikaremoana had multiple strands of whakapapa as a result of generations of intermarriage: they had kin to the north among Tuhoe and to the south and east with Ngati Kahungunu. Like people everywhere, they emphasised particular whakapapa depending on the circumstances. This was also the case in land court or commission hearings in which they appeared. Despite extensive intermarriage and close connections between the various communities on the ground, the

\textsuperscript{407} Rodney Gallen, brief of evidence, no date (doc H1), paras 14–18
\textsuperscript{408} Nikora, ‘Waikaremoana’ (doc H25), pp 124–125
\textsuperscript{409} Ibid, p 124
circumstances surrounding the loss of the four southern blocks continue to rankle – part of the legacy of a difficult past. Almost inevitably, they ignited in adversarial fora where rights to land had to be formally contested. This has left its mark on tribal relationships.

Katarina Kawana addressed this point in her evidence to us, emphasising what she considered to be the impact of Crown actions, lasting right to the present: ‘The Crown has used whakapapa to divide us. I want a future where all groups are recognised and where Whakapapa is used to unite us. I want a future where hurts can be acknowledged and things put right. I want a future where we can all move forward.’

Erina Renata also described to us the legacy of these events in graphic terms. Referring to the Waitangi Tribunal’s hearing at Waikaremoana, Ms Renata said that the very process of making claims and giving evidence set ‘whanau against whanau and hapu against hapu’:

Each group stood under a certain banner to give evidence, the barriers were put up and we were all supposed to be enemies. But when we went off for meals in the whare kai, without the labels of those who we represented, we found ourselves all sitting together, sharing a meal and laughing about each others korero, and presentations.

Our analysis of the events from the arrival of Crown troops in the region in 1865 through to the alienation of the blocks tells us where things began to go wrong. Waikaremoana communities had engaged in widespread conflict for a brief period at the beginning of the century, but had restored their relationships through inter-marriage and negotiation. But events stemming from the second period of conflict with Crown forces, from 1865, would see the two main iwi of the region – Tuhoi and Ngati Kahungunu – locked inexorably into damaging contests about their customary rights. Ngati Ruapani – as the smaller tribal group in the region – occupied an equally difficult middle ground.

7.5.7.2.2 IMPACT ON THE EXERCISE OF CUSTOMARY RIGHTS AND ON RELATIONSHIPS TO THE LAND
The loss of land for any Maori community involves not only the loss of rights to resources, but very often the severing of crucial cultural relationships with that land. Although people might continue their associations with land which had passed from their possession through regular visits, without the unfettered access that ownership confers, these relationships would inevitably be disrupted. The four southern blocks were no exception.

Earlier we explained that the evidence before us helps us understand how customary rights operated in the four southern blocks. In summary:

- The land to the south and east of Lake Waikaremoana was undoubtedly a...
border region between two large tribes (Tuhoe and Ngati Kahungunu) in which a third distinct tribal group (Ngati Ruapani) also live.

- Communities of these three tribes occupied land in several key locations (on the southern shore of Lake Waikaremoana; to the south of the Tukurangi block; in the upper reaches of the Mangaaruhe and Ruakituri Rivers; and in the east of the Ruakituri block); from these key locations, they travelled, often considerable distances, to utilise resources seasonally.
- Communities had close connections through shared whakapapa, but usually affiliated to one of the two main iwi (or to Ngati Ruapani also).
- Rights to land and resources were held at hapu level; the general pattern was negotiation of rights between hapu leaders.

Occupation was well established in these lands, not marginal (as Young and Belgrave argued); the exception was the key period of conflict in the 1820s. Hapu rights to the land, and the exercise of their authority over it, were also well established, if subject to negotiation with other communities.

The picture of settlement that emerged in the Native Land Court in 1875 and in subsequent hearings was without doubt distorted by the military conflicts of 1865–66 and 1869–71. But the four southern blocks were not as heavily settled as other places in the region: there were no concentrated areas of settlement, like Ruatahuna or Maungapohatu. Young and Belgrave summarised the evidence of Ngati Kahungunu witnesses before the Native Land Court who identified themselves as having fought against the Government in the conflicts of 1865–66 and 1869–71. Many spoke of the fact that the conflicts ended their occupation in the four southern block lands. The war years of 1865–71 also wrought havoc with the sustained process of relationship building and the renegotiation of rights.

The loss of the blocks made permanent what war had begun. It resulted in the lasting loss of customary rights that Maori communities had built up over some generations, and many of the spiritual and cultural relationships the people had established with their land.

It is not possible to quantify the extent of land loss for each of the key claimant groups concerned. Nor would we attempt a similar exercise to that which we undertook in chapter 4 of this report. Our attempt at quantifying Tuhoe’s loss in that chapter was done solely for the purpose of assisting settlement negotiations, and the line we drew on the map was expressly for this purpose. We believe it would be inappropriate for us to add another line to what is already a fraught history of boundary-defining in these southern lands.

It is appropriate, however, that we should signal, in general terms, what the evidence tells us about the rights particular groups held in particular lands within the four southern blocks. Although customary rights were complex, there were areas where particular tribal groups were acknowledged to have established the closest relationships with the land. It is clear to us that Tuhoe and Ngati Ruapani had

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412. Young and Belgrave, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), pp 20–21
413. Ibid, p 173
an established presence on the southern shores of Lake Waikaremoana, and particularly at Onepoto. This was not merely a seasonal base, but rather a permanent settlement; and it remained after the reserves had been established. Other areas associated with Tuhoe and Ngati Ruapani were in the north and the west of the blocks. Ngati Kahungunu exercised rights to land across the blocks, but their cultivations and settlements were mostly found in the south and east. As we have seen, Tuhoe, Ngati Ruapani, and Ngati Kahungunu all acknowledged this situation. But the Government attempt to force a clear separation of their spheres in the form of a tribal boundary created great difficulties for them.

We cannot doubt that the peoples of the region suffered a significant blow to their spiritual well-being with the loss of their ancestral land. They were separated from their wahi tapu and other sites important to them. Although they retained some land in the reserves (which we will consider below), this could hardly compensate for the permanent separation of communities from the greater part of the land. The story of Te Waru Tamatea and his community is emblematic of the peoples’ loss. Their exile to Waiotahe was permanent; today, their descendants remain in exile, but remember their ancestral land – and the events that brought about its loss.

Lorna Taylor described the loss for Tuhoe: ‘Our kinship ties to the whenua has been eroded for we no longer have kainga around Lake Waikaremoana and there is a deep sense of grief as our links to our ancestors are clouded with the pain of confiscation and denial.’ Jenny Takuta-Moses echoed these comments when she said: ‘It is a land of lost content as I no longer have access to the resources which give sustenance to my life like my ancestors before me.’ She underlined this with the following pepeha:

Te Aitanga a Potiki
Mai te Whenua kua Ngaro

From the Ancient People of Nga Potiki
To a Land of Lost Content

7.5.7.2.3 ECONOMIC LOSS

Having discussed the impacts of land loss in the four southern blocks on customary rights, we turn to examine what this meant in economic terms. The loss of the land would inevitably impact on the traditional economy of communities, through the loss of traditional resources and also their ability to participate in the colonial economy. How might we understand the extent of the economic fallout from this loss?

We received very little evidence about the productive capacity of the four southern blocks, or the impact of their loss on the peoples of the region. Therefore we can only provide a general assessment of the economic consequences of the loss of land. The total area of the four southern blocks was 178,226 acres. If we deduct the reserves allocated to Ngati Kahungunu, Tuhoe, and Ngati Ruapani, the total the

414. Lorna Taylor, brief of evidence 18 October 2004 (doc H17), p 14
415. Jenny Takuta-Moses, brief of evidence, 18 October 2004 (doc H35), p 7
The question of the reserves is a separate one, and we address the history of the Tuhoe and Ngati Ruapani reserves below. Here we ask two questions:

- What was the quality of the land that was alienated, and what resources were lost to the communities?
- What kind of economic benefit could the owners have derived had it stayed in their ownership?

Professor Brian Murton did not address the quality of the four southern blocks in his report, as he did for the northern lands that were confiscated in 1866. But we can draw on the same Ministry of Works landuse capability survey from 1962 that Murton used in making his assessment of the northern lands. The map produced from this survey shows the blocks contained large areas of ‘non-arable land with moderate limitations for use under perennial vegetation such as pasture or forest[ry]’, and two areas ‘with very severe to extreme limitations or hazards’ which were ‘unsuitable for cropping, pasture or forestry’ (one to the south of Lake Waikaremoana, and one in the north-west of the Taramarama block). But the survey map also shows that the blocks contained small areas of higher quality land. These were primarily located on the banks of the Ruakituri, Mangaaruhe, and Waiau Rivers, and the Waikaretahake Stream.416 This evidence shows that the four southern blocks contained areas that were marginal – perhaps verging on the unproductive – because of the steep terrain. Compared to the northern lands confiscated in 1866, the southern lands do not include substantial areas of high quality.

But there were a number of locations within the blocks where Maori lived and cultivated in traditional times – and these areas were crucial to the economy of the region. People lived in kainga across the blocks; these were bases from which they would access and utilise the resources of the land. Permanent settlements included Te Reinga to the south-east of the Ruakituri block; Erepeti on the Ruakituri River; Whataroa and Ohiwa on the Mangaaruhe River; settlements along the Waiau River; and the land near Te Onepoto.

Witnesses before the Native Land Court in 1875 described some of the cultivations they and their ancestors had established in the Tukurangi and Ruakituri blocks. Ihakara of Ngati Kahungunu told the court that his cultivations were located at Ahi Kūha Kūha (possibly to the south of the block towards the maunga Tukurangi).417 Hapimana Tunupaura and Toha Rahurahu explained that their cultivations were at Mangamauka and Kahotea, a place in the south of the Tukurangi block where a Ngati Kahungunu reserve was created.418 Tuhoe and Ngati Ruapani witnesses supplied similar evidence, though to different areas of the Tukurangi block. Both Hori Wharerangi and Te Makarini described cultivations on the bank of the Waihi River.419 Witnesses also described their cultivations in the Ruakituri

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417. Napier Native Land Court, minute book 4, 4 November 1875, fol 75
418. Ibid, fol p76
419. Ibid, 5 November 1875, fols 78–79
Speaking for Tuho and Ngati Ruapani, Wi Hautaruke said that his people (the ‘Urewera’) cultivated land in locations throughout the block, including Erepeti, Rautakiri, Mangaaruhe, Whataroa, and Ohiwa. Although Ngati Kahungunu witnesses disputed this evidence, the dispute was not about whether the cultivations existed but whether Tuho and Ngati Ruapani had rights in those places. Tamihana Huata and Ihakara Tuhi described many of the same places in their evidence, and Wi Tipuna outlined the places of his people’s cultivations, including Te Papuni, Te Arero, Nga Mahanga, and Ohiwa. This evidence can only be considered as a snapshot of the locations where Maori had once accessed and utilised resources. Belgrave and Young noted that the evidence of occupation presented before the court reflected a distorted picture of customary rights due to the conflict that took place in 1865–66 and 1869–71. We agree, and take from this that had there not been a conflict, witnesses who spoke before the court would have presented a much fuller picture of the range of cultivations that could be found on the land.

Anaru Paine provided us with his assessment of the range of resources Maori would have utilised – one based on his knowledge of the region and on oral traditions. Paine discussed a corridor of land to the south and west of Te Onepoto in the context of explaining the strategic importance of the pa, Te Pou o Tumatawhero. From the puke Raekohu, he said, there was a direct line from Kiriopukai lake through to Te Kopani. ‘In this one place’, Paine describes, ‘are gardens, bird hunting areas, eel netting places forts and caves for interring the bones of our ancestors.’ He explained the significance of Te Pou o Tumatawhero because of its close proximity to these resources. ‘[T]he fort Te Pou o Tumatawhero was used as a station to repel invaders who wanted to take this area of unique abundance.’ This evidence, combined with that given in the court, paints a picture of the location and range of resources Maori utilised in these lands during traditional times.

The extent of crop destruction in early 1866 also suggests that traditional horticultural practices were well established in certain areas of the four southern blocks. As we explained above, Crown forces scoured the countryside in the ‘vicinity’ of Lake Waikaremoana in the days preceding the battle at Te Kopani. According to the correspondent for the Hawke’s Bay Herald, ‘large tracts of valuable land’ were discovered near the 10 settlements that the troops destroyed:

Immense cultivations – the extent of which took the friendly natives completely by surprise – were found in the vicinity of the kaingas, as well as large numbers of horses and cattle. The cultivations comprised crops of all kinds of cereals, and are estimated to be worth, as they stand, a large sum of money.

420. Napier Native Land Court, minute book 4, 5 November 1875, fol 80
421. Ibid, fols 81–83
422. Belgrave and Young, summary report of ‘Customary Rights and the Waikaremoana Lands’ (doc I2), p 22
423. Anaru Paine, brief of evidence, 18 October 2004 (doc H39), pp 3–4
424. ‘Retreat of the Enemy upon Waikaremoana’, Hawke’s Bay Herald, 6 February 1866, p 3 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 111)
The productive potential of these areas is evident. Pakeha who visited the area in the 1860s and 1870s generally expected the land to be of little or no use. And while observers who travelled across the land did note the poor quality of some areas within the blocks, others also expressed their surprise about the quality of different areas, which defied their expectations.

It was at this time, when military leaders and other officials were visiting the district more often, that observations began to be made about the land's potential use for pastoral farming. Thus, in May 1866 (after hostilities were over), Fraser made an assessment of the land that later became the Ruakituri block: ‘the country around the Reinga is very rough and can never be of much value that, as far as Opouiti and about two miles beyond is good and available for cheaper cattle.’

O’Malley also notes that by mid-1868 the surveyor George Burton was ‘scouting for land for McLean’ in the upper Wairoa and Waikaremoana regions. This included land in and around the Te Hatepe deed area. In July 1868, Burton wrote to McLean describing the results of his examination of the ‘inland district.’ The letter included a sketch map which showed two areas: area A was the south-eastern portion of what later became the Taramarama block; area B was the Kauhouroa block, between the Wairoa, Waiau, and Mangaaruhe Rivers. The divide between A and B was marked with the words ‘Government Boundary’. Burton began the letter by referring to a piece of land outside areas A and B about which he had already provided advice to McLean. The accompanying sketch map reveals that this land was to the west of the Waikaretaheke Stream, where the Tukurangi block was later created. Burton commented that he was ‘still of the opinion’ that this land would ‘carry the number of sheep I said before, namely from 4 to 6000 to begin with.’

Burton also described the pastoral potential for area A – the land that remained in Maori ownership. This land, he said, would suit McLean’s purposes better than that to the west of the Waikaretaheke River, as it was easier to access, ‘provided you could make any arrangements with the Govt to Lease the portion marked B’ (Burton anticipated that McLean would lease the Kauhouroa block from the Crown):

The Block marked A is very good sheep country being nearly all grass. I estimate the open and available country behind B [that is, area A] to be about 4000 acres. I think this could be easily worked with two shepherds. Taking A and B together I think they would carry to begin with from 10000 to 15000 sheep, and with a little improvement in the shape of burning & cutr [cutover] it would carry about 25000 sheep.

Burton revealed he had taken independent advice that confirmed his estimates. He was unsure how much Maori would lease area A for, but he thought...
‘they should take £140 or 150 a year’. On the accompanying sketch map, Burton described the south-eastern reaches of what was later defined as the Taramarama block as ‘all open country and very well grassed hills, with good sheltered valleys’. He also described the area to the east of the Mangaaruhe River, in what later became the Ruakituri block, as ‘very good grassy valley [sic]’.

Although none of these plans came to fruition, they are important for showing how settlers viewed the farming potential of the land at the time. Burton had the advantage of having travelled across the land in his surveying activities, and gained a broad appreciation of their value. In September 1868, he wrote that the part of the land toward Lake Waikaremoana ‘is certainly very rough’.

While the northern parts of the blocks were rightly considered as being of little potential, Burton’s July 1868 evaluation clearly reveals that the southern portions were of a standard suitable for stocking good-sized flocks of sheep.

It is no surprise, therefore, that when leasing arrangements were established in 1873 the primary purpose was to establish viable pastoral enterprises. Both groups of lessors – Barker, Cable, MacDonald, and Drummond for the Waiau and Tukurangi blocks, and Maney for the Taramarama and Ruakituri blocks – entered into these arrangements with this intention.

And, as we have seen, one of the key considerations in the Crown’s decision to begin purchasing the land in November 1874 was opening the land for settlement. In his advice to McLean, Burton stated that the land ‘is not very good’, but this contradicted his previous assessment of the land toward the south of the blocks.

The Crown’s ultimate position was recorded in the minutes of the meeting with McLean in November 1874 in which it was formally decided to purchase the land. Once the Government had ‘obtained possession’ of the land, and dealt with the claims of the owners, it would have acquired ‘a large extent of Country for the purposes of settlement’.

We were given no evidence of what use the land was put to in the years after the Crown’s purchase, and we are therefore unable to comment on this. But with the evidence we have concerning the potential and anticipated use of the blocks, it is important to consider the income Maori might have been able to derive from leasing had they retained the blocks. The four blocks were leased in 1873 for a total of £700 per annum for 21 years. Over 21 years this would have amounted to £14,700. In comparison, Ngati Kahungunu (including Te Waru’s people and Ihaka Whaanga’s people), Tuhoe, and Ngati Ruapani were eventually paid a total of £12,750. Counsel for Wai 621 Ngati Kahungunu questioned the adequacy of the

429. Burton to McLean, 24 July 1868 (Binney, supporting papers to ‘Encircled Lands’ (doc A12(a)), pp 100–103)
430. Burton to McLean, 4 September 1868 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 187)
431. Burton to McLean, 17 October 1874 (Binney, additional supporting papers to ‘Encircled Lands’ (doc A12(b)), pp 541–544)
purchase price.\textsuperscript{433} We believe that this is not the most appropriate line of inquiry. As we have explained, the Crown acquired the blocks in dubious circumstances, and because of this the price the Crown paid is irrelevant in determining whether there was a breach of Treaty principles. But the total purchase price is important when considering the extent of prejudice suffered. In total, Maori were paid less than what they would have derived from a 21-year lease. Those leases would have expired in 1894. Of course, there were no guarantees similar leasing arrangements would have continued into the twentieth century, but taking these figures as a general indication, and given that this land would have been put to some kind of use in following years, it is clear that Maori of the region lost over a century’s worth of potential income from the land.

We turn to consider the economic impact of the alienation of the four blocks on each of the iwi. For Ngati Kahungunu, the loss of the blocks needs to be considered in the context of other alienations at the time. Land purchases in the coastal Wairoa region from the Mahia Peninsula to the Waihui River in 1864 and 1865 totalled 186,794 acres.\textsuperscript{434} Gillingham explained that Ngati Kahungunu sold land for a range of economic and political reasons, foremost among which was the desire to stimulate the local economy by enticing Pakeha to the region.\textsuperscript{435} But such alienations were also based on the assumption that a sufficient land base was retained in other parts of the rohe. Gillingham also provided us with an assessment of the overall Ngati Kahungunu loss of land in this period, including the four southern blocks. By 1880, she said, approximately 55 per cent of their original land base had been alienated – this in just over 15 years.\textsuperscript{436} It is unlikely that Ngati Kahungunu leaders contemplated such a large extent of alienation when they began selling in 1864, or that they considered 45 per cent of their original land base to be sufficient for their needs, and their future prosperity. But, as explained earlier in the chapter, Ngati Kahungunu entered into purchase negotiations in early 1875 under a combination of pressures.

For Ngati Kahungunu, especially those from the Wairoa region, the loss of the four southern blocks would have had a marked economic impact. Not only did they lose the ability to utilise mahinga kai and other traditional resources, they were also denied the opportunity of developing their lands, or leasing them long term, to engage with the colonial economy. The greatest effect would have been felt by those hapu of the upper Wairoa for whom the blocks were their primary areas of residence and cultivation. Charles Cotter told us that Ngai Tamaterangi have been ‘left without an adequate economic base’.\textsuperscript{437} The loss devastated the land base of Tamaterangi and left the people with ‘insufficient lands for their sustenance as a hapu’.\textsuperscript{438} From the sale of the blocks, Ngati Kahungunu were left with 8,000 acres.

\begin{itemize}
\item \textsuperscript{433} Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 56
\item \textsuperscript{434} Gillingham, ‘Maori of the Wairoa District’ (doc I5), p 115
\item \textsuperscript{435} Ibid, pp 116–117
\item \textsuperscript{436} Ibid, p 274
\item \textsuperscript{437} Charles Manahi Cotter, brief of evidence, no date (doc I25), p 5
\item \textsuperscript{438} Cotter, brief of evidence (doc I25), p 16
\end{itemize}
of reserves; as stated previously, we are unable to investigate the history of these reserves.

Although it is impossible to quantify the precise land loss for any of the iwi with rights in the blocks, it is clear that for Tuhoe and Ngati Ruapani the reduction of their holdings to 2,500 acres, overnight, represented a very substantial loss. For Tuhoe, the loss of a significant portion of land in the south-east of their rohe followed only a decade after the northern raupatu. This was a further diminution of their land base. In purely economic terms it should be noted that the impact of this loss on the wider Tuhoe iwi was not as severe as the northern raupatu. The northern lands, as noted in chapter 4, were warm and flat, with significant potential for development. They constituted half of the highest quality land in the Tuhoe rohe. The four southern block lands, especially the lands on the southern shores of Lake Waikaremoana, were not of the same quality. Their loss, therefore, did not have the same kind of impact on the ability of the iwi to engage with the colonial economy. But there is no denying that the loss would have contributed to the desire evident among Tuhoe leaders in the latter part of the nineteenth century to focus on developing their internal economy. These effects would have been felt particularly by the Tuhoe hapu whose homes were at Waikaremoana. In the following chapter, we note that it was in these border areas that Tuhoe communities were most eager to develop their lands. This suggests that, had they been given the opportunity, they would have sought to participate in the colonial economy to the fullest extent. Their local economy was restricted, primarily through the loss of mahinga kai and other resources. For Ngati Ruapani, whose home was Lake Waikaremoana and its surrounding lands, the alienation of the four southern blocks was sorely felt. Proportionately, the loss of land and resources was greater for them than either Tuhoe or Ngati Kahungunu. Rose Pere told us that the ‘Hapu of Waikaremoana still experience a situation of blind chaos’, and ‘abject poverty’, mainly through lack of natural resources they once had.\(^{439}\) Like Tuhoe, Ngati Ruapani say they were denied the opportunity to develop the land in the late nineteenth and twentieth centuries. And what they were left with were four small reserves. For Tuhoe and Ngati Ruapani, the impact of the loss of land in the four blocks was compounded by the unhappy history of the reserves allocated to them in the wake of the sale. These inalienable reserves, comprising 2,500 acres, provided small compensation for the loss of their rights and interests in the land. As we will see in a later chapter, in the 1920s – and without providing alternative land – the Crown acquired the two smaller reserves, which totalled 600 acres (nearly 25 per cent by area) of the reserves originally allocated to Tuhoe and Ngati Ruapani. There were also public works takings of some 40 acres in the remaining reserves in the early 1940s, when the lands in the area that were left in Tuhoe and Ngati Ruapani ownership were a remnant of their ancestral heritage. We turn here to consider the impacts on Tuhoe and Ngati Ruapani of being confined to the reserves. We ask whether the reserves allocated were adequate in terms of location, quality, and quantity of land, to meet their present and future needs.

\(^{439}\) Rangimarie Pere, brief of evidence, 18 October 2004 (doc H41(a)), p 6
Crown counsel submitted that 2,500 acres, averaging 236 acres per person (an indicative calculation only, according to counsel), was a ‘not unreasonable’ allocation in 1875 given that the standard for reserves at the time was not less than 50 acres per person.\textsuperscript{440} We find this argument difficult to accept for two reasons. First, we would point out that successive Tribunals have noted the flaws in the 50-acre rule. The Turanga Tribunal found that a requirement of 50 acres per individual was ‘fundamentally misconceived’ for communally held land, especially for customary land. The figure was set at a time when land requirements for pastoral farming were clearly greater: ‘[I]t took no account of the size of families, or the location and quality of land needed for workable farms.’\textsuperscript{441} The Central North Island Tribunal added that it was a figure which envisaged only bare subsistence; it did not take account of what might be required to actively participate in economic opportunities arising from settlement. From the preamble of the Native Land Act 1873, the Crown ‘appeared to have a more generous object than a sufficiency of 50 acres per individual, envisaging sufficient land for the support and maintenance of the Maori people as well as landed endowments on top of that for their permanent “general” benefit.’\textsuperscript{442}

Secondly, the Crown’s argument does not address the actual needs of the community that lived at the lake at the time. As we have shown, a settled community existed on the southern shore of Lake Waikaremoana before the arrival of Crown forces in the district in 1865. We have rejected the idea that the land around Lake Waikaremoana was used only for the taking of seasonal resources. The southern shore of the lake was a place of permanent residence for many people, who depended on the resources of the land and the lake itself. This settlement was severely disrupted by the conflict of 1865–66 and 1869–71, when the community withdrew to the northern side of the lake. The people returned to the land at the conclusion of hostilities, especially when the sites of the reserves were chosen and nominally ‘set aside’ in 1876.

But it is clear to us that the four reserves granted to Tuhoe and Ngati Ruapani were not sufficient to meet the needs of the community who lived there in the late nineteenth century. This emerged clearly in 1894, when those who lived on the reserves expressed their concerns to Premier Richard Seddon, on his visit to Onepoto. Hori Wharerangi told Seddon that ‘we occupy most of our land that will admit of occupation [sic]’. Another leader, Hapi, spoke of the conditions on their reserve: ‘We are occupying the whole of it, ourselves and our horses.’\textsuperscript{443} Similarly, in 1896 an official commented on the small size of Ngati Ruapani’s cultivations.\textsuperscript{444} In the four southern blocks, this meant the Heiotahoka and Te Kopani reserves. The other two reserves (Whareama and Ngaputahi) were isolated in the middle of Crown land and impossible to access without trespassing. Moreover, they did not

\textsuperscript{440} Crown counsel, closing submissions (doc N20), topic 6, p 18
\textsuperscript{441} Waitangi Tribunal, \textit{Turanga Tangata, Turanga Whenua}, vol 2, p 457
\textsuperscript{442} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, p 439
\textsuperscript{444} Ibid, p 46
contain land suitable for cultivation. Ngati Ruapani spokesman Vernon Winitana highlighted these points in his evidence:

People may think it's strange that there was a food shortage here in the Urewera, surrounded by all these forests full of kai. But it's not that simple – by the 1890s most of the area was off limits and we weren't allowed to access it. This restriction meant survival became essentially poaching to feed whanau and hapu.  

Evidence of the inadequacy of the reserves emerged more starkly in the 1920s, in discussions surrounding the implementation of the Urewera Consolidation Scheme. This is not surprising, given the earlier complaints, and cannot be considered as an outcome of changing circumstances. As we have seen, Apirana Ngata commented on the poor quality of the reserves, and the peoples' need to build up their interests around the Te Kopani reserve. Three years later, the consolidation commissioners came to similar conclusions. They noted the poor access to Whareama and Ngaputahi, and the need for the owners to be given a more adequate land base. In short, two of the four reserves were not viable for farm development in the 1920s – as they had not been viable in the 1870s. They were small, on broken land, and were marooned in the middle of Crown lands. All four reserves together were not enough to sustain the community who lived south of the lake in the 1920s.

For these reasons we agree with counsel for Wai 36 Tuhoe, who submitted that there was ‘clear evidence’ that those of Tuhoe and Ngati Ruapani who lived on the reserves ‘suffered significant deprivation because of the poor quality and quantity of the land’. The four reserves designated in 1875 were not ‘sufficient’ – even by the standards of the time. Without the ability to utilise the resources of the wider district as they once had, the community that lived at the lake could not adequately provide for themselves. Because this was clearly the case even in the 1890s, we reject the Crown’s suggestion it was the increasing population over time that produced this situation. Although (as we explained in chapter 5) the Te Urewera population began to recover from the 1870s, it seems unlikely that any increase in the lake community by the 1890s would so quickly have placed pressure on their remaining resources. Put simply, what they were granted at the outset was not enough to sustain the communities that had lived on the land before the alienation of the blocks.

Tuhoe and Ngati Ruapani occupation in the four southern blocks has not been entirely erased. They have concentrated their settlements on the two reserves still

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445. Vernon Winitana, brief of evidence, no date (doc H28), pp 9–10
446. Ngata to Coates, 19 September 1921 (Vincent O’Malley, comp, supporting papers to ‘The Crown’s Acquisition of the Waikaremoana Block’, 3 vols, various dates (doc A50(b)), vol 2, pp 471–472)
447. Knight to Under-Secretary, Native Department, 10 September 1924 (SKL Campbell, comp, supporting papers to ‘Land Alienation, Consolidation and Development in the Urewera, 1912–50’, 3 vols, various dates (doc A55(b)), vol 2, p 220)
448. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 42
449. Crown counsel, closing submissions (doc N20), topic 6, p 18
in their ownership, and have demonstrated down to the present day a fierce determination to keep this remaining land. They are communities with a strong sense of their identity – as was very evident in their intense participation in our hearings, and in their korero and waiata. The two marae – Waimako and Te Kuha – are in active use. But the people have struggled to survive in economic terms, on land that is difficult to farm. The loss of their customary rights in the four southern blocks was a considerable blow to their cultural and economic well-being. Though they remain on the land, their foothold continues to be hard won.

It is a cruel irony that one of the two small portions of land remaining in Tuhoe and Ngati Ruapani ownership is the Te Kopani reserve – the site of the battle with Crown forces in January 1866. This was the battle that began this most unfortunate series of events – first, the Crown’s determination to take land in the Wairoa district and, ultimately, its acquisition of the four southern blocks from its tribal owners.

**7.5.7.2.4 Social, Cultural and Economic Impacts – Conclusions**

In short, the loss of the four southern blocks had marked impacts on the customary rights and interests of Maori communities. Yet, despite this loss, all of the affected iwi – Ngati Kahungunu, Tuhoe, and Ngati Ruapani – have maintained their presence there, retaining what little land they have left. They have sustained a strong network of relationships among those who connect to the land. Although many people have been driven away by a lack of opportunities, those who spoke to us of their loss told us also of their desire to rekindle their full ancestral connections to the land.

**7.5.7.3 Political Impacts**

The events that culminated in the Crown’s purchase of the blocks have also impacted upon the relationship between Maori communities of the region and the Crown. In this section we trace these effects from the signing of the Te Hatepe deed, by looking at how the Crown’s actions in respect of the blocks affected its relationship with these communities. We look first at the relationship between the Crown and Ngati Kahungunu, before turning to its relationship with Tuhoe and Ngati Ruapani.

**7.5.7.3.1 Ngati Kahungunu and the Crown**

The upper Wairoa and Waikaremoana conflict, as we have seen, strained the relationship between various Ngati Kahungunu groups and the Crown. This conflict, and the events that followed, also strained relationships between the Ngati Kahungunu communities of the upper and lower Wairoa. As we explained in the previous chapter, upper Wairoa Ngati Kahungunu led primarily by Te Waru Tamatea fought against Crown forces that included Ngati Kahungunu. After the conflict, those Ngati Kahungunu who had fought on opposing sides appeared to have resolved their differences. But the signing of the Te Hatepe deed placed new pressures on the people.

Though Te Waru Tamatea returned to his lands in the upper Wairoa outside the
Kauhouroa block after the signing of the Te Hatepe deed, he had become alienated from the wider kin group. The cession of the Kauhouroa block had been made despite his protests at the hui. In this context, and with many of his people having recently been killed in conflict, Te Waru and his people aligned with Te Kooti. They had little reason to support the Crown. Binney concluded that the loss of upper Wairoa land in the Te Hatepe deed was one of the main causes for Te Waru and Nana (the other key upper Wairoa leader) siding with Te Kooti. In joining Te Kooti, ‘they were linking the issue of land confiscation to Te Kooti’s cause: illegal imprisonment and communal dispossession.’ Te Kooti’s message of salvation offered hope to Te Waru and his people. Binney suggests that it was unsurprising that Captain Biggs, ‘the agent of their mutual dispossession’, became the primary target for their combined attack on Matawhero in 1869. Thus, the Crown’s acts at Wairoa contributed, in Binney’s view, to much wider political consequences across the North Island.

For the peoples of the upper and lower Wairoa, such consequences were most keenly felt in the killing of four lower Wairoa chiefs who were sent on a mission to persuade Te Waru not to join Te Kooti at the end of September 1868. The identity of the killers is uncertain (though Binney and Gillingham both state that killings were carried out by Te Waru’s brother, Reihana), but the result was clear. According to Gillingham, the event drove a deep wedge between the hapu of the lower and upper Wairoa River. It became the central factor motivating the involvement of the Wairoa hapu in the Government’s attempts to catch Te Kooti, and incited an unprecedented (at least, during the time period of this report) level of violence between the hapu of the Wairoa River.

Richard Niania, referring to the series of conflicts that occurred between 1865 and 1871, in which Te Waru and his community fought on one side against other Ngati Kahungunu who gave assistance to the Crown, stated that ‘These years of warfare had a debilitating effect upon all peoples around Waikaremoana.’

The killings appear also to have been a determining factor in preventing Te Waru and his people from returning to the Wairoa region after the wars.

But the Crown’s role in precipitating conflict and land loss in many parts of the North Island, which Te Waru had opposed over a number of years in the belief that the Crown did not have the best interests of Maori at heart, doubtless weighed on him as he signed away the interests of his people in their ancestral land. They now resided on land far away from their home. Certainly it was land granted to them by the Crown, but in the circumstances it must not have seemed much of a gift.

Other Ngati Kahungunu who, as we have seen, sold their rights and interests in the blocks in the face of a variety of pressures, had experienced a journey that few

450. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 188
452. Niania, brief of evidence (doc I38), p 24
could have imagined a decade before. Many had sided with the Crown in the face of pressures after the battle at Waerenga a Hika in November 1865. Their political descent was from the line of leaders who adopted a stance of cautious neutrality, but their concerns in the face of a determined Crown, which had shown itself ready to take the land of those regarded as rebels, saw them fight against their kin of the upper Wairoa. They subsequently agreed to a cession of land at Kauhouroa under further pressure from the Crown. Their supposed compensation was the award of ‘rebel’ land in the wider Te Hatepe deed area. After five years of waiting to have these promises fulfilled – and with a considerable number of the wider kin group permanently exiled from the region as a consequence of earlier events – they were only rewarded with more uncertainty in the form of the Locke deed and its purported grants to owners in the newly created southern blocks. This, as we have seen, led to divisions among those Ngati Kahungunu who were promised recompense for their military services or their loss of land in the Kauhouroa block and those who had customary rights in the blocks – as well as increased tensions with Tuhoe. The outcome of these tensions and disappointments, as well as indebtedness, would be willingness to sell, and the alienation of the land to the Crown.

Some Ngati Kahungunu leaders, who had invested a great deal politically in their relationship with the Crown, nevertheless remained committed to that relationship. But the Crown did not escape unscathed in the eyes of many Ngati Kahungunu who considered themselves loyal, yet who – in the context of other land alienations in the region – increasingly turned to the repudiation movement for explanations. This movement helped explain to Ngati Kahungunu the promises made by the Crown in entering into the treaty. Seen in the light of the broad sweep of events from the 1860s through to the 1870s, the early hesitant approach of some of the Ngati Kahungunu leaders toward Crown authority must have appeared justified. In Wairoa, this position had initially been occupied primarily by Pitiera Kopu. Kopu’s sole desire in his support of Crown from the early to mid-1860s was to save the land. Yet despite unwavering political and military support, he witnessed the loss to the Crown of the Kauhouroa block – and passed away shortly thereafter. Had he lived, he would have also seen the loss of the lands extending to Lake Waikaremoana.

Concerns over these events lingered into the twentieth century. But these concerns remained largely unresolved even after the inquiry and report of the Sim commission. The commission had only limited terms of reference – a point acknowledged by Crown counsel.\textsuperscript{453} It was only able to investigate confiscated land: the four southern blocks, therefore, did not come under consideration. But it did look at five petitions relating to the Kauhouroa block. This block, it will be remembered, is outside our inquiry district boundary, but we refer to these petitions and the commission’s comments because they are testimony to Ngati Kahungunu dissatisfaction. Crown counsel acknowledged that ‘the Sim Commission was not engaged in a full inquiry of all the evidence that might be available on the issue

\textsuperscript{453} Crown counsel, closing submissions (doc N20), topic 6, p 20
of rebellion, and was constrained to an extent by the evidence placed before it.\textsuperscript{454} Richard Niania told us that few Ngati Kahungunu 'were happy with the settlement proposed by the Sim Commission.'\textsuperscript{455}

The outcome for many of the Ngati Kahungunu claimants who appeared before us has been a lasting mistrust of the Crown. The memories of these events have been passed down through generations. Ngai Tamaterangi claimants primarily seek answers to their one over-riding question: why did the Crown treat them as it did? As Katarina Kawana put it:

I want to know why the Crown branded my great grandfather Peta and other members of Ngai Tamaterangi tipuna rebels.
I want to know why Crown soldiers attacked our lands at Omaruhaakeke on Christmas day in 1865 and at Lake Waikaremoana in January 1866.
I want to know why the Crown soldiers destroyed our villages at Omaruhaakeke and at Lake Waikaremoana.
I want to know why my great grandfather was forced to go in to hiding on his own lands.
I want to know why the Ngai Tamaterangi chief Moururangi was imprisoned without trial on Wharekauri.
I want to know why the Crown confiscated Ngai Tamaterangi land at Kauhouroa.
I want to know why Ngai Tamaterangi lost our lands at Waiau, Tukurangi, Taramarama and Ruakituri.
I want to know why my tipuna Te Waru Tamatea was forced to live in exile in Waiotahe.
I want to know when will the Crown apologise to us for the atrocities committed against my tipuna and others of Ngai Tamaterangi and Hinemanuhiri.
I want to know when the Crown will put things right by returning our lands, which were wrongfully taken.\textsuperscript{456}

Charles Cotter added: 'It is my view that Ngai Tamaterangi has suffered considerably at the hands of the Crown and those working for the Crown.' He sought a Crown apology, alongside appropriate compensation, as part of a comprehensive settlement of their claims. 'At the end of the day all that we want is for the Crown to be fair to us and to recognise our legitimate grievances. We seek justice and we ask simply that the Crown put things right.'\textsuperscript{457}

\textbf{7.5.7.3.2 \textsc{Tuhoe, Ngati Ruapani, and the Crown}}

For Tuhoe, the alienation of the four southern blocks came at a time when their leaders were building a relationship with the Crown following the prolonged

\textsuperscript{454} Crown counsel, closing submissions (doc N20), topic 6, p 20
\textsuperscript{455} Niania, brief of evidence (doc I38), p 32
\textsuperscript{456} Kawana, brief of evidence (doc I29), paras 27–33, 35–37
\textsuperscript{457} Cotter, brief of evidence (doc I25), pp 27–28
period of conflict and upheaval in the upper Wairoa and Waikaremoana regions. Tuhoe’s conditional acknowledgement of Crown authority in April 1871 with the cessation of hostilities and the withdrawal of Wahawaha’s force, the peace agreement in November 1871, and the formation of Te Whitu Tekau in June 1872 marked a watershed in the relationship between Tuhoe and the Crown. As we explain in detail in chapter 8, although Te Whitu Tekau arrived at policies that were designed to retain their remaining lands – including the banning of roads, leasing, and selling of land, and the operation of the Native Land Court within their boundaries – such policies were not seen as inconsistent with Tuhoe’s wish to foster a positive relationship with the Crown. Te Whitu Tekau saw the Crown’s role as recognising its authority, and thus sought legislative approval of its powers. Yet, in the course of events which culminated in the alienation of the four southern blocks, Tuhoe saw every key policy they had set in June 1872 set aside in the south-east. By 1875, not only had their lands been leased, but they had been compelled to enter the Native Land Court in a desperate bid to protect their rights. They subsequently sold their interests under the threat of their lands being taken under the East Coast confiscation legislation.

The issue is whether these events had any short- or long-term effects on the relationship between Tuhoe and the Crown. Crown counsel made no submissions on whether the events culminating in the sale of the blocks placed strain on Te Whitu Tekau or whether there was a consequential impact on Tuhoe’s relationship with the Crown.\textsuperscript{458} Counsel for Wai 36 Tuhoe, on the other hand, submitted that these events had a marked impact on the relationship. ‘Rather than softening Te Whitu Tekau’s attitudes to sales and the Native Land Court however, Tuhoe’s experience in the four southern blocks merely reinforced Te Whitu Tekau’s belief that dealing with the Court and purchase agents wrought disaster on the tribe.’\textsuperscript{459}

It is important, we believe, to view these events in the context of the wider relationship between Tuhoe and the Crown in the 1860s and 1870s. In 1867, Tuhoe not only believed that their interests in the southern lands remained intact but that they had also established a positive relationship with the Crown. This occurred in the wake of the hostilities of 1865–66, when Paerau Te Rangi-Kaitukupe met with Donald McLean and Ngati Kahungunu. Although there was a restoration of relationships with the latter iwi, the Crown in fact rejected Paerau’s overtures, which they found out later. As we explained in chapter 5, this was a significant lost opportunity in the history of the Crown’s relationship with the peoples of Te Urewera. The lack of any kind of meaningful relationship with the Crown, and the unhappy events of previous years that had fostered a negative impression of Crown authority, were contributing factors to Tuhoe’s decision to commit to Te Kooti.

The peace that followed three years of conflict and Crown expeditions into the heart of Te Urewera was indeed a watershed in Tuhoe history. But the signing of the Locke deed and the creation of the four southern blocks posed new

\textsuperscript{458} Crown counsel, closing submissions (doc n20), topic 7, pp 7–8
\textsuperscript{459} Wai 36 Tuhoe counsel, closing submissions (doc n8(a)), p 56

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problems. First, and most importantly, the Locke deed affected significant tracts of land south of Waikaremoana in which Tuhoe held interests. Secondly, the creation of the blocks, and mistaken official pronouncements that the land had been confiscated and was now being returned, indicated for the first time the Crown's assertion of authority over these lands. The spectre of Crown intervention in the Waikaremoana lands, therefore, loomed to spoil this new era of peace in its very earliest stages. Tuhoe anger was initially directed at their principal leader at Waikaremoana, Tamarau Te Makarini, who had signed the deed. But this was soon redirected to the Crown and its agents. Even though disagreements continued between the main body of Te Whitu Tekau leaders and the Waikaremoana leaders, Tuhoe consistently signalled its mistrust of Crown officials, and Samuel Locke in particular. This was in part because they suspected that the Crown favoured Ngati Kahungunu in its dealings over the land – a suspicion that was only intensified by the manufactured 'boundary dispute' that Crown officials came to insist on at this time. Tuhoe mistrust of Crown officials was such that the leaders collectively decided to take the land before the Native Land Court in the hope that their case would get a fair hearing, and their rights would be recognised. Counsel for Wai 36 Tuhoe emphasised the significance of this decision: “These were the first lands that Tuhoe would be forced to pursue through the Native Land Court in breach of Te Whitu Tekau's policy.” They made the decision because they saw no alternative, in light of their understanding of Government policy about the four southern blocks' lands.

As we have shown, they received anything but a fair hearing; instead, they were suddenly presented with the threat of confiscation of their land. We can only surmise what impact this had on Tuhoe's view of the Crown – or of the court, for that matter. We have virtually no account of the interaction between Tuhoe and Ngati Ruapani leaders, and officials, in the days following the bombshell which was dropped into the court proceedings. The result, however, was that they sold their interests in the blocks, because they saw no alternative.

Binney argued that in ‘one stroke’ McLean destroyed all the positive advances he had made with Te Urewera peoples. The methods he adopted in acquiring the blocks left a lasting legacy of bitterness among Te Urewera leaders that surfaced in evidence given to the Native Land Court in subsequent years. Although we might not accept that the impact of McLean's acts was quite so far-reaching, there was certainly a noticeable cooling in what had been – at last – a developing relationship. The late 1870s is notable for the drying-up of letters from Tuhoe to the Crown. There were no great hui between Tuhoe and Crown officials as there had been before the Crown's purchase of the blocks. This might in part be explained by sources not having survived; alternatively, it might be explained by the death of Donald McLean in 1876, who was in essence the face of the Crown for Tuhoe during the war years. The end of a political era brought with it a change in the face of

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460. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 39
Government. But we tend to think that the lack of correspondence is symptomatic of an interruption in the relationship – one that can be dated to the mid-1870s.

We would qualify this conclusion, however. Tuhoe’s loss of the four southern blocks was but one factor in the cooling of the relationship. As we will see in the next chapter, there were other events at this time that disappointed Tuhoe. The second point is that they determinedly recovered from this setback. By and large, Tuhoe remained committed to developing a positive relationship with the Crown, while keeping control of their remaining lands. In the 1880s they again began to invite Government representatives to hui. We believe, therefore, that this period may best be described as an interruption in the relationship between Tuhoe and the Crown which had so recently begun to develop.

Anita Miles suggested that the greater political impact was evident in Tuhoe’s view of the Native Land Court, rather than the Crown. Tuhoe’s first experience of the court was ‘disastrous’ and ‘[i]t must have made a very poor impression’ upon them. It is possible that the experience may have led to a hardening of Tuhoe’s view of the court. They appeared only as counterclaimants in the land court in later years – that is, when applications from other parties obliged them to defend their rights – but they always argued their cases vigorously, often marshalling many witnesses. Tuhoe experience in the southern lands might of course only have confirmed them in the policy they had established against the court’s operation in their rohe.

Tuhoe’s seemingly muted reaction to the loss of the blocks, both in the short and the long term, might be explained more by the unusual circumstances in which the blocks were alienated and by the consequences this had for the defence of their lands in other title investigations. The adversarial nature of later land court hearings, and the emphasis placed on demonstrating wide-ranging occupation in the Waikaremoana region, might explain why many Tuhoe who appeared before the court highlighted the alienation of their interests as a sale in which they had taken the initiative. Hurae Puketapu gave evidence to the Native Land Court in 1915 and again in 1917 about how Tuhoe and Ngati Ruapani sold the blocks. Tutakangahau made a similar comment to Elsdon Best: ‘The Tuku-rangi Block was awarded to us by the Native Land Court, and we sold it to the Government. Whakamoe, Haere-rangi, Kereru Te Puke-nui and I set up the case.’ The block had not, of course, been awarded to Tuhoe, but these statements reveal how the sale was generally remembered, as Tuhoe focussed long after the event on protecting their interests in other title inquiries. By contrast, Eria Raukura (whom we quoted above) still harked back to the fact that the sale of their rights had been made under the threat of confiscation. But in the context of continuing title inquiries, it was understandable that Tuhoe should stress the sale itself as evidence

463. Young and Belgrave, ‘Customary Rights and the Waikaremoana Lands’ (doc A129), pp 145, 156
464. Best, Tuhoe, vol 1, pp 517–518
of their rights in and authority over the land. Consequently, the loss of the blocks was not well-remembered in Tuhoe oral tradition as one of their primary grievances against the Crown.

And because the four southern blocks had not been confiscated in fact, Tuhoe submitted no petitions to the Sim commission. Thus the story of the blocks was not a focus of the Tuhoe komiti raupatu of the 1920s and 1930s, which concentrated its efforts on securing redress for the northern raupatu (see chapter 4). In the course of more recent claims research, however, Tuhoe have more clearly articulated their grievance in relation to the loss of the blocks. Claimants in our inquiry described this loss in the wider context of other Crown actions at the time. It is seen as one of a series of actions by the Crown in the 1860s and 1870s that eroded Tuhoe’s land base and harmed the peoples of the region. This has particular significance for the Waikaremoana people. Tamati Kruger told us that the Crown at Waikaremoana had resorted to ‘utilization of force of arms, the threat of confiscation and forced sale as tools to manipulate outcomes’.466 As a result, Tuhoe identity had been eroded in the Crown’s attempt to make them anonymous – he Whakamau Tarawa (of unknown identity).467 Viewing these events in context, it was clear to Kruger that the Crown’s approach to Tuhoe at Waikaremoana had been consistently hostile.

Similarly, Rose Pere of Waikaremoana viewed events at Waikaremoana as having a deeply detrimental effect on her people’s relationship with the Crown. ‘Their symbol to this very day, is the “Crown”: the “Hat”, that depicts the divine right of the Kings of England. Of what value is this to us in Waikaremoana?’468 Such a feeling of alienation, it became clear during our hearings, was the result of Waikaremoana experience of later Crown policies as well; but the basis for it was laid during the war years.

466. Tamati Kruger, brief of evidence, 18 October 2004 (doc H31), para 4
467. Ibid, para 11
468. Pere, brief of evidence (doc H41(a)), p 5
7.5.7.4 Conclusion
If there is any lesson to emerge from the sad history of the four southern blocks, it is that the Crown should avoid compounding the effects of its interventions by attempting to impose its own order on such a complex tribal landscape.

The parties expressed to us, in various ways, their view that they were capable themselves of settling the matters still at issue between them in the wake of the Crown’s various acts and omissions. The Crown should give the claimants the opportunity to show that they can do this, and should assist them to put things right.

We have faith in the communities who have long survived on the remnants of these lands, and who are bound closely together by whakapapa, to decide how best they may order their affairs for the future, and what role the Crown may play in empowering them.

7.5.8 How did the Crown acquire and use the pa sites Te Pou o Tumatawhero and Te Tukutuku o Heihei?

Ko te Owata
Makuru te ringa
Ko Tamahore
Te Waha Korero
Ko Te Purewa
Te Pakihiwi whanui
Ko Tumatawhero
Te Pa Harakeke

Te Owata
The expert hand
Tamahore
The Sacred Orator
Te Purewa
The Carrier of the hopes of Many
Tumatawhero
The many Offspring

7.5.8.1 Introduction

Te Pou o Tumatawhero and Te Tukutuku o Heihei are two well-remembered pa among Tuhoe and Ngati Ruapani that were located on the southern shores of Lake Waikaremoana but are no longer in existence today. Two of the claims we received concerned the Crown’s acquisition of the land where they once stood, and the subsequent use of that land into the twentieth century. The land in question lies within the Tukurangi block on the southern shore of Lake Waikaremoana, one of the four southern blocks which – as we have already discussed – were acquired by the Crown through a complicated series of transactions, beginning with the Te Hatepe deed in 1867 and finishing with the purchase of the blocks in 1875.

469. Anaru Paine, brief of evidence, 18 October 2004 (doc H39), p 2
470. The primary claim – Wai 795 – was made by Hirini Paine, Anaru Paine, and Irene Huka Williams: Hirini Paine, statement of claim for Wai 795, 5 May 1999 (claim 1.31); Hirini Paine, amended statement of claim, 6 August 2001, Wai 795 (claim 1.31(a)); Hirini Paine, Anaru Paine, and Irene Huka Williams, amended statement of claim for Wai 795, no date (claim 1.31(b)). Wai 945 Ngati Ruapani also brought claims about Te Pou o Tumatawhero. See Wai 945 Ngati Ruapani, fourth amended statement of claim, 4 October 2004 (claim 1.2.19(a), soc J1), pp 11–12.
twentieth century, the Crown embarked on the construction of a series of hydro-electric structures on some of the land in the Onepoto region where the pa had once stood. In this section, we examine the issues arising from these events.

Before our hearings, one of the points of dispute between claimants and the Crown was the exact location of the two pa. Tangata whenua testimony and historical evidence showed they were on the southern shores of Lake Waikaremoana in the vicinity of Onepoto Bay. But exactly where they were located, or when they had been in existence, was unclear. The matter of their location was addressed more fully in the research report and evidence of Peter Clayworth, and in the evidence of Sidney Paine, Anaru Paine, Irene Huka Williams, Rangi Mataamua, Desmond Renata, and Robert Wiri, as well as that of Sir Rodney Gallen. From this evidence, Crown counsel agreed that the nineteenth century location of Te Pou o Tumatawhero was clearly identifiable. Te Tukutuku o Heihei was less easily found, but counsel agreed that its likely location was near Te Pou o Tumatawhero. Specifically, counsel stated:

The evidence suggests that Te Pou o Tumatawhero is on a promontory on the eastern shore of Onepoto Bay, on land that was once occupied by Lieutenant-Colonel Herrick’s camp in 1869. . . .

The promontory . . . was designated in 1965 as section 9, block 1, Waiau Survey District and set aside for water power development. It was later authorised to be used for the secondary use of national park purposes.

There is conflicting evidence as to whether Te Tukutuku-o-heihei was built before or after Te Pou o Tu-mata-whero. However, the evidence indicates that both pa were built close to one another.

Counsel went on to quote Tuhoe claimant Sidney Paine, who stated:

Te Tukutuku o Heihei was sited higher and further back although on the same body of land as Te Pou o Tumatawhero and possibly encompasses parts of the now present Onepoto holiday village. This locates it to the east of Te Pou o Tumatawhero and Te Onepoto.

471. Peter Clayworth, 'Preliminary Report on Te Pou o Tumatawhero: Background Information on Part 2 of the Wai 795: Te Pou o Tumatawhero-Waikaremoana Claim', May 2001 (doc A4); Peter Clayworth, summary report of 'Te Pou o Tumatawhero', 20 September 2004 (doc H8); Peter Clayworth, written answers to questions from Crown counsel, no date (doc H67); Sidney Paine, brief of evidence, 18 October 2004 (doc H20); Paine, brief of evidence (doc H39); Irene Huka Williams, brief of evidence, 18 October 2004 (doc H20); Rangi Mataamua, brief of evidence, no date (doc H21); Desmond Renata, brief of evidence, 15 October 2004 (doc H49); Desmond Renata, brief of evidence, 22 November 2004 (doc 124); Robert Wiri, brief of evidence, 19 October 2004 (doc H52); Gallen, brief of evidence (doc H1)


473. Ibid

474. Paine, brief of evidence (doc H20), p 9
Mr Paine identified this as section 19, block I, Waiau survey district.  

We have already discussed some of the evidence relating to these pa in this and the preceding chapter. While somewhat contradictory, it suggests that Te Tukutuku o Heihei was built after Te Pou o Tumatawhero. Mr Paine reached the same conclusion from his examination of the evidence. What we can say with some certainty is that they were separate pa. Given this, and the broad agreement between the parties outlined above, we make no further comment here on their location.

But there are other significant issues on which parties have not reached agreement. These relate to the Crown’s acquisition of the land and its subsequent use in the twentieth century. Crown counsel stated in closing submissions that Te Pou o Tumatawhero was ‘probably located within the Tukurangi block that was purchased by the Crown in 1875’. Counsel implied that the land was purchased fairly – an argument that they applied to the Crown’s acquisition of all four southern blocks. Counsel for Nga Rauru o Nga Potiki, however, submitted that the land on which the two pa were located was not purchased at all. Instead, it was part of the land set aside in the Locke deed (1872) for a military reserve. Counsel described this as a confiscation:

Land, which included wahi tapu and which was confiscated in 1872 at Onepoto for a redoubt, was not returned when the redoubt was no longer in use. Instead these lands were used for electricity generation purposes. To add insult to injury the land no longer required for the purposes of electricity generation has not been returned to the hapu of Waikaremoana.

Crown counsel did not directly address issues relating to the use of the land in the twentieth century. Although hydroelectric power development was canvassed in closing submissions, counsel did not discuss whether and how this affected the former pa sites. We note, however, that the Crown did address some of these matters in response to the claimants’ statement of claim: ‘The Crown says . . . that
the land at Onepoto was obtained by the Crown by agreement in 1872 [the Locke deed] and was not subject to offer back provisions. Therefore it was not required to be offered back to its original owners when it ceased to be used for defence purposes. The Crown noted further in its response that some of the land continued to be used by Genesis Power Limited.\(^{481}\)

Both the Crown’s acquisition of the land and its subsequent use, therefore, remain as outstanding issues before us. In addition, there are issues as to who held rights in this land before the Crown acquired it. Based on these issues, we address three questions:

- Did the Crown legally and fairly acquire the land where the pa were located?
- On what basis did the Crown retain the land where the pa were located, and how did the legal status of the land change during the twentieth century?
- Who held rights in the land where the pa were located?

Issues relating to the impact of the hydroelectric scheme on the land will be dealt with in a later part of the report.

\*7.5.8.2 Did the Crown legally and fairly acquire the land where the pa were located?\*

We have already established in this chapter that Tuhoe and Ngati Ruapani sold their interests in the four southern blocks under threat of confiscation. This constituted a significant breach of the principles of the Treaty of Waitangi. The Crown further breached the Treaty in acts and omissions which culminated in its purchase of the land in 1875, including its assumption that land extending as far as Lake Waikaremoana was confiscated, when it was not; and its failure to scrutinize the Locke agreement (which, on the basis of that assumption, purported to ‘return’ the land to Maori, divided into blocks). The events preceding and including the purchase of 1875 are significant for our understanding of the Crown’s acquisition of Te Pou o Tumatawhero and Te Tukutuku o Heihei pa sites. But Crown and claimant counsel differed as to whether this land was purchased or whether the Crown acquired it earlier under the Locke deed.

Evidence presented to us clearly demonstrates that the promontory where the pa were located was intended to be part of the ‘military reserve’ set aside in the Locke deed in 1872. In fact, the redoubt at Onepoto had already been erected when the deed was signed in August of that year. From the Crown’s perspective, the deed merely formalised what had already taken place on the ground. The deed set out the following geographical features as the boundaries for the reserve:

All that portion of land, situated at Waikaremoana, commencing at outlet of Lake Waikaremoana into Waikareteheke, thence down that stream to where the stream issues from under ground, thence to Raekahu, thence to Rotokiri-o-Pakai, thence to

\(^{481}\) Crown counsel, final statement of response (statement of response 1.3.2), sec Q, p 125
summit of Panekiri, thence to the outlet of lake into Waikaretaheke, containing two hundred acres, more or less.\footnote{482}

At that time, before its course was altered during the construction of the hydro-electric scheme, the Waikaretaheke Stream exited Lake Waikaremoana from the eastern side of Onepoto Bay. This was to the east of the promontory where the two pa were located. The proposed ‘military reserve’, therefore, included this land.

This reserve, however, was never formally gazetted and as a result did not become Crown land at this time. The primary reason for this is that officials such as Locke believed (wrongly) that all the four southern blocks had been legally confiscated in 1867. A few years later, the Locke deed guaranteed the return of all but a few portions of this confiscated land to the ‘loyal Natives’ (a term which in 1872 was intended to include Tuhoe, with whom the Crown had by then made peace). As officials believed that those portions – including the land at Onepoto – had been legally confiscated, no further action was required by the Crown.

Because of this, the deed referred only to blocks ‘retained’ by the Government. It did not provide for, or refer to, any process by which the land would transfer to Crown ownership. In his letter accompanying the deed, Locke wrote:

\begin{quote}
By the present agreement, the Government retain, over and above what they formerly held, two other blocks of land – one of about 250 acres at Onepoto, on Waikaremoana Lake, at its outlet into Waikaretaheke, the site of present redoubt; and fifty acres on Waikaretaheke Stream, where the proposed road to the lake will cross that stream.\footnote{483}
\end{quote}

There matters stood until a Native Land Court hearing was convened in November 1875. As we now know, the assumptions on which officials operated were turned on their head three years after the signing of the Locke deed, when the four southern blocks went before the land court. The Solicitor-General’s opinion at that time was that those lands had never been confiscated. Thus, the portions of the four southern blocks the Crown claimed to retain had never been removed from customary title, nor had any kind of legal transfer to the Crown taken place. Meanwhile, the Crown set about acquiring the blocks through purchase, and after the land court hearing it moved to finalise its purchase. As we have already shown, this took place through several steps: first, the purchase of Tuhoe and Ngati Ruapani interests;\footnote{484} secondly, finalising the purchase of most Ngati Kahungunu customary interests (except those of Te Waru Tamatea and his...
people);\textsuperscript{485} thirdly, the purchase of interests of those Ngati Kahungunu who were stated to have no customary rights but who were owed payment for their military service;\textsuperscript{486} and, finally, in 1877, the purchase of the interests of Te Waru Tamatea and his people.\textsuperscript{487} The week after this final purchase of interests had been completed, the four southern blocks were proclaimed as ‘Waste Lands’ of the Crown.\textsuperscript{488}

With this evidence in mind, we agree with Crown counsel that the land at Onepoto – including the sites of Te Pou o Tumatawhero and Te Tukutuku o Heihei – was in fact acquired through purchase. At no time had it been confiscated, and the Locke deed could thus provide no legal basis for the Crown to ‘retain’ the land. But, as we have seen, Tuhoe and Ngati Ruapani did not enter freely into the sale of the blocks; rather, they sold because they believed themselves to be facing the threat of confiscation under the East Coast Act. Ngati Kahungunu had also offered their interests in the blocks for sale in the face of a range of pressures. The purchase took place against the backdrop of a series of Crown errors and mis-statements regarding the status of the land, from the Te Hatepe deed onwards. In the meantime, the Crown had had the benefit of use of this land for over three years, and had maintained a redoubt there without any legal title to the land. Its title was simply assumed. If Tuhoe had completed their evidence in the land court, and if they had been awarded title, it is possible that the anomaly of the Crown’s ‘retained’ lands might have become obvious at the time. As it was, the Crown’s completion of its purchase from all parties meant that the so-called ‘retained’ lands were conveniently swept into the purchase. The Crown finally acquired the sites of Te Pou o Tumatawhero and Te Tukutuku o Heihei, but there is no evidence before us to suggest that the Crown admitted – then or later – that it had wrongly assumed possession of the Onepoto and Waikaretahahe blocks in 1872.

The purchase of the four southern blocks was based on flawed premises and was in breach of the Treaty principles of active protection and good government. It follows that the Crown’s acquisition of the Onepoto and Waikaretahahe blocks was likewise in breach of the principles of the Treaty. There is no evidence before us to suggest that officials reopened with Maori the question of the Crown’s title to the two small blocks during the period when it purchased the four southern blocks and settled the matter of reserves for Tuhoe and Ngati Ruapani. We conclude that tribal leaders were left to assume that title to those areas had already passed to the Crown. There would thus have been no discussion between officials and Maori of the value of the 300 acres, and the extent to which the price to be paid by the

\textsuperscript{485} Deed 838, Toha Rahurahu and others, Tukurangi block purchase deed, 17 November 1875 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), pp 25–27)

\textsuperscript{486} Memorandum of agreement between the Crown and Ngati Kahungunu to convey interests in the southern blocks, 15 January 1876 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), pp 43–58)

\textsuperscript{487} Deed 841, Te Waru and others of Ngai Tamatea southern blocks purchase deed (and Hangaroa), 6 September 1877 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), pp 40–42)

\textsuperscript{488} ‘Lands Declared to be Waste Lands of the Crown’, 30 August 1877, New Zealand Gazette, 1877, no 78, p 928
Crown should be higher as a result. These two blocks passed to the Crown with no explicit consent, no additional payment, and by a sideward.

**7.5.8.3 On what basis did the Crown retain the land where the pa were located, and how did the legal status of the land change during the twentieth century?**

We also address here the argument made by counsel for Nga Rauru o Nga Potiki about the Crown’s retention of the Onepoto land into the twentieth century.

As we have already noted, counsel argued that the land ‘was not returned when the redoubt was no longer in use’. Rather, it was used for electricity generation purposes and then the part of it no longer required for those purposes was never returned to the hapu of Waikaremoana. The Crown denied that it had a responsibility to return the land to the original owners once the initial purpose of establishing a redoubt ceased to exist. In its early pleadings, the Crown argued that the Locke deed ‘was not subject to offer back provisions’.

Although Crown counsel did not address this point in closing submissions, we presume that its response was implicit in its main submissions concerning its purchase of the land: because the Crown acquired the land through purchase it was not required to return the land to the original owners when it was put to a different use.

What happened to the land? We note, first, that the Onepoto land did remain in Crown ownership – and initially was used as a military reserve. Belgrave and Young referred to a long report which Locke wrote on 16 August 1877 in which he outlined the history of the purchase of the blocks and explained which reserves would be allocated to Maori within them. ‘Locke also suggested an area of 300 acres be set aside as a military reserve round the redoubt at Onepoto and 150 acres nearby as a timber reserve and these proposals were subsequently adopted.’ The 300 acres suggested by Locke in this report added another 100 acres beyond the amount agreed with Maori in his 1872 deed – though the Crown, of course, now owned the land.

It is unclear what happened next. Clayworth argues that a survey was conducted in 1879, the result of which was a survey plan that marked out the military reserve, including the Armed Constabulary redoubt. ‘The total area of the reserve as shown on the survey plan was 263 acres 2 roods.’ According to Belgrave and Young, however, officials discovered in 1883 that the military reserve had not been surveyed. Following a request from officials to locate a survey plan, the chief surveyor at Napier undertook a search of his records, but was unable to find any record of a survey having occurred. Whether a survey did in fact take place is uncertain. The plan might have been lost – or at least mislaid when the chief surveyor undertook his search. It is clear, however, that no action was taken.

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489. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 278
490. Crown counsel, final statement of response (statement of response 1.3.2), sec q, p 125
491. Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 112
492. Clayworth, ‘Preliminary report on Te Pou o Tumatawhero’ (doc A4), pp 14, 18
494. Belgrave and Young, ‘War, Confiscation and the “Four Southern Blocks”’ (doc A131), p 119
to formally set aside the Onepoto land as a reserve. At some point in the following years, the redoubt – which had been constructed in 1872 – was abandoned. Although we did not receive evidence on this, it may have been abandoned as early as the late 1870s. After this, the land remained in Crown ownership.

Did the Crown have an obligation to return the land to the original owners at this point? We have to doubt that the Crown even considered the possibility, since the lands had been proclaimed Crown land in the wake of its purchase. The moment for acknowledgement that the Crown had no right to Onepoto and Te Kopani land had passed in 1875. That was when it should have offered to return the land to Maori or (since by then it was intent on completing its purchase of the land) to have made Onepoto a reserve for Tuhoe and Ngati Ruapani. But by then, a redoubt had been built on the land, which perhaps accounts for the fact that the status of the land seems to have been passed over. It was not convenient for the Crown to acknowledge that it had in fact been a trespasser. After the abandonment of the redoubt, the Onepoto land appears not to have been used by the Crown until the construction of the Kaitawa Power Station for the Waikaremoana hydro scheme between 1943 and 1948. But there were no moves to conduct a formal survey of the land until 1963. In that year, a survey was conducted and the land was subdivided into sections 5 to 13, block 1, Waiau survey district. \[495\] The largest sections, 5 and 6, contained some 228 acres – by far the majority of the original military reserve land. Section 9 (3 acres) contained the promontory on which Te Pou o Tumatawhero and Te Tukutuku o Heihei were located. \[496\]

The following year, moves were under way to formally state the purposes for which the land was to be used. The result was that in 1965, section 9, containing the promontory, was declared to have a primary use (water-power development) and a secondary use (national park). Other sections were also affected, as follows:

- Sections 7, 8, 9, 10, and 13 of block 1, Waiau survey district – which together contained the land intended to be set aside as a military reserve – was ‘set apart for the development of water power’ under section 25 of the Public Works Act 1928. \[497\]
- Sections 7, 9, and 10 of block 1, Waiau survey district, ‘being land held primarily for the development of water power’, was ‘authorised to be applied also for national park purposes which shall be a secondary use of the said land’. \[498\]

Clayworth notes that it is ‘not clear why the legal status of these areas of land was changed in 1965, as the power station structures had been in place since 1946’. \[499\]

Over the next 20 years some of the land continued to be used for the purposes of hydroelectric power development. According to Clayworth, the rest of the land

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495. Crown counsel, memorandum, 19 October 2009 (paper 2.882), p 1
was administered by the Works Department and national park staff. "The day to day maintenance of the land was carried out by national park staff as though the area were part of the Urewera National Park, but any water power development uses over-rode national park usages."

In 1988, the Crown transferred certain electricity assets to the newly formed State-owned enterprise Electricity Corporation of New Zealand Limited (ECNZ). A certificate of title issued two years later preserved the status quo: the land would be used for power generation purposes but was also registered for the secondary purpose of national park use. But, in 1998, ECNZ transferred some of this land to Genesis Energy – another State-owned enterprise that was formally created in 1999 as part of the break-up of ECNZ. As part of this transfer, section 9, block 1, Waiau Survey District was divided into two sections:

- section 17 SO 8881: a very small area of 16 square metres, containing the meteorological station; and
- section 18 SO 8881: the remaining area of the old section 9.

At the time of our hearings this process of transfer was still under way. Clayworth noted in his report that section 17 was to have its secondary (national park) use lifted and be fully transferred to Genesis Energy. Section 18 was to be transferred to Land Information New Zealand (LINZ), at which point it would be either returned to the original owners under section 40 of the Public Works Act 1981; landbanked for Maori claimants to the Waitangi Tribunal; sold to private owners; or transferred to DOC. In closing submissions, Crown counsel said it was not clear if those proposed transfers had occurred. Recently, the Tribunal asked the Crown to identify the current owners of sections 17 and 18, and to state the circumstances of any transfer of ownership or alienation that had taken place. The Crown responded with information about the very small section 17 SO 8881, which shows that:

- its secondary use (national park) was revoked on 29 November 2000;
- ECNZ became registered as the owner of the land in substitution for the Crown on 7 November 2003;
- Genesis Power Limited became the registered owner of the land on 12 August 2005;
- Genesis Power remained the owner when, on 26 August 2005, a new computer freehold register 238533 was issued for various parcels of land, including section 17; and

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500. Ibid, pp 20–21
502. Crown counsel, memorandum (paper 2.882), p 2
503. Roger Miller to Peter Clayworth, 1 December 2000 (Peter Clayworth, comp, supporting papers to ‘Preliminary Report on Te Pou o Tumatawhero’, various dates (doc A4(a)), pp 26–27)
504. Crown counsel, memorandum (paper 2.882), pp 2–3
507. Presiding officer, memorandum concerning Te Urewera Inquiry, 2 October 2009 (paper 2.880), p 2

As for section 18 so 8881, the Crown informed us that it contains approximately 1.887 hectares, remains in Crown ownership, and continues to form part of Te Urewera National Park.508

From this we conclude that the main part of the land where Te Pou o Tumatawhero was located – section 18 – remains in Crown ownership. The far smaller area – section 17 – is owned by Genesis Energy, which is a Crown entity.

We also note the importance of section 19 – the land identified by Sidney Paine as the likely site of Te Tukutuku o Heihei. This area was not referred to in Crown counsel's closing submissions, and was not included in our recent request for further information. Section 19 appears to have been made out of the old section 10, which was one of the original sections created in 1963 as block 1, Waiau survey district. We have viewed a number of the title documents relating to this land but are unable to draw any firm conclusions as to its ownership. We assume, however, that section 19 remains part of Te Urewera National Park. The same applies for the rest of the land that was nominally set aside for use as a military reserve in the nineteenth century. Sections 5 and 6 – by far the major part of this area, and adjacent to the land identified as the sites of the two pa – remain part of Te Urewera National Park to this day.509

7.5.8.4 Treaty findings and recommendation

In light of our analysis, we reach the following conclusions:

- In the 1872 Locke deed the Crown assumed the right to ‘retain’ Onepoto land when it purported to confirm the return of lands to Maori which it claimed, wrongly, to have confiscated under ECLTIA. There was thus no legal basis for its claim to retain the Onepoto land, or for its use of the land for the next three years.

- There is no evidence that when the Solicitor-General gave an opinion in 1875 that the land was still in customary title, officials explained to Maori the significance of this for Onepoto, or offered to return the land.

- Instead, the Onepoto land was swept into the four southern block purchases in 1875. Tuhoe and Ngati Ruapani sold their interests in the blocks under threat of confiscation. There was no additional payment for the Onepoto land.

- The Crown subsequently used the Onepoto land for hydroelectric power development and national park purposes.

We find the Crown to be in breach of the Treaty principles of active protection and good government in its acquisition and retention of the land at Onepoto.

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508. Crown counsel, memorandum (paper 2.882), pp 3–4
As this land is of particular significance to the claimants, we recommend that the Crown begin a process whereby it will be returned to the original owners. Although there are issues relating to the meteorological station (on the 16 square metre section 17), we see no reason why section 18 should not be returned. Section 19, and other land acquired by the Crown for the purposes of establishing a ‘military reserve’ at Onepoto that currently remains in Crown ownership in Te Urewera National Park, should also be returned. We see no good reason why all of these lands should not be excised from the park, subject to the provision of access to neighbouring lands from State Highway 38, and returned to the claimants.

Given the circumstances in which the Crown acquired the land, we believe it would be appropriate for the ownership to revert to the original owners.

We are aware, however, that issues arise as to who held customary rights in the four southern blocks prior to its alienation – particularly in light of the history of these lands as we have outlined it above, and the complex customary rights in the area. We recognise that our recommendation that the Crown return this land to the original owners raises potential difficulties. We feel it necessary, therefore, to make some comment about those groups who held rights in the land before the Crown acquired it, in order to facilitate negotiations.

7.5.8.5 Who held rights in the land where Te Pou o Tumatawhero and Te Tukutuku o Heihei were located?

As we stated earlier, two claims were made about Crown acts and omissions concerning the pa at Onepoto. The most comprehensive of these was the Wai 795 claim, which dealt specifically with Te Pou o Tumatawhero and Te Tukutuku o Heihei. This was later incorporated into the Nga Rauru o Nga Potiki claims, and we heard evidence from Sidney Paine, Anaru Paine, and Irene Huka Williams. But Te Pou o Tumatawhero was also discussed in the Wai 945 Ngati Ruapani claim, and the traditional history of the pa was explained from a Ngati Ruapani perspective by Desmond Renata. Other Tuhoe and Ngati Ruapani claimants also discussed the pa in their evidence, including Rangi Mataamua (speaking for Wai 36 Tuhoe) and Robert Wiri (speaking for Wai 144 Ngati Ruapani).

Earlier in this chapter, we discussed the broad range of customary rights exercised by various peoples (Tuhoe, Ngati Ruapani, and Ngati Kahungunu) in the four southern blocks before war, and the land’s alienation. We also discussed the historical evidence of occupation on the southern shores of Lake Waikaremoana, including:

- Evidence of battles in Waikaremoana in the 1820s, and Tuhoe’s subsequent occupation of that area, including the construction of pa.
- Visits by the missionaries Colenso and Hamlin to the community at Onepoto in the 1840s.
- The construction of a pa at Onepoto by Tuhoe in 1863.
- The battle at Te Kopani in January 1866 in which Tuhoe and Ngati Ruapani participated against Crown forces. This included the occupation and destruction of a pa at Onepoto. After this, there is no record of occupation at Onepoto.
We also discussed the extent to which witnesses before the Native Land Court acknowledged the rights of others. This included the concessions made by Ngati Kahungunu witnesses who acknowledged the place of Tuhoe and Ngati Ruapani at Lake Waikaremoana, and specifically at Onepoto.

This evidence is supported by the oral testimony given to us by Tuhoe and Ngati Ruapani claimants during our hearings. Anaru Paine described how the famous Tuhoe chiefs Te Purewa and Tumatawhero went to Waikaremoana following Mihikitekapua’s call to arms. In chapter 2 we explained the circumstances in which this happened. After this campaign, Mr Paine told us, ‘they then set about building the fort at Te Pou o Tumatawhero.’ This was because of their ‘strong chiefly connections’ to Lake Waikaremoana.\(^{510}\)

Rapata Wiri and Desmond Renata provided Ngati Ruapani perspectives on this. Dr Wiri listed Hinemare as one of the descendants of Ruapani. ‘It is important to note the marriage between Tumatawhero of Tuhoe and Hinemare of Ngati Ruapani ki Waikaremoana. This indicates that the pa of Te Pou-o-Tumatawhero was occupied jointly by Ngati Ruapani and Tuhoe.’ Wiri says that Ngati Ruapani and Tuhoe built the pa ‘to guard the south-eastern gateway to Waikaremoana from further attacks by their enemies.’\(^{511}\) Mr Renata talked about the origins of the name Te Tukutuku o Heihei. The ‘original Te Tukutuku-o-heihei Pa’, he told us, was built at Te Pukekohu by Haua, the son of Ruapani. This was ‘in memory of his father who was raised in his grandfather’s Pa called Te Heihei in Turanganui. “Tukutuku” (earnest praying) was added to the name.’ Mr Renata claimed that the pa was rebuilt by Tuhoe in later years after they destroyed it in battle.\(^{512}\)

Both Sidney and Anaru Paine explained their whakapapa from Tumatawhero, whose direct descendants they are.\(^{513}\) One important tipuna was Te Peeti Tihi, who Anaru Paine explained was ‘an expert boat, and house builder’. ‘To my knowledge, it was him and the ancestor Te Pika Te Peeti Tihi who built the house Hinekura at Te Kuha. Te Peeti was the tohunga.’\(^{514}\) Another tipuna was Rangiaho Paora, also known as Te Maitaranui. Rangiaho was, Sidney Paine told us, ‘active in the Waikaremoana and southern Waikaremoana lands,’ and was later buried at Te Reinga.\(^{515}\) This may have been the same Rangiaho who was named in Hori Wharerangi’s list of owners of the Tukurangi block submitted to the Native Land Court in 1875.\(^{516}\) Sidney Paine explained to us the significance of this whakapapa to his current search for justice:

During this claims process I have discovered that my grandfather and my great grandfather and great great grandfather through our descent from Tumatawhero have had a consistent presence and connection to Lake Waikaremoana. This discovery had

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510. Paine, brief of evidence (doc H39), p 3
511. Wiri, brief of evidence (doc H52), p 11
512. Renata, brief of evidence (doc H49), para 8.14–8.15
513. Paine, brief of evidence (doc H20), pp 3, 4
514. Paine, brief of evidence (doc H39), p 4
515. Paine, brief of evidence (doc H20), p 4
516. Napier Native Land Court, minute book 4, 4 November 1875, fol 73
added to my own strong interest and aroha for Waikaremoana and indeed the whole of Te Urewera. It has been almost pre-determinative of our role in this claims process and the search for justice that has been inherited by our generation, following in the endeavors of our grandfather Te Kahu Tihi, our great grandfather Tihi Te Pika Te Peeti and our great great grandfather Te Peeti. Given their past efforts it should not surprise anyone that we continue today to attempt to resolve the outstanding issues that have plagued Lake Waikaremoana since the arrival of the Crown.\textsuperscript{517}

In cross-examination, Mr Paine told us that he sought the return of the land to his people: ‘we would be looking at the Crown... returning the title to those lands.’\textsuperscript{518}

The evidence thus strongly points to a conclusion that the sites where the pa were located, and the land immediately surrounding these sites, had been occupied by and under the authority of Tuho and Ngati Ruapani in the period before the wars and Crown purchase of the four southern blocks in 1875. We received no evidence as to the customary rights of Ngati Kahungunu at Onepoto – though this does not necessarily mean they had none. We note that the claim area of Wai 621 Ngati Kahungunu extends as far north as the southern shores of Lake Waikaremoana, whereas the Ngai Tamaterangi claim area extends to the Huiarau Range.\textsuperscript{519} But neither group presented evidence on this particular land, nor did they object to the evidence presented by Tuho and Ngati Ruapani respectively. More crucially, we note the evidence of Ngati Kahungunu leaders such as Tamihana Huata who, in the Native Land Court hearing of 1875, acknowledged the rights and occupation of Tuho and Ngati Ruapani at this site. In such an adversarial forum, this was an acknowledgement to which we attach considerable weight.

\section*{7.6 Explanatory Note: Te Hatepe Deed, ECLTIA, and Four Southern Blocks Maps}

In this section, we discuss historical mapping issues relating to the Te Hatepe deed, ECLTIA, and the four southern blocks boundaries. Both the Te Hatepe deed and the Locke deed were made with reference to areas defined in the schedules to the East Coast Lands Title Investigation Act 1866 and its 1867 amendment. Issues regarding these boundaries were subject to much discussion before us.\textsuperscript{520} Two questions are of particular importance to this chapter:

\textsuperscript{517} Paine, brief of evidence (doc H20), p 4
\textsuperscript{518} Sidney Paine, under cross-examination by Crown counsel, Waimako Marae, Tuai, 22 October 2004 (transcript 4.11, p 205)
\textsuperscript{519} Rangi Paku on behalf of all beneficiaries of the Wairoa-Waikaremoana Maori Trust Board, first amended statement of claim, 27 January 2003 (claim 1.23(a)), pp 4–6; Charles Manahi Cotter on behalf of Ngai Tama Te Rangi ki Ngati Kahungunu, first amended statement of claim, 27 January 2003 (claim 1.19(a)), pp 3–4
\textsuperscript{520} Dr O’Malley discussed these issues extensively in his written answers to questions from counsel. He was also subject to sustained cross-examination from Crown counsel on the same matters: O’Malley, written answers to questions (doc H64), pp 26–29; O’Malley, under cross-examination by Crown counsel, Waimako Marae, Tuai, 18 October 2004 (transcript 4.11, pp 18–21).
What was the difference between the overall area defined in the Te Hatepe deed and that in the Locke deed?

Was any part of the four southern blocks outside the boundaries of areas outlined in the schedules to the 1866 Act, its 1867 amendment, or the East Coast Act 1868?

These questions have broader relevance to how the four southern blocks were alienated. When McLean cabled Locke in 1875 he stated that while the land had not been confiscated, ‘rebel’ interests would be taken under the East Coast Act 1868 if it went through the Native Land Court. The assumption at the time was that the whole of the four southern blocks was inside the area subject to the Act.

Given the importance of contemporary official understanding, or misunderstanding, of crucial boundaries in the period between 1866 and 1875, we have attempted to reconstruct the areas that were defined in the schedules to the legislation and in the two deeds signed between Māori and the Crown. To highlight the issues involved, and to attempt some resolution of them, we have created two maps:

- map 7.1, showing the Te Hatepe deed boundary, the Kauhouroa block, and the four southern blocks; and
- map 7.2, showing the boundaries of ECLTIA 1866 and its 1867 amendment, the Kauhouroa block, and the four southern blocks.

The schedule to ECLTIA 1866 and its successors outline a number of geographical features that form the boundaries of the district within which the legislation was to apply. As with many similar descriptions dating from the nineteenth century, these geographical features are often difficult to identify – whether because of misnamed or misplaced locations, or because they were features that might be identified only in the broadest terms (such as whole mountain ranges). Generally, this was because of limited official knowledge of the area in question. To take one such example, two markers in the schedule to ECLTIA Amendment Act 1867 are given as ‘the range of mountains forming the watershed between the East Coast and the Bay of Plenty to the extremity of the said range north-east of Waikare Moana.’

While this range of mountains is clearly the Raukumara Range, what exactly forms its watershed and how can this be shown on a map? And which peak is its extremity?

Not only were the descriptions often vague, mapping in the nineteenth century was also an inexact science. Sketch maps were produced without the benefit of modern satellite technology, and often before professional surveys had been conducted. Thus, maps produced at the time were prone to error and distortion. For the most part, therefore, they can only be used as guides to what nineteenth century officials intended. Because of these factors, reconstructing the boundaries of the various deeds and legislation today is fraught with difficulties. More
specifically, it is difficult to match those geographical features we can identify with lines on contemporary maps that showed what was intended at the time.

The two maps we provide here include modern reconstructions of mid-1800s boundaries.

Map 7.1 shows two possible reconstructions of the Te Hatepe deed boundary, as well as the Kauhouroa block, and what were later defined as the four southern blocks. We have given two reconstructions of the Te Hatepe deed boundary because it is not clear where the boundary is. The southern and western portion of the deed boundary is defined in the schedule to the East Coast Lands Title Investigation Act 1866;\(^{523}\) the eastern boundary is defined in the deed itself.\(^{524}\) But the deed also had attached to it a sketch plan that showed which area was intended to be subject to the deed’s provisions (see map 7.3).\(^{525}\) The difficulty comes in matching what was shown in the sketch plan with the various descriptions of geographical features in schedules to the legislation, and the deed.

More specifically, there is a problem with recreating the southern and western boundaries. The southern boundary is given as the boundary between the Auckland and Hawke’s Bay provinces, which was then defined as the 39th parallel, and is shown as intersecting the confluence of three rivers – Wairoa, Kauhouroa, and Waiau. The western boundary is shown in the sketch map as intersecting three rivers – Waikaretaheke, Mangakapua, and Ruakituri. The problem is to match the two boundaries with the south-western point – the furthest peak of the

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523. Although the Te Hatepe deed refers to the ‘East Coast Land Titles Investigation Act 1867’, it is likely that this was a clerical error rather than a reference to the amendment Act – which was not passed until later that year. O’Malley says that there is ‘nothing to suggest that this was anything more than a clerical error’; O’Malley, ‘The Crown and Ngati Ruapani’ (doc A37), p 83. The sketch plan to the Te Hatepe deed was clearly made in reference to the schedule to the 1866 Act. ‘Haurangi’, which was part of the 1866 schedule but did not feature in the schedule to the 1867 Act, is marked as a feature on the map.

524. The deed stated: ‘The land comprised in the said schedule [to ECLTIA 1866] lying to the southward of the Ruaki Turi River and of a straight line drawn from the junction of the said river and the Huanga Reu River at Te Reinga to Paritu on the East Coast, as shown on the sketch map drawn hereon except the land comprised within the following boundary commencing at the mouth of the Kauhauroa stream up the river to its source thence to the Manga Poiki by the shortest line down the Manga Poiki to its junction with the Wairoa down the Wairoa to the mouth of the Mangaaruhe river up the Mangaaruhe to the mouth of the Manga Kapua up to its source thence a straight line to the junction of the Waikare Taheke and the Waiau thence following the course of the Waiau to its junction with the Wairoa thence to the mouth of the Kauhauroa the commencing point a shown on the said sketch map where the same is colored pink and marked A.’ ‘The 1867 Wairoa Cession Deed’ (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), p 7).

Version 1

Te Hatepe deed boundary—two reconstructions
Government reserves (Locke deed)
Kauhouroa block (ceded to the Crown by the Te Hatepe deed, 1877)

Version 2

Te Hatepe deed boundary
Kauhouroa block
Ruakituri block
Taramarama block
Four southern blocks (Locke deed, 1872)

Map 7.1: Reconstructions of the Te Hatepe deed boundary and the boundaries of the Kauhouroa block and the Four Southern Blocks.
Maungaharuru Range. The two versions of map 1 arise from our attempts to reconcile the sketch plan with the written descriptions.

- Version 1 follows the 39th parallel as it is given today, beginning about Mahanga and cutting through the Mohaka River at its western point. This means that the western boundary cuts close to the Mangakapua Stream, as is shown on the sketch plan. But the 39th parallel does not intersect the confluence of the Wairoa, Kauhouroa, and Waiau Rivers. Nor does it travel as far west as the Maungaharuru Range.
- Version 2 does intersect the confluence of the three rivers, and reaches the furthest peak on the Maungaharuru Range (Te Ihuru-maioterangi), but is some distance from the Mangakapua Stream.

As this map shows, there is no way to recreate perfectly what was intended at the time.

This map also contains a reconstruction of the Kauhouroa block and the four southern blocks. The boundaries of the Kauhouroa block were primarily defined by natural features, notably streams and rivers. Apart from some minor wording changes, the description of the block’s boundaries is exactly the same in both the 1867 and 1872 deeds. We have also shown the areas defined in 1872 as the four southern blocks to illustrate how much the original area subject to the Te Hatepe deed later changed. While the 1867 area had the Kauhouroa block as its centre and extended as far east as the sea, the area subject to the Locke deed had the Kauhouroa block at its eastern extremity and extended as far west as Lake Waikaremoana. The two areas were substantially different.

Map 7.2 shows the difference between the boundaries outlined in the schedules to the East Coast Lands Title Investigation Act 1866 and its 1867 amendment, in relation to the four southern blocks and the Kauhouroa block. Our map of the ECLTIA boundaries is a reproduction of one made in 1870, now known as the ‘Chapman map’. Here, we have placed the two boundaries from the Chapman map onto a satellite-imaged map. We agree with Dr O’Malley that the Chapman map is the most reliable source of information as to official understandings of the original 1866 ECLTIA boundaries and their 1867 revision – at least at the time the legislation was passed. It shows the 1867 boundary taking in a much bigger area

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526. ‘The 1867 Wairoa Cession Deed’ (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), p 7); ‘The 1872 Four Southern Blocks Deed Agreement’, AJHR, 1872, c-4, p 31 (Marr, supporting papers to ‘Crown Impacts on Customary Interests in Land’ (doc A52(a)), p 9)

527. Dr O’Malley provided the following information about the map’s origins: ‘It was published by George Thomson Chapman, the prominent Auckland bookseller and publisher, and dates from approximately 1870. It is held at Archives New Zealand, under the reference number AAPV 997 G12 and is listed in the Raupatu Document Bank Map Index at page 53635’: O’Malley, written answers to questions (doc H64), p 29. O’Malley stated further under cross-examination that the Chapman map was a ‘standard printed map’. ‘A commercial map if you like that you’d buy but the confiscation district boundaries have been drawn over the top on it.’ He added that the map not only included the East Coast but also ‘the entire North Island’: O’Malley, under cross-examination by Crown counsel, Waimako Marae, Tuai, 18 October 2004 (transcript 4.11, p 19).

528. O’Malley, written answers to questions (doc H64), pp 26–28
of the East Coast than the 1866 original. It also shows Lake Waikaremoana to be outside both the 1866 and 1867 boundaries. This would appear to show that much of the four southern blocks are outside the boundaries specified in the schedules to both the 1866 Act and its 1867 amendment.

Transposed on to a satellite-imaged map, however, the Chapman map can only be a general indication of what was intended at the time. The boundaries shown on our map do not match exactly the geographical features described in the schedules to the Acts, or the original Chapman map. For example, the schedule to the 1867 Act states that one of the boundary points was the ‘junction of the River Waiau with the River Waikare-taheke’. The original Chapman map shows the boundary running to the junction of the rivers, as they were understood at the time. Transferred on to a modern map, however, this boundary point is some considerable distance from the junction of the rivers. For this reason, we have included the position of Waikaremoana as it was shown on the original Chapman map.

529. East Coast Land Titles Investigation Act Amendment Act 1867, sch (Marr, supporting papers to 'Crown Impacts on Customary Interests in Land' (doc A52(a)), p 3)
But the Chapman map does serve to highlight – and to clarify – one of the most important interpretive issues surrounding the expanded boundary of the ECLTIA area: the western boundary, from ‘the range of mountains forming the watershed between the East Coast and the Bay of Plenty’ to its extremity. What is this range and what can be thought of as its extremity? One of the issues raised before us was whether this ‘range of mountains’ included Maungapohatu. Ms Marr considered the mountains to be the Huiairau Ranges and that ‘Maungapohatu was probably the “extremity” described as it was a well known mountain peak and had traditional significance to both Tuhoe and Ngati Kahungunu’. There is good evidence to support this argument:

- In January 1867, Reginald Biggs informed the Government that the boundaries of the 1866 Act did not include ‘some of the most valuable lands belonging to the Aitangamahaki [sic] Tribe’. This land was known to include much sought-after oil springs. Later in February, Richmond also stated that the Government had intended to include the land east of the dividing watershed, but mistakes in the schedule had rendered the Act ‘nugatory’.

530. Marr, ‘Crown Impacts on Customary Interests in Land’ (doc A52), p 91
531. Biggs to Halse, 6 January 1867, RDB, vol 131, p 50,391 (O’Malley, written answers to questions (doc H64), p 27)
532. O’Malley, written answers to questions (doc H64), pp 27–28
identifies those as the misnamed Lottin Point (‘Lottery Point’ in the 1866 Act) and misplaced Purororangi. Biggs made the suggestion to amend the boundaries to include the following:

To the North and East by the sea from Lottin Point (called in schedule Lottery) to the northern boundary of the Province of Hawkes Bay thence by the said boundary to the summit of the Maunga Haruru Range thence by a line to Maunga Powhatu thence by a line to Maunga Haumi thence by a line to Hikurangi thence by a line to Lottin Point.

- A sketch map was prepared around this time showing a boundary line bisecting Lake Waikaremoana and reaching a point at or near Maungapohatu (the name of which is clearly written on the map).
- Another map dating from 1867 showing Biggs’s proposal for the Turanga cession clearly identifies Maungapohatu as a boundary point of the 1867 ECLTIA extension.
- Based on Biggs’s instructions, surveying operations from 1867–68 ranged as far as Lake Waikaremoana and possibly Maungapohatu (see section 7.5.3.3.1).
- When the Native Land Court sat at Wairoa in September 1868, Biggs told the court that the western portion of the Te Hatepe deed area boundary ran from ‘Mangapuata, thence along the range to Waikaremoana’. It is likely that ‘Mangapuata’ is ‘Maungapohatu’ mistranscribed.

Based on only some of this evidence, Marr concluded that the amended district ‘clearly extended into the Waikaremoana region’. While this evidence is convincing in respect of Biggs’s views, it seems that the Government rejected his proposed boundary. Biggs had suggested precise landmarks: mountains that were known and could be identified. Instead, the western boundary was left vague: a watershed instead of a series of peaks and an unnamed peak. In addition, the schedule to the Act named the junction of the Waiau River and Waikaretahaheke Stream as a boundary point – which Biggs did not. One possibility is that officials selected the junction of the Waiau and Waikaretahaheke instead of Maungapohatu as a point on the boundary. In this scenario, the boundary ran from the junction of the rivers to a different peak – one that was properly considered as the ‘extremity’ of the mountain range. Finally, in one of Biggs’s 1867 sketch maps, Maungapohatu was shown to be directly north of Lake Waikaremoana.

533. O’Malley, written answers to questions (doc H64), p 33
534. Biggs to Halse, 6 January 1867, RDB, vol 131, p 50,392
535. O’Malley gives the reference to this map as MA 62/6, Archives New Zealand, Wellington; it is reproduced in the Raupatu Document Bank, vol 131, p 50,398: O’Malley, written answers to questions (doc H64), p 28.
536. See map 9, ‘Biggs’ Proposed Cession, 1867’ (Waitangi Tribunal, Turanga Tangata, Turanga Whenua, vol 1, p 146).
– where in fact it is located. It is likely that officials had heard enough of the area to locate Maungapohatu north of the lake. It is unlikely, therefore, that they would have said the extremity of the range was ‘to the north-east of Waikaremoana’ had they meant Maungapohatu.

The reasons for opting for these boundary points over Biggs’s suggestions are unknown. The most obvious possibility is that officials – hamstrung by their lack of geographical knowledge – preferred to leave the western boundary undefined. Once a survey of the interior region had been completed, the range of mountains and its extremity could be more accurately identified. Another possibility is that surveyors may have objected to Biggs’s particular suggestion of peaks: it may have been difficult to make proper trigonometric surveys between four peaks that were at some distance from each other. Maungapohatu may have also been seen as a provocative inclusion, given that hostilities had not reached that far in late 1865 and 1866, and given the delicate state of relations between Te Urewera peoples and the Crown in 1867.

If not Maungapohatu, what other peak could have been considered the extremity of the range? One possibility is Maungahaumi – one of the other peaks suggested by Biggs. By taking the boundary from the junction of the two rivers to Maungahaumi, the Crown was still achieving its primary aim of including the oil springs in the Waipaoa Valley, north of Gisborne. This argument is supported by our current geographical knowledge. Maungapohatu is not considered part of
the range of mountains dividing the East Coast from the Bay of Plenty. This is properly known as the Raukumara Range and is quite different from the Huiaiaru Range. The divide between the two ranges is clear, and is symbolised today by the Opotiki–Gisborne road. But Maungahauimi is some distance from either Maungapohatu or Lake Waikaremoana. The phrasing used in the schedule to the 1867 Act – ‘to the north-east of Waikaremoana’ – suggests something much closer. It is possible, therefore, that the Government had in mind another peak between Maungapohatu and Maungahauimi; or no specific peak at all but a theoretical location somewhere between the two.

For these reasons it is impossible to know what went through officials’ minds at the time. Given their lack of geographical knowledge it seems unlikely that they would have been able to distinguish between the Raukumara and Huiaiaru Ranges: the two ranges would have appeared as one continuous mountain range. Further research may reveal that officials – apart from Biggs – privately considered Maungapohatu as the extremity of the range of mountains. Even if this were the case, all of what became the Waiau block, most of the Tukurangi block, and some of the Taramarama block would have been outside the boundary of the 1867 amendment.

But nor does it make geographical sense to assume Maungapohatu was the ‘extremity’ of any particular range. From our examination of the sources, we believe it made more sense in 1867 for the boundary line to run from a peak to the north-east of Maungapohatu and Lake Waikaremoana to the junction of the two rivers, thereby excluding most of what later became the four southern blocks. Not only did this roughly stay in keeping with the south-western portion of the boundary as defined in the 1866 Act, it also fulfilled the objectives of including the sought-after oil lands.

It was for this last reason that Dr O’Malley concluded the Chapman map is ‘more reliable’ than other contemporary maps. On the Chapman map, the boundary of the 1867 amendment runs so far west as to include the oil lands, but not Maungapohatu, Lake Waikaremoana, or most of the four southern blocks. For our purposes, the Chapman map also shows the boundary line travelling directly south from the extremity of the range to the junction of the rivers. This is likely to have been the direction and the geography that officials had in mind in rejecting Biggs’s proposed boundary of a series of peaks – one that was specifically designed to exclude Lake Waikaremoana and surrounding lands. While Biggs may have been acting on different assumptions in 1867 and 1868, these assumptions were not shared by those in power who drafted the 1867 amendment. If the boundary on the Chapman map is considered to be the most accurate version as officials understood it at the time of the Act’s passing, then the entire Waiau block, most of the Tukurangi block, much of the Taramarama block, and some of the Ruakituri block would be outside the operation of the Act.

Dr O’Malley also drew our attention to the fact that the Chapman map was signed by McLean on 13 April 1870. ‘This raises the disturbing possibility that McLean may have known at least parts of the four blocks were outside the area
subject to the East Coast confiscation legislation. Yet by 1875, many – including McLean – believed that all of the four southern blocks were subject to the legislation. When informing Locke of the status of the four southern blocks, neither he nor the Solicitor-General paid attention to the schedule to the legislation. If they had, they would have discovered that a significant portion of the blocks fell outside the boundaries. According to O’Malley, this fact was not acknowledged by the Crown until the 1920s.

In summary, to address the two main issues before us:

- The area defined in the Locke deed differed significantly from the overall area defined in the Te Hatepe deed. It included a greater area to the north-west towards Lake Waikaremoana, excluding the area east of the Kauhouroa block to the sea.
- Much of the four southern blocks was outside the boundary defined in the schedule to the East Coast Lands Title Investigation Act Amendment Act 1867, as it was understood at the time it was passed.

539. O’Malley, written answers to questions (doc H64), p 28
CHAPTER 8

TE WHITU TEKAU – THE 1871 COMPACT AND MAORI AUTONOMY IN TE UREWERA, 1871–93

Listen, O Tuhoe. Your mana, O Urewera, and your power in war has not been killed by the mana of the Government. My word, O Tuhoe, is, I do not approve of roads, lease of land, or selling land.

Erueti Tamaikoha

8.1 INTRODUCTION

This chapter concerns the question of autonomy – te mana motuhake – in Te Urewera during the decades after the end of military conflict in 1871. This issue is crucial to understanding the de facto political independence of Te Urewera in those years, and the long, hard-fought struggle that took place against land loss and the Native Land Court.

In 1871, as part of the process of making peace, an arrangement was reached between Donald McLean (represented by J D Ormond, Government agent for the East Coast, and Major Rapata Wahawaha, a commander of Crown forces) and the leaders of Te Urewera: Ngati Porou forces were withdrawn and the chiefs entrusted with the future management of affairs in their districts. The claimants referred to this as a ‘compact’ involving Government recognition of their autonomy. The Crown, on the other hand, denied that there was an official compact or any formal approval of the claimants’ autonomy. This disagreement lies at the heart of matters discussed in this chapter. For Tuhoe and Ngati Whare claimants, their actions in resisting the Native Land Court, in excluding magistrates, and exercising their collective authority within a defined and protective boundary all sprang from their Treaty-guaranteed autonomy.

As a result of what they saw as a compact that affirmed their autonomy, in 1872 Tuhoe and Ngati Whare formed a runanga called Te Whitu Tekau (the Seventy), sometimes referred to as Te Hokowhitu, or the Union of Seventy. This new body acted as a means of collective decision-making for the hapu of the protected district (Te Rohe Potae) from which all roads, surveys, land sales, leases, magistrates, the Native Land Court, and all ‘evil things’ (‘mea kino’) were to be excluded. The Crown argued that Te Whitu Tekau was short-lived, although it accepted that its

1. Erueti Tamaikoha, proceedings of meeting at Ruatahuna, 9 June 1872 (in English only), AJHR, 1872, F-3A, p 30
policies lasted until the 1890s. The claimants maintained that Te Whitu Tekau continued to guide and guard Te Urewera throughout the 1870s and 1880s. In their view, the Crown had rejected major opportunities to recognise their governance body in that period. These opportunities arose from the Government’s own initiatives for native councils in the 1870s and for native committees in the 1880s. Even so, the parties acknowledged that the Crown’s continued rejection of Te Whitu Tekau in these years was combined with some acceptance of its authority on the ground. The Government acquiesced in the exclusion of roads and prospectors and magistrates, but surveys and the Native Land Court penetrated the blocks on the rim of Te Rohe Potae. We will examine the detail of how that happened in chapter 10. In this chapter, we concentrate on the political struggle of Te Urewera leaders to keep their lands out of the court.

One of the reasons the interior of the Rohe Potae survived intact was because there was little pressure to open it up until the late 1880s. From then on, however, there was growing Government insistence on opening Te Urewera for mining and settlement. In 1889, the Government sent Samuel Locke to negotiate an agreement, without success. Negotiations foundered on the Government’s refusal to accord legal powers to the Tuhoe committee and Tuhoe’s refusal to consider opening their district on any other basis. This created something of a stalemate, until the Governor succeeded in obtaining an invitation to visit Te Urewera in 1891. His visit was followed by applications from a small but significant group of Tuhoe leaders for the valuable Ruatoki lands to be surveyed and their title determined by the Native Land Court. For the claimants, the inability of the majority of the tribe to enforce Te Whitu Tekau policies and prevent this survey epitomised the Crown’s failure to recognise or accord legal powers to their tribal governance body. By 1893, Maori autonomy was under siege in Te Urewera.

8.2 Issues for Tribunal Determination
The issues for Tribunal determination with respect to Te Whitu Tekau are:
- What was the basis on which peace was established between the Crown and the peoples of Te Urewera?
- What were the origins, character, and policies of Te Whitu Tekau?
- How did the Crown interact with Te Whitu Tekau? How did it respond to political initiatives taken by Te Urewera leaders?
- Why were some Tuhoe leaders prepared to set aside Te Whitu Tekau policies at Ruatoki in the 1890s, and with what effect?

8.3 Key Facts
At the outset of the period covered by this chapter, peace between the peoples of Te Urewera and the Crown had not yet been established. In chapter 5 we outlined the first making of peace, by Tamaikoha and Te Rangihiwini in 1870, and the Government’s policy of unconditional surrender and relocation to coastal
reserves. This changed in 1871 with the release of Te Whenuanui and Paerau, and the Government’s acceptance that peace could be established without the physical removal of all communities from Te Urewera. In April 1871, Te Whenuanui and Paerau called a hui at Tātahoa (Ruatahuna). According to the oral history of Tuhoe, this was the occasion on which they decided ‘to give their allegiance to the Government as a Tribe’ (‘ka whakaaetia kia tu hangai ki tahi kawaanatanga’). Tensions continued, however, as the Government refused to release the exiles held on the coast, sent further expeditionary forces to search for Te Kooti, and pressed Tuhoe to join them in the search. Finally, the growing peace was put at risk in late 1871 when Wahawaha attacked Waikaremoana and occupied Ruatahuna and Maungapohatu, building redoubts and installing Crown garrisons.

It was at this point that, as we saw in chapter 5, the Government decided against attempting a military occupation of Te Urewera. It was too expensive (and simply unnecessary) to occupy Te Urewera. Lieutenant TW Porter put to the Government that it had a choice: either embark on a permanent occupation, or withdraw its forces and entrust Te Urewera (and the capture of Te Kooti) to its chiefs. In November, Ormond, based at Napier, wrote letters to key Urewera chiefs, setting out the terms of an agreement and, in the case of Te Purewa, responding to his own proposals. The letters proposed that the chiefs of Te Urewera would be responsible for their own affairs and districts, in return for which they would capture Te Kooti if he came within their boundaries. ‘The management of your people,’ Ormond wrote to Te Whenuanui and Paerau, ‘would be left as we arranged to yourselves.’ Ormond asked Wahawaha to present this proposal to the chiefs, and to withdraw if he considered their response satisfactory. Porter then took the letters to Wahawaha and all the Urewera chiefs.

The peace took effect in December 1871. On 11 December, Wahawaha formally withdrew from Te Urewera, having explained to the chiefs the Government’s recognition of their authority and its expectations of them. The flag that had flown over Kohimarama redoubt was formally handed over to Kereru Te Pukenui. Subsequently, various Urewera chiefs were involved in searching for Te Kooti, who was on the move constantly: from the north of Te Whaiti, he went to the upper Waiau River, then to the upper Mohaka River and, by March 1872, to Nuhaka. From there he made his last appearance in Te Urewera, moving rapidly to avoid

3. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 222
his trackers from Maungapohatu and Waikaremoana, and finally disappearing into the King Country in mid-May 1872. Meanwhile, in April, McLean had met Paerau in Napier and other Urewera leaders in Whakatane; and those who had surrendered and were being held at Te Putere reserve on the coast had at last been told they could go home.

As a result of the agreement of late 1871, not only were some Urewera Maori employed as messengers (karrere) but the Government also began to pay annual pensions to several Urewera chiefs. The pension arrangements remained in place up to and beyond the passing of the Urewera District Native Reserve Act 1896.

In the wake of these events, the peoples of Te Urewera formed Te Whitu Tekau – the Seventy. Essentially, this ‘union’ was a traditional-style runanga (council), which met for many years to make collective decisions for Te Urewera. Ngati Whare leaders were among its members, but it did not represent Ngati Manawa. The rangatira who participated in the runanga varied – the number 70 was symbolic, as we will explain below – but they met regularly at hui, and formed common policies to control interaction with the Crown and with settlers. The crucial hui at which this runanga was formed took place between 7 and 9 June 1872 in Ruatahuna, at Kohimarama, the redoubt that Wahawaha had handed over to the people the previous December. A number of issues were discussed: their boundaries; the importance of unity; and opposition to roads, to leasing and selling of land, and to the Native Land Court. Both the overall decisions of the gathering and the opposition of some leaders to those decisions, particularly with respect to roads, were reported to the Government in five letters sent by various Urewera chiefs, and in abbreviated and poorly translated minutes of the meeting supplied by Captain George Preece of the Wairoa Armed Constabulary.

These matters were further discussed at a large hui held at Ruatahuna in March and April 1874. What became the core Te Whitu Tekau policies, repeated throughout the 1870s and 1880s, were confirmed at this hui. Both the Governor and Native Minister McLean had been invited to attend on this occasion. But the hui was delayed from its original summer date, and the only Government representatives present were Herbert Brabant (resident magistrate at Opotiki) and, later, Resident Magistrate Locke from Wairoa, along with Charles Ferris of the Armed Constabulary. Also present were leaders from Ngati Awa, Ngati Pukeko, and Whakatohea (with Brabant) and Ngati Kahungunu (with Locke).

The two major hui of 1872 and 1874 indicate the key concerns of Te Urewera leaders. A range of letters to the Government has survived in which those concerns and policies – and, sometimes, differing approaches within the leadership – are outlined. From the mid-1870s there is somewhat sparse evidence in the written record of the discussions of Te Whitu Tekau, though it is clear both from the oral histories and from the later comment of a Government official (in 1889) that

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the runanga continued to operate. Hieke Tupe, for example, recounted a meeting between Te Kooti and Te Whitu Tekau representatives in the 1880s at which Te Kooti told Tuhoe to unite; they responded that they had already done so, and they were 'seventy.'

This accords with evidence from Resident Magistrate Robert Bush, who wrote in April 1889 that “The Urewera have always had a tribal Committee termed the ‘Seventy’. This Committee has always opposed the making of roads, surveys, and prospecting.”

From the mid-1870s, the interaction between Crown officials and Urewera leaders that had begun during the peace negotiations continued. Brabant visited Ruatahuna several times during 1873, and in 1874 McLean visited Whakatane to open Ngati Awa’s new wharenui, Mataatua. The opening was also attended by a large Tuhoe party who spoke to McLean of issues of concern to them.

In the wake of the confiscation, and the establishment of peace, there were other interactions as well. Armed Constabulary men stationed at Fort Galatea, Te Teko, and Whakatane were building a road down the Rangitaiki Valley to link the three policing posts. And Gilbert Mair, George Preece, Sergeant Bluett, and Captain Frederick Swindley were looking to lease land in the area. Mair, who developed a close relationship with Ngati Manawa, leased at Galatea; Swindley was living at Te Waimana; Bluett had made payments for the Matahina block; and the settler Hutton Troutbeck had leased land from Ngati Haka Patuheuheu and Ngati Manawa in the Horomanga Valley (Kuhawaea). Captain C Fergusson and William Kelly bought up some of the abandoned military allotments on the confiscated land; Fergusson lived at Opouriao from May 1875; and their Whakatane Cattle Company leased an additional 12,000 acres on the western side of the Whakatane River. Cattle wandered across the confiscation line and were seized by Tuhoe on several occasions, resulting in Government mediation between Fergusson and Te Makarini (first by McLean, and later by Preece, in his role as Napier resident magistrate).

From August 1873, the Crown also indicated a strong interest in acquiring land on the western edges of Te Urewera. Using a provision in the Native Land Act 1873, it suspended the operation of the native land legislation over a vast district of the Taupo and central Bay of Plenty (which included an extent of land in the west of Te Urewera). During the period when no land court sittings could be held, the Crown then sent in its own agents, securing agreements to lease by making payments to those it deemed owners. Government agents thus attended various


hui. In May 1874, Wilson, the land purchase agent, and District Officer Gilbert Mair attended one at Galatea hosted by Ngati Manawa. Wilson, who was buying up interests within Tauaroa-Kuhawaea (land leased by Troutbeck), attended four meetings with the Urewera leaders in the early part of 1874.

The history of the ‘four southern blocks’ is dealt with in detail in chapter 7, but it is also relevant here. As we have seen, a major hui was held at Wairoa in 1875 when Tuhoe, Ngati Ruapani, and Ngati Kahungunu debated their respective rights to lands on the south-eastern shores of Lake Waikaremoana. Tuhoe leaders, on advice from Samuel Locke, applied for a land court hearing to determine those rights to the four newly created blocks: Waiau, Tukurangi, Taramarama, and Ruakituri. Tamarau Te Makarini had signed the 1872 Locke deed, and this angered Te Whitu tekau. The Government was anxious to buy the land but needed the Native Land Court to confirm who the customary owners were. Locke told those present at the 1875 hui that the land had been confiscated after the first fighting in Waikaremoana (which occurred in 1865–66) then returned to the ‘loyal’ chiefs of Ngati Kahungunu to look after, but that the Government now accepted the right of ‘the Urewera’ to have their claims heard in the court.

The four southern blocks were not the only Te Urewera lands for which applications were made to have title determined by the Native Land Court. Waimana was heard after a Te Upokorehe man applied for survey and investigation of title in 1877, which brought Tuhoe applicants forward as well.\(^9\) Waimana, Heruiwi, and Waiohau were heard in mid-1878, and Matahina and Kuhawaea in 1881 and 1882 respectively. There was a gap then until Tahora 2 in 1888–89; Waipaoa in 1889; and Whirimake, Heruiwi 4, and Tuararangaia in 1890. In 1891, following the visit of the Governor (see below), an application was made for a hearing of Ruatoki lands. This would lead to considerable internal dispute. (These land court cases, and the sales that followed in their wake, will be discussed further in chapter 10.)

During the 1880s, there was further interaction between the peoples of Te Urewera and the Government. The Government’s 1883 legislation providing for native committees led to both the Government and iwi in the Bay of Plenty region considering the formation of new committees. Under sections 3 to 6 of the Native Committees Act 1883, committees could be elected in proclaimed districts to arbitrate civil disputes, and to give preliminary reports and advice to the Native Land Court. Native committee districts with potential relevance to Te Urewera were declared for Opotiki and Rotorua. Beginning in 1886, there were various proposals to form a committee or committees covering part of the Opotiki and Rotorua districts, with either a new district including the lands of Ngati Awa and Te Urewera, or a smaller Ngati Awa committee and/or a committee for Te Urewera. In the late 1880s, Te Urewera leaders sought Crown sanction for komiti they formed, without success.

By the late 1880s and early 1890s, there were new reasons why the Crown was looking with greater interest at Te Urewera. An important incentive was the belief that there were substantial gold reserves there. Resident Magistrate Samuel Locke,

\(^9\) There was an earlier application from Rakuraku but that had not been progressed.
who visited Ruatoki in April 1889, stated that he had come to ‘make arrangements’ for the opening up of Te Urewera. Both prospecting for gold and minerals and the utilisation of the forests were discussed. Locke pressed for a group of chiefs to be chosen with whom the Government could communicate when it authorised any person to explore in Te Urewera for any purpose. But his visit was not followed by the admission of prospectors, and the following year the Minister for Lands and Mines, GF Richardson, was unsuccessful in even gaining access to Te Urewera. Agreement could not be reached because Tuhoe wanted the Government to recognise a committee with decision-making powers, whereas the Government wanted a committee whose role was limited to admitting and assisting those to whom it had already granted passes.

Government efforts to survey parts of Te Urewera for road-building purposes also met with opposition from Tuhoe – though there was some support from Urewera people living on the western fringes of the district. By the late 1880s, three strategic roads ran close to Te Urewera. At various times, Ngati Manawa, Ngati Whare, Ngati Haka Patuheuheu, and people from Ruatoki and Waimana were employed in building them. On the western side was an old road, made by the Armed Constabulary, linking Fort Galatea, Te Teko, and Whakatane. To the south of Te Urewera there was a road from Wairoa through to Waikaremoana. To the north of the district, a road had been built from Ohiwa on the coast through to Waimana. There was some work on a bridle path from Galatea to Ahikereru in the mid-1880s. Basically, major roads were not permitted in Te Urewera itself, and the Government accepted Te Whitu Tekau’s decision on this issue, although it tested it from time to time.

By 1889, there was something of a stalemate between Te Urewera leaders and the Crown. Although the Native Land Court had penetrated the ‘rim’ of Te Urewera, it was still excluded from the interior lands. But there was a new interest in those lands, especially because it was believed they might hold major gold deposits. The Government had now opened the King Country, and Te Urewera was thus seen as the last place to be ‘opened up’ to the forces of settlement and civilisation. Locke’s attempt in 1889 had failed. Against this background, the Governor, Lord Onslow, visited Te Urewera in 1891 – the first governor to do so. He and the Native Minister both wished to visit Te Urewera, and ‘after much debate’ the senior chiefs issued an invitation to the Governor to visit Ruatoki.

In March 1891, the Governor and his party, including the Native Minister, met with a cordial reception at Ruatoki. The hui followed another major Urewera hui held at Ruatahuna to open the great wharenui Te Whai-a-te-Motu, built over a number of years ‘as a memorial to Te Kooti.’ Te Kooti, to whom the Government

10. Miles, Te Urewera (doc A11), p 239
12. Miles, Te Urewera (doc A11), p 244
13. Pou Temara (Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 282)
had extended an amnesty in 1883, had first returned to Te Urewera in the post-war years in 1884. In February 1891, he returned for the opening of Te Whai-a-te-Motu the following month. The senior chiefs then moved to Ruatoki to greet the Governor. While welcoming him as the representative of the Queen, many chiefs took advantage of the occasion to press the Government for the return of some of the confiscated land. Rakuraku reiterated that no roads, no magistrates, no surveys, no leases, and no land sales were permitted in Te Rohe Potae. ‘The Government laws,’ he said, ‘are not to come on this side of the boundary.’ These fundamental Te Whitu Tekau policies were again published in the Maori newspapers on behalf of ‘Tuhoe Potiki katoa’ (all Tuhoe) in 1893.

But Te Whitu Tekau policies were set aside by some Ruatoki leaders in 1891, soon after the Governor’s visit. Ngati Awa had already applied to bring the Ruatoki lands before the court, and in 1891 this was followed with applications from Tuhoe hapu, including Ngati Rongo. In 1892, a complicated series of negotiations took place between the Native Minister, Te Urewera leaders, Native Land Court applicants (especially Te Wakaunua and Numia Kereru), Government representatives (especially James Carroll, Maori member of the Executive Council), and Te Kooti. There may have been general agreement at Ruatoki to allow the survey to proceed in late 1891; this had been brokered by Te Kooti. But by February 1892 there was significant opposition. In March, the proponents of the survey agreed to hand the matter over to the tribe to decide, and the decision went against continuing with the survey. Rather than accept this decision, Native Minister Alfred Cadman sent Carroll to Ruatoki to negotiate a new agreement. In April 1892, Carroll proposed completion of the survey for the portion of the block where it was under way (some 11,000 to 12,000 acres) and a general ban on any new surveys or court activity in Te Urewera until all peoples had agreed to it. Te Kooti was instrumental in persuading all sides to agree to the Government’s compromise in May 1892.

This compromise agreement, however, was immediately followed by obstruction of the survey. The two sides disagreed over whether the surveyor was in fact limiting his work to the compromise block. The Government allowed the survey to remain unfinished for the meantime, with Cadman promising that he and Carroll would visit Ruatoki at the end of the parliamentary session to ‘hear both sides.’ In the event, Cadman came on his own in January 1893 and delivered an ultimatum: if Tuhoe could not agree to the survey within one month, he would order it to proceed regardless. From this point on, the compromise agreement was abandoned, and Cadman insisted on a full survey of the whole Ruatoki block.

Tuhoe did not agree to his demands, so Cadman authorised the surveyor to continue in the face of obstruction from the opposing hapu, whom Crown historian


15. Native Minister to Under-Secretary, 9 June 1892 (Edwards, ‘The Urewera District Native Reserve Act 1896, pt 1’ (doc D7(a)), p 33); Morpeth to Kipa Te Whatanui, 9 July 1892 (Cecilia Edwards, comp, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’, 3 vols, various dates (doc D7(a)(i)), vol 2, p 659)
Cecilia Edwards accepted were ‘the majority’. The survey was obstructed peacefully by a number of women, at the direction of leading chiefs. In March 1893, those women (and four chiefs) were summoned to appear at the resident magistrate’s court in Whakatane. They voluntarily answered the summonses. Eleven women and four men were convicted for obstruction, and sentenced to one month’s imprisonment in Auckland. The sentences were carried out. Tuhoe offered no resistance.

The survey was resumed and again obstructed peacefully. Further trials followed in April, with fines imposed instead of imprisonment. This time, however, many of the obstructors hid in the interior to avoid summonses. The Government brought in armed police to prevent any further obstruction of the survey, but a peaceful resolution was ultimately obtained by the intervention of Te Kooti, who advised Te Urewera leaders not to obstruct the survey again. As a result, it was completed by mid-1893. The Native Land Court began its hearings on the title of the Ruatoki block in December 1893. In the meantime, as we have seen, tribal leaders had publicised their continued opposition to the court and all it entailed.

In 1894, Richard Seddon made the first visit by a premier to Te Urewera. It seems to have been on this occasion that Seddon heard for the first time, from one of the Tuhoe orators, about the agreement made by Paerau and Te Whenuanui with the Government in 1871.

8.4 The essence of the difference between the parties
Counsel for the Wai 36 Tuhoe claimants argued that the origins of Te Whitu Tekau lay in the peace agreement forged between the Government and Tuhoe in November 1871; it was formed ‘precisely because the chiefs thought they were operating in a new relationship with the Crown’. Counsel relied on Judith Binney’s production of documentary evidence surrounding the 1871 peace agreement, and on McLean’s continuation of negotiations with Tuhoe from April 1872. The Tuawhenua claimants pointed to the ‘peace compact’ of 1871, which originated in an agreement between Te Whenuanui, Paerau, and Ormond in April 1871 that began to be implemented in November of that year. Self-management had been sought by the Tuhoe chiefs and agreed to by Ormond (as is evident, counsel argued, in the letters Ormond wrote to senior Tuhoe chiefs in November 1871). This should be considered in the context of other peace-makings and confiscations in the Bay of Plenty; no such ‘management’ issues were agreed or implemented with other iwi.

The Crown, however, adopted the position of its historian, Dr Battersby, that no specific peace compact was made; rather, peace-making was an incremental
process. It did not specifically address the evidence of the Ormond letters, but it denied the existence of a formal peace compact in which McLean was understood to have promised some form of recognition of self-government in the district.\textsuperscript{20} Alongside this, though, the Crown accepted, with some caution, a link between the establishment of Te Whitu Tekau and the restoration of peace.\textsuperscript{21}

Differences remain between the parties as to the significance of Te Whitu Tekau and its policies, and the attitude of Governments of the time towards Te Whitu Tekau.

The claimants argued that Tuhoe were ‘decisive in rejecting the foreign institutions which would probably bring harm to Te Urewera’ – notably roading, surveys, leases, land sales, and the Native Land Court. But this is not to say they rejected the new economy. Rather, they wanted it on their own terms. Yet Tuhoe were seen by the Crown from the early 1870s as a ‘threat’ to economic development and settlement in the region. They thus had to cope with the Crown’s ‘programme’ to pull land into the Native Land Court and secure its alienation.\textsuperscript{22}

Te Whitu Tekau, the claimants stated, was ‘clearly established as a vehicle by which Tuhoe sought to assert their mana motuhake or authority within their own district.’\textsuperscript{23} It was a ‘tangible vehicle of collective action among the hapu of Te Urewera including Tuhoe and Ngati Whare.’\textsuperscript{24} It held a mandate to represent the views of Tuhoe as the body politic to engage with the Crown, and its policies were clearly expressed. There was some disagreement from the outset over how best to protect and advance Tuhoe interests, especially over roads. Such differing opinions and the potential for dispute ‘only underlined the real need for a governance body for the tribe’; in fact, it was no different from a parliament in which different opinions might be expressed but it was understood that a common view would prevail.\textsuperscript{25}

In particular, the claimants pointed to the general long-term effectiveness of Te Whitu Tekau policies, given the noticeably limited participation of Tuhoe and Ngati Whare in the Native Land Court despite the Crown’s ‘divide and rule’ policy.\textsuperscript{26}

The Crown for its part stated that Te Whitu Tekau had difficulty reaching a consensus agreement in 1872 and 1874, and in enforcing its policies.

The parties did not agree on the nature of the relationship between Te Whitu Tekau and the Crown. According to the claimants, the Crown failed to act towards Te Whitu Tekau and later komiti in such a way as to respect and enhance them as vehicles of rangatiratanga. Its stance, in their submission, was essentially the same as toward any Maori expression of collective identity and local autonomy in this

\begin{itemize}
\item 20. Crown counsel, closing submissions, June 2005 (doc N20), topic 7, pp 8–9
\item 21. Ibid, pp 3–4, 9
\item 22. Counsel for Wai 36 Tuhoe, closing submissions, pt A, overview, 31 May 2005 (doc N8), pp 10–25
\item 23. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 45
\item 24. Counsel for Ngati Whare, closing submissions, no date (doc N16), p 40
\item 25. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 47
\item 26. Ibid, pp 45–48
\end{itemize}
period: it was negative. In particular, counsel for Ngati Haka Patuheuheu argued that the hapu was a member of Te Whitu Tekau and wanted to support its consensus policies, but that such ‘border’ groups faced particular pressures from the Crown and settlers which undermined their ability to do so.

The Crown stated that it ‘did not conspire’ to undermine Te Whitu Tekau, or to destroy tribal autonomy in this way. In fact, it did not accept that successive governments recognised Te Whitu Tekau as an autonomous, independent entity beyond the sphere of Government control, or that it had any particular constitutional status. Rather, the Crown saw it as a ‘loose confederation of interests in a particular location’. The Government was concerned about Te Whitu Tekau policies to the extent that such policies seemed to be ‘holding back the use of any productive lands’ and preventing the peoples of Te Urewera from enjoying the benefits of ‘civilisation’; and it did attempt to ‘include Urewera Maori in its mainstream policies for Maori affairs’. Indeed, there were ‘ongoing efforts to establish dialogue and engagement over a number of issues[,] particularly those related to governance structures’, and though successive Governments were supportive of opening up land for settlement purposes, ‘they were inclined to proceed cautiously and at a pace that suited the wishes of Te Urewera leadership.

The Crown and claimants both looked back on the events of the 1870s and 1880s from the perspective of the Urewera District Native Reserve Act 1896 (see chapter 9). Counsel for Wai 36 Tuhoe claimants argued that McLean was willing to accept and engage with separate laws and districts for Maori in the 1870s, pointing to his Native Councils Bill in the context of the compact of 1871. Later Ministers were less open to such possibilities. In the claimants’ view, the Crown should have instituted ‘something akin to the UDNRA much earlier’. The Crown, for its part, submitted that the 1896 Act did in fact give the peoples of Te Urewera what they had sought through Te Whitu Tekau:

The idea of a forum for collective decision making on the larger issues of tribal affairs, whilst preserving the independence of the constituent hapu, appears to have been preserved in substance if not form in the models for local governance structures developed under the UDNRA legislation.

Why, then, if it was possible in 1896, could the peoples of Te Urewera not have had such an arrangement earlier? While arguing that it engaged in dialogue with them about governance structures, the Crown defended itself by relying on what

27. Ibid, p 59
30. Ibid, p 2
31. Ibid, p 13
32. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 47–50
33. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 35
34. Crown counsel, closing submissions (doc N20), topic 7, p 18
the law had required of it at the time: ‘It was not a task of government under the legislation of the day to enhance Te Whitu Tekau as a vehicle of rangatiratanga.’

Having made this argument, the Crown admitted that McLean had introduced legislation to provide for Maori ‘local government’ in 1872, but that it had failed. Counsel also admitted that there had been dialogue about official recognition of a Tuhoe committee in the 1880s, in the context of the Native Committees Act 1883, but did not comment on the fact that no such committee was ultimately recognised or sanctioned. Rather, the Crown implied there were a number of possible tribal committee and district proposals relevant to Te Urewera in the mid- to late 1880s, all of them overlapping and none of them justifying recognition.

The claimants, in reply, took issue with the Crown’s view of Te Whitu Tekau as a ‘loose confederation of interests in a particular location’. This disparaging approach, they suggested, was the basis of ‘the very action that caused prejudice and loss’. In their view, the Crown ought to have ‘fostered relationships with Te Whitu Tekau and supported the policies upon which there was broad agreement.’

But the Crown ignored the traditional leadership, and exploited rifts within it over matters that were not of central importance. It declined to recognise the komiti Tuhoe ‘elected’ in 1888, the policies of which were no different from those of Te Whitu Tekau (indeed, the komiti may have been Te Whitu Tekau in another guise). And though the Crown pointed to ‘difficulties in enforcing [Te Whitu Tekau’s] policies’, it did not recognise that its own actions contributed significantly to those difficulties – particularly its land purchase policies, its insistence on use of the Native Land Court, and its undermining of Te Whitu Tekau leadership in various ways.

Further, the Tuawhenua claimants took issue with the Crown’s submission that it had not recognised Te Whitu Tekau as having any constitutional status:

The Crown states that it does not accept that successive governments recognised Te Whitu Tekau ‘as having any particular constitutional status’. This statement, with respect misses the entire point of the claimants’ case in respect of Te Whitu Tekau. The claimants argue that the Crown ought to have recognised Te Whitu Tekau as having a special constitutional status. Te Whitu Tekau was one of the key manifestations of Tuhoe mana motuhake, a vehicle through which tino rangatiratanga was given expression. As such, the Crown was required to recognise and protect Te Whitu Tekau, Article Two requires no less.

35. Crown counsel, closing submissions (doc N20), topic 7, p 12
36. Ibid
37. Ibid, pp 13–17
38. Counsel for Tuawhenua claimants, submissions in reply, 8 July 2005 (doc N34), p 21
39. Ibid, pp 21–22
40. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 60
41. Counsel for Tuawhenua, submissions in reply (doc N34), pp 21–22
42. Ibid, p 21
Finally, the parties did not agree on the issue of the Ruatoki survey crisis of 1891 to 1893, in which a significant minority of the Tuhoe leadership set aside Te Whitu Tekau policies in favour of having the Ruatoki block surveyed and processed through the Native Land Court. According to the claimants, the Crown breached the Treaty because it ‘trampled’ on the mana motuhake and tino rangatiratanga of the claimants when it:

- failed to respect the Tuhoe tribal body’s constant proclamation that Te Rohe Potea was closed to surveys;
- ‘forced’ a survey of Ruatoki and the taking of Ruatoki to the Native Land Court;
- arrested chiefs and women of Tuhoe who obstructed the survey;
- sent armed men to assist survey parties to complete the ‘unwanted’ survey; and
- presented Tuhoe with an ultimatum, threatening them with confiscation if the survey the Crown wanted was not completed.\(^{43}\)

The Crown, on the other hand, argued that the Ruatoki crisis was brought on by internal factors. These included conflict between Tuhoe hapu over land, causing some of them to apply for the survey. In that circumstance, the Crown had the responsibility of applying the law and seeing the survey carried out. Also, there was a difference of principle among Tuhoe groups: by this time, some favoured the ‘security of tenure’ and its ‘attendant benefits’ that a land court title would confer; others ‘remained faithful to the policies of Te Whitu Tekau’. Nonetheless, the Government attempted 12 months of mediation before finally applying the full force of the law to the obstructors. In the Crown’s view, it performed its various roles appropriately and responsibly when the survey was applied for and subsequently obstructed.\(^{44}\)

### 8.5 Tribunal Analysis

We will address the key issues for Tribunal determination in terms of the questions set out in section 8.2.

#### 8.5.1 What was the basis on which peace was established between the Crown and the peoples of Te Urewera?

**SUMMARY ANSWER:** The peace-making in Te Urewera evolved over time but was interrupted in late 1871, presenting the Government with a crisis to resolve. The result was an offer of terms by the Crown in November 1871. These were conveyed to Te Urewera leaders in letters to several chiefs, and by Rapata Wahawaha at a widely attended tribal hui. The terms of the peace are thus to be found in both written and oral sources. Letters were written by JD Ormond, the Government’s general agent at Napier; this correspondence both followed and was followed

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\(^{43}\) Counsel for Tuawhenua, closing submissions (doc N9), pp 97–98

\(^{44}\) Crown counsel, closing submissions (doc N20), topics 14–16, pp 11–12

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by face-to-face meetings. The peace was designed to meet the Crown's objectives of ensuring the capture of Te Kooti or, at least, ensuring he would receive no assistance from Te Urewera leaders. It was also designed to meet the objectives of Te Urewera leaders that Crown forces withdraw from their territory and their authority be recognised by the Crown. The basis of the peace was thus that chiefs in the various districts of Te Urewera were authorised by the Crown to direct the affairs of their districts in exchange for giving up Te Kooti if he was in or appeared in their territories. Crown forces would withdraw, and the Crown would allow the people to remain in their own communities, rather than insisting they 'came out' to the coast. There was a clear understanding that the Crown recognised the authority of the chiefs. On the basis of this understanding, Te Urewera leaders would proceed to establish a new tribal body, Te Whitu Tekau.

We consider the basis on which peace was established between the Crown and Urewera leaders in light of the differences between the parties: first, whether there was in fact a peace agreement or compact, as opposed to an 'incremental' process of peace-making; and, secondly (as argued by the Crown), that it has not been established that the Government at the time endorsed the idea of 'self-government' in Te Urewera.

We note that the Crown did not expand on its argument that there was no peace compact. Nor did it explicitly adopt the argument of its historian, Dr Battersby, that what the Government was trying to achieve at the end of 1871 was to 're-establish a more normal peace-time footing' in Te Urewera, thus relying on Urewera chiefs 'for information and cooperation in keeping with the peace. It would withdraw Ngati Porou forces; in return, Urewera leaders would hand over Te Kooti, and would be entrusted with ensuring that 'no further security issue emerged within their territory'.

In other words, the Government simply gave responsibility for maintaining security in the various hapu areas to local chiefs.

The Crown focused instead on what it terms the respective parties' 'different understandings of the nature of the conditions around the return to peace in 1871 and 1872.' Though both sides understood that peace had been made by the end of 1871, the Crown argued that there was no formalised arrangement for regional autonomy. The extent of their mutual understanding, according to the Crown, was that 'government officials would not be excluded from the district, but so long as the district remained quiet, Urewera Maori would generally be left to their own devices.'

This, it seems to us, does little justice to the agreement reached between Urewera leaders and the Crown in December 1871. The key documentary evidence consists of the letters written by Ormond to Urewera chiefs in November 1871, as well as a letter written by Te Purewa to Ormond; Ormond's internal memorandum on

47. Crown counsel, closing submissions (doc N20), topic 7, p 9
48. Ibid
the peace terms; and the accounts we have of the korero of Rapata Wahawaha, explaining the Government’s terms to the chiefs in December 1871. With regard to the oral evidence of Tuhoe, we have a record of what various chiefs said to Prime Minister Seddon in 1894, when they referred to a compact or treaty having been made with McLean, and the evidence of tangata whenua witnesses in our inquiry. Tuhoe witnesses at our hearings, including Tamati Kruger, Tama Nikora, Matthew Te Pou, and the Tuawhenua research team, believed that a formal compact or agreement had been entered into in 1871, carrying the status of a binding oral pact.⁴⁹

As we have seen in chapter 5, the agreement grew out of negotiations between Te Whenuanui and Paerau and Government representatives that began when the chiefs met Ormond in Napier in December 1870. Insofar as we can assess them from the records left by McLean and Crown officials, they initially involved either a request from Te Whenuanui and Paerau, or their concurrence in a plan, to assemble the remaining peoples of Te Urewera at Ruatahuna, where they could be protected from Te Kooti by the building of a redoubt and by Government forces. We accept Binney’s explanation that Te Whenuanui’s adoption of or support for this plan was based on an attempt both to cooperate with the Government and to

shield Tuhoe from the dilemma they found themselves in, given ‘their inner belief in the justice of Te Kooti’s cause’.\footnote{Ormond’s focus, however, was more on securing Te Kooti. As he told Wahawaha, it was ‘thought that by settling the Urewera at Ruatahuna and placing soldiers there, some plan will be devised for capturing Te Kooti’. But, at any rate, the Government conceded that it was no longer necessary for all the people to leave their lands as a condition of making their peace with the Crown.\footnote{In April 1871, the Government allowed Te Whenuanui and Paerau to return home. Soon afterwards, the chiefs held a major hui at Ruatahuna, and wrote letters to report its outcome to the Government; Kereru wrote too, and Hapurona Kohi of Ngati Whare reported back to Preece, bringing the letters with him. All the Urewera, he said, were ‘united in their determination to commit themselves to the government’. The chiefs of Te Urewera thus made a firm commitment to peace, and some eventually became willing to be more actively involved in the pursuit of Te Kooti. Binney and the Tuawhenua researchers drew our attention to a hui called at Ruatahuna in April 1971, attended by the then Minister of Maori Affairs, Duncan MacIntyre, to mark the centenary of the meeting at Tatahoata. The hui was held in Te Whai-a-te-Motu meeting house (see below). In their submission to MacIntyre, Tuhoe described the April 1871 hui as the occasion when they decided ‘to give their allegiance to the Government as a Tribe’.\footnote{As we discussed in chapter 5, this developing peace between Urewera communities and the Crown was interrupted and put at risk in late 1871. First, Wahawaha’s forces attacked pa and destroyed food supplies at Waikaremoana in August, leading to complaints from Te Makarini. Secondly, Wahawaha then occupied Maungapohatu and Ruatahuna, erected redoubts, and declared his intention of remaining until Te Kooti was captured. This created a crisis in relations between the Crown and Tuhoe. It confronted the Government with a serious choice, as Porter conveyed when he brought Wahawaha’s reports back to Wellington: it had either to occupy Te Urewera permanently or withdraw. The gradual process of peace-making, building on the rongopai established between Te Rangihiwinui and Tamaikoha in 1870, had been placed at risk.\footnote{In November 1871, Porter outlined two alternative solutions for peace-making in Te Urewera. The first was that there should be permanent military posts with garrisons at Maungapohatu and Ruatahuna, rather than a reliance on expeditionary forces. The second was that each of the Urewera chiefs should be given a say in the defence of their own pa on a continuing basis.\footnote{50. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 243\footnote{51. Ormond to Ropata, 20 December 1870, AJHR, 1871, F-1, p 8; Ormond to Porter, 20 December 1870, AJHR, 1871, F-1, p 8. The two letters interpret the role of Te Whenuanui and Paerau in this plan somewhat differently.\footnote{52. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 242\footnote{53. Binney, summary of ‘Encircled Lands, Part 1’ (doc B1(d)), p 22; Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 252; Tuawhenua Research Team, ‘Te Manawa o Te Ika, Part 2’ (doc D2), p 427}}}}}}
responsibility for preserving peace and supervising their own districts; men would be paid as messengers to ensure that communications were kept up with them. 54

As we found in chapter 5, Ormond regarded Porter’s first proposal for governing Te Urewera through military posts at Maungapohatu and Ruatahuna as too expensive – though the existing posts on the outskirts of the region, at Waikaremoana and Fort Galatea, should be kept. Instead, he favoured the option that chiefs be ‘entrusted with the security’ of their respective districts. 55 In making this choice he was no doubt influenced – as Porter was – by the view that military occupation was not only too expensive but also probably unnecessary. At this moment in time, the Government chose to trust the Urewera leaders to manage their own affairs and to hand over Te Kooti should he return to their territories.

The memorandum Ormond wrote soon afterwards, and dated 21 November, embodies the essence of what became the peace agreement, or compact, between the peoples of Te Urewera and the Crown. The chiefs of Te Urewera were ‘given direction of affairs in their own districts’ in exchange for giving up Te Kooti, while mail carriers at Ruatahuna and Maungapohatu were also to be employed. 56

These terms formed the basis of letters Ormond had written the previous day, 20 November, to senior Urewera chiefs Tamaikoha, Te Whenuanui and Paerau, Te Purewa, and Te Makarini. The letters referred to:

- the future role of the chiefs in managing the affairs of Te Urewera;
- the creation of a messenger service;
- the withdrawal of Ngati Porou forces and the handing over of Te Kooti to the Government; and
- the proposed construction of a road from Waikaremoana to Wairoa and Ruatahuna. 57

These letters, together with the memorandum, form a major part of the written component of the peace agreement. Binney pointed out that although the letters survive in draft, and some are unsigned, they are all in the handwriting of Ormond, and the associated correspondence makes it clear that Porter personally delivered them all to the recipients. 58 To Tamaikoha, Ormond wrote:

56. J D Ormond, memorandum, 21 November 1871, on Porter to Ormond, 16 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), p 33)
57. Ormond to Tamaikoha, 20 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), p 95); Ormond to Whenuanui and Paerau, 20 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), pp 96–97); Ormond to Purewa, 20 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), p 98); Ormond to Makarini, 20 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), p 99); Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 258–260; Battersby, ‘The Government, Te Kooti and Te Urewera’ (doc B3), pp 175–176
58. Binney, ‘Encircled Lands, Part 1’ (doc A12), p 258 n 93
Friend I received your letter written from Waimana & learn that Te Kooti’s people are in your hands for safe keeping – that is well it is to you the Govt will look to prevent them returning again to evil. Also it is to you the regulation of affairs within your boundaries will be entrusted – to Whenuanui & Paerau in their boundaries & to Purewa in his – as for Te Kooti I have written to Whenuanui & Paerau he must be given up to the Law as it is within their boundaries he is now hiding – Friend add your word that the evil caused by this man may be ended – . . . 59

On the same day, Ormond wrote to Te Whenuanui and Paerau:

Friends when you left here your engagement with me was you were to keep your boundaries clear of trouble & that if Te Kooti came within your boundaries he was to be given up by you – the Govt are well informed of what has passed since – Quite recently an offer was made by Wepiha that Te Kooti shd be given up by you & he conjointly to be tried by the Law provided the govt. withdrew Ngatiporou from your boundaries. Wepiha is now employed on that business. It rests now with yourselves Te Kooti is in your boundaries it is for you to fulfil your engagements & hand him over to the Law – let that be done at once. You choose to who you will give him either to Major Cumming at Waikaremoana or to Mr Clarke at Tauranga or to Major Ropata – Ngatiporou will then withdraw at once & the management of your people will be left as we arranged to yourselves. Porter will talk with you & arrange about the mails through which communication will be kept up between us – The Govt relies on your word being Kept. [Emphasis in original] 60

To Te Makarini at Waikaremoana, Ormond wrote:

Friend I have received your letters through Major Cumming & have been glad to find your people have been kept together & out of evil – Capt Porter will give you what word there is from here & it will be for you to add your word to Whenuanui & Paerau that Te Kooti who is with in their boundaries shd be given up to the law in accordance with their promise to me at Wellington – Another word of mine is that you talk with your people about a Road from Waikaremoana to Wairoa & from Waikaremoana to Ruatahuna so that the mail may go – write to me on this & the road work shall be given to your people that they may earn money as is done by the other Tribes – . . . 61

And to Te Purewa at Maungapohatu, Ormond wrote:

59. Ormond to Tamaikoha, 20 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), pp 95–97)
60. Ormond to Te Whenuanui and Paerau, 20 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), pp 96–97)
61. Ormond to Te Makarini, 20 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), p 99)
Friend I received your letter by Capt. Porter who takes this to you. The Govt. have considered your proposal to leave the management of your people in your hands that is to look to you to keep evil out of your boundaries & hold your people together – This word of yours is accepted & it is to you the Govt. will look in future for the regulation of affairs at Maungapowhatu what is meant is that goodwill shall exist between your people & the Govt. & that Kooti & other evil disposed people shall be given up – Porter will talk with you about the employment of two of your people to carry mails so that communication between us may be complete – he will give you further word from me – . . .

Ormond’s letter to Te Purewa, as Binney pointed out, was in fact written in reply to a letter he had received from the chief. Te Purewa’s letter read:

Ko au me aku tikanga katoa me aku whakahaere me waiho ki Maungapohatu me aku tangata. Kaore e tae tetahi tikanga maku ki Ruatahuna. Waiho kia Te Whenuanui raua ko Paerau te whakahaere ki runga ki to raua iwi, a Tamaikoha ki tona wahi me tona hapu me ana whakahaere. Te take kia marama ai nga whakahaere ki runga ki enei hapu e 3 me nei kaiwhakahaere tikanga hoki to 4 i runga i enei hapu o te Urewera.

My word to you is that I be left alone with my young people to manage affairs at Maungapohatu. I do not want to have anything to do with Ruatahuna. Let Te Whenuanui and Paerau manage their people – and Tamaikoha to manage his people. The reason I ask this is that the management of these three hapus [sic] may be clear, by their four leaders.

Te Purewa’s letter is important because in it we hear a Tuhoe voice at a crucial time. Our translation of this letter is as follows:

I say to you that in accordance with tikanga I be left to manage the affairs of Maungapohatu and my people. I do not have any right to the affairs of Ruatahuna. Let Te Whenuanui and Paerau manage their people, and Tamaikoha to manage his. The reason is to make clear that the management of the affairs of the 3 Hapu of Te Urewera be left to the 4 Rangatira (or leaders).

Binney suggested that this letter embodies Te Purewa’s view of the arrangement being made between Tuhoe and the Government. Battersby was critical of such an interpretation, because the letter was written before the events comprising the

62. Ormond to Te Purewa, 20 November 1871 (Binney, supporting papers to 'Encircled Lands, Part 1' (doc A12(a)), p98)

63. Te Purewa to Ormond, [November 1871] (Judith Binney, comp, additional supporting papers to 'Encircled Lands, Part 1', various dates (doc A12(b)), pp 341–343). The translation was done in 1871 by the Native Department.
‘peace compact’ occurred.\textsuperscript{64} It seems clear, in fact, that Ormond had received the letter only recently, when Porter brought it to Wellington. It is likely that Porter had discussed the possible agreement with Te Purewa before he left Te Urewera.

What can we take from all these letters? Security, clearly, was a preoccupation of the Government; most of all, it wanted to capture Te Kooti, who at this time was assumed to be in Te Urewera (or likely to return there). As Binney has pointed out, he was not in the district.\textsuperscript{65} Yet officials were giving consideration not merely to how they might bring the pursuit of Te Kooti to a successful conclusion; they were also concerned with how they should provide for the conduct of future relations with Te Urewera leaders. Both officials and military leaders had been engaged in talks with Urewera leaders for some time. In his letter to Te Whenuanui and Paerau, Ormond referred to their earlier arrangement that the two chiefs would manage the affairs of their people. The wording of Te Purewa’s letter implies that he also knew of these discussions, and of the form an impending agreement would take. We do not think, therefore, that there was any reason he should have written secretly, as Battersby implied. It was important to him that the Government knew his position too; he wanted his Maungapohatu community to be included and its autonomy respected. It will be recalled from chapter 5 that the Maungapohatu peoples were the last to make peace with the Crown, and may have feared that Te Whenuanui and Paerau had an advantage in dealing with the Government. Thus, Ngati Huri and the peoples of Maungapohatu had not been involved in (or did not agree to the outcome of) the April 1871 hui, but were part of the arrangements made in November and December of that year.

Finally, we note that McLean must have already been contemplating his policy of self-governing Maori districts with ‘native councils’, for which he attempted to legislate in 1872 and 1873. We know that he must have discussed the idea with Tuhoe leaders at some time before he introduced his Native Councils Bill in 1872, as he sent them copies of the relevant parliamentary debates at the end of that year.\textsuperscript{66} We return to this point below.

Here, we conclude that the Crown was prepared to put its relations with the peoples of Te Urewera on a footing that recognised the role and responsibilities of rangatira in managing hapu and iwi affairs. This was because of the evident willingness of various leaders to assist in the search for Te Kooti or at least to provide information, the discussions it had held with those leaders, and the communications it received from them.

This is underlined in the speech Rapata Wahawaha made when he formally withdrew with his force from Te Urewera. This took place at a large hui at Ruatahuna on 11 December 1871, attended by people from Waikaremoana, Maungapohatu,
Donald McLean Withdraws his Second Native Councils Bill, 1873

Speaking in Parliament, Donald McLean, the Native Minister, explained that he was of the opinion that

there were many districts in the North Island where it was exceedingly desirable that there should be local institutions for the Natives, to enable them to govern themselves. The object of this Bill was in that direction; and the intention of the Government had been to confine its operation to those districts where there were no European Magistrates, and no means of affording redress to Natives for differences that might arise among themselves. It was also thought desirable to induce the Natives in remote districts to take an active part in settling their own disputes, thus enabling them to become acquainted with European modes of settlement, so that they might gradually adopt our laws. He regretted that at this late period of the session he would not be able to go on with the Bill, but he hoped, next session, to introduce a measure embodying the principles of the one which he now asked to be discharged. It was intended that this Bill should not apply to the north of Auckland, or to any districts where there were English Courts of law for settling disputes; but to such districts as those of the Urewera, Ngatiporou, and some parts of the Waikato. The Government desired to apply the measure, because in many of those districts the Natives had expressed a wish that some such law should be enacted, to enable them to take part in the management of their own affairs.¹

¹. D McLean, 30 September 1873, NZPD, vol 15, p 1514

and the upper Whakatane River valley, with Wahawaha ‘formally handing back authority to the Tuhoe chiefs.’⁶⁷ The letters he brought to the chiefs had been left open so that he could read them, and Ormond had made it clear to Wahawaha that it was important he speak to the people and present the Government’s message as he deemed appropriate. In other words, Ormond knew the importance of direct discussions with the chiefs. He wrote to Wahawaha: ‘I meant those letters to be more a lever for you to use than anything else & I would like therefore you to return to Ruatahuna at once & push matters.’⁶⁸ This left Wahawaha with an important role to play – as he emphasised when he spoke. In translation, his speech stated:

⁶⁷. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), pp 261–262
⁶⁸. Ormond to Wahawaha, 24 November 1871 (Binney, ‘Encircled Lands, Part i’ (doc A12), p 261)
The Government are greatly desirous that I should disclose to you the thoughts and intentions of the Govrnt. towards you therefore listen intently. It is their thought, that Te Kooti is, or may come among you, trusting in your former sympathies shewn to him, therefore it is left to you, to capture, and hand him over, to be tried by the Law, the same as in the case of Kereopa. The Government have acceded to your thoughts, and no longer entertain the wish to drive you from your country, this change is owing to your present obedience to the Government. Therefore the government desire that I and my people should vacate your Country leaving you the right to act over all your boundaries: – the Waimana, Maungapohatu, Ruatahuna and Waikare Moana. I therefore authorise the Chiefs of the Uriwera [sic] to be responsible for their several Districts, that the Government may know that you are responsible for the actions of your tribes in your own boundaries . . .

It will be the duty of each of the Chiefs appointed to the Districts to keep up a communication with the Government, that a path may be opened for the receipt of correct information, for which reason the Government allow messengers for the conveyance of letters.  

What would Wahawaha’s korero have conveyed to the chiefs and people listening? First, he stressed (and Porter affirmed) that he spoke on behalf of the Crown; his words would thus have carried great weight. Secondly, it was their responsibility to take Te Kooti and to hand him to the authorities for trial. It was no longer assumed that Te Kooti was in Te Urewera, so his capture was not a precondition for this arrangement; but, if he returned, he should be captured. Thirdly, the Government acknowledged two-way discussions that led to this point: the chiefs had conceded Government authority, and the Government had conceded that Urewera communities should not be subject to further aggression. Fourthly, Ngati Porou were to withdraw from Te Urewera at the wish of the Government. Fifthly, the chiefs’ authority over and responsibility for their own people and districts was recognised. (Wahawaha underlined that he authorised this on behalf of the Government.) Finally, the chiefs had a duty to communicate with the Government, which would provide for messengers to facilitate this.

Wahawaha’s speech, alongside Ormond’s letters, is crucial to our understanding of the peace terms which were finalised at this time. It was clearly important to the Government, since Porter was careful to translate the speeches made that day and to send them to McLean; McLean ordered that the report be published, although seemingly it was not. The Government, however, had its own written record of the undertakings made orally to the peoples of te Urewera. There is little need to labour the importance of such undertakings, on such a solemn occasion, for the peoples of Te Urewera. They were underlined, moreover, by the actions of Wahawaha in withdrawing his occupying force.

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69. Porter, ‘Proceedings of a Meeting held at Ruatahuna’; 11 December 1871 (Binney, summary of ‘Encircled Lands, Part 1’ (doc B1(d)), p.25)
70. Binney, summary of ‘Encircled Lands, Part 1’ (doc B1(d)), p.25
Ngati Porou rangatira Major Rapata Wahawaha. In both 1870 and 1871, Wahawaha led a Crown force in pursuit of Te Kooti in Te Urewera. Frustrated at not being able to capture Te Kooti, Wahawaha mounted an attack at Waikaremoana late in 1871, as peace moves between the Crown and Tuhoe were slowly gathering momentum. He then occupied Maungapohatu and Ruatahuna, built redoubts, and announced his intention of staying until Te Kooti was captured. But, in December 1871 at Ruatahuna, Wahawaha was asked to speak on behalf of the Government to inform Te Urewera chiefs of the Government’s plan for peace in the area and to assure them that it recognised their right to manage their own affairs and security.
The basis of the peace between the Crown and the peoples of Te Urewera thus emerges clearly from the sources available to us. It is true that Urewera leaders may have had grounds for suspicion of Government motives. Tamati Kruger, giving evidence to us, expressed such suspicions in the context of the devastation wrought by the wars. Considering the letters written separately to the chiefs, the suggestion of roads, the employment of mail carriers, and the offer of Government pensions, he suggested that the ‘whole arrangement represented a working relationship with the government that acted to subdue Tuhoe and incite tension between the leaders.’\(^{71}\) Urewera leaders were certainly under pressure throughout this period. Ormond’s letter to Wahawaha – and Wahawaha’s reference to the chiefs’ accountability for the actions of their tribes – indicate a readiness on the part of the Government to apply such pressure to ensure that it achieved its own object, which was the capture of Te Kooti.

But the Crown, whatever its motives, offered the chiefs what they had been seeking. In December 1871, it entered into a peace agreement with Urewera leaders and withdrew Ngati Porou. Binney referred to the peace variously as a ‘compact,’\(^{72}\) a ‘compact, or at least an understanding’, and the ‘peace agreement of November 1871.’\(^{73}\) The Crown’s historian, Dr Battersby, conceded in cross-examination that he had not considered Wahawaha’s statements to Tuhoe, and that ‘one might’ describe the terms referred to by Wahawaha as those of a compact, even though he was ‘not sure that [he himself] would.’\(^{74}\) Tamati Kruger referred to the ‘compact’ as ‘Te Maungarongo,’ underlining its foundation in the making of peace between Urewera leaders and the Crown.\(^{75}\)

The claimants further drew our attention to how the peace was remembered by Tuhoe 20 years afterwards. When Premier Seddon visited Ruatahuna in 1894 during his tour of Te Urewera, Te Puke-i-otu of Waikaremoana spoke, as Binney pointed out, of the peace and the role of Paerau and Te Whenuanui in it: ‘It was only in the year 1871 that I made peace with the Government. That was the year that Paerau went via Wairoa to Napier to make peace and swear allegiance to the queen and the Government. That was when Sir Donald McLean was alive.’\(^{76}\)

Te Puke-i-otu told the Premier:

> This is Ruatahuna, and the two great chiefs of this country, Paerau and Te Whenuanui, in the days that are past and in the days of the voice of Sir Donald McLean, arranged that this territory should be kept inviolate, and that they should reign supreme in this part, and that was given effect to by Sir Donald McLean . . . The

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73. Judith Binney, statement in response to statement of issues 3, 4, 6, and 7, 17 November 2003 (doc B1(a)), p 35
74. John Battersby, under cross-examination by counsel for Wai 36 Tuhoe, Taneatua School, Taneatua, 12 April 2005 (transcript 4.16(a), pp 130–132)
75. Kruger, summary of evidence concerning ‘Te Manawa o te Ika, Part One’ (doc D28), p 54
76. ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, AJHR, 1895, G-1, p 76
chiefs arranged that all Government matters should be excluded from this boundary – namely, roads, leases, wrongful sales, mortgages, and everything that is vile. There was then a protectorate over this place, to protect these people against the advances of the Europeans.\textsuperscript{77}

The evidence appears to affirm, as Binney argued, that McLean ‘personally confirmed the peace arrangements with Tuhoe’s leaders.’\textsuperscript{78} He met Paerau in Napier, and subsequently, on 15 April, he met other Tuhoe leaders assembled in Whakatane. Also, as counsel for the Wai 36 Tuhoe claimants noted, ‘there is no correspondence on record to suggest that McLean corrected the chiefs’ interpretation [of Ormond’s letters] when they formed Te Whitu Tekau.’\textsuperscript{79} At some time before the end of 1872, although we do not know precisely when, the Minister conveyed to them his plan for legislation to empower native councils.

Two things are clear from Te Puke-i-otu’s korero. The first is the lasting significance of the agreement to Tuhoe, which was underlined by the mana of those who had entered into and confirmed it: Paerau, Te Whenuanui, and Sir Donald McLean. Secondly, the essence of the agreement was recognition of the authority of Te Urewera chiefs as the basis for protecting the people of Te Urewera, and their land, in the difficult post-war years.

The claimants also noted Tutakangahau’s reference to the compact in 1898. He referred to it as a ‘treaty’ (‘tiriti’), marked at Ruatahuna by a ‘rata stone’.\textsuperscript{80} These traditions have been preserved, and several tangata whenua witnesses referred to this ‘compact’ in our hearings. Tamati Kruger noted that Tuhoe had sought both the end of fighting and a new, constructive relationship with the Crown: ‘I will mention at this stage that this is a tribe that is able to put aside conflict, able to lay down the patu. These are the attributes of mana motuhake, the true qualities of leadership.’\textsuperscript{81} There was no diminution of mana involved:

It was here [at Maungapohatu] according to the crown that Te Puehu and Te Whiu relinquished their mana to the crown. However I again reiterate that which was said to you at Waimana, at Ruatahuna and at Maungapohatu. This was the suspension of the patu.\textsuperscript{82}

In the oral history as recounted by Mr Kruger, the ‘assurance’ (‘te kupu tau-rangi’) of 1871 was seen as ‘an oath to create a law exclusively for Ngai Tuhoe and in 1871 my ancestors were happy’ (‘E kii atu o nga korero o te karauna ki reira, \textsuperscript{77} AJHR, 1895, G-1, p 74 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 148)
\textsuperscript{78} Binney, summary of ‘Encircled Lands, Part 1’ (doc B1(d)), p 26
\textsuperscript{79} Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 49
\textsuperscript{80} Binney, ‘Encircled Lands, Part 2’ (doc A15), p 138 (counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 49)
\textsuperscript{81} Tamati Kruger, claimant translation of transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44(a)), pt 2, p 12
\textsuperscript{82} Tamati Kruger, transcript of additional evidence, Mapou Marae, Maungapohatu, 21 February 2005 (doc K34(a)), p 11
whakaaea ana te karauna ki te waihanga tetahi ture Motuhake mo Ngai-Tuhoe ake. Katahi ka harakoa o matau tipuna i te tau 1871'). The compact, he told us, ‘gave Tuhoe some internal autonomy’. The Tuwhenua researchers pointed to the harsh terms imposed in 1870 by FE Hamlin, a commander of Crown forces (see chapter 5), and concluded that Tuhoe were ‘being forced, not just to make peace, but to accept a condition of utter subjugation where their mana tangata and mana whenua were of no matter’. By contrast, in their view, Tuhoe had accepted a relationship with the Crown at the April 1871 hui, after which the ’compact’ of December 1871 offered at least the potential for that relationship to be based on recognition of their autonomy, their mana motuhake.

We agree with the claimants. In clearly recognising the authority of the Urewera chiefs in 1871, the Crown offered them an opportunity; and within six months they would meet to try to make the most of it by forming a broadly based runanga (council) in Te Urewera. We turn to that development next.

8.5.2 What were the origins, character, and policies of Te Whitu Tekau?

**Summary Answer:** Te Whitu Tekau, the runanga of the ‘Seventy’ of Te Urewera, was established at a hui held in Ruatahuna in June 1872. The hui followed further discussions between Paerau, senior Urewera leaders, and McLean, the Minister for Native Affairs. It remains uncertain whether McLean expected the authority entrusted to Urewera chiefs to lead to the organisation of a runanga which developed a particular set of policies in the way it did; but he may not have been surprised. It certainly dovetailed with his own intention to pass laws to provide district self-government for Maori communities in the form of native councils. He specifically informed Parliament of his intention to apply such legislation in Te Urewera.

In any case, Te Urewera chiefs at once communicated to the Government the establishment of Te Whitu Tekau and the shape of its policies; and the Government acknowledged this. Te Whitu Tekau was a remarkable political initiative which represented the attempt of the peoples of Te Urewera to regroup after a debilitating conflict, to conduct a relationship with the Crown from a position of political unity, and to conduct it on their terms by developing policies to safeguard their mana motuhake and their lands. After the first years, little has survived in written sources known to us of the discussions of the runanga. Nor is it quite clear how Te Whitu Tekau related to the komiti formed in Te Urewera during the late 1880s. Nevertheless, the existence of Te Whitu Tekau was taken for granted by the resident magistrate at Opotiki in 1889.

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84. Kruger, summary of evidence concerning ‘Te Manawa o te Ika, Part One’ (doc 128), p 56
85. Tuwhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc 4(a)), pp 248–249
86. Ibid, pp 252, 259, 261, 267–269
There was much consistency in the policies pursued by Te Urewera leaders from 1872 to at least 1893 with respect to: protection of the boundary of their district (which they called Te Rohe Potae); protesting against the confiscation; seeking unity in Te Urewera; forbidding roads inside Te Rohe Potae; and preventing leasing and sales of land, surveys, and the taking of land to the Native Land Court. Such policies were not always sustainable on the edges of the rohe, where settlers and the Crown were anxious to secure land. The hapu of those areas were faced at an early stage with weighing their economic options; and some communities did wish to engage. But the determination to protect the core Te Urewera lands was lasting, and in that the chiefs succeeded.

8.5.2.1 The origins of Te Whitu Tekau

Te Whitu Tekau, in our view, was formed at a June 1872 hui, and its establishment was related to the peace agreement of 1871. It was also known as Te Hokowhitu (the Seventy, or the Union of Seventy).

Historians have not agreed on the timing of the formation of the new runanga. Battersby has stated with respect to the hui held in June 1872 that 'the evidence only supports the conclusion that the formation of [Te Whitu Tekau] was in itself a topic for discussion at the hui' (emphasis in original).\(^\text{87}\) Subsequently, he argued that ‘it is safe to conclude that by 1874 Te Whitu Tekau existed, though did not appear from the outside to operate any differently to Maori runanga in other districts’.\(^\text{88}\) Similarly, Angela Ballara dates the establishment of Te Whitu Tekau to 1874, although her discussion of this issue is only brief.\(^\text{89}\)

‘The seventy chiefs of Tuhoe’ are referred to in the letter sent by Henare Kepa Te Ahuru and others to McLean in June 1872 as one of the subjects Te Ahikaiata discussed at the hui. There is no further detail about what was said with respect to the Seventy, or what actions were taken.\(^\text{90}\) Battersby also quoted a letter in which Resident Magistrate Brabant reported to McLean that he had told Tamaikoha ‘I considered the Urewera’s plan of appointing seventy chiefs a bad one, as they might have seventy different opinions’.\(^\text{91}\) In Battersby’s view, Brabant’s comment suggests that the formation of Te Whitu Tekau was merely intended; it does not confirm that it had taken place.\(^\text{92}\) We do not find this a compelling argument.

The letter sent by Te Whenuanui and other senior chiefs to the Government on 9 June 1872 stated: ‘There are this day seventy chiefs. Their work is to carry on the work of this bird of peace and quietness.’\(^\text{93}\) Furthermore, the previous day

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88. Ibid, p 196
89. Angela Ballara, Iwi: The Dynamics of Maori Tribal Organisation from c 1769 to c 1945 (Wellington: Victoria University Press, 1998), pp 297–298
90. Henare Te Kepa Te Ahuru and others to Native Minister, 9 June 1872, AJHR, 1872, F-3A, p 29
91. Brabant to Native Minister, 4 July 1872, AJHR, 1872, F-3A, p 28 (Battersby, 'The Government, Te Kooti and Te Urewera' (doc B3), p 190)
93. Te Whenuanui and others to Government, 9 June 1872, AJHR, 1872, F-3A, p 29
Tutakangahau had written to Ormond in Napier, stating, ‘The word I am clear about which was decided at the meeting was the appointment of 70 chiefs of the Ureweras to conduct affairs which would benefit the tribe so that the Law might be clear.’\textsuperscript{94}

Along with this and other information about the meeting, Tutakangahau included one pound, partly so that he could have his words ‘inserted in the paper’.\textsuperscript{95} Accordingly, a slightly variant version of his letter was published in \textit{Te Waka Maori o Niu Tirani} shortly afterwards:

\begin{quote}
Kati ko te kupu kua marama i au mo tenei hui he whakatu i nga rangatira e 70 o te Urewera hai whakahaere i nga tikanga pai ki runga ki te iwi kia marama ai nga tikanga o te Ture. Tuarua, he tiaki tonu i tona rohe koi pa mai te kino me te hara hoki ki oku takiwa. Tuatoru, ko te kore kaore e tukua tetahi wahi o tona whenua mo te hoko ranei, mo te tuku ranei ki te tangata, ki te Pakeha ranei. Tuawha, he kore kaore e pai ki Te Kooti Whakawa Whenua, ruri whenua, kereme ranei.\textsuperscript{96}
\end{quote}

The Tuawhenua research team translated this as:

\begin{quote}
The communique from this hui is about the establishment of 70 leaders of the Urewera to govern with sound laws over the people, so that the aspects of law are clarified. Secondly, to protect its region against wrongdoing and offences in this area. Thirdly to prevent any of its lands being offered for sale or releasing to others or to Pakeha. Fourthly to ban the land court, surveying of land, and claiming of lands.\textsuperscript{97}
\end{quote}

The Native Department’s translation at the time was more literal:

\begin{quote}
The word I am clear about which was decided at the meeting was the appointment of 70 chiefs of the Urewera to conduct affairs which would benefit the tribe so that the Law might be clear. Secondly to keep a watch within their boundaries so no crime might be charged against them. Thirdly, no lands within their boundaries were to be sold or disposed of in any other way either to Natives or Europeans. Fourthly, an objection to the N[ative] L[and] Court and Surveys & forwarding of claims.\textsuperscript{98}
\end{quote}

\textsuperscript{94} Tutakangahau to Ormond, 8 June 1872 (Binney, additional supporting papers to ‘Encircled Lands, Part 1’ (doc A12(b)), p 333)
\textsuperscript{95} Tutakangahau to Ormond, 8 June 1872 (Binney, additional supporting papers to ‘Encircled Lands, Part 1’ (doc A12(b)), p 334)
\textsuperscript{96} Na Tutakangahau ki Nepia ki a Te Omana, ara ki te Kawanatanga, Hune 8, 1872 (\textit{Te Waka Maori o Nui Tirani}, 17 July 1872, vol 8, no 14, p 94). Although there are some slight variations between the letter as recorded in the files of the agent of the general government, Hawke’s Bay, and as printed in \textit{Te Waka Maori o Nui Tirani}, they do not appear to us to affect the substance or meaning of the letter.
\textsuperscript{97} Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 270
\textsuperscript{98} Tutakangahau to Ormond, 8 June 1872 (Binney, additional supporting papers to ‘Encircled Lands, Part 1’ (doc A12(b)), p 333)
Tuhoe rangatira Tutakangahau of Maungapohatu, 1898. Tutakangahau emerged as a prominent spokesman for Te Whitu Tekau, the runanga formed by Tuhoe and Ngati Whare in 1872. Through Te Whitu Tekau, Te Urewera leaders would manage their own affairs collectively and protect the tribal land base.
These letters indicate clearly that Te Whitu Tekau was in fact formed at the June 1872 hui. Crown counsel effectively accepted an 1872 date by using it in a number of places in their closing submissions and, in particular, in their comment that the 'June 1872 hui is central in terms of the government and government officials learning about Te Whitu Tekau'. The significance of this point is that if, as the claimants maintained, the establishment of Te Whitu Tekau followed immediately on from the peace agreement and discussions of late 1871 and early 1872, then the weight of evidence is stronger that its establishment was a consequence of that agreement, and thus more likely to have been anticipated and approved by the Government of the day. If, as the Crown maintained, Te Whitu Tekau was not formed until 1874, its link with the agreement of 1871 is obviously more tenuous.

Urewera leaders clearly wished to publicise their new body. Publication of Tutakangahau’s letter at his request would also have served to assure them that the Government recognised their initiative. In 1873, Captain Charles Ferris of the Wairoa Armed Constabulary referred to the views of the council, the Hokowhitu, after a meeting held at Ruatahuna in November. And, as the Crown noted in its closing submissions, extensive meeting notes taken by Government officials at the 1874 hui are important in revealing how the policies of Te Whitu Tekau developed and were communicated.

In light of what seems to us the established sequence of events – the making of peace at the end of 1871, and the formation of Te Whitu Tekau in June 1872 – we accept the argument of Binney, and of Tribunal-commissioned historian Anita Miles, that the one grew out of the other. Miles pointed to key phrases in the letters written to the chiefs by Ormond at the end of 1871 – ‘the management of the district in their own hands . . . the regulation of affairs . . . the direction of affairs . . . the management of people’ – spoke to them of the future after Te Kooti had been taken with their help. The chiefs, she suggested, formed Te Whitu Tekau in response ‘to whatever they had taken from those letters’. They met to consider how best to manage their affairs in the post-war era, and they reported what they had done to the Government. We accept that Te Whenuanui was referring to the origin of Te Whitu Tekau in the peace-making when he wrote in his letter of 9 June 1872 of the 70 chiefs carrying ‘on the work of this bird of peace and quietness’. This echoed the phrase he had used to McLean when he ‘came in’ in 1870: that he had ‘come under the wings of the bird of peace’. Binney said this became a ‘whakatauki underlying Te Whitu Tekau, the guardians of Te Urewera set up by Tuhoe when the fighting ended’.

The question has also been raised whether McLean knew in advance that a
broadly based runanga such as Te Whitu Tekau, which sought to establish the boundaries of Te Urewera, would be formed. Binney argued that it is likely he did. It is certainly the case that the chiefs referred to prior discussions in Napier. The letter from Henare Kepa Te Ahuru and others, for instance, recorded that Tu Taituha said at the hui: 'I am clear about the plans arranged by Tuhoe, as I have spoken before Mr McLean’s face at Napier about that law setting forth the boundaries of the land. ’ The words attributed to Paerau at the hui by George Preece also imply some foreknowledge by McLean of what Urewera leaders were expecting to do: ‘ Paerau said: Let us have roads; let us lease, let us sell land; let me have the chiefs, as I am the man to stop all these things. It was spoken to Mr McLean at Napier. ’

Preece’s interpretation of the korero is stilted and, in the absence of an account in Maori, the significance of what Paerau said is hard to determine. Binney has suggested that it is likely the published text amalgamates the speeches of two people; it is also possible that Paerau began by echoing, sardonically, the enthusiasm for roads of Paora Kingi, who had spoken immediately before him. What does seem clear, however, is that Paerau referred to direct discussions with McLean in Napier.

In short, though we cannot say for certain that McLean knew in advance that a body such as Te Whitu Tekau would be established, it seems clear that there had been some discussions with him about the issues of concern to the chiefs. It is possible that McLean concluded from these discussions that a runanga would meet to consider the issues. Given his familiarity with Maori decision-making processes, that would hardly have come as a surprise to him. Historian Cathy Marr observed of Te Whitu Tekau as a vehicle for ‘Maori control of their own districts’: ‘This seems to have been well within what McLean was prepared to accommodate at the time.’ As we noted above, McLean must have spoken with the Urewera leaders about his plan to give legal powers to native councils, which he followed up later in 1872 by sending them the relevant parliamentary debates. Even had he not known of their intention, it fitted well with his own. During a speech to the House in 1873, he specified Te Urewera as a district in which he wanted to apply his Native Councils Bill. The Crown put it to Professor Binney that there was nothing more than a ‘coincidence of timing’ between the establishment of Te Whitu Tekau and McLean’s 1872 Bill, an argument she flatly denied. We agree with Binney’s conclusion:

106. Henare Te Kepa Te Ahuru and others to Native Minister, 9 June 1872, AJHR, 1872, F-3A, p 29
107. ‘Proceedings of Meeting at Ruatahuna, Forwarded for the Information of the Civil Commissioner, Tauranga, 9 June 1872, AJHR, 1872, F-3A, p 30
Given the fact that McLean was also preparing to present his Native Councils Bill to parliament in October 1872, which was intended to provide Maori districts with self-governing councils, and that he had the Urewera specifically in mind when he did so, it is not unreasonable to assume that the Urewera chiefs believed that they had his personal support for their union.\footnote{112}

We conclude also that Te Urewera leaders considered, as a result of the terms of the peace, that they had the approval of the Government to manage their own affairs, and that they moved very deliberately to a collective approach. ‘All the boundaries of Te Urewera,’ wrote Tutakangahau, ‘are joined into one on the 7th June.’\footnote{113} The leaders had some earlier experience, as Binney pointed out, with a broadly based runanga, including both Whakatohea and Urewera members at Opotiki, operating in 1861.\footnote{114} At the same time, as we saw in the 1871 letters to and from individual chiefs, there was an important emphasis on hapu or community autonomy. This foreshadowed one of the key themes in the history of Te Whitu Tekau: the collective action of Tuhoe and Ngati Whare depended on the reaching of consensus among the leaders of multi-hapu communities. There was an uneasy tension between these levels of collective action, as the claimants acknowledged.

In the early 1870s, Te Urewera leaders saw the opportunity to reclaim their lands, to protect them from the new threats that were perceived, and, as Tamati Kruger suggested, to ‘bind Tuhoe together after the ravages of war.’\footnote{115} This was part of the reconstruction and cultural renewal necessary after the devastation of the years 1869 to 1871. ‘The purpose of Te Whitu Tekau,’ he explained, ‘was to raise and uplift the spirit and heart of the tribe and to restore the health of Ngai Tuhoe after the wars.’\footnote{116} Its leaders were both ‘frightened’ of what seemed the ‘inevitability’ of land alienation to the Government and determined to prevent it. They were also determined to ‘exercise governance responsibilities recognised by the compact with the government.’\footnote{117}

Ani Hare, in her evidence for Ngati Haka Patuheuheu, saw the need for common action to protect the tribal estate as the key reason for forming Te Whitu Tekau:

According to the stories it was Te Whitu Tekau who sheltered all the lands of Te Urewera. They were the force determined to hold onto this. Ngati Haka Patuheuheu strongly supported Te Whitu Tekau so that Tuhoe would have the authority over the lands of Te Urewera, so that it would not fall into the hands of the Pakeha or someone else . . . Ngati Haka Patuheuheu held onto their authority and to administer

\footnotesize\begin{itemize}
  \item \footnote{112}{Binney, ‘Encircled Lands, Part 1’ (doc A12), p 272}
  \item \footnote{113}{Tutakangahau to Ormond, 8 June 1872 (Binney, additional supporting papers to ‘Encircled Lands, Part 1’ (doc A12(b)), p 333)}
  \item \footnote{114}{Binney, ‘Encircled Lands, Part 1’ (doc A12), p 71}
  \item \footnote{115}{Kruger, summary of evidence concerning ‘Te Manawa o te Ika, Part One’ (doc D28), p 57}
  \item \footnote{116}{Kruger, claimant translation of transcript of oral evidence (doc D44(a)), pt 2, p 22}
  \item \footnote{117}{Kruger, summary of evidence concerning ‘Te Manawa o te Ika, Part One’ (doc D28), p 57}
\end{itemize}
their home and their region, but because of the strong support for Tuhoe, Ngati Haka Patuheuheu supported broad pan-Tuhoe issues, because of the love we had for Te Urewera and for our land.\footnote{118}

Thus, the origins of Te Whitu Tekau lie in the Tuhoe tradition of great tribal hui to decide matters of moment for the district; the Government’s undertakings in the peace agreement of 1871; the willingness of McLean to recognise self-governing native councils at that time; and the determination of many Urewera communities to act in concert to govern themselves and protect their lands while preserving the autonomy of their hapu.

\subsection*{8.5.2.2 The character of Te Whitu Tekau}
We turn here to consider what kind of body Te Whitu Tekau was, the nature of its authority, and the extent to which the leaders of Te Urewera gave support to it. Te Whitu Tekau has been described as a ‘governing council for the Urewera’,\footnote{119} the ‘governing runanga’ of Tuhoe, and its ‘political union’, expressing ‘regional and political autonomy’.\footnote{120} It was not solely a Tuhoe body. The broader representativeness of the runanga is underlined by John Hutton and Klaus Neumann, historians for Ngati Whare, who described Te Whitu Tekau as primarily ‘a coalition of hapu who resided in Te Urewera.’\footnote{121} The hapu were ‘represented by their rangatira on a council termed Hokowhitu (the Seventy)’. Hutton and Neumann stated that the various hapu were responsible for their own regions, ‘and particularly for the maintenance of their boundaries with neighbouring regions.’\footnote{122} (We return to this point below.) Binney also stressed that, although the chiefs were to act through Te Whitu Tekau on the basis of collective agreement, the hapu retained autonomy at the local level; and the voice of each was heard in the collective, through their chief.\footnote{123}

Chiefs from Ngati Whare and Ngati Manawa were present at the 1872 hui. Miles observed that the more conciliatory group of chiefs who wrote to the Government from the June hui apparently included three Ngati Whare and Ngati Manawa leaders; a further signatory to this letter was ‘possibly of Ngati Rangitihia and Ngati Manawa connections.’\footnote{124} The authority of the Ngati Whare chief, Hapurona Kohi, was acknowledged at the hui. As counsel for Ngati Whare put it, Kohi ‘gave up’ (to the collective) and then ‘held’ responsibility (as passed back by the collective) for roads at the Te Whaiti entrance to the Urewera.\footnote{125}

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\begin{itemize}
\item[118.]
Ani Hare, simultaneous translation of oral evidence, 11 December 2003, Tataiahape Marae, Waimana
\item[119.]
Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 270
\item[120.]
Miles, Te Urewera (doc A11), pp 193–194
\item[121.]
\item[122.]
Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p 71
\item[123.]
Binney, ‘Encircled Lands, Part 1’ (doc A12), p 283
\item[124.]
Miles, Te Urewera (doc A11), p 199
\item[125.]
Counsel for Ngati Whare, closing submissions (doc N16), p 41
\end{itemize}
Ngati Whare seem to have been more inclined to remain within the policies of Te Whitu Tekau than Ngati Manawa, who had aligned themselves with the Crown during the war years.\textsuperscript{126} Anaru Te Amo told us that Ngati Whare gave their allegiance to Te Whitu Tekau and supported its opposition to the Native Land Court.\textsuperscript{127} Counsel for Ngati Whare, too, pointed to the tribe’s support for Te Kooti, and the opening of the wharenui Eripitana in 1884, as evidence of their continued alignment with Te Whitu Tekau. As far as possible in their circumstances at Te Whaiti, Ngati Whare held to Te Whitu Tekau’s policies of opposing surveys, the Native Land Court, and interference from outside authorities.\textsuperscript{128} Counsel for Ngati Manawa adopted Peter McBurney’s position that Ngati Manawa were not part of Te Whitu Tekau, and did not follow its policies with respect to land alienation.\textsuperscript{129}

The name Te Whitu Tekau itself tells us something about the purpose of the new body: it signified the sharing of authority. As Binney pointed out, the number 70 was probably based on scriptural texts and was adopted ‘as a symbolically appropriate number rather than as a literal one.’\textsuperscript{130} The number 70 was used in the Old Testament for a group of elders of the people of Israel, most specifically in Numbers, chapter 11, where it is recounted that God instructed Moses to gather 70 elders who might bear the burden of leadership with him, and God then ‘took of the spirit that was upon [Moses] and gave it unto the seventy elders.’ Binney suggested that the chiefs may have drawn an analogy with the lifting of the spirit from Te Kooti and the sharing of his burden of leadership.\textsuperscript{131} Similarly symbolic was the name Hokowhitu, also used for the new runanga. In Binney’s evidence, 70 (seven times 10) is the number Maori use to depict ‘a full complement of men’ (‘hoko-whitu’).\textsuperscript{132}

It is not surprising, then, that a number of Urewera leaders emerged as spokesmen for Te Whitu Tekau: they included Tutakangahau, Te Whenuanui, Paerau, Haunui, Erueti Tamaikohoa, Tu, Hetaraka Te Wakaunua, Te Pukenui, Te Makarini, and Te Ahikaiata – who was described as the secretary of Te Whitu Tekau in its early years.\textsuperscript{133} Tamaikohoa was identified by Land Purchase Agent Wilson in 1874 as ‘the head of the Seventy.’\textsuperscript{134} Te Makarini was said by Numia Kereru, in 1897, to have

\textsuperscript{127} Anaru Te Amo, brief of evidence, September 2004 (doc G34), p 11
\textsuperscript{128} Counsel for Ngati Whare, closing submissions (doc N16), pp 41–43
\textsuperscript{129} Counsel for Ngati Manawa, closing submissions, 2 June 2005 (doc N12), pp 20, 24
\textsuperscript{130} Binney, ‘Encircled Lands, Part I’ (doc A12), pp 12, 71
\textsuperscript{131} Ibid, p 278; Numbers 11:16–17, 24–25. There is a further reference to the 70 elders in Exodus 24:1, 9–10.
\textsuperscript{132} Binney, ‘Encircled Lands, Part I’ (doc A12), p 71. Footnote 113 on page 71 cites Bruce Biggs in favour of the statement that ‘Hokowhitu’ is a ‘canonical’ or optimal number for a full complement of fighting men; see Bruce Biggs, ‘Extraordinary Eight’ (Pacific Island Languages: Essays in Honour of GB Milner, edited by Jeremy HCS Davidson (Honolulu: University of Hawaii Press, 1990), p 35).
\textsuperscript{133} H W Brabant referred to Te Ahikaiata as the secretary of Te Whitu Tekau in his 1874 report: see Binney, ‘Encircled Lands, Part I’ (doc A12), p 291.
\textsuperscript{134} Wilson to Native Minister, 1 June 1874 (Binney, supporting papers to ‘Encircled Lands, Part I’ (doc A12(a)), p 45)
been appointed as ‘the leader’ of Te Whitu Tekau in 1872. Yet it is clear from the correspondence to which we have already referred that a number of chiefs had important roles in the early years of Te Whitu Tekau. Heta, Wakaunua, Binney considered, was the ‘organising secretary’ of Te Whitu Tekau for most of the period when trouble occurred over the Kuhawaea, Waiohau, and Tahora 2 lands (see chapter 10). She noted, however, that on a later occasion, when a petition relating to the Ruatoki survey was prepared in February 1893, ‘Te Ahikaiata . . . signed as chairman (presumably of Te Whitu Tekau)’, replacing Heta, who had previously been ‘its most frequent spokesman’ but who opposed this petition. Later again (1894), she stated, Te Wharekotua acted as ‘secretary and spokesman for Tuhoe’s Union, sometimes writing in concert with Te Whenuanui 11, Tuhoe’s senior chief’.

It seems, in fact, that Te Whitu Tekau operated along the lines of a traditional runanga, rather than like a more formal komiti of the period, which usually had a chairman, officials, elections, minutes, and an official seal, as in the case of Te Komiti Nui o Rotorua – which also passed by-laws.

We note that the early base of Te Whitu Tekau was at Ruatahuna – where both the 1872 and 1874 hui that were of critical importance to its development were held. Ruatahuna remained the centre for Te Whitu Tekau; Tamati Kruger stated that their meetings were held there over a number of years. Brabant commented after the 1874 hui that ‘Meetings of the “Seventy” were held every day while I was at Ruatahuna,’ though he was not asked to attend, and received no official report of them. This is a reminder that the absence of information about Te Whitu Tekau in official sources is not necessarily proof that the runanga had gone into abeyance.

Te Whitu Tekau also flew flags at its hui. In 1874, two flags were flying at Ruatahuna. One was a red ensign, which had for many years been the flag usually flown on marae. The other displayed, as Brabant put it at the time, ‘the bust of a black man on a red ground which was intended for the flag of the Whitu Tekau (seventy)’. Tamati Kruger stated that the flag was designed by Te Whitu Tekau; a replica of it is in Te Totara wharenui, painted up on the heke (rafter). The ‘black man,’ he said, ‘represents te tangata whenua o konei [here]’.

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137. Ibid, pp 150, 233
139. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 281
140. Ibid, pp 270, 275
141. H W Brabant, ‘Notes of Speeches Made at the Native Meeting at Ruatahuna, March 23rd and 24th, 1874’, 2 April 1874, AJHR, 1874, G-1A, p 5
142. H W Brabant, ‘Report by H W Brabant, Esq, R M, Opotiki’, 1 April 1874, AJHR, 1874, G-1A, p 2. There is a reproduction of the flag (or, Binney suggests, the Te Whaiti version of it) on plate 11a of Judith Binney, Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki (Auckland: Auckland University Press and Bridget Williams Books, 1995).
143. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 270
Later, the centre of power within Tuhoe moved to Ruatoki. This move resulted from Te Kooti’s visit to Te Urewera in 1884 to open the wharenui Eripitana, located at Te Murumurunga in the vicinity of Te Whaiti. Te Kooti urged the people to care for their land and not to part with it. As Akuhata Te Kaha later explained, ‘Te Kooti said let the Urewera be one people and one land.’ The people interpreted this as an instruction to ‘live together in one place.’ There was a deliberate migration back to Ruatoki, because it had been chosen as the place ‘not to be given up to the Pakeha.’

With this migration went key Tuhoe leaders such as Kereru, Numia (Kereru’s brother), Te Makarini, Te Ahikaiata and Hetaraka Te Wakaunua. With this move also went a shift in power. It was these chiefs of Ruatoki, along with Tamaikoha and Rakuraku at Waimana and Tutakangahau at Maungapohatu, who began to represent ‘Tuhoe katoa’ more and more often. By the late 1880s, Te Whenuanui was aging and ailing.

Whether this shift was connected with the less visible use of the name Te Whitu Tekau – at least to outsiders – we cannot say. What we do know is that in 1889 Robert Bush, resident magistrate in the Opotiki district, recorded in a letter to the Native Department that “The Urewera have always had a tribal Committee termed the “Seventy”. This Committee has always opposed the making of roads, surveys, and prospecting.”

The clear implication is that Te Whitu Tekau continued to meet and to maintain its policies, and that Bush was aware of its meetings. His letter was written six months after two senior Tuhoe leaders, Rakuraku Rehua and Tutakangahau, signalled to the Government the election of a committee, the ‘great committee of Tuhoe Potiki’ (te komiti nui o Tuhoe Potiki), to conduct their own affairs. (We discuss this komiti further below.)

Though the relationship of this komiti to Te Whitu Tekau is not entirely clear, the main point is that the policies established by Te Whitu Tekau were of lasting influence. This point was accepted by Crown counsel in closing submissions. That is not to say, however, that the chiefs were unanimous in support of them. It is hardly surprising that there were divergent views within a tribal body like Te Whitu Tekau. As counsel for Ngati Whare put it,

It is not unusual in our mind that conflict, disagreement, or divergence in opinion is evident in the historical archive; that could be described as the natural state for any community anywhere, and indeed any process of government. It also reflects

145. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), pp 297–298
146. Bush to Native Department, 4 April 1889 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 7)
147. Crown counsel, closing submissions (doc N20), topic 7, p 17
the diverse genealogical and community rights in land that were encompassed in Te Whitu Tekau. Such instances of divergence do not, however, in our view, detract from the existence of Te Whitu Tekau as a tangible vehicle of collective action among the hapu of Te Urewera including Tuhoe and Ngati Whare.  

It seems to us that there was a remarkably consistent determination to maintain the policies adopted by Te Whitu Tekau, even if growing interaction between the Government, colonists, and Urewera communities on and beyond the boundaries increasingly led to some communities revising their positions. The earlier policies, based on a determination to protect the people and the land, remained the touchstone. We turn now to discuss those policies in more detail.

8.5.2.3 The policies of Te Whitu Tekau

The broad policies of Te Whitu Tekau, as we have seen, were first set out in a series of letters sent from the June 1872 hui to the Government, each bearing multiple signatures. Binney stated that the Maori originals of these letters have not survived. The first, from a group of senior Urewera chiefs, dealt with the general business of the hui. From this letter, it is clear that Urewera leaders were concerned with conveying to the Crown their intention in the new post-war era to conduct cohesive policies within their rohe (which they set out), including resistance to roads, and to leasing and sale of land. On 9 June, Te Whenuanui, Paerau, Haunui, Erueti Tamaikoha, Tū, Hetaraka Te Wakaunua, Te Pukenui, Te Makarini, Te Ahikaiata, and ‘all the tribe’ sent a letter to the Government:

Salutations to you – this is our word to you. The meeting of Tuhoe (Urewera) has taken place at Ruatahuna on the 9th June. The first thing decided were the boundaries of the land [set out in sidebar] . . .

2nd. Was the uniting of the tribe – that their words should be one and that they should have one canoe, Matatua.

3rd. Was the apportionment of chiefs among Tuhoe. There are this day seventy chiefs. Their work is to carry on the work of this bird of peace and quietness.

4th. The things that were rejected from these boundaries are roads, leasing and selling land.

A further letter addressed to McLean, Ormond, and the Government, dated the same day, and signed by a very similar group, related to the control of roads. After discussion:

The Urewera requested that the roads should be given over to them, and they were given up by Hapurona, Paora Kingi, Te Kepa Te Ahuru, from Te Whaiti, Ruatoki, Te Waimana, and to Waikare Moana.

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148. Counsel for Ngati Whare, closing submissions (doc N16), p 40
149. Te Whenuanui and others to Government, 9 June 1872, AJHR, 1872, F-3A, p 29
Te Makarini is to have the roads at Waikare Moana, Hapuroma and all the others the road at Ruatoki and Te Whaiti; Tamaikoha to have the road at Waimana, so that now the Urewera have all the roads in their own hands at this present time. ¹⁵⁰

A third general letter about the hui, which also highlighted discussion of roads, was addressed to McLean on the same day by chiefs from the western borders, who indicated a more conciliatory approach towards the Government:

Salutations to you. We have been to the Urewera meeting, and have heard the points decided on by them. The first is the boundaries of the land . . . [list of boundaries]

Te Ahikaiata stood up and talked about the boundaries; 2nd, about the canoe Matatua; and 3rd, about the seventy chiefs of Tuhoe. He ended, and Te Hiko spoke. He asked the Urewera what they desired to be brought within their boundaries. Te Makarini got up and answered Te Hiko's question, which was that there were two things which they liked to be brought within their boundaries, that is, Orderlies and Militia; but roads, and leasing and selling lands they would not have on their boundaries. Then Te Kepa Te Ahuru spoke, saying: My word for the chiefs of Tuhoe to listen to is that the roads in these boundaries would be broken up by me; but my concluding word to you is – I will send our dispute to the Government, to Mr Ormond. Tu Tatuhu then got up and said: I am clear about the plans arranged by Tuhoe, as I have spoken before Mr McLean's face at Napier about that law setting forth the boundaries of the land. All.

¹⁵⁰ Te Makarini and others to Native Minister, 9 June 1872, AJHR, 1872, F-3A, pp 28–29
The conclusion of our words were that the roads were to go on. This is all the information at present. If any serious troubles arises after that it will be sent on to you. All.

**Henare Kepa Te Ahuru.**

We discuss these statements further below.

### 8.5.2.4 Setting the boundary: Te Rohe Potae and inclusion of the confiscated lands

Among the first concerns of Te Whitu Tekau was the setting of a boundary for Te Urewera. In 1872, the boundary was of immediate importance to indicate to the Government the lands over which the chiefs expected to exercise their authority. Binney described the names given by the chiefs as ‘key boundary markers, carrying ancestral histories.’ The Tuwhenua claimants explained to us the importance of Te Rohe Potae, the name given to the heartland of Te Urewera by Te Kooti. In the words of Rakaua Teka of Ruatahuna, ‘I mea ra a Te Kooti, Tuhoe te rohe potae wehea ra ano e ia te rohe potae. . . . Te Kooti said that Tuhoe is a district of special status, he defined a region as such.’

Tamati Kruger explained the significance of Te Rohe Potae in this way:

> Te rohe potae applies to the designation of Tuhoe’s traditional territories over which Tuhoe mana applies. From this area others are excluded or only welcomed on Tuhoe’s terms. The word ‘potae’ means special state or condition . . . Te rohe potae was about placing territories under Tuhoe mana and about unifying the hapu of those territories.

Initially, Te Whitu Tekau focused on uniting Tuhoe, but by 1874 they were looking outwards towards a possible Mataatua union against uncontrolled land alienation.

We need to note three significant points about the Rohe Potae as set out (and defended) by Te Whitu Tekau from 1872 onwards. First, it should not be thought

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151. Henare Kepa Te Ahuru and others to Native Minister, 9 June 1872, AJHR, 1872, F-3A, p 29
152. The term ‘Rohe Potae’ was sometimes used for Te Urewera from the 1860s. Binney states that this name ‘probably originally derived from the confiscation line which defined the northern border of Tuhoe’s lands, in the same manner that Ngati Maniapoto’s lands were defined and named ‘Rohe Potae’ after the 1864 confiscation there’: Binney, ‘Encircled Lands, Part 2’ (doc A15), p 2.
of as a ‘district’ in English terms. To Tuhoe, the statement of their boundaries was
a statement of their intent to protect and retain their mana motuhake. The Crown
accepted it as such in our hearings. From the 1874 reports of Locke and Brabant,
the Crown concluded: ‘it can be inferred that Urewera Maori seemed to assert and
seek to maintain mana motuhake within certain specific boundaries’.

Our second point about the boundaries of Te Rohe Potae, as set out by Te Whitu
Tekau in 1872, is that they included the land confiscated from Tuhoe in 1866 (see
chapter 4). This is important because Te Whitu Tekau sought the return of that
land. The hope that the confiscation line would be altered and that land would
be returned to the peoples of Te Urewera was constantly expressed at hui associ-
ated with Te Whitu Tekau, and in other interactions between the Government and
various Urewera leaders. While the two letters from the June 1872 hui describing
the boundary have different starting points, and while some of the places men-
tioned are difficult to identify with certainty today, Binney pointed out that both
groups of chiefs included the confiscated land within the boundaries, reflecting
their ancestral claims.

A Tuhoe patere, ‘Ko ranginui’, recalled the role of Te Whitu Tekau in respect of
the confiscation. We were given various translations, but the main point is that,
because of the mana of Te Whitu Tekau, it was described as a central and ‘vibrant
force’ in combating ‘te raupatu’. Binney described this patere as probably dating
to the late 1880s, although Tamati Kruger considered, on the basis of its style and
language, that this is likely to be too early a date. At any rate, it indicates that
there was an ongoing understanding in Te Urewera that a key policy of Te Whitu
Tekau was to stand against the confiscation and, if possible, secure the return of
their lands that had been taken.

The 1870 settlement of the confiscated lands issue in Hawke’s Bay, involving the
return of land to Maori, might have contributed to a widespread rumour that the
Government would return other confiscated lands. Tamaikoha, a signatory to
two of the June 1872 letters quoted above, had admitted to Brabant soon afterwards
that including confiscated land in the boundaries was a way of testing what they
had heard about the Government returning their land, but that ‘it had been agreed
that if the Government refused that ended the matter’. Brabant told Tamaikoha
that persistence in raising the issue would lead to trouble. Nevertheless,
Tutakangahau inquired in September 1872 whether the Tuhoe confiscated lands
were to be returned, while Te Makarini, a further signatory, requested the return

156. Crown counsel, closing submissions (doc N20), topic 7. p 5
1872, see Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 273.
158. Taiarahia Black, ‘Kaore Te Aroha Te Hua o Te Wananga’ (PhD thesis, Massey University,
159. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 295 n 408.
160. On the probable date of the patere, see Binney, ‘Encircled Lands, Part 2’ (doc A15), p 6;
Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 295 n 408.
162. Brabant to Native Minister, 4 July 1872, AJHR, 1872, F-3A, p 28
of eastern Bay of Plenty confiscated lands in December 1872. Neither request met with an encouraging response.  

The issue was set down as a key one for discussion at the 1874 hui, and there were different views as to what strategy to pursue. Some chiefs were moving to acceptance of the inevitable. Tamaikoha, Hemi Kakitu, and Rakuraku had taken responsibility for sections of the dray road from Ohiwa to the boundary at Waimana; Tamaikoha observed that in practice, if not in principle, he had accepted the confiscation boundary. As part of that acceptance, however, he and others expected

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2. Ibid
that the Government would grant them sections of confiscated land, and that Te Whitu Tekau might become guardians of land that had been granted to Ngati Awa and Ngati Pukeko. (Hemi Kakitu and Kaperiere Tamaiarohe of Ngati Pukeko, however, objected at this hui to Te Whitu Tekau asserting control over their sections.) Other Te Whitu Tekau leaders wanted the confiscation line moved. Kereru announced his intention of using the ture (law) to get the land back; he would succeed because the Government had wrongly taken the land: ‘The Government said they took the land for our fault; we never committed any fault.’

In March 1875, at the hui held to open the new Mataatua meeting house of Ngati Awa, Urewera chiefs again raised the question of return of the confiscated land. McLean insisted once more that the line would not change. As we have seen in chapter 4, the issue of the confiscated lands became a festering sore in the relationship between the peoples of Te Urewera and the Crown.

A third significant point about the 1872 boundaries, as set out by Te Whitu Tekau, is that they included land claimed by several iwi. As Tamaikoahia put it in 1874:

I made the peace which causes all the island to be at peace now [the rongopai of 1870]. I made my boundary (the Urewera boundary, made by themselves in 1872). It is not all mine; it belongs to several tribes, but it is for me to look after it. The Whitu Tekau were appointed to look after it.

One of the Crown’s main arguments in its submissions was that it could not recognise or deal with the authority of Te Whitu Tekau in instances where the ‘community of owners’ either was not represented on the council or had rejected the consensus of the wider group.

8.5.2.5 Uniting the iwi, and the waka

A second matter of great concern to Te Whitu Tekau was working for unity. Clearly this was important because the protective policies of Te Whitu Tekau would have more chance of success if all adhered to them. Te Whenuanui and the other chiefs told the Government in 1872 that the second matter decided at the June hui was ‘the uniting of the tribe – that their words should be one and that they should have one canoe, Matatua’. Henare Kepa Te Ahuru also mentioned that Te Ahikaiata, who would later be the secretary of Te Whitu Tekau, talked about ‘the canoe

164. H W Brabant, ‘Notes of Speeches Made at the Native Meeting at Ruatahuna, March 23rd and 24th, 1874', 2 April 1874, AJHR, 1874, G-1A, pp 4–5; see also Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 301–302.


166. H W Brabant, ‘Notes of Speeches Made at the Native Meeting at Ruatahuna, March 23rd and 24th, 1874', 2 April 1874, AJHR, 1874, G-1A, p 4


168. Te Whenuanui and others to Government, 9 June 1872, AJHR, 1872, F-3A, p 29
In fact, Tamati Kruger stated that Ngati Awa and Whakatohea were invited to this first Te Whitu Tekau hui but chose not to attend.\textsuperscript{169} The focus at the 1872 hui, therefore, was on ‘uniting of the tribe’, rather than on the wider grouping. There was some discussion of a wider Mataatua union at the 1874 hui, and it is clear that representatives attended from Ngati Awa, Ngati Pukeko, and Whakatohea, as well as Ngai Tai, Te Arawa, the East Coast, and eastern Taupo.\textsuperscript{170} Kereru summed up his vision of unity thus: ‘Let Mataatua be one, and let us join our lands to keep out rents and roads. Give me the land, not for myself, but to look after.’\textsuperscript{171} The kinship links between Tuhoe and Ngati Awa were obviously of importance to both. The Tuwhenua researchers note that, at the 1875 Ngati Awa hui to open the new whare Mataatua, Te Whenuanui and other Tuhoe leaders

\textsuperscript{169} Henare Kepa Te Ahuru and others to Native Minister, AJHR, 1872, F-3A, p 29. On Te Ahikaiata as secretary to Te Whitu Tekau, see Tuwhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 275.

\textsuperscript{170} Tuwhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), pp 274–275

\textsuperscript{171} H W Brabant, ‘Report by H W Brabant, Esq, r.m, Opotiki’, 1 April 1874, AJHR, 1874, G-1A, p 1; Binney, ‘Encircled Lands, Part 1’ (doc A12), p 305

\textsuperscript{172} H W Brabant, ‘Notes of Speeches Made at the Native Meeting at Ruatahuna, March 23rd and 24th, 1874’, 2 April 1874, AJHR, G-1A, p 4
were invited to sit ‘on the pae for the speechmaking’ in an acknowledgement of their link with Mataatua.\(^{173}\) We note that Tuhoe carvers had been involved in work on the great new wharenui; this would doubtless also have been in the minds of Tuhoe leaders during this period.

It does not seem, however, that the attempt to create a waka-based political grouping met with success. Ngati Awa, Ngati Pukeko, and Whakatohea rejected the invitation to join Te Whitu Tekau. Herbert Brabant, the resident magistrate who attended the Ruatahuna hui in 1874 for the Government, understood that a ‘land league’ was proposed. His wording is reminiscent of that used by officials in describing the Kingitanga (and Taranaki leaders’ initiatives) in the 1850s and 1860s. He described its purpose as being ‘to forbid the sale and leasing of lands, roads, etc.’\(^{174}\) From the speeches as recorded at the hui, this appears to be an accurate assessment.

As will be clear from chapter 2, there had been a long and complicated history of conflict and peace-making between Tuhoe and Ngati Awa. Recent events, especially with regard to the award of reserves in the confiscated lands, had caused further tensions, especially with Ngati Pukeko (see chapter 5). This was one of the main stumbling blocks to ‘union. The Ngati Awa leader, Wepiha Apanui, maintained that Maori authority could not be reasserted over land in Crown title, even if it had been granted back to Maori. Kereru, on the other hand, argued that if it was in the hands of Ngati Awa, then it could be governed by Te Whitu Tekau, no matter what its title. Brabant told the hui that the Government would not permit Ngati Awa and Ngati Pukeko to hand over their Crown-titled lands to Te Whitu Tekau ‘to take care of’, although the iwi could do as they wished with their customary lands. In any case, Ngati Awa and Ngati Pukeko leaders refused to join Te Whitu Tekau or to place their lands under its protection.\(^{175}\) Kaperiere of Ngati Pukeko said: ‘We prefer the Government to the Whitu Tekau as guardians for our land.’\(^{176}\)

The Whakatohea spokesman, Pihana Tiwai, said that his tribe was prepared to ‘join their land to the Ureweras, to keep out leases, roads, etc’. He also revealed that there had been prior negotiations between the iwi; Tamaikoha had visited Opape and raised the issue with Whakatohea leaders there. According to Tiwai, Whakatohea leader Te Awanui had agreed with Tamaikoha to join Te Whitu Tekau, but Brabant later confirmed this was not correct.\(^{177}\) The coastal iwi preferred not to join in a political union with the peoples of Te Urewera at this time. According to the Tuhoe understanding of this decision, it was based on fear that the Government would target and attack this kind of political union, as it had done with the Kingitanga. Nonetheless, Tamati Kruger maintained that the borders of

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\(^{173}\) Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 288

\(^{174}\) H W Brabant, ‘Report by H W Brabant, Esq, R.M, Opotiki’, 1 April 1874, AJHR, G-1A, p 3

\(^{175}\) H W Brabant, ‘Notes of Speeches Made at the Native Meeting at Ruatahuna, March 23rd and 24th, 1874’, 2 April 1874, AJHR, G-1A, pp 4–5

\(^{176}\) Ibid, p 4

\(^{177}\) Ibid
Te Rohe Potae were not affected by their decision not to join, as Te Rohe Potae represented the fullest extent of Tuhoe claims (and not Mataatua claims).  

According to Brabant, Te Whitu Tekau leaders themselves decided not to proceed with a wider union at the end of the hui. The consensus was summed up by Hira Tauaki (described as ‘one of the “Seventy”; a sensible, moderate man and a chief of influence’), who stated: ‘It is clear to everyone that we are divided. As Tuhoe cannot agree, I cannot ask others to join us.’ This disagreement was focused on leasing and the question of whether to accept the finality of confiscation; otherwise, as Brabant said, the hui was ‘almost unanimous in their wish to keep roads, Magistrates, and other Government measures out of their boundaries.’

By the late 1880s, as we shall see below, the issue surfaced again in the context of the Government’s provision for committees; by then, however, there seems to have been little support among Urewera chiefs for a wider Mataatua organisation.

8.5.2.6 Protecting Te Urewera lands: policy on roads, surveys, sale and lease of land, and the Native Land Court

The policies of Te Whitu Tekau were first and foremost aimed at protecting the remaining lands of the peoples of Te Urewera. From the letters of the leaders cited above, it is clear that their main concerns at the outset were to keep roads, surveys, and the leasing and sale of land outside their boundaries. These remained key policies for a quarter century. Tama Nikora explained that they are remembered on Tuhoe marae as: “Kaua te ruri, kaua te rori, kaua te rihi, kaua te hoko”, Irakoihu Manihera being the last kaumatua to have been heard by me to say so.

Roads were a difficult issue. This is not surprising, given their utility, and for some chiefs the advantages of roads outweighed the risks. Hapurona Kohi and Ngati Whare, for example, remained in favour of roads after their release from Te Putere in 1872 (see chapter 5). Others were more cautious, fearing for their ability to protect their boundaries if access to their land was too easy. Their first attempt to deal with this dilemma was to secure general agreement that roads were to be controlled. Those in whose areas roads were located should symbolically hand them to ‘the Urewera’, who would assign guardianship of them: ‘Te Makarini is to have the roads at Waikare Moana, Hapurona and all the others the road at Ruatoki and Te Whaiti; Tamaikoha to have the road at Waimana, so that now the Urewera have all the roads in their own hands at the present time.’

The communication of this decision to the Government, it seems to us, was to indicate that the building of roads was not a matter for Government to...
pursue without consultation with the tribal body. Various chiefs had been assigned responsibility in their own areas where roads were already built, but oversight of policy now rested with that body.

It is true that some dissented from this position during the period in which Te Whitu Tekau was active, beginning with chiefs who were more conciliatory to the Government. The postscript in their 9 June 1872 letter to McLean stated that the ‘conclusion of our words were that the roads were to go on.’ In the later months of 1872, controversy over roads continued, and further discussions were held within Te Urewera in October, November, and December 1872. Te Whenuanui and Paerau, Binney has pointed out, reconfirmed to Captain Ferris in October 1872 that no more roads should be built in their territory:

We are not agreeable to your word; the good is to make roads in your own territory, as for our own territory it rests with us, the Government have nothing to do with it. Our word is, let the Government gently carry about the law, leave Waikaremoana to us, as well as all our territory, Te Whaiti, Ruatoki, Waimana and Ruatahuna.

This is a clear statement of the bounds between the authority of the Government and the authority of Tuhoe; the two chiefs on this occasion signed for ‘all Tuhoe’ (‘na Tuhoe katoa’). There is a sense, too, in which this was a test for the Crown — what would ‘the law’ do in response to Te Whitu Tekau’s decision? The chiefs wrote: ‘Our word is let the Government gently carry about the law . . . We are not agreeable for the road to enter these places. Make roads in your own territory, and the law will look at our talk (decision) now.’

Yet Ngati Huri of Maungapohatu made it clear to the Government in September and November that they were prepared to agree to roads: one from Ruatahuna to Te Whaiti (thence to Whakatane), and another from Maungapohatu to Opotiki. This led to further hui in November and December 1872, where views both for and against roads were expressed. The number of hui indicates not only the importance of the issue, and of collective discussion of it, but also the difficulty of

184. Henare Te Kepa Te Ahuru and others to Native Minister, 9 June 1872, AJHR, 1872, F-3A, p 29
185. Te Whenuanui, Paerau, and all Tuhoe to Captain Ferris, 23 October 1872 (Binney, additional supporting papers to ‘Encircled Lands, Part 1’ (doc A12(b)), pp 288–290)
186. Te Whenuanui and Paerau to Ferris, 23 October 1872 (Binney, additional supporting papers to ‘Encircled Lands, Part 1’ (doc A12(b)), pp 288–290)
187. Ibid, p 290
securing the agreement of all the hapu. Professor Wharehuia Milroy told us of a tribal record of the November hui, at which Te Makarini expressed his desire that roads should be allowed in Te Urewera. It will be recalled that Te Makarini had been entrusted with the responsibility of keeping roads out of Waikaremoana. In response to his position, Tamaikoha and Te Whenuanui both suggested that he give up oversight of Waikaremoana and come to live at Ruatahuna – an option he clearly did not favour. Ultimately, the decision of these hui remained against taking the risk of permitting roads in Te Rohe Potae.

At the next major Te Whitu Tekau hui, in March 1874, Te Ahikaiata gave as the fourth item on the agenda the ‘forbidding of roads, leases, Magistrates and other bad things (mea kino)’. Tamaikoha told those present that he had become involved in road-building, but only on the condition the road stopped at the confiscation line. Opotiki Resident Magistrate Brabant reported, as we have seen above, that those at the hui ‘appear almost unanimous in their wish to keep roads, Magistrates, and other Government measures out of their boundary’; though on other issues – notably ‘renting land’, and whether they should ask the Government to give them sections on the confiscated lands – they were ‘much divided’.

The opposition to roads was confirmed and repeated to Donald McLean in person at a Whakatane hui in March 1875. Hapurona Kohi of Ngati Whare spoke in favour of a road to Ahikereru at that meeting, but in June 1875 a letter from Te Whenuanui and other chiefs reiterated that this road would not be allowed to go ahead.

After Te Whitu Tekau’s first indication of its views in June 1872, the Crown had no success in getting roads built through Te Urewera. It is difficult to assess information about roadbuilding. Sometimes what are referred to as ‘principal roads’ through Te Urewera turn out to be little more than ‘fair bridle tracks’. But right up to the 1890s it was impossible to obtain sufficient agreement to allow the building of a European-style road through Te Urewera. The opposition of senior chiefs such as Te Whenuanui prevailed, and the Te Whitu Tekau policy opposing roads within the rohe held firm.

Ministers and officials engaged in cautious testing of Te Whitu Tekau’s resolve in the early 1870s. McLean wrote to the Maungapohatu community, for example, encouraging them to agree to roads. Preece, Brabant, Locke, and Ferris promoted the economic advantages of roads – both for trade and for the short-term

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189. James Wharehuia Milroy, brief of evidence (English), 15 October 2004 (doc H51(a)), pp 8–9
190. H W Brabant, ‘Native Meeting of Urewera Tribes, Held at Ruatahuna, 23rd and 24th March, 1874’, 1 April 1874, AJHR, 1874, G-1A, p 3
191. H W Brabant, ‘Notes of Speeches Made at the Native Meeting at Ruatahuna, March 23rd and 24th, 1874’, 2 April 1874, AJHR, G-1A, p 3
193. For these expressions, see Locke to Native Minister, 30 May 1874, AJHR, 1874, G-2, p 20.
195. Miles, ‘Te Urewera’ (doc A11), p 200. Although this letter is undated, it is clear from the context that it was either written in late 1872 or possibly early 1873. See also Cleaver, ‘Urewera Roads’ (doc A25), p 9.
8.5.2.6

income available during their construction. But ultimately the Government was not prepared to risk an open confrontation with the Urewera leadership by insisting on building roads, even in areas where local hapu might have been favourable. McLean, for example, annotated Ngati Huri's letter (referred to above) with the comment that the Government must wait for the approval of the Urewera chiefs before acting on internal roads. In 1873, Ferris attended a Te Whitu Tekau hui at Ruatahuna. He reported to the Government:

> The subjects of discourse were Roads, Leases, & Selling Land. They wished to know if the Government intended carrying roads into their country, as they did not want them at present. I answered them I believed that the Govt had no such intention at present, and was of opinion that no such work should be done until they asked for it themselves.

Officials insisted on the Crown's right to build roads on Crown lands. Accordingly, the planned Ohiwa to Waimana, Whakatane Valley, and Te Kapu to Waikaremoana roads all stopped at the limits of Crown land. A roadline for a new Galatea to Ahikereru road was surveyed and laid off (with the support of Ngati Whare), but it did not proceed to the construction phase after Te Whenuanui's objection in June 1875. According to a Public Works Department report for the year to 25 July 1876, less than £20 was spent on survey costs, so there was no substantial progress even on this road in the boundary area of the rohe. Later in the 1870s, all mention of this road disappears from the annual roading reports, with the Ahikereru to Waikaremoana road promoted by Preece appearing in none of the reports between 1873 and 1879. Over the decade from the mid-1870s, the Government basically respected Te Whitu Tekau's ban on roads.

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During the mid-1880s, there was a new push to put a road right through the rohe. This was reported in a section of the Public Works Department's annual report, entitled 'Roads to open Crown Lands for Sale'. A road surveyor, J C Blythe, explored a possible road from Galatea to Onepoto, walking along 'the old Native track'. Even Ngati Whare, who were less opposed to roads than others, initially wanted to send him back. Only the intervention of Harehake Aarea of Ngati Manawa enabled him to walk the route at all. Nonetheless, one of his Maori guides advised him 'not to do any writing within sight of the Uriweras, as they would at once turn me back'. At Ruatahuna, the people indicated forcibly their opposition to 'any surveying of any kind', their determination not to allow any road-making,

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196. Binney, 'Encircled Lands, Part i' (doc A12), pp 283–284
197. Ferris to Locke, 2 November 1873, MS,papers-0032–0271, ATL
198. 'Public Works Statement, by the Minister for Public Works, the Hon Edward Richardson, Tuesday, 25th July, 1876', AJHR, 1876, E-1, p 11
and their wish ‘not . . . in any way to have any dealings with the Government or pakehas’.  

Although Blythe was confident that labour could be found to build the proposed road among young Maori men in the habit of working outside the rohe, he was well aware that these were ‘men of no influence – as they put it, “they are living outside the room,” the room being Mataatua’.

In March 1886, S Percy Smith went with Blythe to Ahikereru and had discussions about roading with both Ngati Whare and Tuhoe. The former were divided but still substantially supportive of a road as far as Ahikereru. Tuhoe, however, made it clear that they opposed not just the road but also ‘surveys, leases or sales, and all these followed in the wake of the road’. Although Smith announced his determination to continue a road past Ahikereru, this did not happen. By 1 July 1886, 15½ miles of bridle path had been built as far as Ahikereru.

In 1889, Samuel Locke met with Urewera leaders at Ruatoki, hoping to secure agreement to the opening up of the district. Nothing concrete came from this meeting, and Robert Bush reported in the same year that opposition to roading and European settlement was stronger than ever, due (he believed) to recent visits by Te Kooti.

The original Te Whitu Tekau opposition to roads was still being expressed by Rakuraku in 1891 when he addressed the Governor. Even though there was some dissent from Rakuraku’s views, there was no further work on the road beyond Ahikereru until 1895. We consider that the Crown’s lack of success in getting a road built through Te Urewera during the 1880s and early 1890s shows that Te Whitu Tekau’s policies proved remarkably resilient, even if there is little overt reference to the organisation itself in the sources at this time.

A determination to prevent leases and sales of land was also evident from the outset. Te Whenuanui and other senior chiefs, in their general 9 June 1872 letter to the Government, quoted in full above, observed that the ‘things that were rejected from these boundaries are roads, leasing and selling land’.

An early focus of concern was Government handling of the four southern blocks. As we have seen in chapter 7, 17 Wairoa chiefs and Tamarau Te Makarini signed the Locke deed. Ngati Kahungunu chiefs at once leased the blocks to settlers, adding to the anger of Tuhoe chiefs at Te Makarini’s signing of the deed. Leases – as well as roads – were discussed at length at a hui held at Ruatahuna in November 1873. These included a Ngati Manawa lease as well as the leasing of the four southern blocks.

Ferris informed Locke that much dissatisfaction had

200. ‘Roads to Open Crown Lands For Sale’, 1 July 1884–30 June 1885, AJHR, 1885, C-1A, pp 31–33
201. Ibid, p 33
203. ‘Roads to Open Crown Lands for Sale’, 1 July 1885–1 July 1886, AJHR, 1886, C-1A, p 23 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 3)
204. Bush to Native Department, 3 June 1889, AJHR, 1889, G-3, p 7
205. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 3
206. Te Whenuanui and others to Government, 9 June 1872, AJHR, 1872, F-3A, p 29; Paerau to Native Minister, 10 June 1872, AJHR, 1872, F-3A, p 30; Te Makarini and others to Native Minister, 9 June 1872, AJHR, 1872, F-3A, pp 28–29
been expressed at the leasing and selling of land, for which the Government was blamed: ‘As regards leasing and selling land, they appear to have been under a false impression that it emanated from the Government.’\textsuperscript{208} It was agreed that no presents from the Government, including food contributions, should be received for any meeting held with the Crown’s agents: ‘presents acted as softeners, leading to the start of roads, leases and sales.’\textsuperscript{209}

By this time, the Crown was also involved in the leasing and purchase of land. From September 1873, the Crown employed Henry Mitchell and CO Davis, who had previously been active agents on behalf of private interests, as native land purchase commissioners, and they began buying out de facto leasing arrangements with McLean’s full knowledge.\textsuperscript{210} In December 1873, McLean also appointed JA Wilson his land purchase agent for the area ‘east of the Rangitaiki river and North of the Whirinaki stream and Ruatuhuna.’\textsuperscript{211} Wilson, in a report to McLean dated 1 June 1874, was very blunt about the purpose of his land transactions. They were, he told the Native Minister, ‘all tending in one direction; viz the setting aside of the ring-boundary – the rohe-potae – which the Uriwera seventy have set up [as he put it] to enclose in many instances the lands of other tribes.’\textsuperscript{212}

A few months after Wilson’s appointment, Gilbert Mair was appointed district officer for the Bay of Plenty under the Native Land Act 1873, while remaining captain in command of the Arawa Flying Column No. 1. Despite these official positions, Mair made use of his close relationship with Ngati Manawa to encourage them to lease their lands (initially to him, then to the Government); to take this land through the Native Land Court; and, eventually, to sell large areas to the Crown.\textsuperscript{213} Senior Urewera chiefs in Te Whitu Tekau opposed the Crown policy of paying tamana (advance lease payments later treated as down payments on the sale of the land concerned) in various areas, and of making payments to single individuals ‘for land which were the common property of the hapu.’\textsuperscript{214} As the Central North Island Tribunal pointed out, the payment of advances ‘even to just a few individuals in each block . . . could then be used to lock whole communities into land transactions’.\textsuperscript{215} We discuss this issue further in chapter 10. The point to be made here, however, is that Urewera leaders criticised Crown tactics at the 1875 hui with McLean. McLean admitted that because ‘blocks of land belonged

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  \item \textsuperscript{208} Ferris to Locke, 2 November 1873 (Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 287–288)
  \item \textsuperscript{209} Binney, ‘Encircled Lands, Part 1’ (doc A12), p 287; see also Ferris to Locke, 2 November 1873, and Ferris to Locke, 3 November 1873, MS-papers-0032–0271, ATL
  \item \textsuperscript{211} Binney, ‘Encircled Lands, Part 1’ (doc A12), p 298; McBurney, ‘Ngati Manawa and the Crown’ (doc C12), p 161
  \item \textsuperscript{212} Wilson to McLean, 1 June 1874 (Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 298–299)
  \item \textsuperscript{213} McBurney, ‘Ngati Manawa and the Crown’ (doc C12), pp 149–150, 152–160
  \item \textsuperscript{214} Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 295, 331–333; McBurney, ‘Ngati Manawa and the Crown’ (doc C12), pp 146–147, 170, 194
  \item \textsuperscript{215} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, p 592
\end{itemize}
\end{footnotesize}
to communities and not to individuals’, it was ‘not right that single individuals should receive money on lands that were the property of hapus’.216

Private interests were also involved in arranging leases for lands on the western borders of Te Urewera. Ngati Manawa leases there had been objected to at the 1873 hui. And, two months earlier, Te Whitu Tekau had written to Tamaikoha, who was negotiating a lease of land at Waimana with Frederick Swindley, a former aide-de-camp to General Whitmore, reminding him of their ban on leases.217

By 1874, leasing was a key issue at the Ruatahuna hui. The chief Nga Waka, contrary to the policy of Te Whitu Tekau, upheld a lease of Kuhawaea to the settler Troutbeck that Ngati Haka Patuheuheu and Ngati Manawa had made the previous year. Wi Patene Taranui of Ngati Haka Patuheuheu defended his acceptance of lease money from the Crown for part of the Pokohu block, subsequently known as Matahina, against the objections of some senior Tuhoe chiefs.218 He reached agreement, however, with Te Whitu Tekau about pulling back from negotiations with the Government purchase officer, Wilson, about the lease of Waiohau. According to Wilson, Taranui ‘made over the land of his tribe to them [Te Whitu Tekau] by a writing dated the 26th of March, a copy of which he shewed to me afterwards’.219 Despite this, he was later involved in a private lease of the land, along with Mehaka Tokopounamu of Ngati Haka Patuheuheu.220 Ultimately, the block was taken to the Native Land Court in 1878, and senior Tuhoe leaders – notably Makarini Te Waru, Kereru Te Pukenui, Hetaraka Wakaunua, Tutakangahau, Netana Rangihiu, and Kepa Te Ahuru – again objected that the land had been leased without their knowledge or agreement.221

Ani Hare explained that Ngati Haka Patuheuheu were a ‘border people’, subject to an intense pressure that they were unable to resist. As a result, ‘Our hapu forgot to support Te Whitu Tekau so that Tuhoe would retain the physical, the symbolic essence, the authority and the sovereignty of their own lands in Te Urewera.’222

The paths that Tuhoe and Ngati Manawa chose to follow to secure their position were very different. Generally speaking, whereas Tuhoe believed that their future depended on the retention of their land and authority, Ngati Manawa hoped that cooperation with the Crown, by active military support and then by supporting

216. Te Waka Maori o Niu Tireni, 6 Hurae 1875, vol 11, no 13 (counsel for Wai 36 Tuhoe, closing submissions, pt B (doc n8(a)), p 56)
219. Wilson to McLean, 1 June 1874 (Binney, ‘Encircled Lands, Part i’ (doc A12), p 299)
220. Binney, ‘Encircled Lands, Part i’ (doc A12), p 299
221. Ibid, p 300
222. Ani Hare, simultaneous translation of oral evidence, 11 December 2003, Tataiahape Marae, Waimana
the Crown’s purchasing policies would ensure their future prosperity. Ngati Haka Patuheuheu can be characterised as somewhere in between these attitudes, attempting to adhere to the policies of Tuhoe’s governing body, Te Whitu Tekau, but at times succumbing to pressures on their land (sometimes in cooperation with Ngati Manawa and other landsellers and at other times in response to rival claims on their lands). Certainly, their impoverished conditions made accepting offers to lease or buy land more attractive.\footnote{223}

As we discussed above, in 1874 Te Whitu Tekau had – as Brabant put it – tried to secure agreement by ‘all the tribes to join them in a sort of land league, to forbid the sale and leasing of land, roads, &c’; it is perhaps not surprising that he reported the Seventy were on the verge of giving up the plan ‘as impracticable’. Tribes beyond Te Urewera would not support it, and he thought they could not agree on it themselves. He gave more names of chiefs who were anxious to lease.\footnote{224}

Further hui were held at Waimana in April 1874, and at Galatea in May. The Urewera leaders all attended the Waimana hui to discuss their concern about the leases being set up on the borders of Te Urewera and about Waimana’s being targeted. The May hui, however, originated in a panui sent by Government Purchase Officer Wilson, and Te Whitu Tekau leaders did not attend, stating that the meeting was held too soon after their own.\footnote{225} But Te Makarini was there as the spokesman for Te Whitu Tekau and he also delivered a letter ‘signed by the Seventy and all their chiefs’ addressed to Peraniko, the Ngati Manawa chief, and to Wilson. Wilson stated that “Te Makarini performed his part with firmness and good temper, and that he had said what they all would have said: ‘viz that they would not allow their rohe potae to be invaded’.”\footnote{226} He was particularly concerned that the Raungaehe block, forest land lying between the Rangitaiki and Whakatane Rivers, might be leased (by Ngati Awa and Ngati Pukeko).

A proposed lease of land at Waimana was also contested. Frederick Swindley had attended the Ruatahuna hui himself, along with William Kelly, an important local businessman who was also a member of the House of Representatives; they accompanied Tamaikoha in what was at that stage a vain attempt to get Te Whitu Tekau to consent to Tamaikoha’s lease.\footnote{227} Tamaikoha called a hui at Te Waimana in April where leasing was further discussed; but the Swindley lease was not agreed to here either. But in October 1874, in a modification of their position, Te Whitu Tekau finally accepted the lease. Sissons suggested that this may have been because of the developing tension between Rakuraku and Tamaikoha over the right to lease Waimana land, and Rakuraku’s accepting a payment jointly with Wepiha Apanui (Ngati Awa) and Hira Te Popo (Whakatohea). Though Tamaikoha recovered the

224. HW Brabant, ‘Report by H W Brabant, Esq, R.M, Opotiki,’ 1 April 1874, AJHR, 1874, G-1A, p 3
225. Wilson to McLean, 1 June 1874 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), pp 56–59)
226. Wilson to McLean, 1 June 1874 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 324)
payment, and returned it to Swindley, the pressures at Waimana were becoming evident. Te Whitu Tekau may have preferred the lease to Tamaikoha as being simpler and, Sissons suggested, as clearly stamping Tuhoe’s rights to the land. In October, Tamaikoha received the rent at a hui at Ruatahuna; Netana Rangihiu stated in 1878 that “Tamaikoha had the 100 pounds, he is the head of the seventy.”

Te Whitu Tekau’s condition for agreeing to the lease, however, was that the land was not taken to the Native Land Court and it was not surveyed. We discuss this transaction further in chapter 10.

The basis for such a decision was further clarified at a hui at Whakatane in March 1875, when Urewera chiefs made it clear they were not wholly opposed to the leasing of some land but that the focus of their concern was strategies that set out to create division among them. Thus, for the time being, Kereru Te Pukenui stated, they wished ‘to close their district against all land dealings.’

Tamaikoha explained to McLean that they did ‘not wish the Government to believe that they would always oppose the leasing of lands to the Government or other Europeans, but they wished to have time for consideration.’ This was confirmed by Te Pukenui, who said that Tuhoe wanted to have time to ‘mature plans for the leasing of their lands,’ and to select their own tenants, not just Government agents. ‘But this was in the future,’ he said.

In other words, they wished to control the pace and nature of their engagement with the new economy; they were very aware of the dangers of individuals being singled out to enter into transactions which might pull land into the Native Land Court; and they also associated the court with sales and loss of control over their lands. Ultimately, as events unfolded in the 1870s and 1880s, with border leases triggering land court hearings and sales, Te Whitu Tekau never actually relaxed its stance on leasing (or any form of alienation). Since there was, at the time, no other way for the peoples of Te Urewera to obtain an income from their lands or to raise capital for farming, this did amount to a rejection of the colonial economy. It was not what they wanted, but it was a price they were prepared to pay.

As Tamati Kruger explained to us on one occasion, an evident Tuhoe unwillingness to accept development had its roots in their determination to assert and defend their mana motuhake:

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228. Ibid, pp 35–37
230. Te Waka Maori o Niu Tireni, 6 Hurae 1875, vol 11, no 13 (counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 47)
231. Ibid
232. Ibid
mahi i runga i te whakaaro kia tapu te mana motuhake o Tuhoe, na reira i tapu ai etahi o a ratau mahi.

Na enei mahi ka kore a Ngai [Tuhoe] e whai kanohi i roto i nga tuhinga o ratau nana nei matau i peia atu i Te Urewera. Kaore matau i aro atu ki wa koutou kupu whakapai kanohi mo te kaupapa whanake i a matau otira ko aua Minita ra a Ngata me Carroll e meatia whanuitia ana e matau he whakahih.

Na reira i ata kitea ai e etahi he ara ra i peneki ai ta Tuhoe whai i tona mana motuhake – he mohio no tuhoe i ahu katoa mai tona mana motuhake i enei mahi.233

The price of our liberty, the price that Tuhoe have always been willing to pay, is unfaltering vigilance coupled with the resolved resistance to the infection of our philosophies [tikanga] and the constriction of its expression. The actions of our tupuna like Te Ngahuru, Te Purewa, Te Umuariki, Te Au Ki Hingarae, Tamaikoha, Tutakangahau, Te Raiara, Te Rangiakumue, Te Makurata can all be seen in this context. The mana achieved by these peoples of Te Urewera must always be seen in the context of that which drove them, the assertion and display of Te Mana Motuhake o Tuhoe, as it is there that the tapu nature of their feats may be found.

For such behaviour, Tuhoe have been criticized and deprioritised in the written records of those who have sought to drag us from Te Urewera. We have been scorned as slow in coming forward and unwilling to accept development, as people such as Ngata and Carroll have. We have been labeled as whakahihi [arrogant] and fundamentalist.

Nevertheless, it is now becoming clear to others why Tuhoe have conducted themselves in the way in which they have, as it is upon this conduct that their liberty depends.234

This stance – of effectively keeping their lands out of the colonial economy – was much debated during these decades. From time to time, various leaders of Te Urewera experimented with border leases or supported the idea of roads, schools, and economic development. However, the fundamental kaupapa remained opposition to those things that were perceived as threats to the autonomy and integrity of the Rohe Potae.

Cash was obtained from growing maize and running sheep on some of the better low-lying lands at Waimana and Ruatoki, but mostly it was earned by working outside the district.235 As we saw in chapters 3 and 4, there was a pre-war history of people from Te Urewera seeking paid employment on the coast, which continued in the 1870s and 1880s. Younger people were often the ones who took this step. Some of them felt alienated from the policies of their leaders. As we saw above, Blythe reported their feeling that they had no influence.236

233. Tamati Kruger, brief of evidence (Maori), 6 September 2004 (doc G12), p 5
234. Tamati Kruger, brief of evidence (English), 6 September 2004 (doc G12(a)), p 5
Tuawhenua researchers, quoting the oral evidence of Pou Temara, described how the whole of Tuhoe became involved in the building and ornamenting of this whare, the magnificent Te Whai-a-te-Motu, a memorial to Te Kooti and his successful escape from pursuit. Thomas Pringle commented that the whole venture was the idea of a ‘mastermind,’ uniting the people and assisting their recovery from the wars: ‘From the middle of fire and brimstone, this is the cure that this house provides.’

As far as possible, the peoples of Te Urewera revived their customary economy,
8.5.2.6

Te Urewera

In May 2004, we held our Ruatahuna hearing in the wharenui Te Whai-a-te-Motu. While presenting his evidence, Tamati Kruger explained how the planning and construction of this wharenui helped in the social and cultural reconstruction of Tuhoe after the wars of 1869 to 1871:

In between all of these troubles we can see that the Tuhoe population decreased as a result of disease, lands were being confiscated, soldiers were attacking, houses were burnt. However amidst all these disputes an idea was formed to build this house. The intention was to wake the soul of Ngai Tuhoe in recognition of the fact that although we were overwhelmed and whatever was done, our mana motuhake remains. Let us portray our mana motuhake of Tuhoe. Although poor, abused, trampled upon, they turned around to build this house.

Let us contemplate that a man in the middle of all these troubles would have time to think about building a house. For most of us we would want to go or run away to recuperate from the burdens and troubles. However alas! The leaders of Tuhoe were going to be united by this house; to the thinking of the people of Tuhoe. This house will bring to mind that we are looking for recovery through our mana motuhake. From the middle of fire and brimstone, this is the cure that this house provides.¹

¹ Tamati Kruger, claimant translation of transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44(a)), pt 2, p 24

although it was now truncated by the loss of land south-east of Waikaremoana, by the Eastern Bay of Plenty confiscation, loss of access to Ohiwa, and the damage that war and land loss had inflicted on the customary resources of their traditional trading partners. As the decades wore on, more land was lost in the ‘rim’ blocks. The inland Urewera economy of the 1870s and 1880s was very different from the pre-war economy. In particular, there had been a significant reduction of kumara growing, access to marine resources, and trade.²⁴¹ By the late 1880s, even the people of Ruatoki – who had much of the best remaining land – were still focused on making canoes and trading them with Ngati Awa for fish and European tools.²⁴²

Professor Murton noted the development of some small-scale farming at Waimana and Ruatoki, and in the Rangitaiki Valley, with maize cash cropping and the establishment of small flocks of sheep. By the end of the 1880s, the great

²⁴² Kruger, claimant translation of transcript of oral evidence (doc J48(a)), pt 1, p 13
majority of the people were living mainly on the Waimana and Ruatoki lands. Cash also came from seasonal work outside Te Urewera, as we have seen, but the people really survived by growing potatoes and maize for consumption, and from hunting birds and wild pigs. According to Murton’s evidence, Te Urewera communities lacked capital to develop their land. By the end of the 1880s, as the lands around Te Urewera began to be developed – and so became closed to hunting and gathering – this was really starting to matter. There were new opportunities by then for smaller-scale dairy and other farming to be made profitable. This was especially so because of the advent of refrigeration. The question was: would the peoples of Te Urewera be able to take advantage of this opportunity? Could they agree on leasing land to raise capital, and could they start leasing without resort to the Native Land Court and the sales that followed in its wake? These were the issues confronting Tuhoe and Ngati Whare at the beginning of the 1890s.

The basis of this economy, as we have seen, was the rejection of dealing in land, either by lease or sale. This key policy of Te Whitu Tekau, as adopted in the early to mid-1870s, was discussed at many hui, and great effort was put into trying to secure general adherence to it. Even on the borders of the Rohe Potae, where it proved difficult to keep leases and sales and the Native Land Court at bay from the mid-1870s onwards, Te Urewera leaders strove to ensure that land transactions were not entered into lightly.

This was still the case in the mid-1880s. In 1884, for instance, the surveyor Charles Alma Baker (who would later embark on an unauthorised survey of the Tahora 2 lands along the eastern edge of Te Urewera) attended the hui of the Ringatu, celebrated on 1 July and held at Ruatahuna. It was a large hui, attended by about 700 people. Among the issues discussed was surveying, and the chiefs raised this directly with Baker:

Ka timata te whakahaere a Tuhoe i te rohe potae ki a ratau i reira ano a te peka kairuri, H [sic] Baker Esq, surveyor. I e mutunga o te whakahaere o te hore [sic: rohe] potae ka hoata [sic: hoatu] tau pukapuka e Tuhoe kia peka me tetehi pukapuka apiti atu ki tono ki a Te Mete, Tumuaki Kairuri, Akarana, kia kauwa rawa e whakaetia kia haere tetehi ruri i roto i te rohe.

The Tuawhenua researchers translated this as:

Tuhoe began to describe Te Rohe Potae to them, and the surveyor H [sic] Baker Esq who was also present. After their description of Te Rohe Potae, Tuhoe gave the papers to Baker, along with papers containing a direction to Smith, Chief Surveyor, Auckland, that surveys would never be allowed in the district.

244. Ibid, pp 249, 251–253, 258–297
246. Hare Rauparaha to Te Korimako, Te Korimako, 15 August 1884, p 4 (translation given by the Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 293)
Te Whitu Tekau could not keep surveys and the Native Land Court out of Te Rohe Potae altogether. In part, this was because – as the Crown pointed out – there were overlapping tribal rights and interests in the outer lands. But, generally speaking, the interior Urewera lands were not the subject of survey or court applications until 1891 – a somewhat remarkable achievement.

A detailed consideration of how the land court operated, and how exactly the rim blocks ended up being the subject of hearings and alienations, will be given in chapter 10. Here, we note that – until the Ruatoki survey and hearings in the early 1890s – Tuhoe and Ngati Whare rangatira largely followed the line advocated by Te Whitu Tekau of keeping land out of the Native Land Court. Tuhoe did, however, take part in court processes throughout the period as counterclaimants, with Rakuraku and Tamaikoha putting their case in Waimana in 1878 and again in 1880 (to which end Tamarau Te Makarini also gave evidence). Netana Rangihiu, Tamaikoha, and Hetaraka Te Wakaunua all appeared at the Tahora 2 hearings in 1889, while Tutakangahau appeared for Tuhoe in the 1890 Whirinaki hearing. Tamaikoha and Kereru Te Pukenui represented Tuhoe at the Heruiwi 4 and Tuararangaia hearings respectively; Netana Rangihiu and Tutakangahau had also made claims on behalf of whanau with respect to Heruiwi 4. Their experiences reinforced the view that it was not possible to have leases without also having the court and subsequent sales. In Waimana, even the Tuhoe chiefs sold interests in the 1880s (see chapter 10).

Most of the Native Land Court business within the Te Urewera inquiry district had involved blocks in the Rangitaiki Valley. Thus, much of it was instigated either by Penetito Hawea of Ngati Awa, or Peraniko te Hura and Harehare Atarea of Ngati Manawa (although, as we shall see in chapter 10, these iwi were also divided about the merits and pace of putting blocks before the court). Neither was part of Te Whitu Tekau, so its injunctions had little persuasive influence over them. The only weight Te Whitu Tekau could claim was with chiefs of affiliated hapu (Ngati Haka Patuheuheu, Ngati Hamua, and Ngati Rakei) in the valley blocks, such as Mehaka Tokopounamu, Te Whaiti Paora, and Makarini Te Waru. With the exception of the Waiohau hearing in 1878, and Tuararangaia in 1890, even these chiefs were involved as counterclaimants rather than claimants, and the Tuararangaia application was made without the support of the hapu (see chapter 10).

In the early 1890s, marked opposition to roads, leasing, surveying, sale of land, and the Native Land Court survived surprisingly intact given the pressures exerted by Government officials and private colonists, and the growing need for cash just to buy necessities. As the claimants suggested, it was very telling that between 1872 and 1896 the Native Land Court, as well as Crown and private purchasing, were

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247. In 1873, during his contest with Tamaikoha over the lease, Rakuraku had joined with Paora Kingi and Wepihia Apanui in applying for a Native Land Court hearing of the Waimana block. When the matter came to hearing in December 1874, the application was withdrawn unanimously so it did not proceed. The judge recorded that ‘none of the claimants wish to have it either surveyed or adjudicated upon’: Maketu Native Land Court, minute book 2, 7 December 1874, fol 69 (Brent Parker, comp, supporting papers to ‘Timeline relating to the Waimana Block’, 19 January 2005 (doc K4(b)), p 26)); see also Brent Parker, ‘Timeline relating to the Waimana Block’, 19 January 2005 (doc K4(a)), pp 1–2.
'kept in check from the interior Urewera.' One reason for this, we were told, was that Te Kooti, and the cultural and spiritual revival associated with Ringatu, stiffened the people’s resistance in the 1880s.

Te Kooti was pardoned by the Governor in 1883, following the passing of an Amnesty Act the year before. One of his first actions after regaining his freedom to leave the King Country was to visit Te Urewera for the opening of the wharenui Eripitana, at Te Whaiti. Te Kooti’s visit in January 1884 was marked by an attempt to place the lands of Te Urewera ‘under Te Kooti’s spiritual authority, in order to hold it.’ Te Kooti, for his part, encouraged the people to resist land alienation, although he would not accept any authority over the land. During our hearing at Murumurunga Marae, we heard of Te Kooti’s kupu whakaari (prophecy) when he arrived to open Eripitana, and of the waiata he sang on that occasion.

Eripitana, Robert Wiri told us, was to be ‘the most sacred house of the Ringatu faith . . . the “holiest of holies”’ As a consequence of Te Kooti’s kupu whakaari, the house became extremely tapu. Although he did not take up residence in Te Urewera, Te Kooti’s influence there remained strong. After the eruption of Mount Tarawera in 1886, for example, he advised the people to leave Ruatoki for a year, as it had been rendered tapu ‘from cover with ash or scoria which had killed many Maori.’ Even more importantly, one of his kupu whakaari (pronouncements) – ‘Let the Urewera be one people and one land’ – was interpreted to mean that Tuhoe should live together in one place. There was an exodus to Ruatoki after the tapu had been lifted, and this had profound effects on the history of Tuhoe (as we shall see below).

The Government was soon aware of Te Kooti’s influence and his exhortations, which were, as Binney maintained, consistent with the long-term policies of Te Whitu Tekau. In 1889, Resident Magistrate Bush summed it up succinctly: ‘He [Te Kooti] is just another word for the struggle for independence from Crown authority, the retention of Mana Motuhake.’

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248. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 60
249. Binney, Redemption Songs, p 321
252. Wiri, ‘Ngati Whare Mana Whenua: Summary of Evidence’ (doc G7), p 34
253. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), p 297
254. Ibid

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1. Tamati Kruger, brief of evidence, 17 January 2005 (doc J29(b)), para 7.22
Kooti] does not approve of Lands being surveyed, or passed through the Court, as he is evidently of [the] opinion that these two things help the Natives to part with their lands.’ Thus, Tuhoe chiefs under the influence of ‘Te Kooti principles’ would, as the Government saw it, ‘keep the Country locked up.’

But, as we have seen, Te Kooti had refused to take on the mantle of direct leadership of Te Urewera on these matters. Bush was present at the 1884 hui near Whakatane when the chiefs tried to place their lands under the spiritual protection of Te Kooti, whose response Bush reported in these words: ‘he had not come for the purpose of acquiring lands, but simply to see them in accordance with their ancient customs, he therefore did not want any of their land, but would recommend them to take care of it, and not to squander it.’

It seems clear to us that Te Kooti’s return and his spiritual messages strengthened the resolve of Tuhoe and Ngati Whare to resist land alienation (and its perceived instruments: surveys and the Native Land Court). Senior Tuhoe leaders, we note, were making the same points to the Governor in 1891 as they had made to Government representatives in the early 1870s. Rakuraku pointed out to Lord Onslow and A J Cadman, the Native Minister who accompanied him, that various ‘evil things’ – including leases and sales of land – were forbidden within the borders of Te Rohe Potae. But in 1891, Tuhoe and Ngati Whare were, in fact, on the verge of a period of disagreement and conflict over these issues, creating a significant crisis for those who wanted to hold firm to the Te Whitu Tekau policies of 1872. We address this crisis in section 8.5.4.

8.5.3 How did the Crown interact with Te Whitu Tekau? How did it respond to political initiatives taken by Te Urewera leaders?

**Summary Answer:** During the early 1870s, the Crown acknowledged the formation of Te Whitu Tekau. The Crown responded to invitations to hui in these years, though the Governor and Native Minister did not attend a major hui in 1874. Lesser officials who did attend dismissed the importance of Te Whitu Tekau, and pointed out that it had no status or powers under colonial law. The responsibility for this state of affairs rested squarely with the Government, which had failed to enact the Native Councils Bills of 1872 and 1873, and had failed to follow up on McLean’s assurance in Parliament in 1873 that special arrangements would be made for Te Urewera (and other districts) in 1874.

On the borders of the Rohe Potae, land purchase agents were anxious to undermine Te Whitu Tekau policies, for they recognised their force; and some communities were willing to participate in land transactions. Crown officials also recognised the limits of their own authority in Te Urewera, and acquiesced in the exercise of authority by Urewera chiefs within their rohe. As a result, there was some de facto recognition of Te Whitu Tekau and its policies. The Government did not force the issue on roads or prospectors, nor did it insist on trying to station road.
The Tuawhenua researchers told us:

Tuahoe sought to place their lands under Te Kooti for his protection and guidance, but Te Kooti insisted that the lands be dealt with under traditional customs, and urged Tuahoe to take care of their land and not to squander it. His advice was etched into the minds and history of Tuahoe through his waiata tohutohu [a waiata giving advice and guidance], Te Morikarika:

"Kaore te po nei i morikarika noa!
Te ohonga, ki te ao mapu kau noa ahau.
Ko te mana, tuatahi ko te Tiriti o Waitangi
Ko te mana, tuarua ko Te Kooti Whenua
Ko te mana, tuatoru ko te Mana Motuhake
Ka kia, I reira ko Te Rohe Potae o Tuahoe
He rongo ka, houhia ki a Ngati Awa
He kino ano ra ka ata kitea iho
Nga mana, Maori ka mahue kei muri
Ka uru, nei au ki te mahi kaunihera
E rua, aku mahi e noho nei au
Ko te hanga, I nga rori, ko te hanga I nga tiriti!
Pukohu, tairi ki Poneke ra
Ki te kainga ra, i noho ai te minita
Ki tuku, whakaro ka tae mai to Poari
Hai noho i, te whenua e kotitia nei;
Pa rawa, te maemae ki te tau o tuku ate
E te iwi, nui e tu ake ki runga ra
Tirohia, mai ra te he o aku mahi
Maku e, ki atu, nohia, nohia!
No mua iho ano, no nga kaumatua!
Na tuku, ngakau i kimi ai ki te ture,
No konei, hoki au i kino ai ki te hoko!
Hei! Hei aha to hoko"

"This is not just a troubled night
For when I awoke to the light, it was with a sobbing gasp
There is the first law, the Treaty of Waitangi
Then the second authority, the Land Court
The third mana is the Independent Sovereignty
Proclaimed as Te Rohe Potae of Tuahoe
And peace was made with Ngati Awa."
But a malevolence can be clearly seen  
Where the mana of the Maori is abandoned!  
If I took part in the activities of councils  
There’s two things I would do  
Building roads, and building streets!  
Yonder the mist hangs over Wellington  
Over the place where the Minister resides  
It is my belief, that a Board will emerge  
To take over the land being processed by the court  
Pain strikes deep in my gut  
All my people, rise up  
See if you can see the faults of my deeds!  
I say to you ‘Remain, remain [on our land]!’  
It is from former ages, from your ancestors!  
Because my heart has searched out the law  
And for this reason I abhor selling!  
Never! Never (mind) selling!  

We were provided with varying translations and explanations of this waiata tohutohu, or waiata matakite. The words of the waiata in Maori are those held in oral tradition at Ruatahuna and other parts of Tuhoe. The translation above is by Brenda Tahi for the Tuawhenua researchers. As Judith Binney pointed out, there are many translations of the waiata, as Te Kooti’s vision – fittingly – is interpreted, and reinterpreted, by those who return to seek guidance from his words. We reproduce here several of the translations received during our hearings. We received this translation from Te Hue Rangi of Tuhoe:

This night will not be cause for torment  
Upon the awakening I sigh with sorrow  
The first spiritual endowment is the Treaty of Waitangi  
The second spiritual endowment is the Land Court  
The third spiritual endowment is Metaautonomy  
Where it is stated that that is the domain of Tuhoe  
Peace has just been made with Ngati Awa  
Through the conspicuous evils that have been seen  

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2. With reference to McLean and Orbell, Traditional Songs of the Maori, p 38
Leaving all Maori spiritual endowments behind
I admit myself into the activities of the council
Where I am engaged into 2 specific tasks
Building the roads and the streets
The mist that shrouds over Wellington
To the home where the Minister resides
I have long considered the arrival of the Board
To settle the land that is being severed into pieces
Affixing this pain to the couch of my liver
Behold my people take your stand
And observe these misdeeds
While I say take what is yours
That which derives from our elders
Which coerced the heart to seek out the law
Manifesting into my disgust towards capitalism
Enough of Capitalism!

We received this translation from Judith Binney, which was based on a translation made in 1975 by Mervyn McLean and Margaret Orbell:

Alas for this troubled night!
Waking to the world I search about in vain.
The first authority is the Treaty of Waitangi,
The second authority is the Land Court,
The third authority is the Separate Mana,
Hence the Rohe Potae (Encircling Borders) of Tuhoe.
A peace was made with Ngati Awa.
It would indeed be an evil thing
To abandon the mana of the Maori!
When I submit to the law of the Council,
There are two things that I do:
Building roads, and building streets!
Yonder the fog hangs over Wellington,
The home of the Minister.
I fear that the [Land] Board will come
To occupy this land adjudicated by the Court,
And I am sick at heart.

3. Te Hue Rangi, brief of evidence, 6 September 2004 (doc G23), pp 9–10
Oh great people, stand forth,
Examine whether my works are wrong!
I say to you, ‘Stay’, ‘Stay’!
It comes from former ages, from your ancestors!
Because my heart has searched out the Law,
For this reason I abhor selling!
Hii! Why sell!?  

We received this translation from Robert Wiri and Ngati Whare:

Alas for this troubled night!
Waking to the world I sob regretfully.
The first authority is the Treaty of Waitangi,
The second authority is the Land Court,
The third authority is Self Governance;
Known as The Encircling Borders of Tuhoe,
Peace has been made with Ngati Awa
But misfortune is clearly foreseen
Maori authorities would be abandoned!
If I enter into the law of the Council,
There are two things that I would do
The building of roads and streets!
The mist hangs over Wellington,
Over the dwelling place of the minister,
I fear that the Board will come,
To occupy the land which has been divided;
The pain strikes at the heart of my emotions
Oh you great people stand up for your rights,
Look at the injustices perpetrated against you!
I say ‘Have no fear! Have no fear!’
For your mana comes from your ancestors!
My heart has searched for the law and justice,
And so I proclaim that selling is evil!
Ah! Why sell!?  

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5. Robert Wiri and Ngati Whare (doc A29), p 150
a magistrate or any other official inside Te Urewera. Issues were resolved by negotiation – for instance, the attempts to secure roads in 1872 to 1874 and again in the mid-1880s, the call for Tuhoe to send out Himiona Te Rua for trial, the trespass of cattle from leased lands, and the attempt to introduce prospectors in 1889.

On one question, however, there was neither negotiation nor compromise. The Native Land Acts gave Maori individuals or communities the right to apply for survey and court titles for lands, and the Crown did not vary this position for Te Whitu Tekau or any other tribal governance body in Te Urewera. Despite the leadership’s constantly stated opposition to surveys, leases involving the court, sales, and the court itself, the rim blocks passed through the court (and land was alienated) throughout the 1870s and 1880s.

In the late 1880s and early 1890s, however, the Crown stepped up its efforts to introduce roads, surveying, and prospecting into the interior of Te Urewera. At the same time, the Crown neither granted Te Urewera leaders a committee under the Native Committees Act 1883, nor sanctioned a komiti formed by Tuhoe in 1888. Offers to recognise a Tuhoe committee in 1889 amounted to nothing more than a committee that would receive and protect people granted passes by the Government, rather than share decision-making as to whom to admit, and so were not accepted by Te Urewera leaders.

By 1889, with Te Urewera closed to prospectors and no agreement that a tribal governance body should decide who could be admitted and on what basis, matters seemed to have reached a stalemate.

8.5.3.1 The Crown’s interaction with Te Whitu Tekau

The Crown and the claimants, as we noted above, did not agree on either the nature of the relationship between Te Whitu Tekau and the Crown or on the nature of Crown actions towards Te Whitu Tekau. In this section (section 8.5.3), we explore the Crown’s actions with a view to later measuring their consistency with the principles of the Treaty of Waitangi (in section 8.5.5).

From the outset, it is clear that the leaders of Te Whitu Tekau considered it important to communicate with the Crown. The letters they sent after the 1872 hui, reporting on their discussions and announcing their new body and their policies, were addressed to the Native Minister and to ‘the Government’. The Crown’s response in printing English translations of the various letters in the Appendix to the Journal of the House of Representatives is evidence of interest in Wellington in what Te Urewera leaders were doing. More important to the chiefs, however, would have been the printing of the letters in Te Waka Maori o Niu TIRENI, as Te Ahikaiata had requested. Te Waka Maori was published by the Government Printer; it contained letters and accounts of meetings, and tended to press Government views on land purchase and Native Department policy. The printing of the Te Urewera letters would, in our view, have conveyed to the chiefs Government acknowledgement of their policies, and would also have served as an announcement of those policies to other Maori groups.
We note that subsequently Samuel Locke (the resident magistrate at Wairoa) and two officers visited Te Urewera in 1873 on behalf of the Government. People were invited from different parts of Te Urewera to meet with them at Ruatahuna. One of those who accompanied Locke published an account of the visit in a Hawke’s Bay newspaper, and this was later reprinted in *Te Waka Maori*. It highlighted Tuhoe’s pledge of allegiance to the Queen and their dissociation from the Kingitanga; discussion of roads to join the various settlements of Te Urewera; and the establishment of a school at Maungapohatu. The Tuawhenua research team, although alert to the possibility of a Government slant in the account, commented that it nevertheless shows ‘Tuhoe were not automatically opposed to government services, but simply wanted to introduce them into Te Urewera under their own regulation and control.’

The Tuawhenua researchers accepted that the peace-making of 1871 had included a pledge of allegiance to the Crown. But Tamati Kruger made it clear that Tuhoe saw this as an acceptance of Crown authority on their terms. At our first Ruatahuna hearing, counsel for the Tuawhenua claimants asked Tamati Kruger if a pledge of allegiance was inconsistent with Tuhoe mana motuhake. He replied that it was not. Under the Treaty of Waitangi, he told us, there was room for the Crown in Tuhoe’s house, and the ‘rangatiratanga of the hapu and the whanau would be similar to the mana of the Crown of England.’ Both the Crown and Tuhoe had mana, not the Crown alone. Under the 1871 compact, Tuhoe had autonomy and the management of their own affairs. This, too, was how Te Pukeietou saw it in his speech to Premier Seddon at Ruatahuna in 1894. As we have seen, he pointed out that the great rangatira Paerau had sworn allegiance to the Queen, but all ‘Government matters . . . and everything that is vile’ were excluded from Te Rohe Potae.

Other officials to attend Te Whitu Tekau hui in these early years included Ferris (1873) and Brabant (1874). Invitations were also issued to Crown representatives – notably, the Governor, Sir James Ferguson – for the second major Te Whitu Tekau hui, scheduled for January 1874 at Ruatahuna. Kereru of Ruatahuna and Hetaraka Te Wakaunua of Maungapohatu both invited Ferguson, while Kereru and Tutanakangahau invited McLean in his capacity as Native Minister. They emphasised that all ‘Tuhoepotiki’ extended an invitation to the two men. This was a remarkable initiative, which might have been the basis for positive political discussions and a stronger political relationship. The hui of course was postponed till March, which may well have created difficulties for the Native Minister and the Governor.

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258. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part One’ (doc B4(a)), pp 277–278
259. Ibid, p 267
260. Tamati Kruger, under cross-examination by counsel for Tuawhenua, Mataatua Marae, Ruatahuna, 17 May 2004 (transcript 4.5, p 11)
261. Ibid
262. Ibid
263. ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, AJHR, 1895, G-1, pp 74, 76
neither of whom attended. It is likely that, like many who hosted large hui, the people found they needed more time to assemble quantities of food – potatoes and preserved pigeons – for the hundreds of manuhiri. But McLean had always been conscious of the importance of kanohi ki te kanohi (personal interaction), and it is difficult to believe his absence was not carefully considered.

It will be recalled that the Minister had failed to secure the enactment of Native Councils Bills in 1872 and 1873, as we discussed above. Given the failure of his first Bill in 1872 (of which Te Urewera leaders may well have had expectations), and the abandonment in 1873 of his proposal to introduce a revised version for certain regions (one of which was Te Urewera), McLean may not have wished to arrive empty-handed. Equally, he was probably well informed about the policy directions of Te Whitu Tekau: that is, that he would face not only pressure for the return of confiscated lands, but also Tuhoe anger at the lease of lands in the four blocks to the south-east of Lake Waikaremoana. He may not have thought it possible to have a useful meeting, especially without anything concrete to offer the chiefs. In any case, the attendance instead of local officials – Brabant, resident magistrate at Opotiki; Locke from Wairoa; and Charles Ferris from the Armed Constabulary – marked a substantial down-grading in Government representation. Whether or not this was intended, the potential for a positive outcome was greatly reduced in such circumstances.

In fact, the Crown representatives put little effort into establishing a positive relationship. Brabant, as we have noted, had made discouraging comments about Te Whitu Tekau at the outset, telling Tamaikoha in mid-1872 that he ‘considered the plan of appointing seventy chiefs a bad one, as they might have seventy different opinions’. At the 1874 hui, the tone of Brabant’s reported speeches was not conciliatory. In response to the korero on the confiscated lands, he said that there was no use discussing ‘whether the Government were right’, since the confiscation had happened long ago. And, in any case, they were lucky not to have had more taken; it was only through the ‘clemency’ of the Government that Ruatahuna itself had not been confiscated too. The people might go to the courts, and to England, as was their right, but it would be very costly, and he thought an appeal would fail. If any of them wanted sections within the confiscated lands, the Government would consider that, since (as he put it) ‘Government are not stingy with their lands as you are’. The Government, he added, would ‘give’ land to anyone, European or native, who wanted it for ‘actual settlement’.

After Brabant had left the hui, Samuel Locke arrived with Charles Ferris and Hamana Tiakiwai of lower Wairoa. Locke reinforced Brabant’s approach, telling the council it would be impossible to hold intact the boundaries of the Uriwera or Tuhoe tribe, or the lands of the descendants of those who arrived in the Matatua

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265. Ibid, pp 290–291
266. Brabant to Native Minister, 4 July 1872, AJHR, 1872, F-3A, p 28
267. H W Brabant, ‘Notes of Speeches Made at the Native Meeting at Ruatahuna, March 23rd and 24th, 1874’, 2 April 1874, AJHR, 1874, G-1A, p 5
canoe.” On the borders, Ngati Whare and Ngati Manawa were already leasing land. The people should take their lands to the Native Land Court so that titles could be determined. And Locke, like Brabant, underlined the Crown's view of Te Whitu Tekau, but added the point that it had no status in law. The chiefs, he said, had expressed their desire to arrange their internal affairs and to resolve any questions with Europeans ‘in a peaceful manner, and in accordance with the law.’

Locke challenged them on this point: ‘If it be your sincere desire to arrange all questions that may arise in a peaceful manner, and in accordance with the law, there is no necessity for the Hokowhitu, or Council of Seventy, or the Maori Committee, as neither is recognised by the law.’ (Emphasis added.) The Government, Locke told the hui, would have regard to the wishes of the ‘owners of the soil’, be they individuals or ‘sections of your tribes’, and not to those of a council which had no legal status.

Messages like those offered by Brabant and Locke would, it seems, have simply reinforced emerging Te Urewera mistrust of the Government’s post-war intentions in respect of their land. Such mistrust was evident at the 1874 hui. Paerau presented ten large taha (calabashes), some carved, containing about 1800 preserved birds, to the Government – to McLean, Captain Porter, and Brabant. Hira Tauaki asked that the Government accept them as payment for food and clothing they had received after their surrender, for rations their leaders had received when visiting the towns, and for money accepted by Kereru Te Pukenui. Their fear was that the Government would at some point claim land in payment. Nor did they want any more rations to be given, so that the Government would have no hold over their land.

Brabant accepted the taha as a ‘mark of the friendship of the Urewera towards the Government’, rather than as payment for rations, and stated that the people were entitled to some share of the public revenue, even though they would not accept public officers appointed within their boundaries. Brabant left the taha at Ruatahuna for the time being, he said; but, when Locke left, he was told young men would carry the taha to Waikaremoana, en route to Napier. Despite Government reassurances that land would not be taken for such payments, the leaders were anxious that the matter be settled on their own terms.

We reiterate, however, the significance of the invitations sent to the Governor, the Native Minister, and officials at this time. Brabant reported that the speeches at the hui were ‘moderate’ in tone, and that ‘the tribe appear to be earnest in their desire to maintain friendly relations with the Government.’

269. Ibid, pp 43–44
270. Ibid, pp 44–45
271. Ibid, pp 43–46
274. H W Brabant, ‘Report by H W Brabant, Esq, RM, Opotiki’, 1 April 1874, AJHR, 1874, G-1A, p 3
same wish expressed that the people should ‘remain on friendly terms with the Government’.

The question, then, is whether the Crown was prepared to accept the terms on which Te Urewera leaders sought a ‘friendly’ relationship, and to respect those terms. The Crown suggested in our hearings that Governments were ‘inclined to proceed cautiously and at a pace that suited the wishes of Te Urewera leadership.’

We think this rather understates the position. In the 1870s and 1880s, the Crown, in our view, seems in practice to have recognised the authority of Te Urewera leadership (though its agents dismissed the importance of Te Whitu Tekau to their face), perhaps because it saw no alternative; yet it did not hesitate to try to undermine policies it considered would interfere with settlement.

Thus, Government policy in relation to roads and land acquisition, it can be argued, tended in precisely the direction many tribal leaders feared. Wilson, one of the local land purchase agents, as we have seen, reported to McLean in June 1874 on the number of transactions he was undertaking, ‘each as yet imperfect in itself; but all tending in one direction; viz the setting aside of the ring-boundary – the rohe-potae – which the Uriwera seventy have set up to enclose in many instances the lands of other tribes.’

Wilson added that this was not to imply Te Whitu Tekau meant to claim ownership of lands that were not theirs. Nevertheless, he went on to imply strongly that the ‘Seventy’ were out of line in their claims, and were attempting to block the real owners from leasing their lands. As he put it,

On the contrary they say some of this land is not ours, but we are more or less connected with its owners, and as the boundaries between us are not always clearly defined and there may be some dispute in some cases about them, therefore we draw this rohe-potae to prevent leases and sales, and within it we assume entire control of all lands.

In this way, the Seventy try to ‘hinder the owners of about 920,000 acres on the Whakatane and Rangitaiki side from doing as they like with their own – and these owners are principally friendly natives who are most anxious to lease their lands for the sake of an income.’

In the face of what he described as ‘an organised opposition to civilisation,’ Wilson reported that he thought it best not to attempt overt Government land purchase, which might simply ‘provoke greater opposition, make the Government unpopular, and retard the object sought.’ Instead, he was working in a ‘less ostentatious’ manner. He went on to detail his various approaches, including acquiring sufficient interest in the Tawaroa and Kuhawaea run occupied by Troutbeck

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275. Locke to Native Minister, 30 May 1874, AJHR, 1874, G-2, p 20
277. Wilson to McLean, 1 June 1874 (Binney, ‘Encircled Lands, Part 1’ (doc A12), p 298)
278. Ibid
279. Wilson to McLean, 1 June 1874 (Binney, supporting papers to ‘Encircled Lands’ (doc A12(a)), pp 43–44)
‘within the rohe potae’ to ‘render the freehold of the remaining portion comparatively valueless to any other purchaser’; and the purchase of some shares in Te Whaiti land from Ngati Manawa and Ngati Rangitihi.

We will consider Wilson’s tactics more fully in chapter 10. Here, we note that his report makes it clear that he recognised the force of Te Whitu Tekau policy and thus hesitated to confront it head on. At the same time, however, he was anxious to undermine it, by working in a concerted way to increase land transactions on the borders and immediately within the Rohe Potae. It was Wilson who sent out ‘circulars’ for a planned hui at Te Teko in April 1874, so that his negotiations ‘with all the Whakatane and Rangitaiki tribes’ could be further discussed; the hui had to be rescheduled (at Galatea) after he conferred with Locke, who had also been planning one with Davis and Mitchell. Ultimately, after a further delay, Wilson went ahead and ‘conducted proceedings’ on his own. It is not at all surprising that Te Whitu Tekau leaders chose not to attend a hui called by a land purchase official, and ensured simply that their position was represented by Te Makarini and a written communication. With so little ‘Urewera’ representation, the outcome, as Wilson observed with satisfaction, was that ‘the general voice of a meeting of loyal tribes settled against him [Te Makarini]’, and each of these tribes emerged, in his view, knowing ‘pretty well . . . what lands it may deal with’. ‘Urewera’ failure to attend, he suggested, was ‘a confession of weakness’.

In short, where the Government could attain its object through sufficient willing Maori participation, it did not hesitate. We do not discount the importance of such participation in land transactions; Maori agency cannot be set aside. That indeed was the dilemma Te Whitu Tekau leaders faced at the time. But what is clear also is that the land purchase commissioner saw it as the ultimate aim of policy to ‘set aside’ the protective boundary that the Urewera leadership had created. Certainly, by the time the leaders defined their boundary again in 1889, excluding from it land that had gone through the Native Land Court, the area involved had been significantly reduced.

Similarly, Crown anxiety to build roads in Te Urewera is hard to explain solely in terms of a wish to assist the people to access markets or improve communications. Crown officials, as we have seen, raised the question of roads even in the context of the peace agreement of late 1871, when Ormond, Government agent for the East Coast, asked Te Makarini to ‘talk with your people about a Road from Waikaremoana to Wairoa and from Waikaremoana to Ruatahuna’ so that, he said, ‘the mail may go’. At this time, Captain George Preece had some men from the Native Contingent of the Militia and Armed Constabulary working on part of a road from Galatea to Ahikereru. Preece also promoted the idea of building a road right through Te Urewera, from ‘Waikaremoana to Maungapowhatu and

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280. Wilson to McLean, 1 June 1874 (Binney, supporting papers to ‘Encircled Lands’ (doc A12(a)), pp 56–60)
282. Ormond to Makarini, 20 November 1871 (Binney, supporting papers to ‘Encircled Lands, Part 1’ (doc A12(a)), p 99)
Galatea via Ruatahuna.\footnote{283} It is telling that he recorded in his diary in November 1871, before the peace agreement between the Crown and Urewera leaders had been finalised, that Mr Crapp of the Public Works Department had informed him that this proposed road ‘is to be done at once. This will be a good stroke in weakening the Urewera and will strengthen ourselves in case of war at any time.’ Subsequently, he noted that ‘Maling and party’ had travelled to Ahikereru and then on to Waikaremoana, inspecting the line of the road and estimating its cost.\footnote{284}

Preece continued to strive for roads through Te Urewera early in 1872, but his efforts bore no more practical fruit than later discussions once Te Whitu Tekau had been formed. In February, he was involved in a conversation with Paerau and Te Makarini about road building, and remarked hopefully: ‘I think that the Urewera will fall in with the idea when they get a taste of the money.’\footnote{285} He subsequently recorded that Hamiora said ‘they would be willing’ to countenance a road through Te Urewera if Paerau was consulted first. Preece’s efforts to persuade people at Ruatahuna about the virtues of a road right through the area were, however, unsuccessful at this time.\footnote{286}

In the previous section, we discussed Government pressure on Urewera communities to agree to roads after the policy-setting hui of 1872. It became clear that the Crown was not willing to force the issue. While there was vigorous debate among and between hapu, the consensus remained firm against roads in the 1870s and 1880s. The Government respected Te Whitu Tekau’s authority on this point, although it tested it from time to time. It was not until the 1890s that the Government effectively forced the issue at Te Whaiti inland to Ruatahuna (see chapter 9).

Despite the underlying aims of Crown policy, the Rohe Potae survived – diminished, certainly, but with its core intact. Some historians have seen this as the outcome of not only Te Whitu Tekau policy but also ‘a measure of Government and settler disinterest.’ There was, as Miles put it, ‘little pressure on the Government to open up the area,’ since the terrain was regarded as unsuitable for agriculture. In any case, the Government was preoccupied with ‘opening up’ the King Country.\footnote{287} (We consider this further in chapter 9.) In other words, remoteness and the less-than-favourable reputation of the land brought some protection, at least until the end of the 1880s, when Government and private interest was kindled by the gold believed to be in the region.

Colonial criminal law was another key area of interaction between the Crown and Te Urewera. Richard Boast has suggested that the reports of successive resident magistrates (based in Opotiki) show ‘law enforcement was entirely dependent

\footnote{283}{George Augustus Preece, diary entry for 7 November 1871, 1 March 1870–5 June 1872, qMS-1685, pp 177–178, ATL.}
\footnote{284}{Ibid, entries for 12 November 1871, p 188; 15 November 1871, p 188; 16 December 1871, p 189; 20 December 1871, p 190.}
\footnote{285}{Ibid, entry for 23 February 1872, p 209.}
\footnote{286}{Ibid, entries for 29 March 1872, pp 218–219 (Hamiora quotation on page 218); 22 April 1872, p 227; 23 April 1872, p 227.}
\footnote{287}{Miles, Te Urewera (doc A11), pp 237–238.
on co-operation with the Urewera chiefs.\textsuperscript{288} Brabant thus asked the chiefs to assist in handing over ‘wanted criminals’ to stand trial. The best-known case involved the handing over for trial by Te Whitu Tekau of Himiona Te Rua, who in 1876 was charged with the murder of his uncle Te Marae for practising makutu; Te Rua was delivered to the authorities at Opotiki. Te Rua, who was of Ngati Awa, had been living at Te Whaiti with his Ngati Whare wife. Many of the chiefs were present at a lower court hearing at which Te Rua was committed for high court trial.\textsuperscript{289}

Boast has suggested that chiefs and officials interpreted this state of affairs differently. Brabant, reporting to the Government, presented the episode as exemplifying a ‘gratifying’ development: the Urewera tribe ‘now appear . . . to be surrendering themselves voluntarily to the rule of law and of the Government.’\textsuperscript{290} The chiefs, however, aware of Ngati Awa pressure on Brabant, took a decision which indicated their cooperation with the Crown while keeping colonial law outside their takiwa.

Chiefs and Crown officials may also have interpreted the payment of pensions differently. The Crown began to pay annual pensions in the wake of the 1871 agreement (see chapter 5). Up to the end of the nineteenth century, and beyond, pensions were paid to Rakuraku, Tutakangahau, Hetaraka Te Wakaunua (Te Wakaunua Houpepe), Te Whenuanui (and his son Te Whenuanui II, also known as Te Whenuanui Umuariki and Te Haka), and Te Makarini (Tamarau Waiari). Binney considered that both parties regarded these pensions as an affirmation of an ‘alliance’ or ‘association.’\textsuperscript{291} Whether the Crown viewed the payment of pensions in this light, we think it is clear the chiefs saw no inconsistency between their acceptance of pensions or Government work and their determination to control access to Te Urewera, including Crown access, on their own terms.

In response to Te Whitu Tekau’s position, the Crown did not force the issue by, for example, trying to install a native officer or a resident magistrate in the region. In fact, there was evident acknowledgement of the Te Urewera position that Government officers were not to have a role within the Rohe Potae; this was stated publicly. In his speech about Government gifts and rations, Brabant told Te Whitu Tekau in 1874:

\begin{quote}
That the Government had considered that although the Urewera and some other Native tribes declined to have public officers appointed within their boundaries, or to have roads and other public improvements gone on with, that they were nevertheless entitled to some share of the [tax] revenue until they were sufficiently advanced in civilization to appreciate our system of government and public works, as they would doubtless do in course of time.\textsuperscript{292}
\end{quote}

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\textsuperscript{288} Boast, ‘Ngati Whare and Te Whaiti-Nui-a-Toi’ (doc A27), p 83
\textsuperscript{289} Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 337–338
\textsuperscript{290} Boast, ‘Ngati Whare and Te Whaiti-Nui-a-Toi’ (doc A27), p 84
\textsuperscript{291} Binney, ‘Encircled Lands, Part 2’ (doc A15), p 20
\textsuperscript{292} H W Brabant, ‘Notes of Speeches Made at the Native Meeting at Ruatahuna, March 23rd and 24th, 1874; 2 April 1874, AJHR, 1874, G-1A, pp 2–3
We note also that Preece, resident magistrate in 1877, decided he had no authority to intervene to retrieve a few head of cattle seized by Te Makarini when they wandered from an unfenced farm on the confiscation boundary onto Tuhoe lands. (Most had been returned.\textsuperscript{293}) All of this, in our view, indicates acceptance by the Crown that its position in Te Urewera had to be negotiated – or, at least, that this was a prudent or pragmatic approach to take. This remained Government policy after the end of McLean’s tenure as Minister in 1877. Although officials such as Blythe and Smith were sent occasionally to test the Urewera leadership’s position, as we discussed above, there was no serious push to ‘open’ the interior of Te Rohe Potae until gold and timber came to the fore at the end of the 1880s. From 1889 onwards, the Crown increased its pressure on Te Urewera leaders to accept gold prospectors, surveyors, timber leases, roads, and the Native Land Court, triggering a crisis in 1891 to 1894 (see below).

\textbf{8.5.3.2 The Crown’s opportunities to give legal recognition and powers to Te Whitu Tekau: the 1870s}

The Crown defended its failure to formally recognise Te Whitu Tekau, or to endorse it as a body for the enhancement and protection of mana motuhake by arguing that ‘it was not a task of government under the legislation of the day to enhance Te Whitu Tekau as a vehicle of rangatiratanga.’\textsuperscript{294} Crown counsel denied that McLean had promised to recognise Te Urewera self-government in 1871. There was no ‘formalised arrangement for regional autonomy’, and ‘it has not been established from the evidence that the government endorsed the idea of “self-government” in the Urewera.’\textsuperscript{295} There is no evidence, counsel stated, that McLean accepted that the operation of Te Whitu Tekau ‘supplanted the rule of law within Te Urewera.’\textsuperscript{296} Instead, the Crown emphasised Premier Seddon’s conception of McLean’s promise ‘to prevent the alienation of Urewera lands (unless they changed their minds) and to allow Urewera Maori to administer their own lands subject to the laws of the colony.’\textsuperscript{297} Further, the Crown noted that McLean’s Native Councils Bill had failed to gain sufficient support to be enacted. In all these submissions, the Crown stressed its need to act according to the law as it was at the time. Thus, it also had to protect the legal rights of those who applied for surveys and court hearings.\textsuperscript{298}

On the other hand, the Crown submitted that it engaged in dialogue with Urewera leaders about ‘governance structures’ in the 1870s and 1880s; that it considered formally recognising a Urewera committee in the 1880s; and that the essence of what Te Whitu Tekau wanted was in fact achieved with the Urewera District Native Reserve Act 1896.\textsuperscript{299} Counsel submitted:

\textsuperscript{293} Binney, ‘Encircled Lands, Part 1’ (doc A12), pp 340–344
\textsuperscript{294} Crown counsel, closing submissions (doc N20), topic 7, p 12
\textsuperscript{295} Ibid, p 9
\textsuperscript{296} Ibid, p 10
\textsuperscript{297} Ibid
\textsuperscript{298} Ibid, pp 8, 12
\textsuperscript{299} Ibid, pp 13–18
The idea of a forum for collective decision making on the larger issues of tribal affairs, whilst preserving the independence of the constituent hapu, appears to have been preserved in substance if not form in the models for local governance structures developed under the UDNR legislation.\textsuperscript{300}

As we noted in section 7.4, this raises the question of why Te Whitu Tekau could not have had formal recognition and legal powers much earlier.

As discussed in chapter 3, the Government had made an attempt to give legal powers of self-government to Maori runanga in the 1860s. These were called the 'new institutions', and the runanga were to operate in partnership with magistrates and a civil commissioner. Rachel Paul, in a report for Te Ika Whenua, quoted the views of Premier Fox in 1862. He told Parliament that it was necessary to:

\begin{quote}
treat the Natives as men, as men of like feelings with ourselves; to avail ourselves of the great movement of the [Maori] National mind as one which has law and order for its objects; and to encourage the Runanga under legal sanctions. But beyond all this we must offer them political institutions for their own self-government.\textsuperscript{301}
\end{quote}

Charles Hunter Brown brought this offer to Te Urewera in 1862. It was received with some caution but, as we found in chapter 3, the Government took no follow-up action and the matter lapsed. The new institutions, which had been set up as a result of this policy, were – as Binney said – undermined by the Native Lands Act 1862 and then abolished in 1865.\textsuperscript{302}

Although the new institutions had been abolished, many Maori groups pressed the Government to accord recognition and legal powers to their runanga. McLean told Parliament that he had been inundated with such requests in 1871. A number of historians drew our attention to McLean's Native Councils Bills of 1872 and 1873. The first Bill proposed to give significant powers of self-government to native councils, including collective land management and powers of deciding land entitlements (with a secondary role for the Native Land Court).\textsuperscript{303} Judith Binney, Cathy Marr, Anita Miles, Peter McBurney, and Bryan Gilling all noted the significance of the proposal for various tribal groups, including Ngati Manawa, Whakatohea, and Te Arawa, as well as Tuhoe.\textsuperscript{304} By contrast, the Crown's historian

\begin{itemize}
\item \textsuperscript{300} Crown counsel, closing submissions (doc N20), topic 7, p18
\item \textsuperscript{301} William Fox, 22 July 1862, NZPD, 1861–63, p 422 (Rachel Paul, 'Native Land Legislation from 1862 to 1880' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1994) (doc A94), p 3)
\item \textsuperscript{302} Binney, ‘Encircled Lands’, vol 1 (doc A12), p 71
\item \textsuperscript{303} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 1, pp 309–312
\end{itemize}
was dismissive, particularly of any idea that the Bills illuminate McLean’s intentions towards Te Whitu Tekau. Dr Battersby argued that ‘the bill was general, had no direct connection with events in the Urewera and was withdrawn shortly after being presented to Parliament.’

Counsel for Wai 36 Tuhoe claimants, however, stressed the importance of the native councils initiative. Drawing on the evidence of Marr and Binney, he argued that McLean was sympathetic to ‘separate laws and districts for Maori.’

The Minister contemplated using North American models of indigenous self-government, establishing districts in which Maori customs would prevail, colonisation would be restricted, and a council of chiefs would have ‘powers of local self-government.’ (Marr added that the Minister was also influenced by British models; local communities there had their own laws and institutions, some of which differed markedly.) At the same time, McLean’s native councils initiative was a response to Maori demands; it was introduced because of Maori calls for the Government to recognise their runanga ‘to regulate local affairs.’ This is the context for McLean’s policy towards Te Whitu Tekau.

As the Crown rightly observed, the Bills were not enacted. Crown counsel put to Cathy Marr that this meant the Bills, ‘while useful context to explain Donald McLean’s thinking . . . cannot be said to be reflective of the Government’s position.’ Ms Marr responded that it was McLean who had made the 1871 agreement with Te Urewera leaders. He was the Minister responsible for the negotiations, and the Bills show that he did not find their desire to manage their own district either unacceptable or inimical to Government interests.

In 1873, McLean told Parliament of his intention to bring in a new Native Councils Bill the following year to provide for Te Urewera (among other districts). In 1874, the very year in which Locke told Te Whitu Tekau that it had no status under colonial law, the Minister failed to carry out this intention – no new Native Councils Bills were introduced from then on.

In respect of the failure of McLean’s Bills, Ms Marr explained:

McLean was only willing to go as far as settler opinion would tolerate. He introduced his Native Councils Bill 1872 in response to Maori requests for more official recognition of local runanga to regulate local affairs and control petty crime. Importantly, the runanga were also to have responsibility in determining land boundaries and managing land in response to criticisms of the dislocation caused by the

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306. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 47
307. Ibid, p 49
308. Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), pp 7–8
309. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 49–50
310. Cathy Marr, answers to questions of clarification, no date (doc D11), p 1
311. Ibid
312. D McLean, 30 September 1873, NZPD, vol 15, p 1514
Native Land Court and land purchase officers. As [Professor Alan] Ward notes, the Bill ‘promised to give Maori leaders a much-needed recognition and responsibility’. However, Parliament rejected the Bill largely on the grounds that it gave Maori too much authority over important matters affecting settlers and it undermined the authority of the Land Court. McLean made further efforts to make the Bill more acceptable to settler politicians but when these were also rejected he bowed to settler pressure and withdrew it, abandoning his attempt to provide legal recognition of runanga authority.\(^{313}\)

Thus, when the Crown defended itself on the basis that the legislation of the day did not require it to ‘enhance Te Whitu Tekau as a vehicle of rangatiratanga’, it quite deliberately ignored the point that it failed to enact laws that would have required it to do so. In particular, the Native Councils Bills of 1872 and 1873 were a key point at which the Crown chose to prioritise settler interests and to refuse legal powers to runanga such as Te Whitu Tekau. As a result, the runanga had no official role or powers vis-à-vis bodies which did have legal powers, such as the Native Land Court. Nor did it have standing to negate the acts of dissentients who opted to exercise the rights available to them under the law as it stood, such as applying for a survey and Native Land Court title.

There is no doubt, of course, that Te Whitu Tekau could expect neither unanimity on all issues nor perfect obedience from all the leaders and groups in the union. In the claimants’ submission:

> The existence of differing opinions and the potential for dispute only underlined the real need for a governance body for the tribe. It was no different to a Parliament, where it is expected that different opinions might be expressed but where it is understood that a common view will prevail.\(^{314}\)

As Locke pointed out at Ruatahuna in 1874, colonial law did not recognise Te Whitu Tekau: it could not enforce its decisions by any means other than customary ones. While those had sufficed in Te Urewera before 1871, they were no longer enough in instances where the colonial State gave legal rights and powers to others – rights that could be enforced. If roads had been treated in the same way as Maori land – if, for example, a single individual had had the right to apply for a road, after which the Government would enforce that right and build the road no matter what the objections – then Te Whitu Tekau may not have been able to stop roads either.

We do not underestimate the difficulty of the situation facing the peoples of Te Urewera in the 1870s and 1880s. As we saw above, the 1874 hui at Ruatahuna was unable to reach a consensus among iwi claiming rights in the outer lands. But it is also necessary to consider the role of the Government when attempts were made to resolve these matters by discussion at tribal hui. Counsel for Wai

\(^{313}\) Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p 8

\(^{314}\) Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 47
36 Tuhoe claimants argued that the Government actually exploited such differences and conflicts. It was not impartial: it sought the bringing of land to the Native Land Court and transference of a substantial part of it to settlers. Thus, Brabant and Locke did not seek to mediate or assist a resolution of tribal differences at the Ruatahuna hui; rather, they discouraged a Mataatua union and advocated taking land to the court. There were no legal powers for Maori tribal bodies to resolve their own boundaries and entitlements, as would have been the case had the Native Councils Bill been enacted. The only body with powers recognised by the State was the Native Land Court.

This is not to say that legally empowered native councils would have been a full expression of – or vehicle for – mana motuhake. Their success would have depended on Tuhoe’s acknowledgement of the Crown’s right to legislate, and on the tribe’s acceptance of a State-sanctioned body with powers recognised by (but also limited by) the State. We do note the apparent enthusiasm of Te Urewera chiefs for the council proposal. In the letter cited on this point by Professor Binney, Tutakangahau wrote to McLean and Ormond: ‘Friends, salutations to you both. May you both prosper because of the mercy you have extended towards this people and this land. The papers with the Parliament’s talk has reached here and have filled me with wonder and admiration.’ The success of the council initiative, had it been enacted, would also have depended on settler Governments remaining willing to share power, and to do so for longer than the four-year life span allowed the new institutions in the 1860s.

We add that the native councils legislation would not have accorded powers to Te Whitu Tekau as it existed in 1872. Some changes of form would have been required, such as an election process and more formal procedures for passing resolutions and enacting by-laws. We cannot say with certainty that Te Whitu Tekau leaders would have been willing to adapt their runanga in these ways. In our view, however, they would have welcomed the benefits of recognition under the law. They were certainly willing to make such changes in the 1880s, in return for formal Government recognition and legal powers. It is to that development – efforts to obtain Government endorsement of their committee in the 1880s – that we now turn.

8.5.3.3 The Crown’s opportunities to give legal recognition and powers to Te Urewera komiti: the 1880s

In the early 1880s, Maori members of Parliament began introducing annual Bills to recognise and empower district komiti (committees) as a vehicle for Maori self-government and collective land management. Finally, in 1883, the Government gave way to Maori pressure and passed its own Native Committees Act. This Act was condemned by the Rees-Carroll commission of 1891 as a ‘hollow shell’ and

315. Ibid
317. Tutakangahau to Ormond and McLean, 1 December 1872 (Binney, supporting papers to ‘Encircled Lands, Part I’ (doc A12(b)), p 350)
a mockery – a condemnation echoed recently by the Tribunal in its report *He Maunga Rongo*, as we shall see below.318 Its disadvantages, however, were not immediately apparent to those Maori who sought legal powers for their committees.

Te Urewera leaders, like leaders elsewhere in the North Island, took a considerable interest in the 1880s in Crown provision for various kinds of committees. In 1886, Native Minister John Ballance visited Whakatane and talked about committees under the Native Committees Act 1883. From the evidence of Cecilia Edwards, there does not appear to have been a Government or newspaper record of the proceedings of this hui, so we cannot be sure of the detail of what was discussed.319 Under the Native Committees Act, district committees had powers to decide civil disputes and could also inquire into Maori land titles. Both powers were limited:

- civil disputes had to be for matters worth £20 or less, and could proceed only where the Maori parties bound themselves in writing to abide by the committee’s decision; and
- the committee’s title investigations consisted of reporting to the Chief Judge for the information of the Native Land Court on cases about to be or actually before the court, and on boundary disputes relating to adjoining areas of Maori land.320

While Maori parties had to bind themselves to accept the committee’s decision, no such requirement was placed on the Native Land Court – it was free to take account of the committee’s report or not as it chose.

In itself, Ballance’s visit marked a notable renewal of Crown interaction with the peoples of the Bay of Plenty. Resident Magistrate Bush pointed out that no Native Minister had visited the region since McLean many years before. Maori, he said,

> have looked upon themselves as being neglected – in fact, slighted . . . [they] argue that the Native Minister is expressly appointed on their account; he ought therefore to make himself personally known to them all, and he can only do this by visiting them at their settlements, and there discussing matters of interest to them and the Government, and affecting their welfare.321

Despite Bush’s cynical take on the worth of ministerial visits – that the Maori needed regular opportunities for ‘giving vent to his pent-up feelings, which in most instances are grievances of some kind or another, over which he has been brooding more or less for some time’ – Ballance’s arrival was much appreciated.322

‘The Urewera’, Bush reported in May 1886, had ‘expressed a wish to have their district made a separate committee district’ – as had Ngati Awa, Ngati Pukeko, Te Tawera, and others who wanted a new district extending to the west of Ohiwa.323

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318. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 318, 340
320. Native Committees Act 1883, ss 11, 14
321. Bush to Under-Secretary, Native Department, 3 May 1886, AJHR, 1886, G-1, p 13
322. Ibid
323. Ibid, pp 13–14
Twelve districts had been proclaimed, and two, Opotiki and Rotorua, impinged on Te Urewera. Bush also recorded that, during his visit, Ballance promised the Urewera leaders a separate district. There was initially some doubt about this reported promise; and the Crown, in our hearings, reiterated that doubt. TW Lewis, the Under-Secretary for Native Affairs, searched the file for a record of it and, according to Crown historian Edwards, could find no record of it. But Bush referred to the promise again in a memorandum to Lewis in 1889; and it seems quite clear that it was made. In this 1889 memorandum, Bush reported Ballance’s 1886 response to Ngati Awa when they raised the question of a separate district: ‘he had promised a committee to Tuhoe, but that it would be necessary for the tribes to confer together, and adjust their tribal boundaries’ – and that a surveyor would have to be involved to lay down the boundaries.

Te Urewera leaders were thus not alone in seeking their own committee. It was a generally held view that such committees could work only if they represented cohesive tribal bodies. This was at odds with the Government position, which was to create districts based on population size, whatever unworkable tribal combinations and whatever difficulties around drawing district boundaries this formula produced. As Ballance told the people at the Opotiki hui in April 1886, there ‘should be at least 1000 people in each district’.

In February 1887, Wepiha Apanui reported that Ngati Awa had elected a committee, and petitioned for recognition of a separate Ngati Awa district under the 1883 Act. A number of chiefs signed, including representatives of Ngati Pukeko, Te Tawera, and Ngati Rangitihia, as well as Te Maranui Hona (who reportedly later repudiated his consent) for Tuhoe and Te Peti for Ngati Manawa. Bush noted that the boundaries given included ‘a portion, or perhaps I should say, the bulk’ of the Urewera country. A ‘regular’ election would need to be held to ‘provide for some Ureweras being elected, because there are disputed claims to land between them and Ngatiawa’.

Subsequently, Urewera leaders objected to the concept of a Ngati Awa–Urewera district, asking that the boundary be removed from their lands, and reminding Ballance that Tuhoe and Ngati Awa were ‘quite . . . distinct’. This time, it was

325. TW Lewis, file note, 12 August 1886 (Cecilia Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, p1227)
326. Bush memorandum, 4 April 1889 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, p1190)
327. ‘Extracts from Notes of Native Meetings’, 24 April 1886 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, pp1229–1230)
328. Wepiha Apanui to Native Minister, 21 February 1887 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 5); petiion (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, pp1210, 1212–1215)
329. Bush, minute, 23 February 1887, on Wepiha Apanui and others to Ballance, 21 February 1887 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, pp1211–1212); see also Bush, minute, 2 July 1887, on Te Maranui Hona and Te Whakaunua to Ballance (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, p1199)
8.5.3.3

Urewera leaders who rejected the idea of a Mataatua union. Ngati Awa and Ngati Pukeko told Bush:

The two tribes said, the reason they had included the Urewera in this application was because they were descended from the one ancestor, and belonged to the one Canoe, but as it appeared that the Urewera were aversive to joining with them, they would not press the matter, but leave them to go their own way...\(^{330}\)

Bush, who went to talk to Rakuraku, Tutakangahau, and Te Wakaunua, pointed out that their lands already formed part of existing districts under the Act, and the new proposal would ‘give them a voice in matters concerning themselves’. It was not surprising, therefore, that the chiefs said they would ‘prefer to work on their own in the meantime’; they would see how the new committee worked, but at present did not wish for a committee themselves under the Act.\(^{331}\) We do not think Urewera hapu were divided, as Cecilia Edwards suggested. Rather, they were keeping their options open while making their present position clear. In fact, Bush advised the Government against accepting the Ngati Awa proposal, as he was suspicious of those who might be members of their committee.\(^{332}\)

The Urewera chiefs later decided to take the initiative themselves. It appears that Kereru te Pukenui, writing from Ruatahuna, notified the Native Minister in November 1887 that Tuhoe had elected their own committee. Edwards commented that because the actual letter is not extant it is impossible to tell whether Kereru simply advised the Minister of the committee’s establishment or sought Government sanction for it. In her view, the reply, which is extant, implies the former. At any rate, Kereru was informed that, unless the committee was set up in accordance with the correct regulations, it had no legal authority.\(^{333}\)

The following year, Tuhoe made another approach to the Crown. Rakuraku, Tutakangahau, and ‘Te Komiti nui o Tuhoe potiki’ wrote from Waimana to inform the Native Minister of Tuhoe’s election of a committee

for the purpose of dealing with their local affairs within their own boundaries, as all strife, perverse dealings, and acts of violence have ceased, and all have mutually settled down under the law. (he whakatūtēna kia koe i te komiti o Tuhoe kuaara hāi whakahaere mo na raruraru i roto i ana rohe kua mutu hoki na ki nona patu tanata [tangata] na whakato i na tuki no i te tanata kua noho tenei ki te ture)\(^{334}\)

\(^{330}\) Bush to Lewis, memorandum, 27 May 1887 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc d7(a)(i)), vol 3, p1203)

\(^{331}\) Ibid, pp 1203–1205

\(^{332}\) Ibid, p 1205

\(^{333}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc d7(a)), pp 7–8

\(^{334}\) Rakuraku Rehua, Tutakangahau ara na te komiti nui o tuhoe potiki to Native Minister, 30 Hepetema 1888 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc d7(a)(i)), vol 3, pp 1193–1195)
The committee was to have sole power both to deal with all survey applications, ‘not by any one or two individuals or more’, and to grant permission for any gold prospecting. This collective approach would ‘prevent difficulty and trouble arising within the boundaries of their territories’. The chiefs wanted the Minister’s sanction for the komiti, and set out the ‘Rohe Potae’ boundaries again. Binney argued that the boundaries given here took in more land on the west because of competition with Ngati Awa.

We can take several points from this letter and the important proposal it contained. First, it was written in the context of new pressure from gold prospectors. There was a widespread, albeit mistaken, belief that large quantities of gold would be found in Te Urewera. As early as October 1869, Lieutenant-Colonel St John had told McLean that, although the country of the rebel Whakatohea and the Urewera was otherwise worthless, he firmly believed ‘these mountains contain within their bosom mines which some day will add to the wealth of New Zealand.’ In the late 1880s, both the Government and private interests were turning their eyes to Te Urewera.

Secondly, it remains uncertain what the relationship of this komiti was to that proposed by Kereru Te Pukenui not long before. Nor is its relationship to Te Whitu Tekau clear. The claimants suggested that the komiti nui ‘may have been Te Whitu Tekau in another guise, made more palatable for the Government’, and this seems probable. Its policies were no different from those of Te Whitu Tekau.

Thirdly, there was a long delay before the Government responded to Tuhoe leaders. Though their letter was dated 30 September, it was 26 November before it was even registered and 9 March 1889 before TW Lewis, the Under-Secretary for Native Affairs, referred it back to Bush for comment. At that time, Lewis was inclined to think it ‘advisable to constitute the district referred to [as] a Committee district under the Act & let a Committee be legally formed’. This raises a further question about whether constitution under the Act was what Tuhoe sought. The Crown suggested to us that this was uncertain, and we are inclined to agree.

Fourthly, we note that Bush’s negative report, dated 4 April 1889, guided the Crown’s response. He detailed the whole history of proposed committees in the region since Ballance’s visit. He then, in effect, strongly advised against the new Tuhoe committee on the same grounds as he had earlier advised against the Ngati
Awa proposal for a Bay of Plenty district, namely that the influence of ‘Te Kooti-ites’ on the committee might be too great. The ‘Urewera’, he told the Government, were all ‘Kooti-ites’. Bush was, in fact, well aware of the influence of the Ringatu faith; in 1886 he had spoken both of its abandonment in some parts of the Bay of Plenty and of the ‘grave suspicion’ in such settlements of ‘the increase of Te-Kootism’, presumably following the visit to the region of Te Kooti himself in 1884. He may have been aware of the significance of the building of the great wharenui at Ruatahuna, which we described above. But what Bush really objected to was ‘Te Kooti principles, which are to keep the country locked up’:

He [Te Kooti] does not approve of Lands being surveyed, or passed through the Court, as he is evidently of opinion, that these two things help the natives to part with their lands. If there would be any chance of the Urewera acting sensibly, and allowing gold prospecting and such like within their territory, then I certain think it would be a great advantage to constitute their country into a separate Committee district, but of this I am doubtful. The Urewera have always had a tribal Committee termed the ‘Seventy’. This Committee has always opposed, the making of roads, surveys, and prospecting. The question is would another Committee be more amenable to reason. I am doubtful.

It seems to us that whatever Bush knew or did not know of Te Kooti’s advice to the people, the main point is that the continued protection of the Rohe Potae by the leaders of Te Urewera was not acceptable to him. The only advantage he was prepared to allow for the establishment of a Tuhoe committee was if it helped in ‘opening up’ the country. But since it was unlikely the committee would be ‘sensible’, there was no point. In a way, of course, he was right; the native committees were designed to assist processes of title determination by the Native Land Court. But his frank comments underline the limits of Government thinking at this time. Offered the opportunity of affording legal sanction to a Tuhoe komiti – seemingly the first, as Edwards pointed out, if Kereru’s was not such a request – Bush’s response was to turn aside on the grounds that the komiti would not act in accordance with the Government’s wishes. He passed over the important fact that the komiti had not stated that surveyors or prospectors would be prevented from entering Te Urewera. What the komiti had said was that it would take responsibility for decisions, so that such important matters were not left to individuals acting on their own; this kind of initiative could lead to real trouble when the Rohe Potae had been protected for so long.

Bush’s advice, its impact doubtless enhanced by the reference to Te Kooti’s influence, was critical. The Native Minister was advised to let the application ‘stand

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342. Bush to Under-Secretary, Native Department, 3 May 1886, AJHR, 1886, G-1, p13
343. Bush to Native Department, 4 April 1889 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, pp 1190–1191)
344. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), pp 7–8
over’; accordingly, the correspondence was simply filed.\textsuperscript{345} After months of delay, the approach of Tuhoe leaders to the Crown was ignored.

The Government’s wishes were spelt out to Te Urewera leaders soon afterwards. On the instructions of the new Native Minister, Edwin Mitchelson, Samuel Locke was sent to meet with Tuhoe leaders at Ruatoki in April 1889. His mission was ‘endeavouring to make such arrangements as would lead to the opening-up of that part of this Island for prospecting for gold and other minerals, and for utilising the forest, &c, which are said to contain a large quantity of totara’.\textsuperscript{346} Locke tried to persuade the leaders to form a committee to receive communications from the Government about people whom the Government authorised to explore, and to ‘make arrangements for any required object’.\textsuperscript{347} The Urewera chiefs, however, were not prepared to accept such a passive role. They wrote to the Native Minister on 17 April to say they would set up a committee ‘to prevent and to consent to (consider ?) the desires of some Pakeha-Maoris who had applied to the Governor for permission to come to do certain works on the Tuhoe land’. Their letter also included a list of their boundaries.\textsuperscript{348}

The Minister’s response to the chiefs, in the wake of Locke’s visit, emphasised that the role of a committee would be to ‘consider any government-issued passes for prospectors’ and to admit prospectors carrying a Government pass by noting their consent on the pass.\textsuperscript{349} Basically, as Cecilia Edwards put it, the Government envisaged a ‘consultative body’; its role was to be limited to receiving Government passes for prospectors and then ensuring those prospectors were admitted. The Minister, for his part, assured the chiefs that the Government would vet prospectors very carefully.\textsuperscript{350} This proposal is an important one. It shows that, despite talk about the law and not recognising committees that had not been established under the law, the Government was prepared to work with an informal committee where it suited. It also shows that Locke’s discussions with the chiefs, and their response to his proposal, had envisaged the committee actually exercising authority: it could say no to prospectors if it chose. This was not, however, the Government’s view, as was made clear to the chiefs by the Minister.

On 26 July, Kereru te Pukenui conveyed to the Minister his people’s objection to this proposal about the authorising of gold prospecting. This was hardly a surprising result, given Tuhoe’s earlier decision as to how prospectors should be dealt with. The same decision was conveyed to Wellington as before: Te Urewera leaders intended to retain authority over their land in their own hands. The boundaries

\begin{itemize}
\item \textsuperscript{345} Morpeth, file note, 16 April 1889, approved 17 April 1889 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, p 1189)
\item \textsuperscript{346} ‘Mr S Locke’s Trip to the Urewera Country (Report of)’, AJHR, 1889, G-6, p 1
\item \textsuperscript{347} Ibid
\item \textsuperscript{348} Kereru Te Pukenui and eight others to Native Minister, 17 April 1889, ‘Mr S Locke’s Trip to the Urewera Country (Report of)’, AJHR, 1889, G-6, p 2. The insertion of the word ‘consider ?’ in round brackets was made by the translator at the time.
\item \textsuperscript{349} Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 11
\item \textsuperscript{350} Ibid, pp 11, 18
\end{itemize}
given to the Native Minister on this occasion were different from boundaries stated previously, and we agree with Binney that they delineated only land that the peoples of Te Urewera still possessed and were actively defending. Land under Government control through confiscation and land that had been passed through

Maori Self-government in Te Urewera: A Settler Perspective

Professor Judith Binney drew our attention to the following 18 March 1891 editorial in the *New Zealand Herald*, which, she argued, showed that the settler public could be persuaded to accept Maori autonomy in Te Urewera in the late nineteenth century. The occasion for the editorial was Governor Onslow’s planned visit to Ruatoki, which had been a matter of some controversy:

But through the Urewera Country the Queen’s writ has never yet run, and New Zealand has gone on for twenty years without anybody caring much about the matter. There are several reasons for this. When the troops returned to England, and the Treasury chest was closed against us, there was a sudden fall to zero of our enthusiasm about the Queen’s writ . . . Another reason was – for we are compelled to be strictly truthful – that the Urewera country was not of the least use to us . . . Of late years they [the Urewera] have been perfectly quiet, contenting themselves with preventing all access to their country, and especially keeping an eye on all surveyors, gold prospectors, and those who wander about on the ‘ragged edges of civilisation’.

It is quite natural that His Excellency Lord Onslow should wish to go through this country. No Governor has been through it, and very few Europeans . . . But he will reflect that there is a time for everything, and that, after all, there is nothing whatever to be gained by shaking the aforesaid writ in the face of the Maoris, when all they want to do is to be allowed to live in peace on the lands of their fathers. There are about 2000 Urewera all told, and they are to assemble at Ruatoki, a place only a few miles within their own territory, to meet His Excellency. It has been stated that they do not intend to allow the Governor to go any further . . . There is nothing that we can see to be gained by any attempt to force this tribe to open their country . . . If they give a kindly reception to Lord Onslow – which we are sure they will do – that is about as much as can be expected. That will show that they have no desire to disturb the peace of the colony, and wish to be in friendly relationship with the representative of Her Majesty. As for the Queen’s writ, they carry out a better system of self-government than we could give them. There is no need for the policeman crossing the boundary line of the confiscated land.¹

the Native Land Court was excluded.\textsuperscript{351} As a result of Tuhoe’s rejection of such a limited committee – informal, and allowed only to say ‘yes’ – the Government’s offer was discontinued. Edwards concluded that ‘This appears to have spelt the end of the earlier agreement that Tuhoe elect a committee to authorise prospectors, in the manner described.’\textsuperscript{352}

The Crown’s failure to respond to Tuhoe on their own terms was in our view a major missed opportunity. But its failure also highlights the limits of Crown provision for Maori self-government in this period, when Maori had fought a long battle for recognition, protection, and empowering of their autonomy. The Central North Island Tribunal has drawn attention to the range of options then available to the Crown and its failure to deliver what Maori wanted – despite its various attempts.\textsuperscript{353} There were, for instance, considerable limits on the powers of committees under the Native Committees Act 1883; Native Minister Bryce (whose Bill it was) had rejected the idea that they should have decision-making powers with regard to land titles. The Central North Island Tribunal found that the committees ‘had no powers, either as title-determination bodies (or even advisers), or as organs of self-government’. It pointed to the determination of the 1891 Native Land Laws commission that ‘the Act was a “mockery” that provided no more than a “hollow shell”’\textsuperscript{354}. Further, the Tribunal highlighted the shortcomings of Ballance’s 1886 act to establish block committees: it had left out the almost-universal Maori request that land be managed at two levels – by district committees as well as the block committees actually included in the Act.\textsuperscript{355} In other words, Tuhoe might have been disappointed with the outcome, even if their komiti had been constituted under the 1883 Act. They had a clear idea of the kind of powers they wished to exercise.

On the other hand, Tuhoe had made a direct proposal to the Crown, and Crown officials might have engaged in a useful dialogue with the iwi on the basis of that proposal. This might have led to the constitution of their komiti under the 1883 Act (and Crown acquiescence in its exercising broader powers than the Act provided for), or simply to Tuhoe exercise of their authority through the komiti with Crown sanction. Such an arrangement might have eventuated in 1889, had the Government been interested in more than a committee that would simply receive and protect the prospectors it sent. Tuhoe had indicated that the important thing was the preservation of their own right to collective decision-making – that they had room to shape their own policies on survey and prospecting. They had not necessarily shut the door on either, but had offered a pathway forward. The lack of Crown engagement with the Tuhoe komiti, and substitution of its own proposals, was not helpful. In the final years of the period we look at here, the pressures on Tuhoe to change their policies in line with Government wishes intensified; and

\begin{itemize}
  \item 351. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 12–16
  \item 352. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 12
  \item 353. Waitangi Tribunal, \textit{He Maunga Rongo}, vol 1, pp 282–357
  \item 354. Ibid, p 340, see also pp 318–319
  \item 355. Ibid, pp 349–356
\end{itemize}
Tuhoe responded initially by turning their backs. In the next section, we turn to the stalemate that seemed to exist by 1890, with the Government determined to open up Te Urewera and the Tuhoe chiefs still committed to the original policies of Te Whitu Tekau.

8.5.4 Why were some Tuhoe leaders prepared to set aside Te Whitu Tekau policies at Ruatoki in the 1890s, and with what effect?

**Summary answer:** In 1890, the Minister of Mines was turned back from the borders of Te Urewera. At the same time, the Government was negotiating for an invitation to the Governor to visit Te Urewera. This was refused first in 1889 and again in 1890, but by early 1891 the chiefs were ready to agree to extend an invitation. In March 1891, Governor Onslow visited Ruatoki, where he was greeted with great warmth but also a restatement of Tuhoe requests for the return of confiscated land, and of Tuhoe opposition to roads, surveys, leases, and land sales. Even so, the Governor’s visit – and especially the Native Minister’s statement that Tuhoe could protect their lands from being claimed by other iwi if they had it surveyed and its title determined by the Native Land Court – prompted an application by some Ruatoki leaders to have their lands surveyed. External pressure was one of the reasons for this setting aside of Te Whitu Tekau policies. In particular, Government pressure to open Te Urewera worked in combination with pressure from Ngati Awa applications that had been filed for Ruatoki, and that were known to Tuhoe leaders. The Tuhoe application to survey Ruatoki also occurred because of the settlement of so many hapu there, the disputes between hapu (especially Ngati Rongo and Ngati Koura), and the desire of Numia Kereru and others to lease and develop land in the colonial economy. The result was that Tuhoe could not reach agreement, and some Ruatoki hapu insisted on the survey taking place.

As the Crown’s historian acknowledged, Government mediation was not impartial, but rather aimed at opening Te Urewera to surveys and settlement. When Tuhoe leaders all agreed to stop the survey in March 1892, Native Minister Cadman responded by sending James Carroll to negotiate a new agreement. Carroll found that there was still significant support for the survey, despite the March decision. With the assistance of Te Kooti, he secured a compromise agreement: the Government agreed to a limited survey of part of the block, and to allow no new surveys or court hearings in Te Urewera without the explicit consent of all its peoples; the opponents of the survey agreed to its completion for a small part of the block; and the proponents of the survey agreed to give up on surveying the full block. When the surveyor (Creagh) resumed work, however, he was immediately obstructed. Tuhoe leaders disputed whether Creagh was actually working inside the compromise block. We are unable to answer that question today.

Instead of inquiring into the matter when it was raised, Cadman postponed dealing with it until January 1893. At that time, he took charge of the situation, set aside the compromise agreement (which he probably viewed as defunct), and insisted on a full survey of the whole block. Tuhoe could not agree to his ultimatum, so he ordered the survey to resume and had the obstructors summoned to
Whakatane for trial in March 1893. Refusing all further appeals that he negotiate (including those from the Kotahitanga parliament), Cadman insisted on proceeding with the survey and using the courts to deal with each obstruction.

Tuhoe leaders voluntarily left Te Urewera to stand trial, and accepted their imprisonment without resistance. Further peaceful obstruction of the survey resulted in additional trials and the imposition of fines. This time, the obstructors hid in the interior. The Government then brought in armed police to prevent further obstruction, but conflict was prevented by the final intervention of Te Kooti, who advised Tuhoe to stop obstructing the survey. The Crown's historian recognised that the Crown had a duty to protect the rights of 'the majority', who opposed the survey. But colonial law did not recognise tribal governance institutions or their decision-making power; it was weighted in favour of the land court's processes. Thus those who opposed a survey, even if they were a majority with the support of their tribal governance body, could not prevent the court exercising jurisdiction over their land.

8.5.4.1 Origins of the Ruatoki Survey

As we discussed in the previous section, Samuel Locke failed to negotiate agreement in 1889 to the opening of Te Urewera on the Government's terms. A month prior to Locke's mission, a prospecting party was compelled to turn back at Galatea.356 Around the same time, Tamaikoha added to a rahui (carved post) that marked the northern confiscation line at Opouriao a notice 'warning that any gold prospector or indeed any European who crossed the line “will make relish for my food.”'357 Early in 1890, GF Richardson, the Minister for Lands and Mines, was told to turn back from his intended trip into Te Urewera before he crossed the northern confiscation line.358

The visit paid by the Governor, Lord Onslow, to Ruatoki in March 1891 was, therefore, a very significant occasion. Its origins appear to lie in the wish of the Native Minister to secure an invitation to Te Urewera for himself and the Governor, and a consequent approach to the chiefs from a Native Department official in June 1889. In fact, the Minister sought an invitation specifically to the 'meeting proposed to be held at Ruatahuna' connected with the opening of the wharenui there.359 The Governor reported later to the Queen that in seeking an invitation through intermediaries he had emphasised the 'difference between the Governor who represented your Majesty and the Government who represented the people of New Zealand.'360 He reiterated this distinction during his speech at Ruatoki in 1891.361

357. Ibid
358. Ibid
359. Edwards, "The Urewera District Native Reserve Act 1896, Part 1" (doc D7(a)), p 14
360. Onslow to Queen Victoria, 18 June 1891 (Tuawhenua Research Team, "Te Manawa o te Ika, Part One" (doc B4(a)), p 305)
361. Auckland Evening Star, 23 March 1891
In 1874, as we have seen, Te Whitu Tekau leaders had invited the Governor and Native Minister to their hui at Ruatahuna. Now, in the context of the late 1880s, the idea of allowing the Crown’s most senior representatives into Te Rohe Potae was the subject of a long and intense debate. At first, in 1889, Tutakangahau wrote to the Minister that there was not going to be a hui at Ruatahuna. Then, in July 1889, the Ngati Haka Patuheuheu leader Mehaka Tokopounamu issued what appears to have been an invitation to the Governor and Native Minister to visit Ruatahuna. This was repudiated by Ruatahuna leaders, and further debate and negotiation followed. In February 1890, Tokopounamu finally advised the Government that a decision had been made not to invite the Governor in 1890. The Government (through Bush) continued to negotiate the point during 1890.\footnote{362. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), pp 13–15. We note that the content of much of this correspondence is unknown. Historians have had to rely on very brief summaries recorded in the Maori Affairs register of letters.}

Ultimately, on 10 February 1891, an invitation was issued to Governor Onslow by Kereru Te Pukenui, his brother Numia, Tamaikoha, Hetaraka Te Wakaunua, Te Makarini, and Tutakangahau, speaking for ‘Tuhoe katoa’. After a considerable amount of diplomacy, and a long delay, the chiefs had finally invited the Governor – but only as far as Ruatoki ‘at the edges of their territory’\footnote{363. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 23}. Three weeks before the arrival of the Governor and his party, there was a hui of more than 800 of the people of Te Urewera at Ruatahuna, where Te Kooti was greeted and the great new meeting house, Te Whai-a-te-Motu, was opened at Mataatua. The people also agreed unanimously that no gold prospectors, surveyors, or other Europeans might enter their boundaries, with the sole exception of the Governor and those with him, who were to be allowed to travel as far as Ruatoki.\footnote{364. Ibid, p 24; Miles, Te Urewera (doc A11), pp 244–245} Food shortages at the time meant that the Ruatahuna hui was cut short and only some 200 people could attended the Ruatoki hui.\footnote{365. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 29}

The invitation to the Governor and his party, which included Native Minister Alfred Cadman, Under-Secretary for the Native Department TW Lewis, and Resident Magistrate Bush, was significant, both for the relationship between the Crown and the leaders of Te Urewera, and for its immediate consequences in 1891. Tuhoe, it seems, were willing to hold discussions with the New Zealand Government at the highest level. This meant the Native Minister, not the Governor. The point had been made that the Governor represented Queen Victoria, and the speeches of welcome to the Governor on the first day focused on the importance of face-to-face knowledge of one another and of testing whether intentions were good or ill. The speeches on the second day were for the Native Minister. There was general laughter when Rakuraku finished his welcome to the Governor by saying that he would have more to say the next day, when his korero would be with the Minister.\footnote{366. New Zealand Herald, 23 March 1891} It was Rakuraku who put the decisions of the earlier hui to the
Government, reaffirming the long-standing ban on roads, prospecting, surveying, and leases and sales of land within Te Rohe Potae. Other senior Urewera chiefs used the occasion to present some practical requests to the Native Minister, including for redress on specific land matters. Their main issue in this respect was the return of some of the confiscated land, including land for access to fisheries at Ohiwa. Some chiefs emphasised their past friendship with and support for the Government in the hope of eliciting a favourable response.

Cecilia Edwards suggested that the hui with the Governor revealed an ‘ongoing tension between those who held firm to the Te Whitu Tekau policies, and those who did not.’ This was based on Cadman’s report that a young chief named ‘Miua’ told him privately that Rakuraku ‘spoke for himself, and that it was childish talk.’ Tamaikoha, who had missed the hui but accompanied the Governor’s party back to Whakatane, was also reported to have ‘expressed contempt for the speech when he heard about it.’ We set little store by this evidence. As Professor Binney pointed out, this was a second-hand report of Tamaikoha’s views, which had not been stated publicly. In her view, ‘[t]he examples chosen do not represent significant differences among Tuhoe’s leaders.’ Also, Rakuraku was clearly not speaking for himself but reporting the views of the tribe as decided at the Ruatahuna hui. No one contradicted him or put a different view at the hui with the Government.

Rakuraku’s speech asserted Tuhoe authority, including authority to grant access to their lands. He added that the Government might not enforce colonial criminal law within their takiwa, although dealing with criminals outside it was acceptable. In this, he stated the position as it had long been in practice. But Native Minister Cadman responded at once to this statement:

Now I want you all to understand very distinctly that the Queen’s laws must go everywhere in New Zealand. So far as your own lands are concerned, they are in your own hands, and if you part with them, you have no one but yourselves to blame, but you must understand that criminals will be taken here if necessary, and the laws generally upheld.

And when Te Urewera leaders requested that the Government ‘settle’ their boundary, so that their land could not be claimed by other tribes, the Minister replied that the way to do that was to ‘have the land surveyed and put through the

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368. Auckland Evening Star, 23 March 1891
369. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 17
370. New Zealand Herald, 23 March 1891
371. Ibid
373. Auckland Evening Star, 23 March 1891
These interchanges, it may be argued, set the tone for developments over the next few years. They reveal some of the pressures and concerns which soon led Ruatoki leaders to set aside Te Whitu Tekau policies, and apply for a survey and court title for their lands.

These pressures were both external and internal. The Crown’s historian, Cecilia Edwards, suggested that the Governor’s visit triggered the 1891 applications to the Native Land Court. In her view, some Tuhoe leaders may have believed (as a result of what Cadman had said) that they could get surveyed an outer boundary, inside which other tribes could not claim land. If the Government can catch criminals outside the Tuhoe boundary, it is all right; but they are not to come after criminals here. The Government laws are not to come on this side of the boundary. This is what I wish to bring to your notice as Governor. Today, you the Governor, are a visitor of the Urewera, and are therefore at liberty to go where you like, but we are not in the habit of allowing Europeans into our country, either this way or by any other road. That is one of the established rules of this tribe. There were two words left by Sir Donald McLean to the natives when he left them at Whakatane. One refers to selling their land. They should preserve their land. The Tuhoes have nothing to do with selling lands, but adhere to their decision not to sell. Europeans must not think that because you, the Governor, have gone where you have been that anybody else could go. They would be turned back on any road they might come.'

Rakuraku’s Speech to the Governor and the Native Minister, 1891

‘Peace was made, and then the Government sent up Major Mair. The Government were to have the other side of the aukati line, and the Tuhoes this side. We were to live here, and the Government on the other side of that line. The Tuhoes were not to go into the confiscated lands to steal any of the Government land, and the Government would not come on the Tuhoe side to steal any of their land. That is why we, the Tuhoe people, like to have none of the evil things belonging to the Europeans – namely surveying, leases, land sales, roads, gold prospecting, and coming after criminals. If the Government can catch criminals outside the Tuhoe boundary, it is all right; but they are not to come after criminals here. The Government laws are not to come on this side of the boundary. This is what I wish to bring to your notice as Governor. Today, you the Governor, are a visitor of the Urewera, and are therefore at liberty to go where you like, but we are not in the habit of allowing Europeans into our country, either this way or by any other road. That is one of the established rules of this tribe. There were two words left by Sir Donald McLean to the natives when he left them at Whakatane. One refers to selling their land. They should preserve their land. The Tuhoes have nothing to do with selling lands, but adhere to their decision not to sell. Europeans must not think that because you, the Governor, have gone where you have been that anybody else could go. They would be turned back on any road they might come.’

Rakuraku

1. New Zealand Herald, 23 March 1891 (Cecilia Edwards, comp, supporting papers to ‘The Urewera District Native Reserve Act 1896’, 3 vols, various dates (doc D7(a)(i)), vol 3, newspaper section, doc 2)

Court. These interchanges, it may be argued, set the tone for developments over the next few years. They reveal some of the pressures and concerns which soon led Ruatoki leaders to set aside Te Whitu Tekau policies, and apply for a survey and court title for their lands.

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375. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p16
applications focused on the Ruatoki lands, which were the best of the agricultural lands in Te Rohe Potae. These lands, as Edwards noted, had already been the subject of applications by Ngati Awa.\textsuperscript{377} Ngati Pukeko and Ngai Tai were also applicants.\textsuperscript{378} Professor Binney stressed that one of the Ngati Awa applications had been lodged by Wepihana Papanui, and so was a serious challenge from a senior Ngati Awa leader.\textsuperscript{379}

Tuhoe at the Ruatoki hui were clearly concerned that surveys initiated by other peoples could lead to their own land being forced into court. Edwards noted that Tuhoe knew of the Ngati Awa applications and were worried about them.\textsuperscript{380} Ngati Awa decided that Ruatoki could be surveyed only on a Tuhoe application, and so did not attempt to have it done themselves.\textsuperscript{381} Instead, they pressed Resident

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\textsuperscript{377} Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc d7(a)), pp 30, 78
\textsuperscript{378} Te Wharehuia Milroy and Hirini Melbourne, ‘Te Roi o te Whenua: Tuhoe Claims under the Treaty before the Waitangi Tribunal’, 1995 (doc A33), p 213
\textsuperscript{379} Binney, statement in response to Crown questions of clarification (doc k28), p 13
\textsuperscript{380} Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc d7(a)), p 78
\textsuperscript{381} Ibid, pp 25, 64

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Magistrate Bush, who in turn had ‘for years been trying to get that tribe [Tuhoe] to have one made’\(^{382}\) As Binney pointed out, Tuhoe’s wariness also reflected their experience in the Tahora lands.\(^{383}\) These had just been put through the court on the survey and application of outsiders who were found not to have rights to the lands (see chapter 10). We should not under-estimate the growing pressure as a result of Ngati Awa (and other) applications for Ruatoki being filed with the Government.

There was, in addition, ongoing pressure from the Government, which wanted the district opened for prospecting. Rather than applying direct pressure in 1891, the Government waited for the Native Land Court system to secure the outcome it wanted. When Tuhoe asked Cadman for the protection of their lands from unwanted surveys and court hearings, he could have responded – as Carroll was to do the following year – with a promise to prevent surveys and hearings until the tribal authorities had agreed to them. Instead, Cadman told the chiefs that their only recourse was to apply for surveys and hearings themselves. And this was exactly what followed in 1891.

As well as external pressures, there were particular factors at Ruatoki that influenced the decision to apply for a survey. The Tuawhenua researchers saw the developing crisis at Ruatoki in 1891 to 1893 primarily as a land dispute between Tuhoe hapu, especially Ngati Rongo and Ngati Koura. This dispute, they argued, could not be resolved because Te Whenuanui was now too ill to lead the tribe – he died in 1892.\(^{384}\) Quarrels over land arose in part because of the additional pressures at Ruatoki in the late 1880s and early 1890s. As we noted in chapter 4, those who had lived mainly on the confiscated lands had been forced to relocate to Ruatoki. Then, as we have seen, from 1887 the word of Te Kooti encouraged many Tuhoe to come to live on the Ruatoki lands, which were some of the best that remained.\(^{385}\)

As Murton argued, economic factors had encouraged a concentration on these lands.\(^{386}\)

Finally, there was a new, younger leader in the ascendant: Numia Kereru. Tamati Kruger described him as ‘a new breed of Tuhoe leadership, non-military, politically moderate, culturally astute’.\(^{387}\) Professor Binney emphasised that the key factor for Numia Kereru, as for many at Ruatoki, was the need to use their lands more effectively in the colonial economy.\(^{388}\) As Murton explained, they were growing maize for sale, but pastoral farming had been very small scale up to this point.\(^{389}\) Leasing to raise capital seemed the only way forward; and, as was abundantly clear by 1891, the only way to get that was by surveying land and obtaining a title from the Native Land Court.

\(^{382}\) Bush to Surveyor-General, 17 February 1892 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 1' (doc D7(a)), p 25)
\(^{383}\) Binney, 'Encircled Lands, Part 2' (doc A15), p 110
\(^{384}\) Tuawhenua Research Team, 'Te Manawa o te Ika, Part One' (doc B4(a)), pp 297–298, 307–308
\(^{385}\) Ibid, p 297; Binney, 'Encircled Lands, Part 2' (doc A15), pp 110–111
\(^{386}\) Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 297
\(^{387}\) Kruger, brief of evidence (doc J29(b)), para 10.19
\(^{388}\) Binney, 'Encircled Lands, Part 2' (doc A15), p 111
\(^{389}\) Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 268–273
Although Numia Kereru was a key leader in applying for (and persisting with) the survey, he did not act alone. Other senior Ruatoki rangatira, including Kereru Te Pukenui and Hetaraka Te Wakaunua, joined him in this endeavour. At first, it seemed that Ngati Koura also wanted the lands surveyed. Binney attributed early, widespread Ruatoki agreement to the survey to the influence of Te Kooti. She argued that in November 1891 Cadman finally agreed to set aside land near Ohiwa as a home for Te Kooti and his people. In return, Te Kooti agreed to mediate Tuhoe agreement to the Ruatoki survey: ‘On 22 November 1891, at Ruatoki, Te Kooti persuaded Tuhoe to allow Ngati Rongo’s application to survey to go ahead.’

Edwards pointed out that there are no records of this November hui, so we have no direct account of what happened at it. If Tuhoe did agree to the survey at this time, then that agreement was shortlived.

The Native Minister was quick to take advantage of the Ngati Rongo request. He expedited Government approval of a surveyor. The Surveyor-General, Percy Smith, had been holding things up because he was sure there would be opposition and obstruction, but the Minister telegraphed him to proceed. Cadman was, he said, ‘exceedingly anxious to get the Urewera country opened’. It was ‘a matter of importance . . . to the whole country’. This remained Cadman’s over-riding motive in all that followed. As Edwards put it, he had ‘achieved what, for him, would have seemed a major concession from the Urewera chiefs, namely the introduction of the Native Land Court into the prime area of agricultural potential in the Urewera’.

As Percy Smith had predicted, opposition to the survey was soon evident. In part, this opposition came from Ngati Koura, and was motivated by their contest with Ngati Rongo over Ruatoki lands. Its leader was Te Makarini Tamarau, who had long been a proponent of Te Whitu Tekau policies against surveying, the court, and land dealings. As became clear over the following months, this survey was considered a tribal question, and the leaders of all Tuhoe hapu and communities felt entitled to participate in decision-making about it.

The Crown and claimant historians agreed that the majority of Tuhoe hapu adhered to Te Whitu Tekau policies and opposed the survey. They had no legal power, however, to stop it.

391. Ibid, p 113; see also page 118.
392. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 21
393. Ibid
394. Native Minister to Surveyor-General, 18 January 1892 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 21)
395. Cadman to Carnachan, 9 February 1892 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 2, p 692)
396. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 113–114, 125
Numia Kereru, right, and Tutakangahau, 1898. By the 1890s, Kereru believed in the need for the gradual opening-up of Te Urewera. Hoping to maximise the productive use of remaining Tuhoe lands and to raise capital through leasing, Kereru was instrumental – with support from other Ruatoki rangatira – in arranging the survey and passage of Ruatoki lands through the Native Land Court.
The result was open conflict between Tuhoe leaders and hapu, played out in support for (and obstruction of) the survey. As we have seen, Cadman was keen to see the survey under way as soon as possible. A key question for our inquiry, therefore, is: how did the Government respond when some Tuhoe hapu obstructed the survey? In her evidence for the Crown, Cecilia Edwards argued that the Crown had three duties when the survey was contested: it had to protect the legal rights (granted under the Native Land Acts) for any Maori to get a survey and land court title; it had to protect and keep the peace; and it had to protect the rights of the majority of Tuhoe hapu, who were clearly opposed to the survey and ‘adhered to the Te Whitu Tekau policies at this time’. She concluded: ‘I have no suggestion as to how the government of the day might have reconciled the one role with the other.’

She did, however, note what she considered various Government attempts at mediation ‘tempered by the threat of enforcement action’. She also argued that obstruction – and therefore trials and imprisonment – could have been circumvented altogether if the Government had withdrawn the surveyor, and exercised its legal power to apply for the court to rely on a sketch map instead of a full survey. Had this option been pursued, this ‘might have resulted in a better balance being struck between the duties of the government’, she argued.

The key point, in our view, is that the native land legislation was heavily weighted towards those who saw fit to use the system it provided. As we noted in the preceding section, persistent Tuhoe efforts had failed to get recognition of their komiti from the Crown. This meant that, in the eyes of the State, their governance body had no legal status or powers. As Edwards put it, the tribe had no legal rights: ‘Under the law, he [Native Minister Cadman] was not required to protect any such collective group.’ In April 1892, the Government’s mediator, James Carroll, told Tuhoe that ‘as they had started the law in motion by sending in an application’ , the law would have to run its course – the survey would have to go ahead.

Professor Binney drew our attention to a newspaper article of 4 April 1892, which said of the objectors to the survey: ‘So far their rights and privileges are not to be regarded.’ Those rights and privileges, protected and guaranteed by the Treaty, were not provided for under colonial law. What were provided for, as Carroll so bluntly noted, were the rights of those who had applied for a survey. We quote Edwards in full on this point:

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399. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 78
400. Ibid, pp 78–79
401. Ibid, p 78
402. Ibid
403. Ibid, p 37
405. Ibid, p 115
406. New Zealand Herald, 4 April 1892 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 1, p 380)
The former opposition to the survey, on the basis that there had been no collective agreement by Tuhoe (a point made by many of those who objected to the survey) was not a focus of Cadman’s attention. Under the law, he was not required to protect any such collective group. He confined his attention to protecting the legal rights of those who had applied to have the survey conducted, and the [legal] authorisation of a surveyor to carry out a survey of the Ruatoki block.  

We do not intend here to provide a complete account of the long process which saw the survey applications vetted, a surveyor appointed by the Government, the surveyor challenged by various applicant groups, and the survey itself challenged by the majority of Tuhoe. Rather, we focus on the Government’s actions in dealing with the crisis, which soon assumed national prominence when Tuhoe appealed to Kotahitanga for assistance. At various times, officials and Ministers tried to mediate the dispute, Te Kooti was called in by the Government to assist, and Tuhoe held hui after hui to resolve the matter. All these attempts failed to budge Ngati Rongo and others from a determination to see the land surveyed and put through the court, although at one point there did seem to be an agreement to stop the survey.  

In February 1892, the division between Ngati Rongo and Ngati Koura became evident at a major tribal hui which could not agree on whether the survey should be permitted to go ahead. Both sides appealed to the Government: Numia Kereru, Kereru Te Pukenui, and Hetarakia Te Wakaunua asked for the survey to continue; Paora Kingi and Tamaikoha asked Cadman to put a stop to it. The tribe came together again in March 1892 for a further hui, at which they reached a fragile consensus. According to Paora Kingi’s account, Te Kooti and Ngati Awa representatives were also present at this hui and agreed to its decision. The hui reaffirmed the main Te Whitu Tekau policies; it was decided ‘by Tuhoe, by Ngati Awa, and Te Kooti Te Turuki not to allow the survey, roads, lease, sale of land, prospecting for gold and mortgage within the Tuhoe territory to trouble them.’ A letter was sent to the Government, with 79 names attached (including those of Te Whenuanui, Rakuraku, Kereru Te Pukenui, Tamaikoha, Tutakangahau, Hemi Kakitu, and Paora Kingi), stating that the supporters of the survey had agreed to have the question decided by the tribe, which wanted it stopped.  

Edwards asked, ‘Can this letter be taken as a firm sign that on 17 March all Tuhoe chiefs, including those, who on 20 February had still supported the survey,
were now averse to it?''  

She noted that this was ‘certainly the understanding of the Herald reporter’, who on 1 April wrote that Ngati Rongo and Ngati Koura were now opposed to the survey. On 30 March, Cadman had wired Numia to ask his opinion. Edwards described Numia’s response as ‘curiously passive’. In her view, he ‘washed his hands’ of it, saying he was not responsible for the trouble that had arisen. ‘At this point in time,’ she wrote, ‘Numia’s support or opposition to the survey seems ambiguous.’ Given that Cadman had asked Numia to arrange for it to proceed, his reply must have caused some consternation in Government circles.

Cadman still wanted to see the survey for these valuable lands completed, although he now indicated his willingness to compromise about the rest of the district along the lines sought by Tuhoe in 1891. He had written to Numia to ask ‘whether it was possible to complete this survey and have a general meeting of Natives afterwards to decide what is to be done respecting future surveys.’ The Minister also wrote to Paora Kingi, pointing out that the people would still have to pay for the survey costs incurred so far. Kingi replied on 2 April, agreeing that those who had applied for the survey should pay – but pointing out that neither the people generally nor the chiefs had consented to the survey, as no collective decision had been made to ‘abandon the previous collective policy of banning surveys.’ Thus, the threat of costs might have backfired in this instance. (In other words, it might have acted as an incentive to the opponents of the survey, if they believed they could pin the costs on Numia Kereru and Ngati Rongo.)

The Minister’s next move was to send James Carroll to Ruatoki at the beginning of April, rather than accepting Tuhoe’s request that the survey be stopped, which it seems even Numia was unwilling to challenge. It is important to note, therefore, that Carroll’s mission cannot be characterised as an attempt at mediation. In the circumstances, it appears that Carroll was sent to negotiate a different outcome from the one agreed by Tuhoe on 17 March 1892. Carroll met with the tribe on 7 April 1892. He found there was still significant support for the survey, as well as opposition (led by Te Makarini and Paora Kingi) and some who were ‘neutral’. According to the account in the Auckland Star, this hui was fairly evenly divided between supporters and opponents of the survey. At least, Carroll rightly discovered that the March consensus had not meant the proponents of the survey had changed their minds, once given the chance to express their dissent – as they now were by Carroll’s mission.

So far, some 11,000 or 12,000 acres (about half the block) had been partially surveyed. Carroll proposed a remarkable solution. He wrote to Te Kooti:

413. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 29
414. Ibid
415. Ibid
416. Ibid
417. Native Minister to Numia, telegram, 30 March 1892 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 28)
418. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 29
419. Ibid, pp 29–31
Ko taku kupu atu ki a ratou me whatatutuki poro te ruri i te wa e iti ana, kia wawe te rite atu – Ki te oti tena i a ratou makua muri atu. Katahi au ka kaha ki te whakamana i a ratou hiahia i te mea hoki kua rite mai te taha ki au ki te ture. . . . Ara, ahakoa oti taua ruri i te wahi iti i ki ake nei au, ka taea e au te whakatapu taua wahi, otira te rohe katao o te Urewera. Ka whakahokia e au te kai-ruri, ka araitia e au nga ruri a muri atu me nga Kooti Whenua Maori. E kore e tukua e au kia mana nga tono a nga iwi o waho. Kia rite rano te whakaro a e te iwi nui tonu, otira ma te reo tonu o te iwi nui e whakakeukeu te ture, katahi ka pera. Kati tena.

Katahi ano au ka mea atu ano – ‘Ki te kore koutou e whakaae ki taku kupu ki te tuku mai i ta koutou raruraru ki au maku koutou e awhina – heoi ka whakawatea au i au ma koutou ano ko te ture e whakaointi a koutou raruraru. Ko tona mutunga ka puta tena ruri ki te rohe nui katao o te Urewera, kaore e taea te puru.’

My advice to them was that they should at once bring the survey to conclusion while it is (a) small (area) so it can be settled immediately. If they complete that, it will be up to me thereafter. Only then will I be able to sanction their wishes because my position with the law [that is, under the native land legislation] will be justified. . . . That is, although that survey over the small part which I mentioned above will be completed, I will be able to restrict that part, that is, the whole region of the Urewera. I will send back the surveyor and I will prevent surveys thereafter, and the Maori Land Court (sittings). I will not allow the demands of the tribes outside to be authorized until the opinion of the whole people is the same, that is, the very voice of the whole people will move the law [the native land legislation], but only then will it happen like that. Enough of that.

Then I also said – ‘If you don’t agree to my suggestion to give your problems to me, for me to help you – then I will free myself (of you) and it will be up to you yourselves and the law to end your troubles, and the conclusion will be that that survey will come out right over the vast region of the Urewera. Blocking it won’t be possible.’

Binney characterised this proposal as a ‘small compromise,’ but we do not agree.\textsuperscript{421} In our view, this was a constructive solution which offered Tuhoe the chance of tribal control over any further surveys and court applications in Te Rohe Potae, in return for agreeing to a limited survey of part of Ruatoki. It did not, as Binney suggested, further the Government’s desire to open the district; rather, it offered control to the tribe. While such a solution was outside the native land legislation, it was not beyond the power of the Government to arrange. Carroll did not have as much political clout in the Liberal Government then as he would achieve later, but it appears from Cadman’s telegram to Numia Kereru (cited above) that the Minister was willing to endorse this kind of arrangement. Carroll had, however, compromised on Cadman’s wish to see the whole of Ruatoki surveyed. At

\textsuperscript{420} Timi Kara (James Carroll) to Te Kooti, 12 April 1892 (Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 117–118)

\textsuperscript{421} Binney, ‘Encircled Lands, Part 2’ (doc A15), p 116
the same time, there was an influential group of Ruatoki leaders and people who wanted the survey, so they too got part of what they wanted.

It appears to us that Carroll’s intervention was successful. Both the supporters and the opponents of the survey agreed to his compromise solution. They did not do so, however, without further persuasion from Te Kooti. Carroll had promised to delay additional survey work for two weeks, and asked Tuhoe to consider his proposal and make a decision within that time. It appears to us that Carroll’s intervention was successful. Both the supporters and the opponents of the survey agreed to his compromise solution. They did not do so, however, without further persuasion from Te Kooti. Carroll had promised to delay additional survey work for two weeks, and asked Tuhoe to consider his proposal and make a decision within that time.422 On 2 May 1892, Cadman and Wi Pere met with Te Kooti at Otorohanga, where they agreed that completion of the survey would again be delayed ‘to enable a settlement to be come to between the parties through the intervention of Te Kooti’.423 According to Binney, Te Kooti felt obligated to help Cadman in return for agreement that he and his followers be given land at Te Wainui, near Ohiwa Harbour.424 Edwards, however, felt that Te Kooti’s role at this time was a more ‘neutral’ one, which sought the best outcome for Tuhoe.425 It was certainly the case that he had a strong and sincere belief that the law should be looked to for protection.426 Although we have no record of Te Kooti’s subsequent meeting with Tuhoe in May 1892, Binney and Edwards concurred that he won agreement to Carroll’s proposal. This had happened by late May, when the survey was recommenced.427

8.5.4.2 What were the outcomes of the survey being resumed?

At once, Te Makarini and Te Ahikaiata obstructed the survey and destroyed three trig stations. There is disagreement over whether the survey was in fact being conducted inside the agreed boundaries of the smaller, compromise block. Cadman telegraphed Te Kooti, advising him that the stations were ‘in the portion of land arranged to be surveyed’.428 Binney agreed this was the case.429 But Edwards provided evidence that this was contested. On further inquiry, Resident Magistrate Bush uncovered that the survey’s opponents alleged the trig stations were outside the agreed boundary for surveying, while Numia Kereru and Hetaraka Te Wakaunua insisted they were inside.430 In 1893, the obstructors’ lawyer also reported his clients’ view that the surveyor, Oliver Creagh, had broken the

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422. *Evening Star*, 11 April 1892 (Edwards, supporting papers to “The Urewera District Native Reserve Act 1896, Part 1” (doc D7(a)(ii)), vol 1, p 370)
423. Edwards, “The Urewera District Native Reserve Act 1896, Part 1” (doc D7(a)), p 32
425. Edwards, “The Urewera District Native Reserve Act 1896, Part 1” (doc D7(a)), pp 76–77
428. Cadman to Te Kooti, 3 June 1892 (Binney, “Encircled Lands, Part 2” (doc A15), p 120
429. Judith Binney, statement in response to questions of clarification from the Tuawhenua claimants, 1 April 2005 (doc M19), p 4
430. Edwards, “The Urewera District Native Reserve Act 1896, Part 1” (doc D7(a)), p 34. Cadman’s telegram to Te Kooti, stating that the trig stations were inside the compromise block, was dated 3 June 1892. The same view was communicated by the Native Department Under-Secretary to Wilkinson on 8 June. Bush informed the Native Department on 17 June 1892 that he had since found out that the obstructers claimed the trig stations were outside the compromise block.
agreement and was surveying outside the boundary. Thus, it appears that both sides saw themselves as upholding the agreement negotiated by Carroll in April and Te Kooti in May 1892. We have no definite evidence on the location of these stations, whether they were inside or outside the agreed survey area. In any case, as Edwards pointed out, the two sides disputed the location of the boundary of the compromise block over the following months.

The opponents of the survey sought assistance from Kotahitanga at this point. The Maori parliament wrote to Cadman on 29 June that it was not right for the survey to proceed ‘without the consent of all’, and appealed for him to stop the survey. Creagh did stop in July 1892 and the matter was left in abeyance for six months. Numia Kereru, from the other side, asked the Minister to send in the police to enforce the survey, but Cadman declined to do so. Instead, he replied that he would come to Ruatoki after the parliamentary session to ‘hear both sides of the case before taking extreme steps’. He also told Kotahitanga on 9 July that he would go with Carroll to Ruatoki after the session, ‘when they will be prepared to hear both sides of this survey dispute before deciding anything’. There the matter rested: the first proposal had been made to enforce the survey, instead of relying on mediators such as Carroll and Te Kooti, but the Minister was not yet prepared to do so. The survey was left incomplete for the time being.

It appears, however, that the Minister had made up his mind to enforce the survey. The parliamentary session ended on 11 October 1892, but Cadman did not come to Ruatoki until January 1893. A criticism was later levelled at the Government by the obstructors’ lawyer: where was Carroll, and why did he play no further part, as had been promised? But Cadman went alone. He seems to have decided to set aside the April–May agreement and have the whole Ruatoki block surveyed. There was no more talk of Tuhoe making tribal decisions about future surveys or court sittings in the rest of Te Urewera. This was off the Government

431. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 51; see also New Zealand Herald, 28 March 1893 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 3, newspaper section, document 27).
432. Ibid, p 37
433. Ibid, p 34
434. Native Minister to Under-Secretary, 9 June 1892 [instructing him to write to Numia Kereru] (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 33)
435. Morpeth (for Native Minister) to Kipa Te Whatanui, 9 July 1892 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 2, p 659)
437. Ibid, p 51
438. Creagh’s original authorisation to survey Ruatoki had expired by this time. On the instructions of the Native Minister, Creagh was issued a new authority to survey on 9 February 1893. Although this authorisation was revised to suit new circumstances (it no longer contained a requirement to start the survey, as it was already under way), the new authority required Creagh to survey an estimated 20,000 acres, the same area as the original 19 January 1892 document (that is, the full Ruatoki block): see Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 37; Lands and Survey Department, ‘Authority to Survey Native Land’, 9 February 1890 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 2, p 647).
agenda until Carroll resumed an influential role in 1894, acting in conjunction with Seddon as Native Minister (see chapter 9). In the meantime, Cadman took direct control and Carroll's 1892 agreement was set aside. It is likely, however, that by this time the opponents of the survey were no longer so willing to accept the small, compromise survey, although they did propose an alternative small block later in March. Ngati Rongo, for their part, were determined to see the full survey completed. In other words, by January 1893 there may have been little point in trying to keep people to the agreement, but that was not put to the test.

When he arrived at Ruatoki in January 1893, Cadman delivered an ultimatum: the people had a month to agree among themselves as to the survey; after that he would order it resumed. Edwards has suggested that there was room to interpret this as an offer to abandon the survey if they all agreed it should be stopped. This is not, however, supported by Cadman's own statements on the subject. In a February 1893 letter to Paora Kingi, the Minister reminded him: 'Maori who had gathered at Ruatoki on 23 January had been told that if they did not themselves contact Mr Creagh within one month and request him to complete the survey, he, Cadman, would instruct Creagh himself.'

Similarly, Cadman wrote to Te Makarini Tamarau on 27 February: 'The Tuhoe heard my words at Ruatoki and they have declined to grant my request, viz, that they would instruct the surveyor to proceed.' Also, well before the month expired, Cadman had already ordered Creagh's survey authority for Ruatoki to be renewed.

From January 1893, the Government's efforts were focused on trying to get agreement to a full survey, and (in the absence of agreement) on enforcing that survey against all opposition and obstruction. We take it from Edwards' account that the Government was neither neutral nor impartial; for a long time, Cadman and others had wanted the land surveyed and the rest of the Urewera district opened up to further surveys and court titles. In 1892, the Government had been willing to negotiate and compromise, but now the gloves were off. At one point, the Native Minister even instructed George Wilkinson, the Government's native agent at Otorohanga, to threaten to move the confiscation line 'closer to Ruatoki' and to cancel the chiefs' pensions if they would not give in. Thus, the Government's dealing with the survey in 1893 was of a markedly different character from what it had been the year before.

439. Edwards, ‘The Urewera District Native Reserve Act 1896, Part i’ (doc D7(a)), p 37
440. Ibid, pp 38–39
441. Native Minister to Tamarau Te Makarini and Te Amo Te Pouwhenua, 27 February 1893 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part i’ (doc D7(a)), p 39)
442. Native Minister to Surveyor-General, 30 January 1893 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part i’ (doc D7(a)(i)), vol 2, p 649). This instruction was given only a week after Cadman's meeting with Tuhoe.
444. Edwards, ‘The Urewera District Native Reserve Act 1896, Part i’ (doc D7(a)), pp 48, 68
We will not provide details here of the fresh round of obstructions in 1893. Suffice to say that neither side would give in. When George Wilkinson was sent to Ruatoki in 1893, he reported that the grounds for obstructing the survey were a determination that the Maori law recognised by them shall not give way because of European law, if they can prevent it without bloodshed & also that the other side who have appealed to the European law to have the title to the land investigated shall not be able to exult over them. There is great jealousy and bitter feeling between the two parties.445

Ngati Rongo leaders, although sorely tempted, took no action against the obstructors. They refrained from turning up in force to support the survey. Cadman asked Kereru Te Pukenui, Numia Kereru, and Te Wakaunua to keep their people from interfering, and to sit 'quietly at home so that no trouble may arise'.446 This left the field to the obstructors, who removed instruments and at times physically prevented the surveyors from working. As a tactic to avoid violence, women – including some leading women of the tribe – confronted the male surveyors and carried out the obstruction. The chiefs also sent written appeals to Cadman, but they had no legal right to stop the survey, and he refused all further requests for discussion or negotiation. From February 1893, the Government was determined to see the survey carried out no matter what, and the obstructors were summoned to appear before the resident magistrate's court in Whakatane.

The first set of summonses (March 1893) was obeyed. In the resulting trial, the women who had obstructed the survey, as well as several leading chiefs (including Te Makarini and Te Ahikaiata), were convicted and sent to prison in Auckland. The chiefs were sentenced to hard labour.447 The law, as Ms Edwards put it, 'took its course'.448 This was a remarkable turnaround from the situation only a few years before, given that Tuhoe leaders voluntarily came out of Te Rohe Potae, stood trial, and accepted their sentence. As we see it, they were prisoners of conscience. Resident Magistrate Bush asked the convicted protestors 'whether they would discontinue opposition'. In return for an assurance that they would no longer obstruct the survey, he would not imprison the women. They refused to give any such undertaking, so he sentenced all of them to prison. The assembled Tuhoe (some 300 people) made it clear that they too would continue their non-violent resistance to the survey.449

After the trials, the Native Minister instructed Creagh to continue the survey,
and the ‘majority’ of people at a Ruatoki hui asked for the survey to be delayed and for Cadman to visit them. Again, Cadman refused any further diplomacy, instructing the survey to proceed.\(^{450}\) The whole of Tuhoe, including people from Waimana, Maungapohatu, and ‘other parts’, now assembled to consider the question at a huge meeting from 20 to 22 March. The decision of the hui was to continue obstructing the survey.\(^{451}\) On 22 March, two women removed Creagh’s instruments, in the presence of about 100 protesters, and two more trig stations were destroyed.\(^{452}\)

Cadman’s response was to send Wilkinson from Otorohanga at the end of March, not to mediate or negotiate but to persuade the protesters to give up. As noted above, he instructed Wilkinson to threaten the people with confiscation and the chiefs with cancellation of their pensions. Edwards cautioned, however, that ‘there is no certainty’ that Wilkinson conveyed these threats.\(^{453}\) He did communicate on 27 March the Government’s resolve to continue, even if it had to imprison every single one of them, and he pointed out that in the end they would have to pay the costs of the ever-lengthening survey.\(^{454}\) According to Binney, the obstructors gave way not because of Wilkinson’s threats but because Te Kooti had sent a message on 24 March urging them to allow the survey to continue.\(^{455}\) As a result, they offered Wilkinson a compromise similar to that agreed with Carroll and Te Kooti the year before: limiting the survey to only a portion of the block (7,010 acres). They were willing to consider a larger area (16,000 to 18,000 acres), although the majority had not agreed to that. Numia Kereru, Te Wakaunua, and their party thought this ‘absurd’, because both proposals left out disputed land, but they agreed to abide by Cadman’s decision.\(^{456}\) The Minister’s response on 28 March was that nothing less than the full block could be surveyed: ‘Government cannot agree to any compromise in the matter.’\(^{457}\) This had been Cadman’s line since January.

There was outside intervention in March 1893 from two other sources apart from Wilkinson. First, the Kotahitanga parliament petitioned the Governor on 23 March, asking for the release of people who had been imprisoned for obstructing surveys (at East Cape as well as Ruatoki). The parliament also asked for the survey to be stopped, and for the chiefs to meet and decide the matter.\(^{458}\) Secondly, as noted, Te Kooti had sent a message that the survey should be allowed to proceed

\(^{450}\) Ibid, p 45
\(^{451}\) Ibid, p 46; Binney, ‘Encircled Lands, Part 2’ (doc A15), p 125
\(^{452}\) Binney, ‘Encircled Lands, Part 2’ (doc A15), p 125
\(^{453}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), pp 48, 50
\(^{454}\) Ibid, pp 49–50
\(^{455}\) Binney, ‘Encircled Lands, Part 2’ (doc A15), p 125
\(^{456}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 50
\(^{457}\) Under-Secretary, Justice, to Wilkinson, draft telegram, 28 March 1893 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 50)
\(^{458}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 49; see also Henare Tomoana and others to Governor Glasgow, 23 March 1893 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 2, p 597)
and the surveyors’ instruments returned. He was responding to a telegram earlier in the month from Cadman, who asked him to use his ‘influence and advice to respect the law otherwise serious trouble must ensue as the survey will be continued even though it be necessary to send sufficient constables to carry it through’. Cadman was threatening force, which Te Kooti was anxious to see avoided. In February, he had asked Cadman not to send soldiers, ‘because the shedding of blood has ceased. I am not willing that that bad work (shedding of blood) should take place’. As Binney noted, Te Kooti was on his way to Wainui from the end of February, and was expected in Ruatoki in mid-March. But he met with a very serious accident, and by the end of March he was dying.

On 29 March, as Te Kooti struggled to Ruatoki, Tuhoe again placed the Ruatoki lands under Te Kooti’s protection. On 10 April, Te Kooti sent his last word on the matter: ‘Nathan [Netana Rangihihu] salutations to you[,] let the survey proceed until completed and better look to the law for redress in the future’. As Binney pointed out, Te Kooti’s word was final. Armed police with an artillery escort were brought in to protect the survey after this, but they were not needed. There were no further obstructions.

In the meantime, the two women who had taken Creagh’s instruments on 22 March (and 13 men who assisted them) were summonsed for trial. Conducted by Resident Magistrate Clendon in April 1893, the trials resulted in 13 convictions. This time the penalty was fines of £10 or £15 instead of imprisonment. Many of those convicted fled to Ruatahuna, avoiding either answering their summons or paying fines. We note that the Government did not attempt to pursue them or send armed police to arrest them. These people were still in hiding when Premier Seddon visited in 1894. Edwards argued that outstanding fines were finally written off in 1895. Binney pointed out that the fines of only six of the protestors were rescinded.

Cadman wrote to Te Kooti on 13 April, thanking him for his help, and ‘particularly for his instruction to look to the law for any redress of grievance’. As Binney argued, Te Kooti put his belief in the principle of the law to the test in 1893, and ‘it was on this principle, too, that the integrity of the government should

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459. Native Minister to Te Kooti (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p.42)
462. Te Kooti’s letter was quoted in translation in James Clendon RM to Under-Secretary, Justice Department, 11 April 1893 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p.127).
464. Ibid, p.127
467. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p.63
469. Ibid, p.128
8.5.4.2

have rested’.470 In any case, it was Te Kooti’s intervention, not Clendon’s court or Cadman’s threats, ‘which had been central to Tuhoe’s acceptance of the Ruatoki survey. Te Kooti’s spiritual authority was the determining fact by which Tuhoe acted in this matter.’471 For that very reason, no progress was made in resolving the issues that led to the obstruction of surveys. The majority of hapu were still committed to the kaupapa of Te Whitu Tekau, while others were determined on having lands surveyed for use in the colonial economy.

We may summarise developments since 1892 as follows. Agreement had been reached to stop the survey back in March 1892, but Cadman’s refusal to accept this decision effectively overturned it. The compromise agreement negotiated by Carroll (and cemented by Te Kooti) in April and May 1892 had a much firmer base, with the commitment of the Government, the Ngati Rongo leaders, the opponents of the survey, and Te Kooti. But this agreement dissolved in uncertainty. When Creagh resumed the survey in late May, its supporters maintained that he was acting inside the agreed boundary; its opponents argued that he was not, and obstructed him. Instead of inquiring into the matter, Cadman left it in abeyance for six months and then appeared at Ruatoki in January 1893, without Carroll, insisting that the full block survey be agreed to. This shattered the Carroll–Te Kooti compromise agreement for good, and resulted in bitter division. As we have seen, Government policy from then on was to insist on the full survey, without the possibility of negotiation or compromise.

Even so, at the time of this apparent defeat for collective decision-making and tribal governance, Tuhoe’s leaders stressed that the completion of the survey was possible only because the tribe had allowed it to happen.472 They placed a panui in the Maori newspaper Huia Tangata Kotahi in July 1893, reaffirming Te Whitu Tekau policies and notifying all Aotearoa of Tuhoe laws:

Tenei Panui he Panui na Tuhoe mo ana ture, kaore nei e pai ki nga mea kino, ate Pakeha.

(Tuatahi) ko te Ruri, (2) ko te Rori, (3) ko te Reti, (4) ko te Rohepotae (5) ko te Ateha, (6) ko te Pirihimana, (7) ko te Kaiwhakawa, (8), ko te Hoko Whenua, (9) ko te Nama moni, (10) ko te Mokete.

Ko a matou ture tenei i whakatakoto ai, i te kitenga i te Pakeha, kaore matou e pai ki aua tu mahi:

Kua kite a Tuhoe i nga mate o nga iwi Maori menga iwi Pakeha. Nga Tane nga wahine, nga Tamariki,

Koia tenei te ture a Tuhoe, ka tukua atu nei kia Huia tangata kotahi o Aotearoa, mana e Panui kia mohio ai nga iwi tauhou, e noho maira i nga pito e wha o Aotearoa.

Kia pai te Panui, a Huia Tangata Kotahi o te kawanatanga maori.

E hoa ma kapai tenei mahi a Tuhoe.

470. Ibid
471. Ibid, p 129
472. Netana Rangiihu, Erueti Tamaikoha, and others to Cadman, 2 June 1893 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)(i)), vol 2, p 539)
This notice is a notice by Tuhoe of their laws and who do not accept the bad things of the Pakeha.

(Firstly) the survey, (2) the road, (3) the rate, (4) the area encumbered, (5) the Assessor, (6) the police, (7) the judge, (8) the sale of land, (9) the borrowing of money, (10) the mortgage.

These are our law we laid out, when we saw the Pakeha, and did not agree to those kind of works:

Tuhoe has seen the sufferances of the Maori people and the Pakeha people, the men, the women, and children,

This is the law of Tuhoe we now send to ‘Huia tangata kotahi o Aotearoa’ for it to publish for the information of the strange and unacquainted people living in the four corners of Aotearoa. May this be well published by ‘Huia Tangata Kotahi’ of maori governance.

Friends, this work of Tuhoe is good.473

The panui was signed by Tamaikoha, Rakuraku, Te Ahikaiata, Te Makarini, Wi Tamaikoha, and ‘na Tuhoe Potiki katoa’ (‘from all Tuhoe’).474

The leaders of Tuhoe were about to embark on a new phase in their relations with the Government. The following year (1894), the Premier toured the district, in part to try to resolve outstanding issues with the Urewera leadership. He found there a belief that Donald McLean had made promises and arrangements in 1871 – promises that had not been fulfilled. This was to become part of his dialogue with the chiefs. What exactly had McLean promised in 1871, and how was it now to be honoured? This belief about the 1871 compact and its broken promise has passed down through the oral history of the people.475 In 1896, it seemed to all that it might finally be fulfilled in the Urewera District Native Reserve Act. We consider that Act in chapter 9. And, when Seddon visited Ruatoki in 1894, he heard Numia Kereru set out the policy of Tuhoe: no roads, no surveys, no sales, no leases, and no Native Land Court. The kaupapa of Te Whitu Tekau, reaffirmed in the July panui quoted above, were thus put to the Premier of New Zealand in 1894 by the principal architect of the Ruatoki survey. As we shall see in chapter 9, the Te Whitu Tekau vision was far from spent.

8.5.5 Treaty analysis and findings

In 1870 and 1871, peace was negotiated between the Crown and the leaders of Tuhoe and Ngati Whare. In April 1871, Te Whenuanui and Paerau returned to Ruatahuna and called a hui of the leaders who had not been sent into exile. Tuhoe

473. Huia Tangata Kotahi, 6 Hurae 1893, vol 1, no 17, p 7, transcribed and translated by Tama Nikora, 20 May 2005 (counsel for Wai 36 Tuhoe, closing submissions, pt b (doc N8(a)), pp 61–62)
474. Counsel for Wai 36 Tuhoe, closing submissions, pt b (doc N8(a)), p 62
475. Kruger, brief of evidence (doc J29(b)), paras 10.3–10.5; Kruger, claimant translation of transcript of oral evidence (doc J48(a)), pt 2, p 2
date their acknowledgement of the Crown, and their relationship with it, from that hui.⁴⁷⁶ As the Tuawhenua researchers explained:

Ka tu te hui taumata mo Tuhoe ki Tatahoata i te timata o te marama o Paenga- whawha o te tau 1871, ka whakaaetia kia tu hangai ki ta te kawanatanga.⁴⁷⁷

Tuhoe held a major hui at Tatahoata early in April 1871, and decided to give their allegiance to the Government.⁴⁷⁸

This acceptance of the Crown’s authority was not unconditional. When asked if a pledge of allegiance to the Crown was ‘inconsistent with Tuhoe still exercising and maintaining its mana motuhake’, Tamati Kruger replied that the two were perfectly consistent because both the Crown and Tuhoe had mana, not the Crown alone.⁴⁷⁹

As we discussed in chapter 5, however, the developing peace was put at risk in late 1871 by an attack on Waikaremoana, and the occupation of Ruatahuna and Maungapohatu by Crown forces. As a result, the Government made a deliberate decision to withdraw all expeditions from Te Urewera and to entrust the capture of Te Kooti – and the future management of all their affairs – to the chiefs in their various districts.

At the time (and still today), Tuhoe saw the peace arrangement as their compact or treaty with the Crown. Tamati Kruger referred to McLean’s assurances (‘te kupu taurangi’) as a key part of this compact (‘te maungarongo’). Letters from Ormond, and the korero of Rapata Wahawaha and T W Porter, set out the Crown’s assurances. From the Crown’s perspective, it was a definite watershed in its relationship with the leaders of Te Urewera. The expeditionary forces were withdrawn, the redoubts handed over to Tuhoe, and Maori messengers were paid to keep communications open between the Government and tribal leaders. Above all, the Government accepted that those leaders would henceforth have full authority in their own districts. On the basis of these assurances, Tuhoe engaged with the Crown.

In 1872, some six months after Wahawaha’s korero at Ruatahuna, the leaders of Te Urewera (including those who had finally been released from exile) met at Ruatahuna and formed Te Whitu Tekau. The historical evidence is clear that they believed they were doing so with the knowledge and agreement of the Crown. In our view, McLean’s policies in the early 1870s – especially his Native Councils Bills

⁴⁷⁷. Ibid, p 252
⁴⁷⁸. Ibid, p 252
⁴⁷⁹. Tamati Kruger, under cross-examination by counsel for Tuawhenua, Mataatua Marae, Ruatahuna, 17 May 2004 (transcript 4.5, p 11)
te Urewera

reinforced this belief. Having established a ‘Union of Seventy’ for the purpose of maintaining consensus, Te Whitu Tekau set out its primary objectives: roads, magistrates, surveys, the Native Land Court, and the leasing and selling of land would all be excluded from the boundaries of Te Rohe Potae. These objectives were communicated to the Government and published in the Maori newspapers. Attempts to widen this union to other Mataatua groups were not successful, but there was a fair amount of consensus among Tuhoe and Ngati Whare leaders. Ngati Manawa, however, did not accept Te Whitu Tekau or its policies.

Nonetheless, the historical evidence is clear that Te Whitu Tekau’s policies were maintained from 1872 to 1893 (at which point we end the discussion in this chapter). These policies were constantly communicated to the Government, often in the form of objections to Government pressure to build roads or to lease and sell interests in land. At the time, both the Crown and the leaders of Te Urewera wrestled with the fact that some hapu and chiefs, especially on the borders of Te Rohe Potae, did not always apply the Te Whitu Tekau kaupapa. In that circumstance, Te Whitu Tekau was able to maintain its authority where colonial law did not undermine it. The best example of this is roads. Despite the fact that some leaders (especially the chiefs of Ngati Whare) favoured roads, the Government backed down in the face of determined resistance from Te Whitu Tekau. In the case of land, however, the Government implemented the Native Land acts, which gave enforceable legal rights to individuals or groups to have land surveyed and put through the court, regardless of the strength of any opposition to that move. Beginning with the four southern blocks, a number of rim blocks were the subject of dealings with private or Crown agents, often in the form of de facto leases, and were then taken to the Native Land Court. Although unable to prevent this on the outer borders, where many tribal rights and interests overlapped, the leaders of Te Urewera succeeded in keeping the inner lands out of this process.

By the treaty of Waitangi, the Crown promised to protect the tino rangatiratanga of Maori communities, their right to manage their own affairs, and to keep their land in their possession and control for as long as they wished to do so. It will be recalled that in chapter 3, when we discussed the Tuhoe ‘constitutional claim’, we found that because they did not sign the Treaty and were not offered the opportunity to do so, in 1840 the Treaty of Waitangi took effect for Tuhoe as a unilateral set of Crown promises. We also found that the situation had not changed by 1865: by that date, Tuhoe had still not entered into a relationship with the Crown and did not recognise its authority. In our view, the events of 1871 signalled the beginning of a new era for Tuhoe and the Crown, but fell short of establishing a reciprocal, Treaty-based relationship. The April hui, at which Tuhoe accepted kawenatanga and sought a relationship with the Crown, and the November–December agreement, in which the Crown recognised the authority of Tuhoe chiefs to manage their own affairs and withdrew its forces from their rohe, were positive steps. But, as it transpired, neither development was formalised and entrenched by the Crown, which left to trust and to chance the vitally important matter of the future
engagement of the Crown and Tuhoe. Such uncertainty could not generate Treaty obligations owed by Tuhoe to the Crown.

In their submissions on the significance of the Treaty for Te Whitu Tekau, the claimants emphasised the Crown’s obligation to protect and enhance their mana motuhake (or tino rangatiratanga) in its policies and legislation. Crown counsel submitted that Te Whitu Tekau was not a tribal governance body and that the law did not require the Crown to recognise it. She observed that while McLean wished to introduce a form of local government for Maori districts in 1872, his Native Councils Bill had failed to gain sufficient support.

Central to our analysis of the events outlined in this chapter is the Treaty principle of autonomy, which arises from the Crown’s guarantee to protect the tino rangatiratanga (mana motuhake) of the chiefs. The Taranaki and Central North Island Tribunals have explained this principle in clear terms. Autonomy is ‘the inherent right of peoples in their native territories’. It describes the right of indigenous peoples to ‘constitutional status as first peoples’ and their rights to:

- ‘manage their own policy, resources, and affairs within minimum parameters necessary for the proper operation of the State’; and
- ‘enjoy cooperation and dialogue with the Government.’

We agree with the Taranaki Tribunal which found that, in dealing with Maori for their lands, the Crown’s responsibility was to recognise and protect institutions that formalised a ‘negotiating face’ for the tribe. This was a practical way for the Crown to give effect to the Treaty principle of autonomy. We also agree with the Central North Island Tribunal’s finding that the Crown was obliged to give effect to the Treaty recognition of Maori authority through the models suggested to or available to it at the time. The Tribunal gave an extensive account of such models, and of the practical institutions for Maori self-government proposed to the Crown in the 1870s and 1880s, which we do not need to repeat here. In our view, Te Whitu Tekau – or some variant of it acceptable to those it represented – was an institution within the range of options identified by the Central North Island Tribunal as being available to the Crown in the late nineteenth century to give effect to Maori autonomy.

We further accept the Central North Island Tribunal’s finding that there is an article 3 right of self-government by representative institutions. This was clearly the case in nineteenth-century New Zealand. It forms part of the Treaty guarantee of Maori autonomy. In her questions to Cecilia Edwards, counsel for the Tuawhenua claimants drew a strong contrast between the legal arrangements

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481. Ibid
482. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 172–192, 198–208, and, more generally, pp 215–400
483. Ibid, p 206
484. Ibid, pp 174–177
available for the self-government of settler communities and what was allowed the peoples of Te Urewera. Ms Edwards accepted this point.\(^{485}\) Counsel for the Nga Rauru o Nga Potiki claimants put it to her that, in nineteenth-century terms, a Treaty partnership between Crown and Maori (where Treaty obligations are owed by both parties) was to be achieved by the Crown recognising Maori institutions of self-government. Ms Edwards declined to comment on constitutional matters, although she accepted the argument might have ‘merit’.\(^{486}\)

Ultimately, we agree with the submission of counsel for Nga Rauru o Nga Potiki that the ability of Maori to control their own destiny depended on ‘substantive equality of treatment’ for Maori and settlers in the exercise of authority over their own affairs. This required Maori authority to be ‘entrenched in the legal systems of nation states, so that it is not vulnerable to political pressures’.\(^{487}\) The way to achieve that in the nineteenth century, as the Central North Island Tribunal has found, was for the Crown to have given legal recognition and protection to institutions of Maori self-government.

We are in no doubt that Te Whitu Tekau was such an institution. It was established after deliberate debate and decision by the peoples of Te Urewera, in the wake of the Crown’s promise that they should have full authority inside their own borders. It acted in a responsible manner. Hui were held constantly throughout the period to discuss and reconfirm the cardinal policies: no roads, no surveys, no magistrates, no Native Land Court, no leases, and no land sales. Though later events showed that the peoples of Te Urewera were willing to change the formal shape of their runanga to that of a komiti, the system they had established was one in which the leaders came together, and decisions were thoroughly canvassed and agreed in a Maori way. Witnesses such as Tamati Kruger assured us that Te Whitu Tekau was the embodiment of mana motuhake. It recognised and tried to work with Government authority (kawanatanga), but it remained determined to exclude unwanted authority, including colonial laws and magistrates, from its borders. This, the Government of the day accepted until 1893. No magistrate or court operated inside Te Urewera, except for the Native Land Court. Clearly, this was a situation the Government could live with. As one settler newspaper put it in 1891, nobody had much cared for the past 20 years that the Queen’s writ did not run in Te Urewera.

As has been seen, Te Whitu Tekau was successful in upholding its kaupapa only where colonial law did not grant enforceable legal rights to individuals or groups who dissented from its aims. The most glaring example of the law undermining

\(^{485}\) Cecilia Edwards, under cross-examination by counsel for Tuawhenua, Taneatua School, Taneatua, 2 March 2005 (transcript 4.14, pp 92–93). Ms Edwards qualified her answer by pointing out that she did not know much about the political institutions available for settler communities at the time, but she accepted as ‘reasonable’ the proposition that they had institutions which were passing laws and regulating affairs within their own boundaries.

\(^{486}\) Cecilia Edwards, under cross-examination by counsel for Nga Rauru o Nga Potiki, Taneatua School, Taneatua, 1 March 2005 (transcript 4.14, p 25)

\(^{487}\) Counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (doc N14), pp 163–165
the authority of Te Whitu Tekau in this way is the native land legislation, which was built on principles diametrically opposed to those of Te Whitu Tekau. We examine the operation and impacts of the Native Land system in chapter 10 and conclude, in agreement with many previous Tribunals, that the system was gravely in breach of the Treaty’s guarantee to protect Maori ownership and control of their land. It suffices here to note that had the Crown recognised and afforded legal status to an autonomous, tribal governance entity, it would also have needed to suspend, or at least greatly modify, the operation of the native land system within that tribal entity’s sphere of influence. The native land laws upheld the right of an individual or group to invoke the Native Land Court’s power to decide who had rights and interests in particular customary land, and authority over it, and to translate that customary position into ownership by the individuals named on a certificate of title. The law thus promoted (in breach of the Treaty of Waitangi, as previous Tribunals have found) the individualisation of title to Maori land and, as an inevitable consequence, the alienation of that land – results to which Te Whitu Tekau was totally opposed. Therefore, had legal recognition and protection been given to the authority of a body such as Te Whitu Tekau to determine issues affecting the land within its sphere of interest, the Crown would have had to accept as a necessary corollary the severe curtailment both of the Native Land Court’s powers and the rights of those who would otherwise have invoked the court’s powers. The result – tribal control of tribal land – would have been consistent with the Treaty.

It follows from the Treaty principle of autonomy that where different iwi claimed interests in the same land, the primary means of decision-making about that land should have been negotiation among the institutions that were the legally recognised ‘negotiating faces’ of those iwi. An alternative process would have been needed only for situations in which those tribal bodies could not agree. It is not merely with the benefit of hindsight that we can see the existence of Te Whitu Tekau as presenting the Crown with an opportunity to honour its Treaty promises, and its 1871 promises, to the leaders of Te Urewera. We are certain that, at the time, McLean intended to recognise Te Whitu Tekau through the provisions of the Native Councils Bills of 1872 to 1873. When withdrawing his second Native Councils Bill in 1873, the Minister told Parliament that special arrangements were needed for Te Urewera (among other districts), and that he planned to introduce another Bill in 1874. Yet he did not do so. Nor did he accept the invitation to attend the crucial Ruatahuna hui of that year. Instead, magistrates Brabant and Locke told the hui that Te Whitu Tekau had no legal status or standing. The Crown’s failure to provide a mechanism through which the authority of tribal leadership in Te Urewera could be recognised in colonial law was a critical one and was to have major consequences.

As we have seen in this chapter, the peoples of Te Urewera were willing to be flexible on the exact form of their governance body. By the 1880s, they were willing to experiment with a committee structure, either under the Government’s 1883 Native Committees Act or in some other form, so long as the Crown accepted it and recognised its authority. The negotiations of 1886 to 1889, in which ‘the
Ureweras’ were promised their own committee but not delivered it, were an important failure on the part of the Crown, compounding the failure of the early 1870s.

This is not to deny that, on some matters, the Crown accorded de facto recognition to Te Whitu Tekau in the 1870s, and to the authority of ‘Tuhoe katoa’. The most telling examples are roads and prospectors: although Ministers and officials tested the leadership’s resolve from time to time, the Government did not try to force either of these in the face of the leaders’ consensus against them. In 1890, the Minister of Mines himself was turned away from Te Rohe Potae, a fact rather meekly accepted by the Government of the day. These are, however, examples of matters more incidental than central to the colonial endeavour.

In summary, then, we have found the treaty principle of autonomy to have been breached by the Crown’s failure to ensure that colonial law recognised Maori governance bodies, including Te Whitu Tekau, as the primary means of resolving their own land disputes. That breach was compounded by the Crown’s failure both to engage constructively with Te Urewera leaders in the 1880s, and to provide legal recognition and powers for their komiti at that time.

We are also of the view that the Government’s handling of the Ruatoki survey crisis in 1893 was inconsistent with treaty principles. Prior to that, the Government had mostly acted properly in treaty terms. There was apparent agreement to stop the survey in March 1892, but Cadman sent Carroll to negotiate an alternative solution. Carroll found a significant body was still in support of the survey. The compromise agreement negotiated by Carroll and Te Kooti in April and May 1892 was, in our view, consistent with the treaty and reasonable in the circumstances. The Government agreed to a limited survey, and to prevent further surveys or court sittings in Te Urewera, until the people had given their explicit consent to them. This was a proper – though tardy – concession by the Crown. The proponents of the survey gave up their wish to put the whole block through the court, and its opponents accepted a limited survey in the knowledge that it would be the last one unless they agreed to more. In other words, their rights would be respected from then on.

The obstruction that followed this agreement in May 1892 was not a rejection of it. Rather, the two sides disputed whether the surveyor was keeping to its terms. Instead of inquiring into this matter, the Native Minister postponed the survey for six months. In January 1893, he then unilaterally set aside the compromise agreement and insisted on the full survey of the Ruatoki block, without the previous guarantee that any further surveys would require tribal agreement. He also refused requests to negotiate, and insisted on using the law and the courts to punish each set of obstructors. We find the Crown in breach of treaty principles for setting aside its own negotiated agreement unilaterally, for refusing to negotiate any further, and for using the full force of the law to punish those whose ‘crime’ was non-violent obstruction of a disputed survey.

The prejudicial effects of the Crown’s broader Treaty breaches of the principle of autonomy are thus seen most clearly at Ruatoki in 1891 to 1893. Disagreement among the hapu, and opposition of the majority to the survey, could not be
resolved by the iwi because iwi had no legal powers to resolve the dispute. As a result, Tuhoe leaders who resisted the survey were fined or jailed by the State, and the land was surveyed in the teeth of their opposition. The full prejudice will be described in chapter 10, where we address the alienation of land in the rim blocks during this period.
9.1 Introduction
In October 1896, Parliament enacted the Urewera District Native Reserve Act. This was the culmination of 25 years of struggle by the leaders of Tuhoe and Ngati Whare to repel the Native Land Court and to seek Crown recognition of tribal autonomy. The Act established a unique ‘native reserve’ of some 656,000 acres and a commission, with a majority of Tuhoe members, to determine land titles within it. The lands of the reserve were to be managed by hapu committees, and the whole district was to be governed by a tribal General Committee. Only the General Committee could alienate any portion of the reserve, and only to the Crown. In the claimants’ view, this unique system of land title determination and self-government represented the fulfilment of their 1871 compact with Donald McLean. The Act preserved their autonomy and gave it the recognition of colonial law.

The creation of the Urewera District Native Reserve was the outcome of a series of remarkable discussions and negotiations from 1894 to 1896 between the Premier, Richard Seddon, Cabinet Minister James Carroll, and Te Urewera leaders. Overshadowing those communications was the so-called ‘small war’ of 1895, which reflected long-standing tensions over surveys of lands and roads in Te Urewera and the Government’s lingering anxiety to show that it could carry out both if it wished. The Government was quick to send in an armed force but quick also to realise the time for armed confrontation had passed. In any case, Seddon was convinced that Te Urewera was unsuitable for settlement, which helped persuade his Government to give up its insistence on the Native Land Court, costly surveys, and land purchases in the district. The leaders of Te Urewera also emerged from the confrontation more determined to pursue their dialogue with the Government to an agreed position. As a result, Tuhoe and Ngati Whare were persuaded to give up their adherence to some of the core Te Whitu Tekau principles while Ngati Manawa were persuaded that they could halt land loss by trusting to a new arrangement with the Crown. From mid-1895, Te Urewera leaders spent several months in Wellington to finalise with the Premier the arrangements for the future governance of their district. By the time the Act was passed, there was genuine agreement on the fundamentals of the new relationship between the Government and Te Urewera. In particular, the Government saw itself as granting real powers of self-government and collective tribal control of lands. The purpose of this
unique arrangement, as Seddon stated repeatedly, was to protect the peoples of Te Urewera in the retention of their land and to ensure their future prosperity.

For many claimants, the passage of the 1896 Urewera District Native Reserve Act represented a rare high point in the history of the relationship between the Crown and the peoples of Te Urewera. They regard the Act as having provided the means by which the future of Te Urewera could unfold in a manner consistent with the Treaty, to the mutual benefit of Maori and settlers. It gave their tipuna hope of a positive relationship with the Crown, based on recognition of their own institutions, and of their wish to preserve their lands. The Crown conceded in our inquiry that it had granted powers of self-government in the 1896 Act, and that this could be characterised as protecting the claimants’ mana motuhake.

And yet the Act’s arrangements were only partly implemented. The system of self-government, which was the key to the success of the Act, was not implemented, and Crown agents bought up individual shares in the reserve from 1909. Crown counsel stated that by 1921, the Crown had purchased more than 50 per cent of those shares. By 1927, it held some 75 per cent of Te Urewera lands, much of which later became part of Te Urewera National Park. In our inquiry, the Crown made an unprecedented number of concessions of Treaty breach in connection with the fate of the Urewera District Native Reserve. It conceded that in implementing the agreement with the peoples of Te Urewera reflected in the 1896 Act, the Crown did not act reasonably and in good faith in that it:

- failed to establish an effective system of local land administration and local governance;
- made unilateral changes to key parts of the legislation, without effective consultation with Urewera Maori; and
- purchased individuals’ shares without the collective control of such actions by the General Committee [established by the 1896 Act]. In these purchases the Crown did not follow the usual protective mechanisms applying to Crown purchases of Maori land from 1909–1921.

The result of those concessions, the Crown stated, is that it ‘ultimately accepts responsibility for the parlous state of affairs that existed in the Urewera district as a result of Crown actions and omissions in implementing the local governance provisions and purchasing undivided shares’.

Despite these major concessions, there were fundamental points of contention between the Crown and claimants concerning the creation and destruction of the reserve. There was disagreement over exactly what had been agreed between the Crown and Te Urewera leaders about the reserve, why the Act was not implemented according to its terms, and the nature and extent of the impact of that failure on the peoples and the environment of Te Urewera.

2. Ibid
3. Ibid, p 9
In this chapter, our attention is confined to the motives for and the intentions behind the passing of the Urewera District Native Reserve Act. The purpose of our examination is to understand fully the nature of the agreement that was reached between the Crown and Te Urewera leaders, the extent to which the agreement was incorporated in the 1896 Act, and the reasons for any discrepancies between what was agreed and what was enacted. That information provides the essential context for our examination in later chapters of the full range of issues that arise out of the Crown’s admitted failure to implement the Urewera District Native Reserve Act 1896 in a manner consistent with the principles of the Treaty of Waitangi. It also provides information vital to the Tribunal’s task of considering whether and, if so, when the peoples of Te Urewera who did not sign the Treaty of Waitangi forged a Treaty-based relationship with the Crown.

9.2 Issues for Tribunal Determination
After reviewing the evidence and submissions, we have determined that the following questions are key to our analysis of the claims:

- Why and how did Te Urewera leaders and the Crown negotiate a new basis for their relationship in 1894 and 1895?
- What agreement was reached as a result of negotiations?
- Was the agreement between Te Urewera leaders and the Crown given legislative effect in the Urewera District Native Reserve Act 1896?

We have structured our account of the essential differences between the parties (section 9.4) and our analysis of issues (section 9.5) around these three fundamental questions.

9.3 Key Facts
In February 1894, the leaders of Te Urewera sought to heal the divisions of recent years, especially those caused by the split over surveying Ruatoki and having the land put through the Native Land Court. At a month-long hui, they agreed to return to the principles of Te Whitu Tekau. Ruatoki lands would be considered as outside Te Rohe Potae. Inside Te Rohe Potae, the ‘vile things’ of the Government would remain banned: surveys, the Native Land Court, leases, land sales, and roads. In April 1894, soon after this hui, Richard Seddon, the Premier of New Zealand, visited Te Urewera as part of a tour of North Island Maori districts. He was accompanied by James Carroll, a Minister in Cabinet (representing the ‘Native race’ there), and by an entourage of officials. Carroll was a key figure for Te Urewera, having represented the Crown in negotiations over the Ruatoki survey. He was also a member of the Rees–Carroll commission of 1891, which had investigated the situation of Maori land and delivered a report highly critical of individualisation of title, the native land laws, and the Native Land Court.

Seddon and his party visited Maori communities at Ruatoki, Ruatahuna, Te Whaiti, Galatea, and Waikaremoana. James Carroll acted as both translator and facilitator, explaining many of the Premier’s points for the benefit of his Maori
audience. Unfortunately, most of Carroll’s speeches were not recorded. The Liberal leader was partly on a ‘fact-finding’ tour, and partly on a mission to persuade Maori communities to trust his Government’s reforms and use the new Native Land Purchase and Acquisition Act 1893. He wanted leaders to agree to have their lands surveyed and put through the court, and then to use their ‘surplus’ land in the economy by leasing or selling it (although he hardly ever mentioned sales in Te Urewera). At the same time, he promoted schools and roads, and promised Crown protection to those who obtained legal titles from the land court. He emphasised the Treaty of Waitangi and its protections.

Ngati Manawa, Ngati Whare, and Ngati Haka Patuheuheu were – to varying degrees – willing to trust the Premier’s assurances and deal with their lands. They welcomed schools, and roads to link their communities with coastal trading centres. Tuhoe, on the other hand, conveyed to Seddon the results of the February 1894 hui, and sought the Government’s agreement to exclude the court and surveys from Te Rohe Potae, and to recognise their governing committee. The Premier responded that trig surveys would be carried out (at no cost), and that prior notification would be given, but that other issues could be reserved for future discussions in Wellington. He encouraged the idea of reaching a general agreement on all the issues later, after he had completed his tour. In recognition of their difficulties, the Premier promised to fund the journey of a delegation from Te Urewera to complete the discussions.

At Ruatoki, Kereru Te Pukenui gifted the Premier with an ancient taiaha, Rongokarae. Both there and at Ruatahuna, the people pressed for legal powers for a governing committee. There was a sharp exchange on this point at Ruatahuna, but no real agreement on it. It was one of many matters to be pursued later in Wellington.

After the tour, the Premier informed Parliament and the public that he had settled the ‘native problem’ in Te Urewera. The chiefs recognised the authority of the Queen and had promised to obey the law. But the anticipated negotiations did not take place in Wellington in 1894, as promised. In January 1895, there was a hui at Ruatoki about mining at which the Surveyor-General informed the people that a trig survey was about to commence. It was obstructed at Ruatoki in April 1895, and the Premier sent a combined force of 40 to 50 soldiers and armed police to prevent further obstructions. He also sent James Carroll, who negotiated a new agreement with Te Urewera leaders at an eight-day hui at Ruatoki. At that hui, he was reported as promising that the Government would conserve the lands of Te Urewera for its Maori people. The time had now come, he said, for the long-delayed Te Urewera delegation to go to Wellington. Kereru Te Pukenui made a key speech at this hui, affirming his gift to the Premier and his intention to live at peace and obey the law. In response to Carroll’s promises and Te Pukenui’s assurances, the Crown and Tuhoe agreed that the trig survey would go ahead. Most of the troops were withdrawn.

At some point in 1895, however, the Government also decided to push roads through Te Urewera. When it became apparent in May 1895 that some surveyors were also surveying road lines, there was renewed obstruction. This time, a force of
68 armed soldiers and police was dispatched to Te Whaiti. Again, Carroll was sent to the district. He met with Te Urewera leaders at Te Whaiti and Waikaremoana. Once again, the idea of a delegation to Wellington and a wide-ranging settlement of issues was proposed. This time, however, Carroll is believed to have promised that the whole of Te Urewera could be protected and reserved to its Maori owners by a special Act of Parliament. On the strength of Carroll’s renewed assurances, and in the face of Seddon’s ‘show of force’, Tuhoe and Ngati Whare agreed to allow work for interior roads to continue.

A delegation of Te Urewera leaders finally came to Wellington in August 1895. It consisted of important chiefs, and is known to have included Tuhoe, Ngati Whare, and Ngati Manawa leaders. The delegation held discussions with Carroll (and Maori members of the House) in August and September, but we have no record of them. On 7 September 1895, the delegation met with Seddon. At that meeting, Carroll presented a series of proposals that he and the delegation had worked out. The Premier responded to each of them. The content of the proposals (and of the Premier’s response) was not agreed between the claimants and the Crown in our inquiry, and will be examined in our analysis section below. Here, we note that there was a further meeting between Seddon and the delegation on 23 September at which additional proposals were presented to the Premier. The delegation also asked for a draft Bill or ‘heads of agreement’ to take back to their people for consultation.

On 25 September, Seddon drafted a memorandum setting out what he understood to be each of the delegation’s proposals and his undertakings in respect of them. It was understood between the Premier and Te Urewera leaders that they were in broad agreement. The newspaper account of the 7 September 1895 meeting (which was very detailed), and Seddon’s memorandum of 25 September, were translated into Maori and printed for distribution in Te Urewera. Tuhoe and Ngati Whare held hui to discuss and confirm the arrangements.

In October 1895, the Premier introduced a draft Bill into the House. This Bill appears to have been sent to Te Urewera for discussion, but there is no definite evidence on the point. It does appear that, as a result of Tuhoe representations, some aspects of this Bill (and later the 1896 Bill) were changed by the Government. Seddon had introduced the 1895 Bill mainly so that it could be read for a first time in Parliament and then sent out for consultation. It lapsed when the session ended, and a new (and in some respects quite different) Bill was prepared in 1896.

The purpose of the 1895 Bill was to provide for Maori ownership and ‘local government’ of an inalienable reserve. The ‘Urewera District’ was declared an inalienable native reserve, with the exception that land could be ceded to the Queen. A seven-person commission (five Maori, two Europeans) would define the boundary of the reserve and investigate ‘native ownership’ according to ‘native customs and usages’ and the ‘equities of each particular case’. A sketch plan (paid for by the Government) was sufficient for each block, which would be based as far as possible on hapu boundaries. The commission would declare the relative interests of owners, ‘grouping family interests together’. Family members would be joint tenants; all other owners would be tenants in common. Every ownership order
9.4 The essence of the difference between the Parties

9.4.1 Why and how did Te Urewera leaders and the Crown negotiate a new basis for their relationship in 1894 and 1895?

The parties were generally agreed that a dialogue was opened with Seddon’s tour of Te Urewera in 1894, was interrupted (but ultimately assisted) by the events of the ‘small war’ in 1895, and was concluded with the reaching of a ‘heads of agreement’ in Wellington in September 1895.

For their part, the claimants argued that the negotiations of 1894 to 1895 were inspired by their fear of land loss, and of the erosion of their autonomy by colonial institutions, especially the Native Land Court. On the other hand, they were not ‘isolationist’; they did want to participate in the colonial economy and build a more constructive relationship with the Government. Both sets of factors, positive and negative, impelled them to negotiate when the opportunity arose.  

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5. Counsel for Ngati Whare, closing submissions, no date (doc N16), p 58
The Urewera District Native Reserve Act 1896: A Summary

‘An Act to make Provision as to the Ownership and Local Government of the Native Lands in the Urewera District.’

Creation of a native reserve
Sections 2–3: The ‘Urewera District’ (of approximately 656,000 acres, its boundaries specified in the Act’s first schedule) is set aside as a native reserve, in which the Native Reserves Act 1882 and the Native Land Court Act 1894 will not apply (except as provided for in this Act).

A special commission to investigate title
Sections 4–7: A commission (five Tuhoe, two Europeans), with powers and functions to be prescribed by regulation, will divide the district into blocks based as far as possible on hapu boundaries, and investigate the ownership of each block ‘with due regard to Native customs and usages’ and to justice and equity. A sketch plan (paid for by the Government) will be sufficient.

Form of title
Section 8: The commission will make an order declaring the names of the owners of each block, grouping families together, and also the relative share of each family in the block, and the relative share of each member of the family.

Appeals and the role of the Native Land Court
Sections 9–15: People have 12 months to appeal any order of the commission to the Minister of Native Affairs. If no appeal is lodged, the Governor will confirm the commission’s order and have it registered as a ‘certificate of ownership’. When the Minister decides appeals, he may direct an ‘expert inquiry’ to assist him and either confirm the commission’s order or modify or vary it as he deems equitable. Alternatively, the Minister can refer the appeal to the Governor in council, so that it may confer jurisdiction on the Native Land Court to deal with it. The Governor in council can also confer jurisdiction on the Native Land Court to determine succession claims or for any other specific purpose relating to the district. The court’s orders can be registered as, or recorded on, a certificate of ownership under the Act.

Local government and management of lands by committees
Sections 16–20: The commissioners will appoint provisional local committees for each block, until permanent local committees can be elected. Each local committee will elect one of its members to a General Committee, which will deal with ‘all questions affecting the reserve’, with its decisions binding on the local committees. The powers, functions, and mode of election for the local committees and the General Committee will be prescribed by regulation.
Alienations

Sections 21–23: The General Committee will have power to alienate any part of the district to the Queen or to cede land for mining purposes. The Governor may lay out roads and landing places. The Governor may also take land for other public works, with the proviso that the sum total of takings cannot exceed 400 acres without the consent of the General Committee.

Powers to make regulations

Section 24: The Governor in council may make regulations for the election of committees, to fix their term of office, to give effect to anything in the Act that is stated to be prescribed by regulations, or to ‘give full effect to the Act’, and to give effect to the memorandum of Seddon, dated 25 September 1895 (which is reproduced as the Act’s second schedule).

Costs

Section 25: All of the Government’s expenses incurred under the Act will be paid from money appropriated by Parliament (in other words, not charged to the people of Te Urewera).

36 Tuhoe claimants argued that the origin of the Urewera District Native Reserve Act 1896, which was the outcome of the negotiations, lay in their long-standing efforts to preserve their autonomy. Since 1871, Tuhoe had been struggling to obtain Crown recognition of a tribal governance body.6 Their long and partially successful resistance to the Native Land Court also helped to force the Crown to negotiate a new arrangement in 1895.7 Because they had held out for so long and so successfully, the Government had little choice but to negotiate something unique to fit their particular circumstances.

In the short term, the claimants argued, the Ruatoki survey of the early 1890s, followed by the Government’s attempts to force trig and road surveys in 1895, created a crisis that ‘ironically served as a catalyst for the legal protection of the district’8 According to counsel for the Wai 36 Tuhoe claimants, the so-called ‘small war’ of 1895 ‘embarrassed’ the Government and helped pressure Seddon to negotiate.

In respect of longer-term factors leading to negotiations in 1894 to 1895, the Crown accepted that by this time there had been lengthy opposition from the

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7. Ibid, pp 10–11, 43
8. Counsel for Wai 36 Tuhoe, closing submissions, pt B, response to statement of issues, 30 May 2005 (doc N8(a)), p 84
9. Ibid; see also counsel for Ngati Whare, closing submissions (doc N16), p 57
‘majority of Urewera Maori’ to the operations of the Native Land Court. The court was seen as time-consuming, expensive, and the cause of rapid land alienation. At the same time, one of the Government’s key objectives was to open land for settlement. But, in the Crown’s submission, the 1894 tour was critical in convincing the Premier that Te Urewera was in fact unsuitable for settlement. As a result, this was no longer a motive for the Crown when it negotiated an agreement in 1895. Rather, Seddon’s and Carroll’s motivation ‘appears to have been to extend to Urewera Maori the benefits enjoyed by Maori elsewhere, specifically schools, roads, and enjoying legal title to their lands.’ In this context, Crown counsel also submitted that Seddon and Carroll had demonstrated a willingness to build a constructive relationship with the tribal leaders of Te Urewera, and ‘strove not to impose solutions on unwilling participants.’

Within this broader context, the Crown agreed with the claimants that the immediate trigger for a negotiated agreement in 1895 was the ‘small war’ over surveys. It also agreed with the claimants that the crisis had been resolved by quick resort to a show of force. Carroll had also mediated, however, and secured agreement to the surveys going ahead, with a promise that local Maori would be paid to build the roads, and that there would be special legislation to protect their district. The Crown accepted that core elements of the future agreement were included in Carroll’s promise of ‘the preservation of collective decision-making for tuhoe, and keeping the Native Land Court out of the district.’ At the end of this crisis, the need to repair the relationship between the Crown and Te Urewera leaders was ‘uppermost in the minds of all parties.’ This brought them together in Wellington.

9.4.2 What agreement was reached as a result of negotiations?
The Crown and claimants submitted that agreement, at least in principle or to a broad ‘heads of agreement’, was reached in Wellington in September 1895. The parties also agreed about some of the content of what was negotiated, but differed as to how the broad principles should be interpreted and whether some things had been agreed at all. The claimants took an expansive view of the content and meaning of the agreement, whereas the Crown – while accepting some of the claimants’ arguments – took the view that it could be held to account only where very concrete undertakings had been made.

The only claimants to argue that they were not represented in these negotiations were Ngati Kahungunu and Ngai Tamaterangi. The Crown accepted that it had an obligation to consult all hapu likely to have been affected. Crown counsel noted

10. Crown counsel, closing submissions (doc N20), topics 14–16, p 3
11. Ibid, p 16
12. Ibid
13. Ibid, p 17, topics 18–26, p 89
14. Crown counsel, closing submissions (doc N20), topics 18–26, p 89
15. Ibid, topics 14–16, p 17
that the Ngati Kahungunu claimants’ historians were ‘silent on the question of Kahungunu participation at the meetings held in 1895’, but the Crown inferred that they were not represented.\footnote{17}

The question of when agreement was reached was contested in our inquiry, because it had a critical effect on which set of proposals or statements constituted the actual ‘agreement’. According to counsel for the Tuawhenua claimants, the essence of the agreement was contained in the 7 September 1895 proposals of the delegation from Te Urewera.\footnote{18} The claimants did not agree among themselves as to the significance of Seddon’s memorandum, which followed on 25 September. The Wai 36 Tuhoe claimants said that it was ‘akin to a Heads of Agreement’, in which the details had not yet been discussed or agreed.\footnote{19} The Tuawhenua claimants, however, believed that the memorandum did not reflect and in fact resiled from almost all of the agreements reached in Wellington on 7 September.\footnote{20}

The Crown argued that the 7 September meeting represented a ‘milestone’ in the negotiations, but that the agreement was most fully summarised in Seddon’s memorandum.\footnote{21} The Crown’s view of the memorandum was similar to that of the Wai 36 Tuhoe claimants: it recorded ‘broad agreement to a set of principles in good faith’.\footnote{22} Those principles, however, had to be translated into practical legislation, which necessarily meant changes or additions; the Crown saw the process of reaching an agreement as one that continued in 1896.\footnote{23}

According to the claimants, the core elements of the September 1895 agreement were: an inalienable reserve; continued autonomy or self-government through tribal committees; the exclusion of the Native Land Court and surveys; a special title investigation process ‘in accordance with Tuhoe customs and at no cost to the people’; protection of native flora and fauna; and a package of social and economic assistance.\footnote{24} There was a ‘clear understanding, in accordance with Tuhoe’s consistent wishes, that land title was not to be individualised but to be dealt with at a hapu level’.\footnote{25}

The Crown’s view of what it called the ‘broad’ principles of agreement was much the same as the claimants’.\footnote{26} The Crown took a narrow view, however, of what specific promises were made to put these principles into effect: ‘These were title determination through an alternative process to the Native Land Court involving hapu, no court or survey costs to be charged for title determination, and the provision of a form of local government.’\footnote{27}
In the Crown’s submission it was stated ‘The test for the Crown is whether it translated the agreed principles into the legislation, and whether in implementing the Act it derogated from those key principles.’²⁸ The claimants broadly agreed that this was a key test for the Tribunal to apply. The parties differed, however, on the exact content and extent of what had been agreed in 1895. Largely, the disagreement arose because the Crown saw itself as committed only to the concrete promises it had made.²⁹ This was partly because so much, in the Crown’s view, was left ‘unspecified’. The Crown argued, for example, that the degree of self-government promised by Seddon ‘appeared to be not unlimited and certainly remained unspecified to any degree’.³⁰

The claimants, however, saw the Crown as committed to delivering every aspect of what had been discussed and (so they argued) agreed. Moreover, they said, some aspects of the agreement that they considered were both critical and wide-ranging

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²⁸. Ibid, p 6
²⁹. Ibid, pp 20–22, 47
³⁰. Ibid, p 23

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were interpreted by the Crown to be indirect or ‘ancillary’. The claimants, as we have seen, argued that an extensive package of ‘social assistance’ was part of the agreement.\textsuperscript{31} The Crown considered most of this ‘package’ to be made up of benefits that were expected by everyone involved, including Seddon and Carroll, but that were not concrete promises of the kind the Crown could be held to account for failing to deliver.\textsuperscript{32}

\textbf{9.4.3 Was the agreement between Te Urewera leaders and the Crown given legislative effect in the Urewera District Native Reserve Act 1896?}

The parties agreed that the Urewera District Native Reserve Act was intended to save the lands and to preserve and promote the self-government, tino rangatiratanga, and mana motuhake of the peoples of Te Urewera. Within that broad agreement, there was considerable disagreement over whether the Act was a faithful representation – and, where necessary, amplification – of the September 1895 principles. Nonetheless, the Crown and claimants generally agreed that Treaty breaches arose from the Crown’s failure to carry out the Act, rather than from fatal flaws within the Act itself. The main exceptions to this were the questions of whether the Act provided for the creation of individualised titles to land, and whether it was appropriate or safe to have left key points for future regulation (by the Crown alone). The claimants and the Crown also agreed that powers to alienate land and to take land for public works were added to the Act without their having been part of the September principles. The parties did not agree on whether Te Urewera leaders had consented to the additions.

\textbf{9.4.3.1 Title determination}

Counsel for the Tuawhenua claimants argued that Tuhoe had wanted hapu to decide titles but, instead, the Act created a title-determining commission in which hapu would play only a subordinate role.\textsuperscript{33} Other claimants argued that the process – and the degree of Maori involvement and control – was not in fact ‘well articulated’ in the Act. No one was sure how it would work.\textsuperscript{34} The Crown’s view was that the Act gave effect to what had been agreed: an ‘alternative form of title investigation through the specially appointed Commission’. The Commission provided for Tuhoe input, because five of the seven commissioners would be Tuhoe and the titles would be determined according to Maori custom.\textsuperscript{35} Ngati Kahungunu claimants argued that they were disadvantaged by the specification that the five Maori members of the commission would be Tuhoe.\textsuperscript{36} The Crown accepted that Ngati Kahungunu were not consulted about this, but suggested that since their rights

\textsuperscript{31} Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 51; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 87, 92
\textsuperscript{32} Crown counsel, closing submissions (doc N20), topics 14–16, p 47
\textsuperscript{33} Counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), pp 126–127
\textsuperscript{34} Crown counsel, closing submissions (doc N20), topics 14–16, pp 28, 46, 49
\textsuperscript{35} Counsel for Ngati Whare, closing submissions (doc N16), p 59
\textsuperscript{36} Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 23
were recognised in parts of the reserve, the real issue was whether they were represented on the governing committees.37

9.4.3.2 Individualisation of title
The parties did not agree on whether the 1896 Act created individual titles in land. The question was one of the key issues for our inquiry. The claimants argued that section 8 of the Act either individualised title, which they had never agreed to, or enabled the Government to ‘raid’ the shares of individuals, even if the title was not technically individualised.38 The Crown argued that section 8 was necessary to define the owners who would elect block committees and to whom proceeds from the land could be distributed. But individuals did not have many of the powers of ownership; these were vested in the General Committee. In the Crown’s view, this meant that section 8 did not create individual titles.39

9.4.3.3 Self-government
The Crown and claimants agreed that the Urewera District Native Reserve Act was intended to give effect to the claimants’ tino rangatiratanga and mana motuhake. The Crown’s argument was that it breached the Treaty later, when it lost sight of this purpose of the district reserve, and when it failed to give effect to the promises of self-government and tribal land management.40 In the claimants’ view, the Act failed to define the powers of the committees. Instead, this was to be done by regulations, which placed the Crown in an important position of trust.41 The Act thus failed to entrench Maori autonomy in colonial law, and therefore provided only ‘ostensible’ autonomy.42 The Wai 36 Tuhoe claimants argued that the Crown’s reservation of these powers to itself was a breach of the agreement and of their tino rangatiratanga.43 The Tuawhenua claimants, however, argued that it did allow for flexibility in working out the details, and that iwi ought to have been able to trust the Crown: ‘The honour of the Crown was a key component that could determine the success or otherwise of the legislation.’44 On this point, the Crown and claimants were in agreement.

9.4.3.4 Social assistance
According to the claimants, the Government had promised a package of social and economic assistance, but this was left out of the Act.45 The Crown argued that

37. Crown counsel, closing submissions (doc N20), topics 14–16, pp 27, 35, 37
38. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 87–88, 91, 93–96, 98; counsel for Ngati Whare, closing submissions (doc N16), pp 59–60
40. Ibid, p 34
41. Counsel for Ngati Whare, closing submissions (doc N16), pp 59–60; counsel for Tuawhenua, closing submissions (doc N9), p 124
42. Counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (doc N14), pp 68, 163
43. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 91
44. Counsel for Tuawhenua, closing submissions (doc N9), p 124
45. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 51; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 92
it had never promised anything more than a few specific things (such as schools) that could already be provided under existing laws or by the Crown's power to regulate for matters in Seddon's memorandum.  

### 9.4.3.5 Alienations

The parties agreed that there were two key provisions in the Act that had not been agreed or discussed in September 1895: the General Committee's power to alienate land to the Crown and the Government's power to take land for public works. The claimants regarded these additions as breaches of the 1895 agreement, although they admitted that the alienation provisions were relatively restricted and included significant protections. The Crown's power to take land for public works, however, was seen as a violation of their tino rangatiratanga. The Crown argued that both powers were restricted and qualified by safeguards, and that their inclusion was almost certainly agreed by the delegation of Te Urewera leaders in 1896.

### 9.5 Tribunal Analysis

#### 9.5.1 Why and how did Te Urewera leaders and the Crown negotiate a new basis for their relationship in 1894 and 1895?

**Summary Answer:** By 1894, there was significant pressure to open Te Urewera to settlement and the colonial economy. Premier Seddon toured the district, intent on convincing its inhabitants of the benefits of roads, schools, and using their ‘surplus’ land in the economy. In particular, he stressed Treaty protections, but argued that these could be given effect only if Maori obtained land court titles for their lands. The Government, he said, wished to protect them in the retention of their lands, protect their interests from the settler majority, promote their welfare, and see them prosperous and free. Ngati Manawa, and to a lesser extent Ngati Whare and Ngati Haka Patuheuheu, welcomed this message. Tuhoe, however, told the Premier of their determined resolution to keep to Te Whitu tekau policies, and to seek legal powers for a governing committee. There were sharp exchanges on some of these issues, especially the question of what kinds of powers the Crown could or would recognise in a Maori committee. Nonetheless, the historians who gave evidence on this issue agreed that a foundation of trust and some level of agreement were achieved at these meetings, serving as a basis for later discussions and agreement in 1895.

When Seddon left the district, the press said he had solved the ‘native problem.’ The chiefs, it was said, had confirmed their acknowledgement of the Queen and had promised to obey the law. Kereru Te Pukenui had gifted the taiaha Rongokarae to the Premier at Ruatoki, though this exchange was understood quite differently.

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47. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 48; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 95–96
48. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 91
by Tuhoe and the Government. At the same time, the Premier had offered further discussions on most issues at Wellington later in the year. He insisted, however, that a trig survey would be carried out (with proper notification). Given their circumstances, Seddon undertook to fund a delegation from Te Urewera to visit Wellington. For reasons unknown, the Government did not keep this undertaking, despite several requests from Te Urewera leaders during the remainder of 1894.

As a result, the promised discussion of surveys and protection of Te Rohe Potae did not happen before the trig survey started in 1895. What followed was, in the words of Apirana Ngata, a ‘small war’, though a war in which neither side fired any shots. Tuhoe and Ngati Whare obstructed the survey, leading (as the Crown conceded) to an immediate ‘show of force’ by the Government. In the wake of the troops, however, Cabinet Minister James Carroll came to negotiate agreement to the trig survey. He convinced Tuhoe at Ruatoki that the survey would not (as officials had told them in the past) be used for Native Land Court purposes. Numia Kereru stressed that Tuhoe’s compact with the Government, confirmed by the gift of the taiaha Rongokarae, did not mean the Government could do whatever it chose without consulting them. But by the close of the hui, Kereru Te Pukenui secured agreement among those present that the Crown could be trusted and the law would be obeyed.

No sooner had the dust settled than it was discovered the surveyors were also surveying for roads in the interior. The Government appears to have decided to force the issue of roads in response to the first obstruction, so that the district would be opened up and any further opposition speedily countered. The surveyors were again obstructed, with the result that Seddon immediately sent a (larger) armed force – and Carroll to negotiate. This time, Carroll seems to have promised that a delegation could go to Wellington to negotiate a settlement of all outstanding issues, and that the district would be protected and reserved by a special Act of Parliament.

Bewildered at the Government’s willingness to use troops and to force roads on them, Ngati Whare and Tuhoe wavered in their commitment to Te Whetu Tekau policies. At the same time, Seddon was embarrassed that his much-lauded settlement of the ‘native problem’ had been exposed in this way; he was also aware that he could do no more than make a limited show of force. Moreover, his 1894 tour had convinced him that the district was not required for European settlement. But he needed to undermine the growing influence of Kotahitanga, with its goal of a national Maori parliament and Maori control of their own lands, and show that the Government’s policies presented a genuine and reasonable alternative, of benefit to both Maori and settlers. For all these reasons, both sides were by August 1895 ready not only to negotiate but also to make real concessions.

**9.5.1.1 Origins of the negotiations between Te Urewera leaders and Seddon’s Government**

By 1894, there was significant pressure on the peoples of Te Urewera to give up the long-standing Te Whetu Tekau policies of no roads, no surveys, no land sales, no
leases, and no Native Land Court. For some time, the groups on the outer edges of Te Rohe Potae – especially Ngati Manawa and Ngati Haka Patuheuheu – had been getting land surveyed and put through the Native Land Court. As we will see in chapter 10, there were many reasons for this. Ngati Manawa, in particular, wanted to use and develop their lands in the colonial economy. But all groups faced the risk of losing land no matter which way they turned. Native Land Court processes empowered any group (even though they might have comparatively small or even no interests in a block) to set in motion the inexorable process of surveying, land court hearings, and the award of title. At the same time, Government agents pressed for the leasing and sale of land for settlement. Tuhoe had been unable to keep land in which they had interests out of the court or to prevent the alienations that usually followed.

This situation was mitigated by two factors. First, the leaders of Te Urewera had maintained their compact with the Government since 1871. They had sought to communicate and cooperate with the Government where possible, and to obtain recognition (and legal powers) for their tribal governance body. As we saw in chapter 8, they were willing in the 1880s to be flexible about the exact form of their governance body, and to accept the trappings of a European-style committee, if that won it status and powers at colonial law. At the same time, they did not accept all the powers of kawanatanga as conceptualised by the Crown. They kept magistrates and the operation of most colonial laws out of their district, and they maintained a ‘border’ which prevented access for prospectors and others who the tribe saw as threatening Te Whitu Tekau policies.

Secondly, Te Whitu Tekau policies were maintained by consensus. The leaders of Te Urewera met with each other and, from time to time, with officials (usually neighbouring resident magistrates such as Samuel Locke and RS Bush) and continually debated how to protect their authority, lands, laws, and way of life. Until 1891, there had been general agreement that the Te Whitu Tekau policies were the best – indeed the only – way to do this. The result, as we have seen in chapter 8, was a stalemate with an increasingly assertive Crown by 1889. By that time, the Government was actively trying to open Te Urewera to gold prospecting, the Native Land Court, and British settlement. Also an issue, though arguably less important to the Crown than these others, was its desire to bring Te Urewera under the full authority of colonial law. In chapter 8, we pointed to articles in the settler press which were sceptical of any urgent need to see the Queen’s writ run inside Te Urewera.

Three factors had protected the heartland of Te Urewera from the full brunt of colonisation before 1889. First, it had not been subject to much pressure from either private settlers or the Crown, who had been preoccupied with better, more accessible, less apparently ‘hostile’ districts. Secondly, ever since the withdrawal of Rapata Wahawaha’s forces and the 1871 compact with Donald McLean, the leaders of Te Urewera had protected their mana motuhake with a single-minded determination. Thirdly, there had been – as we noted above – continuous debate and renewal of the consensus to keep out the ‘evils’ of colonisation and the colonial state. These factors either no longer applied or were of less force by the early 1890s.
In particular, there was a new and intense pressure from the Crown to open Te Urewera for economic development, and the consensus of Te Urewera leaders had been decisively broken.

How had this come about? As we saw in chapter 8, there had been a great movement of Tuhoe to live at Ruatoki by the late 1880s. One result seems to have been an explosion of conflict and uncertainty as to land rights and authority. At the same time, a younger generation of leaders, especially Numia Kereru, saw the future of Tuhoe in the development and use of their lands in the colonial economy. Applications to survey Ruatoki lands and put them through the Native Land Court had been filed by Ngati Awa. Partly in response to that, and partly as a result of the Governor’s visit in 1891 and internal conflict, some Ruatoki leaders and hapu decided to have the lands surveyed to get the court to confirm their ownership. With most of the people now living at Ruatoki, and the majority still opposed to surveying and to the court, this intensified the conflict within Tuhoe. That conflict is one context for the negotiations which took place with the Crown from 1894 to 1896.

The Tuawhenua researchers described the choice facing their people as follows:

[By the early 1890s] the leadership of Tuhoe [was] in disarray – divided and distracted by the actions of the Crown, and desperate to find some way to regain control over their destiny.

They faced a great dilemma as only the great composer Mihikitekapua could put it in her pithy waiata:

- Te roa o te whenua te tawhaia atu I travel such a long way
- E noho ana hoki au i Poneke raia To reach distant Wellington.
- Awhi ana hoki au ko koe Te Karauna When I embrace you the Crown
- He whakairitanga mo te mate o te tinana I know it will destroy me.

Thus, as Mihikitekapua in her wisdom could see, Ngai Tuhoe had come to a point where they had little choice but to co-operate with the Crown, even join with the Crown, yet they knew that act would only bring disaster for the people.50

What had brought the peoples of Te Urewera to this point, and would it be ruinous as Mihikitekapua feared?

We pause here to briefly recapitulate the events at Ruatoki in 1892 and 1893, which serve as essential context for what followed. It will be recalled from chapter 8 that the majority of hapu opposed the survey of Ruatoki, which was at first delayed by their opposition, and then obstructed when the Government decided to persevere. James Carroll had mediated on behalf of the Government. He did try to limit the amount of land covered by the survey, and he was understood to

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have promised in 1892 that if the people allowed the survey of Ruatoki to go ahead the rest of the district would be protected from further surveys and the court. In any case, there were two rounds of major obstruction in 1893, each of which was followed by arrests, trials, and the imposition of either fines or imprisonment. On both occasions, the Premier, Richard Seddon, brought in armed police and the situation appeared headed for a major showdown until Te Kooti intervened (at the request of the Government). Te Kooti had been pardoned by the Crown in 1883 and was able to return to Te Urewera, where his influence remained strong among Tuhoe and Ngati Whare. By 1891, the Government was looking to Te Kooti to play a mediating role with Tuhoe, and we noted above that Te Kooti (whether or not he felt under an obligation to assist the Government) had come to believe that the law should be looked to for protection. His advice to Tuhoe was that the survey should be allowed to continue, and this proved decisive. The survey was completed without further obstruction, and the Native Land Court proceeded to sit and hear the Ruatoki case in late 1893 and from time to time in 1894.

In February 1894, Tuhoe held an important hui to try to heal the divisions that were manifested in these developments and to restore a united approach to the threats that faced them. The hui lasted for over a month, and at the end of it a consensus had been reached: Tuhoe reaffirmed all the old Te Whitu Tekau policies as the way to protect their lands and authority from further encroachments. Our main source of information about this hui and its decisions comes from the record of Seddon’s visit to Ruatoki in April 1894. It was telling that the rangatira who addressed him on the subject and set out the Te Whitu Tekau policies as the considered decisions of a united Tuhoe was Numia Kereru, one of the leading proponents of the Ruatoki survey. At Whakatane, Ngati Awa had warned the Premier that Tuhoe would try to get him to stop the court from completing its work at Ruatoki, but that did not happen. The price of unity, it seems, was a concession by other Tuhoe leaders that the valuable Ruatoki lands were to continue through the court and obtain Crown titles, the key to participation in the colonial economy. Numia was chosen as the spokesperson to present the united views of Tuhoe, even though, as he told the meeting, he did not agree with some of them. For him, the undoubted key point was that the policies newly re-endorsed by the hui did not cover land that had already been surveyed – in other words, Ruatoki.

For our purposes, it is important that Tuhoe negotiations with the Crown in the mid-1890s began from this starting point: an apparent restoration of unity in February 1894 around the policies of Te Whitu Tekau. We have to account for how and why the leaders of Te Urewera were persuaded to move from this position and to give up some of these policies by September 1895. Numia Kereru’s account of the February hui was recorded as follows:

53. ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, March 1894, AJHR, 1895, G-1, pp 45, 52
That meeting began its work on the 1st of February, and continued till the 4th of March, when it concluded its business. I will now let you know what transpired at that gathering. I will lay before you what was transacted on that occasion. One matter that was determined was the territorial boundary of what land was to be surveyed under command of the Government [the ring boundary], and internal surveys within these boundaries would not be consented to at the present time, and that searching for gold would not be agreed to by them, and that the sale of their land would not be acquiesced in by them, and the laying-off of roads through their land would not be agreed to, and that leasing of their lands was also to be prohibited, that committees should be established and that the duty of these committees was to deal with troubles that might arise in reference to their lands. These were the matters decided upon at that meeting.

I may further explain to the Government what else took place at that meeting. The people who attended it are dwelling under the authority of the Government; they are dwelling in peace; they will not depart therefrom and take up the course followed in former times; they will pursue the road that leads to prosperity. Now, this is a separate matter I am going to speak of – that is, in regard to the land. They – I am referring to the meeting – wished to retain within their own hands the administration of the affairs relating to their lands. The lands that are already surveyed are not included in the remarks I am now making. I should explain why the meeting has taken up this position. This is the explanation I have to give: Lands that get under the control of the Government are simply squandered away; those who have possessed land become landless, they are those who are supported by the Government.  

54. Ibid, p 52
This, then, was to be the basis for Tuhoe’s re-engagement with the Crown in the wake of the Ruatoki survey crisis.

After the abandonment of resistance to the survey in mid-1893, there was no significant contact between Tuhoe leaders and the Crown for several months. This situation underwent a dramatic change in April 1894, when the Premier (who was also the Native Minister) came to visit them as part of his tour of North Island Maori communities.

Seddon in Te Urewera

Seddon travelled determinedly through Te Urewera, though the weather was often bad, and he refused to turn back. The journey from Ruatahuna to Waikaremoana was arduous; the official report described it as ‘most trying, it being over the roughest part of the country they had travelled, the party having literally to crawl over masses of slippery clay and rocks, besides fording several streams’. The waters of the lake were rough when they crossed to Onepoto, and the party were ‘half drowned by the huge seas which continually broke over the canoe’. Three settlers were waiting to welcome them, and served whiskey without stint. Seddon then rode on three miles to the ‘Native settlement’ where a warm welcome and a huge fire awaited him; soaked to the skin, he addressed the people, and the hui lasted from nine in the evening to one in the morning.¹ Cathy Marr commented:

The documentary records of the 1894 visits show that Seddon appeared to relish the opportunity to engage in debate with Maori communities, and employed his usual combative political style to full effect. He liberally mixed eloquent appeals, entertaining humour, and promises of protection and goodwill with thinly veiled threats that only his government’s sense of justice stood between Maori and the far less generous mood of the settler community. His physical size, debating ability and obvious enjoyment of public speaking also appeared to impress many in the Maori communities he visited and according to his biographer he showed during these visits that the ‘mana of a Premier was safe in his keeping’. As the tour went on, Seddon also clearly became enamoured of the idea of himself as a statesman. He relished the idea of following in the footsteps of men he admired such as Sir George Grey and John Ballance in negotiating with Maori leaders of the most separatist districts to persuade them to bring their communities to acknowledge the authority of the Queen.²

¹ ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, March 1894, AJHR, 1895, G-1, pp 48, 61, 79
In her evidence for the Tribunal, Cathy Marr explained the Liberal Government policies that had led to this tour, and the events that followed. In Ms Marr's view, the tour was designed to win both Maori and Pakeha over to Liberal Party policies. On one side, the Government was under Pakeha pressure to open up more Maori land for settlement. On the other, Seddon's Government was faced with a North Island-wide groundswell of Maori disquiet over land loss and the effects of the Native Land Court. Maori concerns had been reflected in the establishment of the Kotahitanga, or Maori parliament movement, in 1891:

A major goal of this movement was to establish a separate council or parliament to handle Maori affairs. It also sought to abolish the Native Land Court and replace it with committees of owners under the council to settle title and administer Maori lands. In the early 1890s, the Kotahitanga pursued these aims in Parliament, proposing a series of Bills in the General Assembly. When the Liberals rejected these, the movement sought to establish its parliament independently and from the mid-1890s supported a boycott of the Native Land Court.

The Liberals responded to Maori and Pakeha discontent by appointing a commission of inquiry into the native land laws, which reported in 1891. James Carroll, who accompanied Seddon and was a key point of Government contact with the Ruatoki leaders in 1893, had been a member of that commission. Its report, as Ms Marr noted, was highly critical of the impact of the Native Land Court on Maori. Seddon had appointed himself Native Minister in 1893, following the resignation of Alfred Cadman. He had the task of trying to balance reforms (such as the reintroduction of pre-emption) that the Government hoped would deal with Maori concerns, with the Liberals' desire to make more Maori land available for settlement. As Cecilia Edwards put it, 'a critical issue for Seddon and Carroll was to win grassroots support from the communities involved for having title to their lands determined through the Native Land Court as a pre-requisite for considering selling lands surplus to their requirements to Government.'

In Cathy Marr's view, the Liberals were also keen to give the impression that they understood Maori issues and were in 'control' of Maori districts. Discussion and negotiation, rather than military force, were considered the best way to achieve this aim. Ms Marr notes that Seddon, who spent two years as Minister of Defence under Ballance, was well aware that the armed forces were 'small, inefficient and underfunded', and that any measures to strengthen them would be expensive and unpopular. Thus military solutions, apart from occasional shows of force, were no longer seen as viable by the 1890s. For that reason alone, Seddon – who had sent armed police to Te Urewera in 1893 – had an incentive to improve relations with

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57. Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), p 21  
58. Edwards, 'The Urewera District Native Reserve Act 1896, Part 1'(doc D7(a)), p 90  
59. Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), p 20
the leaders of that district, and to get to the bottom of their opposition to surveys and the court. As Cecilia Edwards also noted in her evidence for the Crown, this was a ‘fact-finding’ tour designed to better inform the Government, as well as a mission to ‘sell’ Liberal land policies to Maori. For their part, Te Urewera leaders welcomed the arrival of the leader of the Government, a man who said he had come to sort out problems and settle any justified grievances, as an important opportunity.

9.5.1.2 Seddon and Carroll visit Te Urewera, 1894

Seddon's entourage travelled extensively in Te Urewera in 1894, holding talks in Ruatoki, Galatea, Te Whaiti, Ruatahuna, and near Lake Waikaremoana. Seddon was heartened by apparent support from Ngati Whare and Ngati Manawa for the prospect of roads and schools in the district. According to Marr, Seddon returned from his tour believing that 'he had finally convinced the majority of the Urewera leadership to accept the mana of the government and the Queen'. He was able to portray this to the settler electorate as a success. Seddon's conviction arose in part because he had learned on his tour – to his surprise – of McLean's 1871 compact, and the way in which the leaders of Te Urewera understood it. Seddon had not been aware of past efforts by Tuhoe and Ngati Whare leaders to maintain contact and a positive relationship with the Government. He was told of this in no uncertain terms.

The discussions between the Government representatives – primarily Seddon, but also Carroll – and the leaders of Te Urewera were recorded in English and published in newspapers and the Appendix to the Journal of the House of Representatives. They provide an important account of how dialogue was opened between Tuhoe, Ngati Whare, and Ngati Manawa on the one hand, and the new Premier on the other. The exchange of views, which was sometimes heated and inconclusive, started both parties on the road to the Urewera District Native Reserve Act in 1896. In some ways, it was a false start. This was because the dialogue was interrupted. As we shall see, Seddon and the various communities agreed that the latter should send representatives to Wellington to continue the discussions there. Several key matters, including surveys and tribal committees, were held over for future settlement in Wellington. But before that could happen, surveyors were sent in 1895 to complete a trigonometrical survey, and to survey a road line from Te Whaiti to Ruatahuna. The result was a conflict which Sir Apirana Ngata later described famously as the 'small war'.

Nonetheless, there was an important exchange of views and exploration of opening positions at the 1894 hui. Seddon and Carroll explained how the Government wanted to protect Maori interests and ensure their prosperity, and the manner in

60. Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), pp 33–34
61. Detailed accounts of the hui have also been provided in the reports of Cecilia Edwards (doc D7(a)) and Judith Binney, 'Encircled Lands, Part 2: A History of the Urewera, 1878–1912' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A15).
which they believed it would (or could) do so. Much of the groundwork for future trust in the Premier was, in our view, laid at these meetings. At the same time, Seddon learned of the existence of the 1871 compact, alongside Tuhoe’s determination to have their land and affairs controlled absolutely by their own committees, and their fundamental opposition to parting with their lands. He also learned, as we shall see below, that most of the land in Te Urewera was not suitable for the kind of close settlement promoted by the Liberals. These things underpinned the eventual agreement reached in 1895.

9.5.1.3 What the Liberals wanted: surveys, land titles, land dealings, roads, schools

Three main themes emerged from the 1894 hui. The first was the Government’s message that Maori should prepare their lands for use in the colonial economy by putting them through the land court. The second was the Government’s promise to protect the peoples of Te Urewera and ensure their prosperity. The third theme was Tuhoe’s wish to govern themselves by means of a tribal committee, which they believed was compatible with the Crown’s exercise of kawanatanga.

During the 1894 hui, the Government constantly reiterated its message that Maori should get their lands surveyed and clothed with a ‘legal title’, and then use their ‘surplus’ land in the colonial economy. That could involve either leases or sales but the idea of selling land was seldom mentioned, except at Galatea, where Harehake Atarea of Ngati Manawa said: ‘We always acted under the instructions of the Government. I have carried out roads, surveys, land-courts, leases, and sales.’

This, as he well knew, was the antithesis of Te Whitu tekau policies.

At most places, the Premier’s messages included his promotion of the recently enacted Native Land Purchase and Acquisition Act 1893, which was designed to facilitate the disposal of ‘surplus’ Maori customary land, thereby helping meet the ‘rapidly increasing demands for land for settlement’. Seddon emphasised that committees of owners, or the majority of the owners themselves, should make a deliberate decision as to whether their lands were ‘surplus’ or not. If they were considered surplus, then the majority of owners would be able to decide if the land should be leased or sold. Land did not have to be sold to be profitable in the colonial economy. Nor were leases of land the only way to ensure an income in the long term, as the Government could invest purchase moneys in annuities for the sellers. In either case, under the Liberals the choice would be a deliberate one made by the community. The Government itself did not want to take the people’s lands from them. There was an emphasis on leasing, in acknowledgement of the audience’s expected preferences. There was also an emphasis on fair prices. The people could have their land auctioned, either for lease or sale, to the highest bidder, or – if they dealt with the Crown – their land would be valued by an independent board, on which they would be represented.

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62. AJHR, 1895, G-1, p 65
63. Edwards, ’The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 87
64. See, for example, AJHR, 1895, G-1, pp 54–56, 82
During his 1894 tour, Seddon made frequent references to the Treaty, which he reaffirmed. His comments to Tuhoe at Ruatoki and Ruatahuna related mainly to the Queen’s guarantee of protection; he explained that the Government did not want to take their land but would protect them in their retention of it. We will consider those comments in detail below. Here is Seddon’s general understanding of the Treaty, as he explained it at Whakatane in April 1894:

Then the Europeans came, many years afterwards [after the arrival of the canoes], and further trouble arose, and that was caused through the men. Instead, then, of agreeing as brothers – instead of living in peace together – because there was quite enough land for all – they commenced to destroy each other. This evil state of things continued for some time; there was great loss of life, and many evils overtook both races. Then the forefathers of those present, the chiefs of the Native race, held a conference. They saw that the European race was increasing in large numbers, and the Natives were decreasing, that unless some position was established on a more satisfactory footing it probably meant the extermination of their children. The result of this was the signing of the Treaty of Waitangi. Now, the principles contained in that treaty were – first, that the Native race was to admit the sovereignty of the British Government – the sovereignty of the Queen – and from that day forward the Native race were to be her children just the same should be kept in mind when we consider the actual process of land alienation in Te Urewera, in chapters 10 and 13.)

As well as surveys, land titles, and land dealings, the Government representatives preached a message of roads and schools as the means to develop the people both economically and socially. Schools would enable the teaching of new farming methods and technical skills such as carpentry. Roads would enable better communications and commerce. Ngati Whare and Ngati Manawa expressed themselves in favour of both. Tuhoe, on the other hand, were more willing to have schools than roads. At Ruatoki, some people wanted the land titles clarified before deciding where to put the school, while at Ruatahuna the community preferred to keep the school at a safe distance – at Ruatoki – for the meantime. But the benefits of schools were not challenged by anyone. Roads, however, were still banned from Te Rohe Potae despite everything that Seddon and Carroll could say in their favour.65

Gold prospecting proved a non-issue, disposed of briefly by Seddon at Ruatoki. He told the people that the Government would not send any prospectors, and that

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65. AJHR, 1895, G-1, pp 51–52, 55, 56, 59, 64, 65, 70, 71, 72, 73, 75–76, 77, 83
as the pakehas; that their welfare was to be attended to; that they were to have protection; that no one else should interfere with them; and that she – the Queen – would give them the same protection she gave her liege subjects at Home. And she conceded that they were to be the owners of the land. There were also certain privileges conceded as regards the fishing rights which had been established, and which it was considered good for the Native race should be reserved to them; your forefathers, at the same time agreeing, on your behalf, that in dealing with their lands they were only to deal through the Government – that is, the Queen. The wisdom of that course has been apparent, because wherever there has been a departure therefrom trouble has overtaken both races. We must all, therefore, admit that the principles of that treaty originated with men who knew what they were doing – men who could see a long distance ahead; and I am sure that if some of your forefathers had only had an opportunity they would have left some mark behind to prevent a departure from this treaty, and would have taken steps on behalf of the Native race – would have left some command – so that a departure could not have taken place. This day the Government – Her Majesty the Queen, and those under her who are governing this country – are quite prepared – and I speak on their behalf – I say it is our desire to maintain the position that was then agreed upon by both races.¹

1. ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, March 1894, AJHR, 1895, G-1, p.44

nothing would be done about gold until after land titles had been awarded: ‘So you do not require to have any anxiety upon that account.’⁶⁶

Most of the disagreement was therefore focused on the Government’s promotion of surveys, land titles, and land dealings. At Galatea and Te Whaiti, Ngati Manawa, Ngati Haka Patuheuheu, and Ngati Whare saw the advantages offered by dealing with their lands, and evidently accepted the Premier’s view that secure land ownership and prosperity would be the result.⁶⁷ This was indeed an act of faith, especially for Ngati Haka Patuheuheu, who so far had achieved neither of these things in the wake of their land court hearings (see chapter 10). The hardest audience to convince, however, was Tuhoe at Ruatoki, Ruatahuna, and Waikaremoana. The latter community was something of a special case. As they explained to Seddon, they were living to the south of the lake on their reserved land. The Premier seems to have accepted that ‘surplus’ land was hardly an issue for this group.⁶⁸ At Ruatoki

66. Ibid, p.60  
68. AJHR, 1895, G-1, pp.79, 81, 82, 83
and Ruatahuna, however, he pressed the idea of surveys, titles, and leasing. Tuhoe, in response, told him quite firmly that they wanted an outer boundary defined, within which a committee would manage their affairs, and a ban on surveys within the boundary – at least for the meantime. Interestingly, in response to the strong line taken by Seddon and Carroll, Tuhoe indicated that they might be willing to accept surveys and land transactions in the future. They wanted to negotiate a full agreement with Seddon in Wellington first. But they stressed that only short-term benefit had ever resulted for Maori dealing with their lands. They did not believe his assurances that this was the path to long-term prosperity.\(^69\)

The Premier deduced that the concerns about the court and surveying arose from the admittedly heavy costs. He was not yet prepared to abandon either the court or surveying, as he would be in discussions a year later. Instead, he promised reforms, including cheaper surveys carried out fairly as between all parties by Government surveyors, and lower court costs. The value of the land would no longer be swallowed up by the costs of getting a title. He also promised that the court would sit in Ruatoki; the people would not be forced to go long distances or to sell land to cover the costs of attending court in distant locations for long periods of time.\(^70\) At Ruatoki and Waikaremoana, Seddon was told that Tuhoe's main objection to surveys and the court was indeed the ruinous costs.\(^71\)

One of Seddon’s key messages at the 1894 hui was that for their land to be protected and bring them prosperity, it had to be defined (by survey) and awarded a Government-created title by the Native Land Court. The Premier stated that the tribe could not protect their land under their own laws; they had no choice but to get a title from the Queen. He also accused them of being afraid they could not prove themselves the owners in court.\(^72\) While accusations and criticisms flew back and forth, amid the expressions of love and goodwill, Seddon remained adamant that Tuhoe must get their land surveyed and put through the court. Tuhoe remained adamant that they would not do so – but qualified their position by holding out hope they might do so in future, if a satisfactory general arrangement could be made with the Government.

From these hui there emerged the proposal of continuing negotiations. The Premier encouraged the idea that Tuhoe should send a delegation to Wellington, after he had completed his tour and had a chance to get the preliminary views of all communities. Recognising that transport and accommodation would be difficult for the delegation, he promised to fund it.\(^73\) June was mooted as the time for further discussions, during the parliamentary session.\(^74\) Due to the nature of the meetings (or perhaps the minutes), the historian witnesses in our inquiry do not agree on exactly what the parties agreed to hold over for further negotiations in Wellington. Judith Binney understood that decisions in relation to the

\(^{69}\) AJHR, 1895, G-1, pp 48–61; see also Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 132–140

\(^{70}\) AJHR, 1895, G-1, pp 54, 55, 58, 71

\(^{71}\) Ibid, pp 57, 84

\(^{72}\) Ibid, pp 53–54

\(^{73}\) Ibid, pp 57–58, 71

\(^{74}\) Ibid, p 57
9.5.1.4 What the Liberals offered: the active protection of Maori, and the creation of prosperity for the mutual benefit of Maori and settlers

The second main theme to emerge from the hui was the Government’s wish to protect the peoples of Te Urewera. Almost everything that Seddon said in his discussions was couched in the language of active protection. He told the people that he was their loving father who had only their best interests at heart. He explained that the Government wanted to protect them, to ensure they retained their lands, and to ensure they survived as a race and had a happy, prosperous future. He promised the Government would be ‘strong’ to protect them; it would stand between them and the large settler population. He stressed that Liberal policies would enhance the prosperity of both Maori and settlers. Professor Binney noted

75. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 139, 151, 166–167
76. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), pp 98, 101, 111
that Seddon’s references to himself as parent (translated as matua) would not have seemed paternalistic to his Maori audience, and that the Government cast itself quite properly as having a role to ‘control, guide, protect, and assist both races’.  
Seddon repeatedly told the people that his words were not empty ones but could be relied upon: ‘My heart is not made of stone’, he said:

I see a noble race, and see that they are disappearing from the face of the earth. I say, it is my desire to preserve that race. I see them living in absolute poverty, not having sufficient food, not having the comforts they ought to have. We wish to alter this state of things, and let them live happy and contented by our side.

The way to reach this happy state was to deal with their lands under the law:

I say they will never be landless – never be without money, food, or clothes. They will be more prosperous than Tuhoe have been since they have been Tuhoe. There is still a sufficient remnant of your tribe from which may be built a good and great people, and I have indicated to you the foundation upon which that great people can be built.

But it is also important that the Government’s many promises of protection and prosperity came with ‘riders’ or provisos, as Binney noted. Carroll, for example, reiterating at Ruatoki that the Government stood between the people and the settlers, stated that ‘We are warding off any evil that may befall you and the Native people, but it will be impossible for us to maintain this position for long.’ Continued protection, in his view, was dependent on their getting titles to their land and deciding to do something with it. Seddon underlined both of these points. Although the Government stood between Maori and the large settler population, there was ‘an almost overwhelming pressure being brought to bear upon the Government.’ His Government wished to carry out the Treaty, and ensure the peoples of Te Urewera were protected in the retention of their land, but he added that they could not have such protection without a Crown-derived legal title to their lands. Only then, he said, would he know who and what the Crown needed to protect. Seddon, perhaps unaware that Tuhoe had not signed the Treaty, told the hui at Ruatoki:

Your forefathers [when signing the Treaty] laid down the principle that the Government, which you acknowledge, was to see you maintained in the possession of your own lands. Now, it is impossible for the Government, of which I am the head, to

78. See, for example, AJHR, 1895, G-1, pp 48, 49, 62, 69
79. AJHR, 1895, G-1, p 49
80. Ibid, p 55
82. AJHR, 1895, G-1, p 51
83. Ibid, p 70
still carry out, on behalf of the Queen, the Treaty of Waitangi; I say it is impossible for us to maintain you in the possession of lands belonging to you unless we know where those lands are situated.\textsuperscript{84}

At Ruatahuna, Seddon returned to this point: the Queen’s protection under the Treaty was vital for Maori to keep their lands and thus for their very survival as a people:

The great changes that are taking place make it almost imperative that the titles to all lands in the colony should be ascertained, so that the Natives who own land should be put in possession of their own land, and may have the protection of the Queen. Your forefathers stipulated that the Queen was to give them her protection. She can only protect you by giving you a title and by placing you in possession of the land. Those who say, ‘We do not want the protection of the Queen,’ are practically committing suicide, because the land is life.\textsuperscript{85}

Also important is the question of whether Seddon’s many promises of protection and prosperity, and of his Government’s intention to ensure the peoples of Te Urewera had both, amounted to an enforceable undertaking on the part of the Crown. Many of the historians who appeared before us agreed that Seddon’s statements were sincere; that what he said to Tuhoe, Ngati Whare, and Ngati Manawa was what he meant, not just in 1894 but throughout the discussions that led to the 1896 Act. Richard Boast, in his evidence on twentieth-century issues, cited the evidence of John Hutton and Klaus Neumann:

From the government’s side, while Seddon appears to have been enamoured with the sound of his own voice – and he sincerely appears to have believed his paternalistic rhetoric – the commitment he made as Premier of the New Zealand Government to the hapu of Te Urewera should not be treated lightly. Seddon repeatedly stated that the people of Te Urewera would be protected, that a survey of their lands would ease ‘uncertainty’, and that the government would be their friend and parent. He stressed the benefits of development that would flow from their new relationship, and he gave emphatic assurances that Urewera hapu would be protected in their ownership and management of land. This seems to have been exactly what Urewera rangatira were looking for.\textsuperscript{86}

In our view, Seddon’s promises and assurances fell broadly into three categories. First, he assured Te Urewera communities that the Crown did not want to acquire their land, but rather to protect them in their retention of it. Carroll told Tuhoe

\begin{footnotes}
\item \textsuperscript{84} Ibid, p 53
\item \textsuperscript{85} Ibid, p 76
\end{footnotes}
at Ruatoki that ‘It is not that the Government has any desire on its part to take possession of your land. What the Government wishes is to see you firmly established upon your own property.’\(^87\) Seddon said at Ruatahuna: ‘I speak for the Government when I say we promise you our protection to confirm you in the possession of your lands. We do not want to take your land from you.’\(^88\) He tied this assurance directly to the Treaty.\(^89\)

Secondly, as we have seen, he assured the peoples of Te Urewera that the Government was their friend and protector, anxious to protect their interests both from the settler majority and in a multitude of ways. These assurances were not tied to any particular outcome, but rather were statements of how his Government intended to act. As such, Maori were entitled to believe them and rely on them.

Thirdly, Seddon assured the people that the Government wanted them to be prosperous, and tied this to a particular outcome; if they leased or sold their ‘surplus’ land, and accepted roads and schools, then they would never be landless but would instead enjoy permanent prosperity alongside settlers. Both peoples would benefit from such an outcome. These kinds of promises, in the Crown’s submission, were nothing more than an expectation of a future outcome: they did not bind the Crown to deliver it.\(^90\) Further, the Crown’s historian, Cecilia Edwards, stated that, in her view, Seddon’s discussions were sometimes tied to Maori using a very particular piece of legislation: the 1893 Native Land Purchase and Acquisition Act.\(^91\)

We do not accept, however, that Seddon’s assurances were limited to (or understood as limited to) what would happen if Maori used the 1893 Act. They had a broader relevance and application to his Te Urewera audiences, and laid the groundwork for future trust in a good outcome from the Urewera District Native Reserve Act. Overall, Seddon’s message was that if the people got a Crown title for their lands, and then used them in the colonial economy, they would be forever prosperous. In 1894, Tuhoe themselves did not necessarily believe his assurances on this point. The starkest representation of this is Numia Kereru’s speech at Ruatoki. Numia assured the Premier that he himself accepted the truth of what had been said. ‘People like myself,’ he said, ‘who are upholding the Government, are strong in our endeavours to get the people to consent to the advancement that is pointed out to us.’\(^92\) But the great majority of Tuhoe had agreed on a contrary view in February, and Numia explained that view on behalf of the people, in measured and thoughtful terms:

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\(^{87}\) AJHR, 1895, G-1, p 56
\(^{88}\) Ibid, p 76
\(^{89}\) Ibid
\(^{90}\) Crown counsel, closing submissions (doc N20), topics 14–16, p 47
\(^{91}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’1 (doc D7(a)), pp 81, 97–98, 115–116
\(^{92}\) AJHR, 1895, G-1, p 52
They have watched what has taken place with regard to the tribes outside of us; we see that others of the Native race are now in a landless condition – that their lands have all passed away to the Government. These lands have passed away, because they desired the Government should have control of them. It is not that the Government obtained these lands unfairly from these people; hence it is that my people wish that the control of their own land should remain with themselves. I may explain to the Tuhoe the course suggested whereby prosperity and wealth may come to them. The people of Tuhoe do not agree; they think that there may be temporary prosperity, a temporary enjoyment thereof by dealing with land. You are an advocate of progress. Very good; but the people do not believe in a temporary prosperity. There is the reaction to be taken into consideration. People like myself, who are upholding the Government, are strong in our endeavours to get the people to consent to the advancement that is pointed out to us, but the bulk of the people of Tuhoe look at what has taken place in the past – they do not agree with us. They see in other parts of the country Natives struggling and passing away; they give away their land without any good coming to them.93

Numia’s powerful message on behalf of Tuhoe was that they had seen little in the experience of other iwi, or indeed, closer to home, to convince them that the result of engaging with the land court system was prosperity – unless it was a short-lived prosperity which could be of little real benefit. All of the land in the blocks surrounding what was to become the Urewera District Native Reserve had already passed through the court. Seddon’s response to the deep concerns expressed about the court – concerns that had inspired the recent recommitment to Te Whitu Tekau’s policies – was that the people at the February hui had not heard the opposing view. The exaggerated rhetoric he then employed in order to sway the people indicates, however, that he was aware of the strength of their resolve. It would be suicidal for Tuhoe to keep to the hui’s platform, he said: ‘They might just as well have hung themselves, cut their own throats, or flung themselves into the river.’94 ‘I have said,’ he repeated, ‘that the Government desire to protect you, and to maintain you in the possession of the lands which belong to you.’95 This promise was tied to the Treaty and to the protection of those who had certain title under colonial law.

But the Premier expressed himself glad of the opportunity to answer the charge that land dealings were not in the best interests of Maori. Some Maori, it was true, had ‘dissipated their substance’, but his message was that if that looked like happening the Government would step in and ‘by a very strong hand’ prevent them from ‘doing away with their substance’.96 He gave as an example the west coast of

93. Ibid
94. Ibid, p 53
95. Ibid
96. Ibid; see also pp.54–55.
the North Island, from New Plymouth to Whanganui; that is, the reserves created for Maori from the confiscated lands of the Taranaki region, which had been vested in the management of the Public Trustee under legislation that provided for perpetually renewable leases.\textsuperscript{97} Seddon claimed that in Taranaki the Government had done exactly that, ensuring the people kept land for their own use, ‘more than ample for them and their children’. Their ‘surplus’ lands were then leased by the Government for high rents. This was how ‘good parents’ protected their children, but first those children had to have titles before the ‘strong power of the Government’ could stand behind them and secure their future.\textsuperscript{98}

Thus, Seddon’s assurance was broader than any specific piece of legislation or any particular outcome. If the peoples of Te Urewera trusted the Government, got legal titles, and dealt with their lands in the colonial economy, then the strong power of the Government would always protect them. It would step in where necessary, as it claimed to have done in Taranaki, to ensure they kept sufficient for their own use and also obtained a good income from leasing their ‘surplus’ land.

Previous Tribunals have considered these kinds of promises when connected to specific land transactions. That is, the ‘collateral benefits’ of land dealings were often promised as part and parcel of the individual land deals themselves.\textsuperscript{99} In this instance, Seddon’s and Carroll’s assurances were both broader and, in a sense, more binding, because they related to the future of an entire tribe’s land dealings, whatever forms those dealings might take. If their land was brought into the economy, the Government would protect them, and they (and future generations) would be prosperous.

\textbf{9.5.1.5 Mana motuhake and kawanatanga: self-government empowered by New Zealand law}

The third main theme to emerge from the 1894 hui was the desire of Tuhoe to govern themselves by means of a tribal committee, and their belief that this was compatible with the Crown also exercising authority. As Cecilia Edwards noted, Seddon went into the tour with the intention of sounding out Maori communities about committees to manage their lands.\textsuperscript{100} He told the peoples of Te Urewera that they could have committees to advise the Government and to make decisions about land. Under his 1893 Act, majorities of owners could also act directly, as we discussed above.\textsuperscript{101} Thus, the Premier was already interested in the idea that committees of owners should manage their lands. (We note that he also encouraged

\textsuperscript{97} For the Taranaki Tribunal’s discussion of the West Coast Settlements Reserves legislation, which the Tribunal found to be contrary to the principles of the Treaty of Waitangi, see Waitangi Tribunal, \textit{The Taranaki Report: Kaupapa Tuatahi} (Wellington: GP Publications, 1996), ch 9.

\textsuperscript{98} AJHR, 1895, G-1, p 53


\textsuperscript{100} Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 81

\textsuperscript{101} AJHR, 1895, G-1, pp 54, 56, 78, 82
Seddon’s Vision for the Individualisation of Maori Land Titles

Near the end of his tour, on his way from Wairoa to Gisborne, Seddon commented:

The great trouble that besets the Natives arises from the fact that each Native has not got his own particular bit of land to cultivate. Some will not work; some reap where they have not sown. That is the curse of the Natives in this country. That is the mist that is over the minds of the men of the Native race. They see this going on, but do nothing to stop it. In time they will refuse to work, and will leave the wahines to do the cultivation. If I had the power, I would subdivide every plot of Native land and put each of the owners on his own particular plot, and see the husbands, wives, and children cultivating it so that they may live, and know that what you are doing is for the benefit of yourselves for all time.¹

¹. AJHR, 1895, C-1, p 87

individualisation of title, in the sense of nuclear family farms for the lands that were to be kept, but not a single speaker took any notice of that idea. ¹⁰²)

Seddon also sought an assurance from the peoples of Te Urewera that they were under the mana of the Queen and would obey ‘her’ laws. He was surprised to learn of the 1871 compact, and was delighted to receive assurances from the leaders of Tuhoe, Ngati Manawa, and Ngati Whare that they accepted the authority of the Government and undertook to obey its laws. Negotiations could not have resumed in 1895 without these assurances. There had been a recent failure to obey the law, however, and at Ruatoki this was brought before Seddon with a request that he sort it out. Te Makarini and others told him of the fines that had been imposed on survey obstructers, and that some of those people were even now in hiding, having failed to obey their summons or pay their fines (see chapter 8). Seddon promised that the fines could be forgiven so long as the obstructers turned up in court and accepted the mercy of the Government. He was thus presented with two conflicting facts: the leaders of Te Urewera promised to obey the law, and they had recently failed to do so over the matter of surveys. Nonetheless, Seddon accepted their assurances.

At both Ruatoki and Ruatahuna, the nature of the relationship between Tuhoe and the Crown was discussed. At Ruatoki, Seddon offered flags for the people to fly in proof that they accepted the Queen and her protection. ¹⁰³ Kereru Te Pukenui,
for Ruatoki, offered to erect a flagstaff there, to be named Rongokarae, after the eponymous ancestor of Ngati Rongo. And at the end of the Ruatoki hui, Kereru Te Pukenui gifted to Seddon the taiaha ‘which once belonged to Rongokarae and which bore his name.’ This was a gift of great significance.

Te Pukenui was recorded as saying that the gift was ‘an earnest that there was to be peace for the future, and that the Tuhoe intended to be with the Government and obey the laws.’ Edwards reported the official interpretation of the gift, as recorded in the minutes: ‘From a Maori point of view such a gift means perfect submission, and is symbolical of an intention to abandon all unfriendliness and to live in peace in the future.’ Binney pointed out that Te Pukenui mentioned peace, not submission. She cited his brother Numia’s view, reported later, that the gift had been intended to create a covenant, binding both sides to peace and future consultation with each other. In 1895, speaking in Wellington to the delegation from Te Urewera, Seddon claimed that Te Pukenui had said to him on that occasion: ‘To you I hand this – protect my people – I am weak and old but the Gov’t is strong.’ Seddon, as Binney stressed, accepted that the gift had imposed a trust upon him. He hung the taiaha on his wall, saying ‘there is the Tuhoe’s insignia of office, power of office, that has been given to me, and there has been a trust imposed and that trust will be followed out to the letter.’

An 1895 newspaper report asserted that the gift carried with it the ‘mana of sovereignty.’ Tamati Kruger denied that there was any kind of submission or cession of authority in the gift. In the oral history of Tuhoe, the coming of Seddon in 1894 was seen as a fulfilment of Donald McLean’s 1871 promise to ‘recognise separate laws for Tuhoe’. The gift was made to confirm the compact with McLean and now with Seddon. It was not an acceptance that the Crown’s mana was greater than that of Tuhoe; nor was it an act that ‘surrendered their mana motuhake to the government.’

But it was at Ruatahuna rather than at Ruatoki that the main discussion of tribal autonomy took place. Because it is central to understanding how agreement was reached in 1895, we provide a full account of that discussion. As we outlined in chapter 8, Te Pukeiotu, a Waikaremoana chief who had fought with Te Kooti,
explained the 1871 compact to the Premier. Te Whenuanui and Paerau had arranged with McLean that ‘this territory should be kept inviolate, and that they should reign supreme in this part’. He outlined the original Te Whitu Tekau policies, just as Numia Kererū had outlined their recent renewal in his korero at Ruatoki. But while McLean had promised that the chiefs would ‘reign supreme’ in Te Urewera, Paerau had also sworn ‘allegiance to the Queen and the Government’. This was not, in Te Pukeiotu’s view, inconsistent with what followed: the chiefs’ creation of the ‘ring boundary’ and the agreement that ‘all Government matters should be excluded from this boundary – namely, roads, leases, wrongful sales, mortgages, and everything that is vile’. Indeed, referring to the Ruatoki hui that Seddon had just attended, Te Pukeiotu said that Tuhoe were bound by the discussion there: ‘The law will be our defender and we will look up to it.’

Te Wharekotua endorsed Te Pukeiotu:

I would like the surveys to be held in abeyance in the meantime. We want our territorial boundary defined. We want the Government to let a committee of Tuhoe be established to carry out our affairs. We would not then need the Government to carry out our affairs within this boundary. If you like to answer these subjects now you can do so; but if you like them to remain over until you reach Wellington that will suit us equally well. We do not want other people to prosecute the survey, and cut up our land while we are trying to arrange with the Government. We want a proper understanding to be arrived at. We want our boundary confirmed, and our titles to the land indorsed, without a survey if possible. We want the Government to give legal effect to the establishment of a committee, who will manage our affairs in connection with our land.

Discussion ensued over surveys and whether these matters could (or would) be delayed for further negotiations once the Premier, having consulted all communities during his tour, had returned to Wellington. Seddon found it difficult to distinguish between the surveying of an outer boundary, which was to define Te Rohe Potae, and the surveying of land claimed for an award of sole ownership. Tuhoe made it clear that they wanted to define the boundary within which land would be protected and governed by a committee, while Seddon wanted the Native Land Court to decide legal ownership of the land. He did not think that land claimed by more than one tribe could be included inside the kind of boundary Tuhoe wanted.

It is clear that these topics aroused strong feelings among those present, and there were sharp exchanges between various speakers, whom the note-taker could not identify, and the Premier. An unnamed speaker said: ‘Let us define our own

113. AJHR, 1895, G-1, p 74
114. Ibid, p 76
115. Ibid, pp 74, 76
116. Ibid, p 76
117. Ibid, p 77
boundary.' Seddon replied that he would hold the matter over until the tribe's delegates came to Wellington, as they had asked for; but then there was something of an outcry from 'the meeting' that they had a 'paper with all the signatures of the Tuhoe in support of this subject.' The meeting came to a head as Seddon reacted strongly to what he saw as a challenge to the Crown's sovereignty. Evidently uncomfortable with the turn the korero was taking, the Premier stated:

If you mean by that there is to be another Government outside the Government of the country, and that the Queen is not to be recognised by the Tuhoe, it is no use for you to discuss it in that way. There cannot be two Governments in this country. I always speak plainly, so that I may be understood. I do not come here to leave any doubts in your minds. There are none in my mind. Not only that, but you cannot have protection unless you acknowledge the sovereignty of the Queen, who governs all. Who is there to protect you? You are only a few in number. It is the law, the Parliament, and the Queen who afford you protection. Suppose we said, 'All right, you say you can govern yourselves; very well, do so'; where would you be? Why, you would soon disappear from off the face of the earth. There must be, and can only be, one Government. I have said, as regards any matters you wish to put before the Government, come and do so. Do not stop at home nursing ill-will, but let the Government know the cause of the trouble. It is impossible for things to go on as they are much longer. You must admit that you are disappearing from the face of the earth, and that you are in absolute poverty. Well, the Government is willing to maintain the race, but you must work with the Government, so that your own welfare and the welfare of your children may be protected. If you want to have a committee amongst yourselves to meet and discuss matters so as to condense and bring down to a focus what is in your interest, it is wise you should do so. The pakehas adopt the same course, and they select advisers for the benefit of the country. They are what are called advisory committees. There is no objection to that. But if you want a committee that is to pass laws to have effect in the land of Tuhoe and to act antagonistically to the Government, I may tell you at once it is impossible, and the sooner you get that out of your minds the better it will be for all of you . . . I can, in conclusion, only advise that you should have a meeting, gather from all parts representatives of the Tuhoe – their best men – consult together, then come to me and bring matters in such a form that I may grant what is reasonable. What is unreasonable I mean to reject, and one thing I should object to, and that would be to have two controlling bodies over one country. Perhaps I have misunderstood you, and I would not like it to be said you had again requested the Government to allow you to pass laws for yourselves in these boundaries. I say, perhaps I have misunderstood you.

Faced with Seddon's portrayal of their request as one for a separatist government, the immediate response was: 'No, we do not want to fly so high as that.'

118. AJHR, 1895, G-1, p 77
119. Ibid, pp 77–78
Seddon replied: ‘What am I to understand then?’ He was told: ‘We simply want a committee for our own district to settle matters amongst ourselves, not between ourselves and other people – a committee to protect and control our own affairs.’

Having had it explained that what was sought was the power to manage their own affairs, and not the power to govern others, the Premier then changed tack to focus on practicalities. He put it to the meeting that if anyone refused to obey the committee, by what power would its decisions be enforced? ‘Without the power of the law,’ he said, ‘any decision of the committee would be valueless; with no laws to support you, it would be no good.’ The response was: ‘The Government could give effect to the decision.’ In other words, Tuhoe were reminding him that they wanted their committee to have its own legal powers, conferred by the Government. Seddon almost wilfully misunderstood, suggesting that the people wanted the Government to enforce the committee’s decisions directly. It could only do so, he replied, if a commissioner was sent each time to make sure the decision was a just one.

The Premier’s fundamental point was there could not be two governments, and the kinds of powers that Tuhoe wanted to exercise could only be exercised by a government. His compromise was that he would recognise ‘an advisory body’, which would be the organ of communication between the Government and the tribe. ‘Further than that,’ he said, ‘it would be very unwise to go.’ Clearly, the role of the Kotahitanga parliament was weighing on his mind, and he was dismissive of its attempts to make laws for Maori. Those attempts, he said, had proved a ‘farce’ because the people would not fund the parliament’s operations. Again, he mixed matters of principle with what he portrayed as the very practical difficulties of getting a Maori government off the ground.

Resolution was reached at this point in the meeting. An unnamed person said:

It is well that we brought this matter out, because it has drawn from you the possibilities and impossibilities. We are quite satisfied, if it is at all feasible, to have a committee to act on behalf of the people, and to advise the Government in matters on behalf of the people.

Seddon replied: ‘That is quite feasible.’

But exactly what would satisfy the people, and what Seddon understood of their expectations, were matters in dispute. Professor Binney commented that Seddon was wrong if he believed the people had agreed to nothing more than an advisory committee. She interpreted the Tuhoe statement that they wanted a committee to protect and control their own affairs as the true essence of the korero:

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120. Ibid, p 78
121. Ibid
122. Ibid
123. Ibid
124. Ibid
They wanted a recognised authority controlling autonomy within their own defined boundaries; they wanted to retain those lands intact and unpartitioned; they wanted the government to uphold their decisions, based on consensus, by legislation. They wanted an internal autonomy, under the Crown, based on customary law with regard to land. In 1894 they possessed that autonomy, *de facto*; they wanted it *de jure*. [Emphasis in original.]\(^{125}\)

Binney’s view was that Tuhoe had not cut back their aspirations to match what Seddon had wanted but rather saw the concept of a tribal committee to manage their own lands and affairs, and to be consulted henceforth by the Government (even if only ‘advisory’), as a step forward. Binney thought that although they may have seemed to have compromised, Tuhoe maintained their position (which she saw as the genesis of the General Committee in 1895), knowing that they could continue to press for its adoption as long as ‘the nature of the powers of such a Committee was unresolved.’\(^{126}\)

Cecilia Edwards disagreed, arguing that Seddon would have emerged from the hui believing the chiefs were willing to accept an advisory committee. The significance of this, she said, was that the origins of the 1896 Act could not be sourced in the 1894 hui.\(^{127}\) In cross-examination by counsel for the ‘Tuwhenua claimants, Ms Edwards agreed with the claimants that, contrary to his own words at Ruatahuna, Seddon had no grounds for assuming that a committee would act ‘antagonistically’ towards the Government. Nor could she disagree with the proposition that – contrary to what Seddon had implied – settler communities governed themselves with local bodies that passed laws.\(^{128}\) And Ms Edwards accepted that the 1894 tour marked the beginning of a key relationship between Seddon and the leaders of Te Urewera, and that the ‘mutual good-will’ generated at the hui underpinned the successful negotiation of an agreement the following year.\(^{129}\)

The relationship between Tuhoe authority and kawanatanga was a key issue for the Tuawhenua researchers. They suggested that Seddon was mistaken to think of Tuhoe authority (mana motuhake) as incompatible with kawanatanga:

For Tuhoe, it seemed not only possible, but reasonable for the rangatiratanga of Tuhoe to be accommodated alongside the kawanatanga authority of the Crown. After all, Tuhoe had demonstrated their willingness to recognise the sovereignty of the Crown alongside Te Mana Motuhake o Tuhoe, when they had formed the compact with McLean, and as they now recognised Seddon as Premier and welcomed him into their rohe.

Ngai Tuhoe were used to this kind of political accommodation. The Tuhoe people had long been operating in Te Urewera under political schema that involved different

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\(^{125}\) Binney, ‘Encircled Lands, Part 2’ (doc A15), p 152

\(^{126}\) Judith Binney, statement in response to questions of clarification from the Tuawhenua claimants’, 1 April 2005 (doc M19), pp 6–7

\(^{127}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 116

\(^{128}\) Counsel for Tuwhenua, closing submissions (doc N9), pp 106–107

\(^{129}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 116
levels of authority – iwi, hapu and whanau, as well as the overlay of mana from Tuhoe-Potiki, Toi, and Potiki. As they had reconciled the authorities of these tipuna and their descendants, they believed now there could be a place for the Crown across all of Aotearoa, whilst Tuhoe maintained its mana within Te Rohe Potae. Seddon’s insistence on one government could only have been interpreted as a ‘takahí mana’, for it did not allow for Tuhoe to have any real authority over Tuhoe affairs.\textsuperscript{130}

At various hui in Te Urewera, Seddon had floated the idea that the Government would allow committees of owners to manage their lands, which was a step forward from the outright individualisation that had dominated Maori land titles since 1865. At the same time, he was willing to accept a tribal committee that would advise the Government and present Tuhoe wishes to the Government – in other words, be an ongoing part of consultation and negotiation between the tribe and the Government from then on. This in itself would have gone some way to securing more of a partnership between the Crown and Maori. He had also heard the Tuhoe aspiration that tribal affairs should be managed by their own committee, not the Government. In particular, the tribe should control its lands; wherever the Government had gained control of the lands, disaster had followed.

Tuhoe’s aspirations could not have come as a surprise. In particular, the Government would have known that from the late 1880s onwards Tuhoe had been seeking its recognition of – and legal powers for – a tribal committee. But Seddon took a hard line in respect of a committee having anything smacking of government powers. In particular, the tribal committee would not be allowed to pass laws for its district. As a result, the meeting made some progress but ended with the parties still far apart. Nonetheless, this was the beginning of a dialogue between Seddon and Carroll on the one hand, and Tuhoe on the other, that was to see both sides reach a compromise in 1895 that won much more for Tuhoe than might have been expected from Seddon’s korero at Ruatahuna.

\textbf{9.5.1.6 Interruption of the dialogue between Te Urewera leaders and Seddon: the failure to negotiate an agreement in Wellington in 1894}

It is clear that both Seddon and Te Urewera leaders planned to resume negotiations in Wellington. While the historians who presented evidence did not agree on what, exactly, was held over for further discussions, Tuhoe, at the very least, expected further discussions of their ring boundary, internal surveys, and land titles, before any further surveying or court activity took place in Te Rohe Potae.\textsuperscript{131} (As noted above, Ruatoki was no longer counted as part of Te Rohe Potae.) Seddon had expected to resume discussions quite quickly, and Carroll mentioned June as a possible date.\textsuperscript{132} At Ruatoki, the Premier told the hui that he expected immediate answers about a school and flag, but ‘larger questions’ could wait for a considered

\begin{itemize}
\item [\textsuperscript{130}] Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), p.11
\item [\textsuperscript{131}] See, for example, Heteraka Wakaunua’s speech at Ruatoki compared to Seddon’s speeches: AJHR, 1895, G-1, pp 58, 60, 73.
\item [\textsuperscript{132}] AJHR, 1895, G-1, p 57
\end{itemize}
response from a delegation to Wellington: ‘The want of means shall not prevent you coming to Wellington and seeing me there. I think it is only right that Her Majesty’s subjects living in isolated places should be brought more together.’

But no Tuhoe delegation visited Wellington to negotiate with the Government during the remainder of 1894, nor before the ‘small war’ broke out over road and trig surveys in 1895. Why were there no further discussions, as promised? Cathy Marr suggested that Seddon became too busy during the parliamentary session, and the matter was simply lost sight of. Cecilia Edwards set out the following facts. On 13 April 1894, Numia Kereru wrote to the Government, asking how many Tuhoe should come to Wellington. He was informed that the tribe should send six representatives. On 2 May, the Justice Department wrote to the Ngati Whare chief, Wharepapa Whatanui, and told them the travel arrangements for the representatives would be finalised in six weeks. Everything seemed on track for the proposed June meeting. Nothing happened, however, and Tutakangahau’s son, Tukua Te Rangi, wrote to the Government in either September or November, asking for the promised financial assistance so that the delegation could come to Wellington. In October, Tutakangahau himself wrote requesting funds to visit Wellington ‘in connection with the survey of the Rohe Potae’. Edwards concluded that the leaders of Te Urewera were keen to continue the discussions in Wellington in 1894, but she offered no explanation for why the Government did not provide the necessary funds.

It seems clear to us that because they lacked the means to do so, the delegation of Te Urewera leaders could not come to Wellington. They must also have doubted whether they would be welcome. Despite their requests throughout 1894, the Government did not keep its pledge to fund their delegation and to follow up the April hui by discussing their considered views and responses in Wellington. This was an important failure on the part of the Crown. It left the matter of surveys and roads up in the air, when these issues could have been the subject of consultation and a negotiated agreement before matters reached a crisis point in 1895. It is to that crisis which we turn next.

9.5.1.7 Interruption of the dialogue between Te Urewera leaders and Seddon: the ‘small war’ of 1895

The importance of the 1894 discussions, and the dangers of leaving them in limbo for months afterwards, became evident when a crisis erupted in Te Urewera early in 1895 about surveying. Nine months after Seddon’s April tour of Te Urewera, the promised follow-up negotiations in Wellington still had not happened. In January 1895, the Minister of Mines, Alfred Cadman, was invited to a hui at Ruatoki to discuss gold prospecting. Seddon had been nearby in Whakatane the month before, but had not met with Te Urewera leaders there or visited Te Rohe Potae. Cadman

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133. AJHR, 1895, G-1, pp 57–58
134. Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p 34
135. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 117
136. Ibid, p 118
was accompanied by the Surveyor-General, Stephenson Percy Smith, who took the opportunity to explain that a trigonometrical survey was about to be carried out in Te Urewera. Such a survey would be used to create topographical maps, and had been discussed at hui by Seddon and Carroll in 1894. Both Ministers had told Te Urewera communities in 1894 that the survey was for mapping purposes, but they had also stressed that it could and would be used in the work of the Native Land Court. They also insisted that the Government would carry it out but the people would be notified of it in advance. Percy Smith delivered the same message in January 1895 – the survey would happen soon, and it would be useful for the court’s title decisions. His message to the January hui was later relied on by the Government as notification that the trig survey was about to happen.

The speeches of Seddon and Carroll in 1894, and of Percy Smith in 1895, laid the basis for much of the confusion that followed. From the evidence of Cecilia Edwards, it is quite clear that almost every Minister and official involved, as well as settler press editors and reporters, either believed the trig survey would assist the title work of the Native Land Court or told Maori that it would do so, or both. As a result, the peoples of Te Urewera confused it with ‘subdivisional’ surveys, by which was meant the surveying of blocks for Native Land Court hearings. Crown counsel accepted that this confusion was understandable, given what the people had been told. Tuhoe warned Smith at the January 1895 hui that they would not

137. Ibid, pp 98, 101, 111, 114, 154–156
140. Crown counsel, closing submissions (doc N20), topics 14–16, p 15
permit this survey – it would be Ruatoki all over again, they told him.141 But the Government persevered, sending first its surveyors to Ruatoki and Te Whaiti in April 1895, and then an armed force, 40 to 50 strong, in response to the immediate obstruction of the survey at Ruatoki. (At Te Whaiti, Ngati Whare refused to guide or work for the surveyors, but did not attempt active obstruction.) James Cowan, then a reporter, gave a graphic account of the reception of the armed force in Te Urewera, and the role of James Carroll in resolving the stalemate, which we reproduce over. Despite its stereotypes, it also conveys deep Tuhoe concerns at the arrival of the surveyors, and their anxiety to avoid direct conflict.

One of the issues debated between claimants and the Crown was whether Seddon had promised that surveying would be delayed until after further discussions in Wellington, and also whether the Government notified the communities of Te Urewera in compliance with the law.142 On the first point, it is quite clear that Seddon told the people the trig survey would be carried out no matter what. All

he promised in that respect was proper notice. The claimants and their historians argued that notice was not given. Surveyors brought the notices with them when they turned up to do the work, and were prevented from delivering any notices to Ruatahuna as part of the obstruction of the survey itself. The Crown, however, argued that notification had been delivered as thoroughly as possible in the circumstances, and reminded the Tribunal that all communities had known of the coming survey after Percy Smith told them of it in January. We accept that the Government thought it was acting within the law. Nonetheless, we note that Seddon was not entirely satisfied. He claimed not to have known that the survey was happening and regretted that the Survey Department had not notified him or the Native Department of its intentions. He told Smith that, had he known, he would have notified the Te Urewera leaders himself. We consider, however, that the issue of notification was not the real problem.

In essence, the people of Te Urewera believed that the survey would be used for Native Land Court purposes – with good reason, as the Crown has conceded – and they had told the Government they did not want it. They also feared that some of their land might be taken to pay for it. The Government clearly had the legal power to carry out the survey, regardless of the people's wishes. As soon as any kind of obstruction took place, Seddon sent armed forces to Ruatoki. As Binney put it, 'While within their legal rights to make the triangulation survey, the government chose to make a fight rather than to negotiate properly and openly.'

But the Government also sent Carroll to Ruatoki. He attended an eight-day hui, at which he told the people the trig survey was not a survey of land for Native Land Court purposes and there was no risk to them if it went ahead. He firmly refused their request that the survey be delayed until Parliament met in June. This request had its origins in a suggestion from Hone Heke, the member for Northern Maori, who was working with both the Kotahitanga parliament and Te Urewera leaders. Heke had advised against obstructing the survey, but had also suggested that the people allow their members in the settler Parliament to seek a solution.

At hui it was evident that the arrival of the surveyors might call in question Seddon's good faith. As Heke put it, discussion at the Ruatoki hui focused on Maori authority, colonial law, and the gifting of the taiaha, Rongokarae. Numia Kereru pointed out to Carroll that the law had been satisfied; Numia had 'caused the law to awake' when he applied for the Ruatoki survey, but now that was finished. The people had not applied for the current survey, they did not want it, and they wanted to go to Wellington to discuss it. The gift of Rongokarae did not mean that the 'chief rangatira of the pakeha' could do whatever he wanted to the people or their lands without objection. Nor did the covenant with the Government bind the people to accept anything the Premier 'desired to impose upon them without consulting them in the first place.' Numia Kereru made an impassioned speech, claiming that the sending of an armed force to Te Urewera was a violation of the covenant, aiming to 'extinguish off the face of the earth the very person and his people who gave the chief rangatira his taiaha. Fine love this!' Numia was deliberately echoing what Seddon had said to them the year before, when he told them that his loving protection would prevent them from disappearing off the face of the earth. The integrity of the Premier's words, and his assurances of active protection, were now in question.

But the final decision of the hui was brought about by Kereru Te Pukenui, who

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147. New Zealand Herald, 3 June 1895 (Cathy Marr, comp, supporting papers to ‘The Urewera District Native Reserve Act 1896 and Amendments 1896–1922’, 2 vols, various dates (doc A21(b)), p 248
148. New Zealand Herald, 3 June 1895 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 183)
149. Ibid, pp 183–184. We note that it is not always clear in the New Zealand Herald article when the words of Heke are being quoted, as opposed to those of Numia Kereru, but we take it from the context that Heke was reporting the views of Tuhoe and of Numia Kereru as put forward at the April 1895 hui.
reminded the people that he had given his taiaha to the Premier, and with it his pledge that he would not allow fighting and would ‘uphold the law, and live and abide under it.’ He accepted Carroll’s explanation of the survey, and said, ‘We should have confidence in the law. . . . Let this trouble end. Sufficient for us to rest our thoughts on the promise Mr Carroll has given to concede our rights to the soil. This pledge was given last year, and it is now repeated.’

Subsequently, according to Cathy Marr: ‘Seddon informed the Governor that it was the chief Kereru who persuaded the meeting to trust Carroll, largely because of the goodwill developed during the 1894 tour.’ In his report to the Governor, Seddon gave a slightly different version of Carroll’s promise: that it was to ‘conserve’ rather than ‘concede’ their ‘rights to the soil’. Although we do not have a detailed account of this hui, we infer that Carroll renewed the promises that had been made in 1894: that the Government did not want to obtain their land but instead would protect them in their possession of it. The trig survey, it was now affirmed, would not interfere with that promise. The sense of Carroll’s 1895 promise, therefore, was more likely to have been to ‘conserve’ their rights.

A further positive outcome of the hui was the revival of the proposal to send a delegation of Te Urewera leaders to Wellington. According to Binney, Numia was the first to raise the issue of the long-delayed delegation. Carroll clearly favoured the idea, telling the people that the delegation should lay their issues before Parliament and resolve the question of the other surveys (Native Land Court surveys and the ring boundary). Carroll also wrote to the Premier that ‘the present is a fitting opportunity to once and for all time settle the difficulties in connection with the Urewera Natives’. Binney suggested that this referred to the Government’s intention to push roads through Te Urewera. But we think it more likely that Carroll was talking of a political solution – given his own encouragement at the hui for Tuhoe to negotiate with the Government, and his strong statement to Seddon about the desirability of settling difficulties ‘for all time’. In other words, he was reminding the Premier about his invitation during the April 1894 hui for a Te Urewera delegation to visit Wellington and negotiate a wide-ranging agreement. If this was so, however, Seddon seemed not to be listening. But in the short term, he accepted the hui’s decision and Carroll’s assurances, and withdrew the troops from Ruatoki. A few armed police remained for the duration of the survey.

But though the crisis passed, the Government made little effort to avoid further straining relations with the peoples of Te Urewera. At some point in 1895, the Government decided to force roads through the interior of Te Urewera. How or

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150. *New Zealand Times*, 30 April 1895 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 231)
151. Ibid
152. Cathy Marr, answers to questions of clarification, May 2004 (doc D11), p 6
155. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 139
why this decision was made is not clear. But the outcome was a repetition of the earlier pattern of obstruction of surveyors, Government dispatch of troops, and the arrival of Carroll to mediate. A decision had clearly been made by June 1895 when the Governor made his speech at the opening of Parliament:

From causes which will be made known to you, the work of surveying the territory of the Tuhoe Tribe was some months ago suddenly interrupted. A display of armed force, and negotiations conducted for the Government by the member of the Executive representing the Native race [Carroll], quickly led to a peaceful understanding. But my Advisers, deeming it best to guard against any further disturbance or obstruction in that part of the colony, have decided to insure, by pushing roads through the length and breadth of the Urewera Country, that in future it shall lie at peace and open to all.

This fitted with the way Cowan and Best saw the decision to open the interior with a road to Ruatahuna. Cowan later described it as ‘the strategic road through the heart of the Urewera Country’. Best noted that it was the same road that had been sought back in 1885 (see chapter 8), and ‘commented that it was intended to be “the wedge that split up the Tuhoean policy of isolation”’. Binney and Marr agreed that Seddon was also keen to see the district opened up with good roads for tourism, having decided the area was mostly unsuitable for settlement. Crown counsel, however, suggested that since Seddon thought the district useless for settlement, he simply wished to ensure that Maori in Te Urewera got the same benefits as other Maori, including roads. This was certainly how Carroll and Seddon portrayed it to Tuhoe in 1895, although the Premier also made it clear that he wanted roads to facilitate tourism.

If the Governor’s explanation is correct, then the Government decided to push road surveys through the heart of Te Urewera when it did for purely political purposes, in response to the first survey obstruction in April 1895, as well as to improve communications and access. It soon became apparent in May that part of the surveying work was for a road from Te Whaiti to Ruatahuna, and also for

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157. Governor, 20 June 1895, NZPD, vol 87, p2 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(a)), vol 1, p68). The Governor’s opening speech to Parliament was traditionally written by his Ministers, and summarised policy and legislative intentions for the coming session.
159. Ibid
160. Ibid, pp185–186; Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p43
161. Crown counsel, closing submissions (doc N20), topics 14–16, p16
162. ‘Urewera Deputation, Notes of Evidence’, 7 September 1895, pp1, 41, 11897/1389, Archives New Zealand, Wellington (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), pp165, 205)
a road from Waikaremoana into the interior. Carroll’s explanation was that the
Government was simply delivering the roads that had been asked for in 1894,
but this was incorrect. Those requests had been for roads on the outskirts of Te
Urewera, running to coastal trading points, and not for roads into the interior.
Also, we note Seddon’s caution about roads at the 1894 hui. He encouraged Ngati
Manawa, for example, to try to get Tuhoe agreement to roadng, so that a joint
approach could be made to Parliament. But at the same time he admitted that
making roads without the agreement of the people would lead to a justified griev-
ance. ‘Now,’ he said, ‘if the Government was to undertake to make a survey, and
say, “We will put the road through in spite of you,” then they [Tuhoe] might have
cause to complain.’ He seems to have forgotten these reservations in 1895, when
the Government decided to force roads through the interior without consultation
or consent. It will be recalled from chapter 8 that the Government had been try-
ing to get roads through Te Urewera since the 1870s, but had not been willing to
force the issue then or in the mid-1880s. Now, under Seddon, the Government
was finally prepared to use force if necessary. The settler press was puzzled by his
decision: roads were urgently needed by settlers in other districts, so why bother
forcing roads on an area in which they were not wanted?

A possible explanation, as Cathy Marr suggested, is that Te Urewera became
cought up in Seddon’s showdown with Kotahitanga. Hone Heke, a member of
both the New Zealand and the Maori parliaments, was accused of inciting the
whole Tuhoe resistance to surveying. It was believed to be part of an orchestrated
resistance to the Government, devised at the Rotorua paremata (parliament).
The Government tried hard to find evidence that Heke was behind it all; Edwards
detailed its efforts in her report. We agree with Crown counsel that Seddon was
also motivated by the need to uphold the law. Having made the decision to send
surveyors in, they had to be protected from forcible obstruction. The initial deci-
sion to send surveyors, as well as the degree of force necessary to protect them,
were questioned at the time. Hone Heke described Seddon’s decisions as ‘trying
to make a show of doing great things’ and a ‘farcical political display.’ In other
words, Seddon was grandstanding for the settler public, impressing them with his
ability to manage the Maori people (both Te Urewera and Kotahitanga).

On the ground in Te Urewera, surveyors working on the road lines in May
were either obstructed or found themselves without local guides or assistance.
Details of the obstruction, and the surveyors’ efforts to proceed regardless, may be
found in the reports of Binney and Edwards. The Government’s handling of the

163. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 137
164. AJHR, 1895, G-1, p 64
165. Ibid
166. Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p 41
169. Crown counsel, closing submissions (doc N20), topics 14–16, p 16
170. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), pp 134, 135, 139
difficulties it had created followed the same pattern as before. Troops were sent to respond to obstructers with force, and then Carroll was sent in their wake to negotiate agreement. In May, 68 soldiers and armed police were sent to Te Whaiti.  

Tuhoe and Ngati Whare were thrown into turmoil by this renewed testing of their fragile relationships with the Government, following so soon after the first. Some chiefs tried to hold to the Te Whitu Tekau policies, no matter what. Others began to see that roads could be useful for them, or gave up in the face of Government pressure. Binney cited the following letter from Ngati Whare to Hone Heke on 30 May, expressive of their loss of faith and sense of powerlessness:

Friend, we are not going to obstruct the survey any more, and also the roads. We are going to leave it, as the Government dares to force their works. Friend, we are pained and are weary through this work of the Government. We hold to the word manawanui (patience). The road from Galatea to Te Whaiti is an old road, therefore this is all right; but the construction of a road to Ruatahuna and Waikaremoana – this is new. We are pained and weary over this.

Then Carroll arrived, and this time the matter of negotiating with the Government in Wellington – and new legislation – was discussed in earnest. Carroll attended two hui at Te Whaiti, one in late May and another in early June, at which he encountered a mix of opposition and support for roads. Edwards noted that people were afraid the roads would lead to taxation (rates) and loss of land to the Government. According to a newspaper interview with Ngapuhi Irihei, of Te Whaiti, the people told Carroll ‘they did not like being intimidated, that if anyone was breaking the law, it was the Government; they were living on their own land in a peaceful manner doing harm to no one, and did not wish to be coerced.’

According to the report in the newspaper Hot Lakes Chronicle, Carroll assured the people the interior road would not proceed from Te Whaiti to Ruatahuna until a Te Urewera deputation had been to Wellington and settled things with the Government. He also promised, according to the recollections of Urewera commissioner Hurae Puketapu, that the Rohe Potae would be protected by special legislation reserving the lands for their owners. These assurances were enough to convince Tuhoe and Ngati Whare to abandon their resistance. When further obstruction occurred at Waikaremoana immediately after, Tuhoe leaders accompanied Carroll to the lake. As Hurae Puketapu recalled, they informed the people there that ‘the whole trouble had been settled’; representatives would be ‘selected

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173. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 148
175. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 141
by 'Tuhoe' and sent to Wellington, where 'a special Act was to be passed'. The Waikaremoana hui endorsed these arrangements.\(^{179}\)

Binney doubted the accuracy of the newspaper report that Carroll had promised no further work on the interior road. If there was such a promise, it 'did not hold'.\(^{180}\) Binney and Edwards agreed that surveyors began to lay out the line for a road from Te Whaiti to Ruatahuna in July.\(^{181}\) At Te Umuaroa, Paraki Tiakiwhare accepted the inevitability of the road. Te Whitu Tekau's great leaders, he told the survey party in July, had

determined to hold on to their lands, and decided that all injurious measures of the Government, such as the leasing, selling, surveying, and road making through their land should not come within the boundaries (of Tuhoe); but they have departed with their words, and now the Government policies cannot be withstood. Whilst they lived their determination lived, but now that they are dead so also are their words, & resolutions.\(^{182}\)

Tuhoe thus 'painfully reconciled themselves to the coming of the road'.\(^{183}\) Edwards noted 'despite [Tiakiwhare's] feelings about having to bear witness to “the work of the Europeans in their surveys, and in their road making”, he had to admit “that the work already completed is very pleasing to the eye”'.\(^{184}\)

But at Mataatua, in the heart of Ruatahuna, Te Whenuanui II and other leaders told the surveyors that the law had feet and eyes but was clearly deaf, since it refused to hear their opposition to roads. The ears of the law, they said tauntingly, must have been torn off by dogs.\(^{185}\) Some of the soldiers were withdrawn after Carroll's successful hui at Te Whaiti, but a military presence was maintained in Te Urewera until September. No further significant obstruction was offered.\(^{186}\)

### 9.5.1.8 What was the outcome of the ‘small war’?

The ‘small war’ was Apirana Ngata’s label, a decade later, for this conflict.\(^{187}\) The Crown’s historian objected to it, asserting that no shots were fired and nothing resembling actual warfare took place. ‘War did not break out,’ she said, ‘because it was averted.’\(^{188}\) In its closing submissions, the Crown accepted that Seddon had

\(^{179}\) Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 180–181

\(^{180}\) Ibid, pp 179, 181; see also Judith Binney, statement in response to Crown questions of clarification, 18 February 2005 (doc K28), pp 24–25


\(^{182}\) Te Tuhi Pihopa, letter commenced 30 June 1895 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 182)

\(^{183}\) Binney, ‘Encircled Lands, Part 2’ (doc A15), p 182

\(^{184}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 146

\(^{185}\) Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 182–183; Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 147

\(^{186}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), pp 149–150

\(^{187}\) Binney, ‘Encircled Lands, Part 2’ (doc A15), p 188

\(^{188}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 158
quickly resorted to a ‘show of force’. On this point, the claimants and the Crown were in agreement.\footnote{Crown counsel, closing submissions (doc N20), topics 14–16, p 16}

Why did the Government force the question of roads in 1895, without consultation or consent? Crown counsel did not address this key issue and we have received no satisfactory explanation for it. But the outcomes of the Government’s decision are clear. The first was that by mid-1895 acquiescence in internal roads had largely been brought about by Seddon’s show of force. Counsel for the Tuawhenua claimants pointed out that work on the road continued, protected by an armed force. Tuhoe saw no choice but to agree to proper roads connecting Te Whaiti and Galatea with the outside world.\footnote{See, for example, Kereru Te Pukenui to Seddon, telegram, 25 May 1895 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 178)} Ngati Whare had wanted such roads for some time but were dismayed by the presence of troops and the decision to push new roads into the interior. The evidence does suggest that some Tuhoe leaders were beginning to see a use for roads in the interior. But, in the claimants’ view, Tuhoe did not agree to roads; they had been coerced to accept them. The hui with Carroll in April (Ruatoki) and in May and June (Te Whaiti and Waikaremoana) seemed to make significant progress towards achieving what the chiefs wanted from the Government. It remained to be seen whether a better quality of agreement to roads could be negotiated now that their delegation was at last going to Wellington.

Ironically, the second outcome was the revival of the negotiations. The claimants and the Crown agreed that, regardless of how unpromising a show of force was as a starting-point, the survey crisis of 1895 triggered the negotiations that followed in Wellington in September of that year.\footnote{Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 84} Tuhoe had been seeking such negotiations since Seddon had first made the offer in April 1894. They had also, at their Ruatoki hui in April 1895, signified an intent to trust Seddon and his promises, despite the sending of troops. Carroll had further promised at Ruatoki that their lands would be conserved to them, and – at Te Whaiti and Waikaremoana – that special legislation would be arranged to protect Te Rohe Potae. It was on the basis of these promises, more than the presence of troops, that Te Urewera leaders gave up their resistance to surveys at the Te Whaiti hui and encouraged the same decision at Waikaremoana.

But it was not just Tuhoe that the events of April to June 1895 encouraged into negotiations. The Crown also now had reason to re-engage. Seddon’s ego had been pricked, and the accolades he had received the previous year for settling the ‘native problem’ were now called into question.\footnote{Anita Miles, Te Urewera, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 270} Counsel for the Wai 36 Tuhoe claimants maintained that Seddon was politically embarrassed by the whole affair.\footnote{Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 84} Cathy Marr’s analysis of events would support this thesis. In particular, Seddon
was anxious to woo Maori support away from Kotahitanga, and to show that the Crown offered credible alternatives to the Maori parliament's policies.\textsuperscript{194} The importance of the 'small war' cannot be discounted, because it brought the parties to the negotiating table, with both sides ready to make concessions.

There was also an economic dimension to Seddon's willingness to negotiate by mid-1895. New Zealand was emerging from a recession, leading to a revival of immigration and more demand to utilise the country's resources. Cathy Marr cited both the misguided belief that there was gold in Te Urewera and a growing interest in tourism as important motivations for the Government to try to open up greater access to the region. During his 1894 tour, Seddon (a former miner) had observed the possibility of gold-bearing rock, and noted the tourist potential of Waikaremoana.\textsuperscript{195} Even if Te Urewera was unsuitable for extensive European settlement, 'there could still be some possibility of negotiated exploitation of potentially valuable resources such as minerals and alternative economic development such as through tourism.'\textsuperscript{196}

In early 1895, however, before the survey crisis broke out, Government geologists had tried to visit the district and take samples. They had been prevented from doing so in a manner that, as Binney put it, 'makes pleasant reading for those who wish to learn about the tactics of peaceful obstruction developed into an art form.'\textsuperscript{197} Access to Te Urewera was still something that had to be negotiated, unless the Government was willing to arrange a general settlement of issues or use a show of force in each and every instance.\textsuperscript{198} Seddon could not, we presume, keep stripping Government house of its guards in order to deploy them in Te Urewera, as he had to in 1895. The amount of force available to the Government was really quite limited.\textsuperscript{199}

For all these reasons, the Government was interested in a negotiated settlement, and was prepared to make some genuine concessions, when the delegation from Te Urewera arrived in Wellington in August 1895.

9.5.2 What agreement was reached as a result of negotiations?

\textit{Summary answer:} In August 1895, a delegation of Te Urewera leaders went to Wellington to negotiate a wide-ranging settlement of issues with the Crown. The full composition of the delegation is not known, but it included Tuhoe, Ngati Whare, and Ngati Manawa leaders. Ngati Kahungunu and Ngai Tamaterangi say they were not represented, and the evidence appears to bear that out. Preliminary negotiations were held with James Carroll, during which Ngati Whare and Ngati Manawa delegates agreed to the inclusion of Te Whaiti lands in the proposed reserve to prevent further land loss.

On 7 September 1895, Carroll presented a series of proposals to Premier Seddon

\begin{enumerate}
\item Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), pp 19–70
\item Ibid, p 30
\item Ibid, p 28
\item Binney, 'Encircled Lands, Part 2' (doc A15), p 161
\item Ibid, pp 161–164
\item Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), pp 20, 36–37
\end{enumerate}
that had been negotiated between Carroll and the Urewera delegation. On this key occasion, the Premier appeared to agree to almost all of the proposals as presented to him. He did not agree, however, that the proposed single commissioner would assist the owners to define their own titles. Rather, the commissioner would be an adjudicator of title with input from the people. The minutes of this meeting, as reported in the newspapers, were translated into Maori for circulation in Te Urewera. On 23 September, at a less well-recorded meeting, the Premier agreed to some additional proposals from the delegation, and made the comment that powers of ‘local government’ were being conceded. On 25 September, in response to a request from the delegation for a draft Bill or ‘heads of agreement’, Seddon wrote an important memorandum that summarised some of the delegation’s proposals (as he understood them) and recorded his specific responses and undertakings.

In our view, the documentation and results of the 7 September meeting, the 23 September meeting, and the 25 September memorandum must all be taken together as constituting the agreement reached between the leaders of Te Urewera and the Crown. The agreement cannot, as the Crown suggested in our inquiry, be confined to the contents of the 25 September memorandum. Having regard to all the evidence, we agree with the Wai 36 Tuhoe claimants and the Crown that broad principles were decided, akin to a ‘heads of agreement’, without much detail having been specified. It was implicit in the agreement that consultation would continue, and the proposals would be fleshed out for legislative implementation. Compromises had been made on both sides.

There were seven core principles agreed between the delegation from Te Urewera and the Crown in September 1895:

- The first principle was that an inalienable reserve would be established to provide permanent protection for the Maori peoples of Te Urewera; their lands; their forests, birds, and taonga; and their customs and way of life.
- The second principle was that the Native Land Court would be excluded from the reserve, and that an alternative process would be used to create Crown-derived land titles. The nature of this process had not been agreed. Carroll and the Urewera delegation essentially proposed that hapu would decide their own titles, with the assistance of a single commissioner. The Premier, however, stated on all three occasions (7 September, 23 September, and 25 September) that the commissioner would adjudicate, with input from the people.
- The third principle was that land titles would be awarded at a hapu level, in a form that facilitated hapu and tribal control. The claimants and Crown agreed on this point.
- The fourth principle was that the peoples of Te Urewera would be self-governing by means of hapu committees to manage their lands and tribal affairs, and a General Committee that would have ‘local government’ powers.
- The fifth principle was that the peoples of Te Urewera acknowledged the Queen and the Government and would obey the law.
- The sixth principle was that the Government would protect the people and
promote their ‘welfare’ in all matters, and it would provide a ‘package’ of social and economic assistance. The details of the ‘package’ had not been agreed. It appears that Carroll may have had more in mind than Seddon was willing to provide at that time.

The seventh principle was that development should take place in the reserve, although (as we understand it) in a manner in keeping with the primary nature of the reserve. This development included roads, tourism, gold mining (if gold was discovered), and farming.

In August 1895, a deputation of leaders from Te Urewera arrived in Wellington to negotiate a settlement of outstanding issues with the Crown. The Tuwhenua researchers relied on the oral evidence of Tamati Kruger to explain Tuhoe’s strategy. According to Mr Kruger, Tuhoe were still acting on the advice of Te Kooti when he had told them: ‘It takes the law to put the law right’.

This was at the heart of Tuhoe’s new approach towards the Crown in 1895: ‘Faced with little choice but to co-operate with the Crown, the new leadership did its best to protect Te Rohe Potae, but this time, by using the laws of the Crown.’ As Mr Kruger put it,

No longer was the leadership going to confront Pakeha but they were going to try and use the Pakeha tikanga and ture to find a comfort area for them in line with Te Kooti’s kupu ‘It takes the law to put the law right’. That was the new strategy, new leaders . . . They were going to get all of the Tuhoe area and put it under its own Act.

But it was not only Tuhoe who were represented in the delegation of Te Urewera leaders. Some of the positions it adopted were clearly compromises between iwi, as well as between iwi and the Crown. The first issue before the Tribunal is the question of which tribal groups were parties to the 1895 agreement.

9.5.2.1 Who were the Maori parties to the agreement?

The *New Zealand Herald* reported that the delegation consisted of ‘about 20 young prominent Natives in the Urewera country’, although only 13 were named. Some of the names of the chiefs can be determined from official records and press reports, and these indicate that several iwi and hapu were represented. Binney noted representatives from Tuhoe, Te Urewera (the hapu), Ngati Haka Patuheuheu, Ngati Whare, Ngati Manawa, and Warahoe. The Tuwhenua researchers identified the following leaders:

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200. Tuwhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), p1
201. Ibid
203. Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p44; see also Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p167
204. Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p44
205. Binney, ‘Encircled Lands, Part 2’ (doc A15), p189; see also *New Zealand Times*, 9 September 1895
Mehaka Tokopounamu has been positively identified as one of the delegation. 206 Harereare Atarea, the senior chief of Ngati Manawa, was also there. 207 Numia Kereru, the Ruatoki leader, does not appear to have been present at the 7 September meeting, but was at the later meeting on 23 September. 208

Ngati Whare and Ngati Manawa both agreed to the inclusion of Te Whaiti lands in Te Rohe Potae. 209 This was a definite change of mind on the part of Ngati Manawa. At the 1894 hui at Galatea, Harereare Atarea had told Seddon that ‘The Ngatimanawa is distinct from Tuhoe. I do not want them mixed up with the others. I do not want the Tuhoe ring, or territorial boundary, as it is styled. I want my land dealt with distinctly from the others.’ 210

Ngati Manawa’s historian, Peter McBurney, argued that Ngati Manawa changed their minds in the hope of preventing further land loss. He cited Harereare Atarea’s explanation to the Urewera commission:

Now, about Ngati Manawa and Tuhoe going to Wellington the first time about the ‘rohe’. [No number given] of Ngati Manawa went, and 20 Tuhoe. I protested against Te Whaiti being included in the Tuhoe boundary. Mr Carroll showed me the map. I marked out our lands I wished to be excluded, and be dealt with by the Court. Mr Carroll then asked, ‘Will you agree to put your block into the Tuhoe Rohe so that you may be saved and your land prevented from sale and other trouble?’ I agreed and we all met the Premier and settled the details. 211

The 1895 delegation, counsel for the Wai 36 Tuhoe claimants submitted, had been ‘broadly representative of the communities within Urewera.’ 212 We accept that submission, with one proviso. The only claimant groups to argue that they had not been represented were Ngati Kahungunu and Ngai Tamaterangi. 213 Counsel

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207. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 167
211. AJHR, 1895, G-1, p 65
213. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 86
214. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 22; counsel for Ngai Tamaterangi, closing submissions (doc N2), p 44
for the Wai 621 Ngati Kahungunu claimants suggested that the Crown had negotiated with ‘Tuhoe/Ruapani/Whare only.’ The Crown had some trouble accepting this submission, noting that the claimants’ own historians (Belgrave, Deason, and Young) had been ‘silent’ on the matter.

Having reviewed the documentary evidence for the 1895 meetings, and putting it in the context of what was to follow, we conclude that there is nothing at all to suggest that Ngati Kahungunu were involved or consulted in any way. Counsel for the Wai 36 Tuhoe claimants suggested that their interests would nonetheless have been protected by James Carroll, who was of Ngati Kahungunu, and by Wi Pere, who was connected to that tribe and later represented them before the second Urewera commission. The position of Carroll is not clear-cut. While he certainly worked for the best interests of both Maori and the Crown (and sometimes acted as spokesman for the Urewera delegation), he was a Minister in Seddon’s Government, and not a representative of Ngati Kahungunu in these negotiations.

Wi Pere, who was independent of the Government, did not mention Ngati Kahungunu in any of his recorded speeches about – and in support of – the agreement. The Crown has accepted that it was under ‘an obligation to consult with the representatives of those hapu likely to be affected by the Act.’ In our view, Ngati Kahungunu were neither represented in the negotiations nor consulted afterwards. The reasons for this are not clear. The Crown failed to meet its obligation in respect of them. But we think it is significant that neither Carroll nor Wi Pere evidently raised the matter during the process of the negotiations. Whether Ngati Kahungunu interests were harmed by this failure will be considered in chapter 13, where we address the investigation and award of land titles following the agreement.

We turn next to the substance of the negotiations.

9.5.2.2 7 September 1895: Te Urewera delegation’s proposals, Seddon’s response

The nature, content, and results of the discussions on 7 September were much debated in our inquiry. As a result, we set out what was said in some detail. The delegation of Te Urewera leaders had conducted detailed negotiations with Carroll before this meeting. As we saw above, one result of those negotiations was to persuade Ngati Manawa to agree to the inclusion of Te Whaiti in the reserve. Other groups must also have made concessions, to each other as well as to the Crown. By 7 September, Tuhoe had apparently agreed to roads, tourists, and getting land titles, all of which departed from the policies of Te Whitu Tekau. Unfortunately, we have virtually no evidence about these discussions.

215. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 22
217. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 86
218. Crown counsel, closing submissions (doc N20), topics 14–16, p 26
Delegation of Te Urewera chiefs meeting with Seddon (on the right) and Carroll (far left), at the ministerial residence, Wellington, 7 September 1895. The group included Te Wharekotua, Mehaka Tokopounamu and Te Korowhiti, jointly representing Patuheuheu; and Harehare Aterea and Te Marunui Rawiri of Ngati Manawa. Hurae Puketapu is at the far right, and Paraki Tiakiwhare of Ngati Manunui from Te Umuroa is in the centre.
But it is clear that the negotiations produced a set of proposals which were put to the Premier at Parliament on 7 September. On this the historians agree. James Carroll had a unique role. Having represented the Government in the discussions so far, he now acted as spokesperson for the Urewera delegation. As Cathy Marr noted, he spoke in Maori in order to ‘show the delegation that he was reporting their views as closely as possible’.219

It appears from the minutes of the meeting that Carroll was presenting proposals that he himself had negotiated with the delegation. One of the chiefs told Seddon: ‘I wish to say that these people here present chosen by the Tribe were chosen to come here to see you, and we have come here and we have seen Mr Carroll and discussed the whole matter with him and come to a conclusion on the matter.’220

Carroll said that the delegation had ‘approved of the views and policy that I have laid before them in regard to their land.’221 In other words, the content of the proposals reflected positions that Carroll had agreed to (or initiated), and which he expected the Premier to approve. In particular, this affected the way in which some of the proposals were put; they were calculated to appeal to Liberal politicians and to Seddon’s own views on matters.222 Nonetheless, it was not a done deal, negotiated between Carroll and Seddon beforehand. The Premier did not accept everything that was proposed, and he put his own spin on some of the proposals, to some extent distorting or altering what the delegation had wanted. He spent a lot of time trying to pin the leaders down to specific sites and numbers for schools, until an unidentified chief asked him to get back to the ‘principal matter’ at hand: ‘the matter which has been placed before you by Mr Carroll.’223 In particular, counsel for Tuawhenua noted a fundamental disagreement between how the delegation and the Premier saw the respective roles of Maori and the single commissioner in determining land titles. We will return to this point below.

9.5.2.2.1 THE PROPOSALS

9.5.2.2.1.1 Creation of a reserve
The most fundamental of the proposals was for the creation of a permanent reserve in which the land, natural resources, the people, and their way of life would be protected. To show how this would suit the interests of the Government (and the economic development of the people), there was an emphasis on tourism: ‘[The] whole of the Tuhoe boundary should be reserved as a reserve for the Native people. A place wherein the Native people could develop itself and that its mountains and its forests be reserved as a resort for tourists in the future.’224

220. ‘Urewera Deputation, Notes of Evidence’, p 10 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 174)
221. Ibid, p 2 (p 166)
222. Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), pp 47, 49
223. ‘Urewera Deputation, Notes of Evidence’, p 9 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 173)
224. Ibid, p 2 (p 166)
9.5.2.2.1.2

Native birds would be protected from the massive deforestation that was happening elsewhere. The Maori way of life would be preserved, and might also attract tourists to 'see the Maoris in their natural state and their land and all that they placed on it.' The country was unsuitable for agriculture or settlement, but 'in the estimation of the native race it is a country very suitable to their requirements; they think a great deal of it.' Te Urewera was

[the] last tract of native country in its natural state . . . And it would be a District in which the natives, the remnants of the name Maori, could gather themselves together. That is why I ask that this District be reserved, made sacred, to preserve this name of the Maori people, preserve the Maori and the forest and all connected with the people in this particular spot.

This was the fundamental basis of the agreement, submitted counsel for Nga Rauru o Nga Potiki. Relying on the interpretation of Brad Coombes, they argued that this was an 'affirmation of cultural traditions which were essential for the survival of tangata whenua and [which] must be seen as the real intent of the UDNR Act which was to follow and as the starting point for any relationship thereafter.' This essential element of what was to be reserved was, for Nga Rauru o Nga Potiki, the 'critical underpinning' of the future relationship between the Crown and Tuhoe in Te Urewera.

9.5.2.2.1.2 Surveys, land titles, and committees

The second proposal related to surveys and the Crown's long-term goal of creating land titles under colonial law, and the long-standing Tuhoe aspiration to get legal powers for their governing committee. Carroll had told Tuhoe earlier in the year that they would not have to pay for the trig survey and that block surveys would be 'reserved for some future time.' Now, Carroll and the delegation proposed that the trig survey, in combination with a survey of the ring boundary, was all that was necessary for title purposes. A commissioner would assemble the people, 'discuss at meetings,' and compile a list of 'all the owners in that Country'; 'all this to be done outside the Native Land Court by the Commissioner and the Maoris themselves.' After that, 'the hapus could then settle and arrange the hapu boundaries between themselves: the Commissioner and the Natives.'

225. ‘Urewera Deputation, Notes of Evidence’, p 3 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 167)
226. Ibid, p 4 (p 168)
227. Ibid, pp 5–6 (pp 169–170)
228. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 92; see also Brad Coombes, summary of evidence for ‘Making “Scenes of Nature and Sport”’, no date (doc H3), p 4
229. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 92, 117
230. ‘Urewera Deputation, Notes of Evidence’, p 2 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 166)
231. Ibid, p 3 (p 167)
232. Ibid, p 4 (p 168)
Edwards understood this to mean that hapu would settle and arrange the boundaries with the assistance of the commissioner. Next, the commissioner and the Maori would mark the hapu boundaries on a map. Then, each hapu would appoint a committee to manage ‘their respective hapu Districts’, and each hapu committee would elect one of their members to a ‘general committee for the whole District’. The only power specified for the committees was that, should gold be found in the district, the Government would consult the General Committee and cooperate with the hapu committee in any mining matters.

This proposal represented a significant compromise on both sides. The delegation agreed to land titles on the basis that the Native Land Court would not be involved and that the people themselves would make the decisions. No doubt at Carroll’s urging, the people would act with a commissioner, to compile the names of all the people in Te Urewera at informal meetings. Then, the hapu were to decide their boundaries themselves (with the aid of the commissioner). After that, the commissioner would help them locate the boundaries on a sketch map. Carroll also agreed to the management of land by committees at both a hapu and a wider-district level. These were very significant concessions for the Government. Never before had it agreed to exclude the Native Land Court and permit the people virtual control over deciding their own titles. Although the Crown had experimented with block committees in 1886, and incorporations in 1894, it had always resisted Maori requests to manage their lands at two levels: the block or hapu level and the district or tribal level. If Seddon agreed to what Carroll and the delegation proposed, it would be a major concession by the settler Government.

### 9.5.2.2.1.3 Social assistance and active protection

In the third proposal, Carroll and the delegation linked social assistance and development with the protective role of the Crown. All of the proposals should ‘be given effect to by a special legislation’. Carroll continued:

> If these proposals were given effect to in a measure such as I suggest then it would be for the Government to act as the parent and the father of this people and see that the matter was carried out: and establish schools and other measures for the welfare of the natives living in that District; such as the introduction of a medical attendant and sanitary laws; improved methods of cultivation and matters connected with the general welfare of the District, for the people within the District. This is what I thought would be for the welfare of these people, so that they would save their lands and save themselves and improve the condition of their families.
What about Ruatoki and the Rim Blocks?

The proposals of the Urewera delegation covered only land that had not passed through the Native Land Court. We do not know what Carroll and the delegation had discussed during their negotiations before the 7 September hui. Wi Pere, a Maori member of Parliament, was present at the hui as an observer and adviser. He was not limited by compromises worked out between Carroll and the chiefs. Carroll had pointed out that the proposals were based on the idea that settler interests were not affected, and that the land could be dealt with in the proposed way because it was ‘virgin soil’, not part of the colony’s current legal system for Maori land. Wi Pere, on the other hand, saw no reason why the committee arrangements could not be extended to include land that had passed the court. He asked Seddon to consider this.¹ Cecilia Edwards, in her report for the Crown, noted that Seddon later agreed to see if there was anything useful in Wi Pere’s own Bill, which provided for committees to manage Maori land, but did not in fact support it when it was introduced to Parliament.² For the time being, at least, Ruatoki and the ‘rim’ blocks were excluded from the agreement.

In our inquiry, this part of the proposals gave rise to debate between the Crown and claimants as to whether it was part of the 1895 agreement, whether it needed to be given effect by legislation, and whether any positive obligations arose from it for the Crown. We will return to these issues below.

9.5.2.2.1.4 Roads

As part of the proposal to create a reserve, the delegation asked for roads to be built to facilitate access and tourism.²³⁷ This request must have been a compromise between those who favoured roads – the Government, Ngati Whare, Ngati Manawa, and Ngati Haka Putuheheu – and those Tuhoe who did not (or who were only just beginning to come around to the idea).

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¹ ‘Urewera Deputation, Notes of Evidence’, pp 3–4, 56 (Cathy Marr, comp, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’, 2 vols, various dates (doc A21(b)), pp 167–168, 220)
²³⁷ ‘Urewera Deputation, Notes of Evidence’, pp 2–3 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), pp 166–167)
**SEDDON’S RESPONSES**

**9.5.2.2.1 Creation of a reserve**

The Premier based his response to this proposal on the experiences of his 1894 tour. He said that he had found ‘the Maori in his original state’ in Te Urewera – and this, in his view, was worth preserving. He had also learned of Donald McLean’s ‘policy’ and ‘promise’. This was clearly a reference to Te Pukeiotu’s speech at Ruatahuna, in which he described how McLean had agreed to a ‘protectorate’ preserving their lands for them, and in which they would exercise authority (see above). Now, with their ring boundary defined, Seddon said that the delegation had asked:

> that this land shall be kept intact, that your forests may continue to exist, that your wild birds which are very few now may flock there, so that you may live and shall be undisturbed. A people, only a remnant it is true, of the native race. That is your request. You ask that your streams may be allowed to flow as at present, the waters to remain unpolluted so that the fishes may live; they are also to you a source of food. Both these requests are reasonable and they are in accordance with what I believe to be in your interest and in the interests of the Country.\(^{239}\)

Seddon saw a national significance to the reserve on several levels. It would be the last tract of native land, where the people ‘may enjoy the freedom that their forefathers enjoyed for ages’ – a particularly important way of looking at it.\(^ {240}\) It would also preserve the native flora and fauna, in the same way the new Barrier Island reserve did, but without the Crown having to buy the land as it had in that case: ‘Granting your request costs the State nothing.’\(^ {241}\) And the reserve would be shared generously with visitors from around the world, thus generating tourism.\(^ {242}\)

**9.5.2.2.2 Surveys, land titles, and committees**

Seddon confirmed that the trig surveys ‘now being made will not cost the Tuhoe or the Native people a single penny piece’. He also undertook that there would be no ‘subdivisional’ surveys unless the people eventually wanted them.\(^ {243}\) ‘Your anxiety is caused,’ he said, ‘from the fact that the subdivision surveys seem to you a first proceeding in order to take possession of your lands. But your lands will not leave you.’\(^ {244}\) We note here that the Crown Law Office commissioned a review of

\[^{238}\text{Ibid, p 11 (p 175)}\]
\[^{239}\text{Ibid, p 22 (p 186)}\]
\[^{240}\text{Ibid, p 38 (p 202)}\]
\[^{241}\text{Ibid, p 39 (p 203)}\]
\[^{242}\text{Ibid, pp 19–20 (pp 183–184)}\]
\[^{243}\text{Ibid, p 39 (p 203)}\]
\[^{244}\text{Ibid, p 20 (p 184)}\]
the Maori-language document supplied to the delegation, which was a translation of the newspaper account of this meeting.\textsuperscript{245} It appears from Edwards’ report that the only significant discrepancy between the English and Maori accounts was on this issue. The Maori version of the document did not always distinguish between the trig survey and other kinds of surveys. Hence, the Urewera delegation (and the people back at home) may have been left with the impression they would never have to pay for any kind of survey.\textsuperscript{246} In our view, this is an important difference.

Not unnaturally, the Premier welcomed the delegation’s decision ‘to have the titles of the land ascertained’.\textsuperscript{247} This was what he had been pushing for in 1894, and it was clearly tied to his belief that gold could not be exploited until the owners of the land had titles. But his understanding of what would be involved seemed radically different from what Carroll had proposed. The first thing, he said, would be to define the hapu boundaries; this would be done by a special commissioner.\textsuperscript{248} The people would ‘appear before’ the commissioner, ‘to whom shall be left the decision as regards the Hapu boundaries’.\textsuperscript{249} This was almost the exact opposite of the delegation’s proposal. The people, he added, might be allowed to help select a commissioner in whom they had confidence, but that was a point Seddon said he needed to consider further.\textsuperscript{250}

The Premier also accepted the proposal for hapu committees and a general committee. In Seddon’s view, the committees would provide for chiefly authority, but ‘these men, these Committees will be the Chiefs by election, by the voice of the people’.\textsuperscript{251} Each would act as a ‘committee of management as amongst yourselves deciding upon Hapu and Tribal questions’.\textsuperscript{252} The committees could, for example, advise the Government on surveys and the wishes of the tribe on other matters.\textsuperscript{253} But Seddon thought decisions about mining were more appropriately made by hapu committees, not the General Committee.\textsuperscript{254} He also promised special legislation to give effect to the agreement, which he described as ‘giving all power to the Tuhoe’ within the ring boundary, including the ‘necessary power to select these Committees and manage affairs within these boundaries’.\textsuperscript{255}

\begin{footnotesize}
\begin{enumerate}
\item ‘Urewera Deputation, Notes of Evidence’, p. 24 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’, p. 24 (doc A21(b)), p. 188)
\item Ibid., pp. 24–25 (pp. 188–189)
\item Ibid., p. 25 (p. 189)
\item Ibid
\item Ibid, pp. 26–27 (pp. 190–191)
\item Ibid, p. 24 (p. 191)
\item Ibid, pp. 21, 28 (pp. 185, 192)
\item Ibid, p. 28 (p. 192)
\item Ibid, p. 37 (p. 201)
\end{enumerate}
\end{footnotesize}
Wi Pere’s Interpretation of the Role of the Proposed Commissioner

At the end of the 7 September hui, Wi Pere said that he thought the commissioner would not act as a tribunal, involving all the formalities and ‘inconveniences’ of the Native Land Court, but rather a ‘tribunal which will better suit the Maori character and solve the question of ownership than those which are at present in force’. This ‘tribunal’ would hold an ‘informal sort of inquiry’; it would ‘confer with the natives after assembling them together’, and give a ‘temporary interim judgement’ before giving ‘further notice’ to ‘others who may be [affected] by that decision to bring their cases forward and they will be dealt with and every care will be taken that no injustice is done.’


9.5.2.2.3 Social assistance and active protection

Seddon understood the people to be asking for the ‘benefits of Civilization’:

You are entitled to have that because when your forefathers made the Treaty of Waitangi your Mother the Queen on her part undertook to say that you should have the benefits of Civilization without losing your own rights. It is therefore my duty as it is my pleasure as the Premier of the Colony and as the Servant of the Queen to conform to the request which is I say reasonable and while I am also satisfied it will also prove beneficial to you. [Emphasis added.]

In response to the delegation’s proposal that the Government ‘act to the Tuhoe as a father would act to his children’:

I have very great pleasure in replying in the affirmative and by expressing to them our earnest desire to act in a fair and partial and paternal manner; to act in such a way that their lives may be improved that their lands may be conserved and that their children may live after them and represent and continue for all time to represent a noble race.

256. Ibid, p 14 (p 178)

257. Ibid, pp 34–35 (pp 198–199). The reporter for the New Zealand Times reported ‘fair and partial and paternal’ as ‘fair and impartial and paternal’: New Zealand Times, 9 September 1895 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 255). Either version could be correct. If connected to the word ‘fair’, ‘impartial’ seems more likely. If connected to the word ‘paternal’, ‘partial’ (loving or favouring) seems more likely.
Referring back to Kereru Te Pukenui’s gift of his taiaha, Seddon emphasised that Kereru had sought the protection of the Government for his people: ‘The word of the Gov’t was given and that protection shall ever be afforded to them.’ A trust had been ‘imposed and that trust will be followed out to the letter.’

In terms of a concrete response to the social assistance requested, Seddon promised only schools and roads – and that the schools would double as distributors of medicine for their communities.

Seddon’s views on development within the reserve were ambiguous to some extent. Cecilia Edwards suggested that one aspect of these discussions was an expectation that development would be excluded from the reserve. Cathy Marr concluded that ‘a package of development assistance’ was ‘presented as part of the overall provision of self-government’, while noting that Seddon’s assurances were at times confusing. For example, he ‘appeared to support the principle of a reserve type of “sanctuary” for remnant indigenous people, flora and fauna to live by traditional means while at the same time promising Government assistance with programmes for developing the district’. We note that the Premier encouraged tourism but also expected other forms of development to be compatible with what was being preserved. Most importantly (since gold would prove to be a mirage) he saw economic potential in pastoral farming. The land was not suitable for the kind of ‘close’ settlement wanted for Europeans, but – with the benefit of roads – he thought some of it could be developed by the people themselves for sheep and cattle farming. At the end of the hui, Wi Pere suggested that money be given to help the committees develop their land for farming, in the same way the Government was helping out the Bank of New Zealand. No response was made to this suggestion. (We note here that no one seems to have mentioned the possibility of a timber industry, although it had been raised by resident magistrate Samuel Locke in 1889, and by Harehare Atarea at Galatea in 1894.)

9.5.2.2.4 Roads

In Seddon’s understanding, an agreement to roads had been part of what Carroll had negotiated with Te Urewera leaders earlier in the year. Now, the leaders wanted roads to facilitate tourism. Although they had not asked for it, Seddon

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258. ‘Urewera Deputation, Notes of Evidence’, p 36 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 200)
259. Ibid, pp 36–37 (pp 200–201)
260. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 183
261. Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p 69
262. ‘Urewera Deputation, Notes of Evidence’, p 41 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 205)
263. Ibid (pp 219–220)
264. Miles, Te Urewera (doc A11), pp 240, 262
265. ‘Urewera Deputation, Notes of Evidence’, p 18 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments, p 18’ (doc A21(b)), p 182)
266. Ibid, p 22 (p 186)
told them he would now withdraw the armed forces from their district, while leaving some police to keep an eye on things. The Premier thus recognised that there was still not full agreement to roads, but he believed that those who were ‘far-seeing’ and unselfish would recognise that both Maori and settlers would benefit from the wealth generated by giving access to tourists.

9.5.2.3 Was there agreement between Te Urewera leaders and Seddon?

At the end of the hui, Wi Pere protested that the ground had been cut out from under his feet, because the Premier had agreed to everything the delegation had asked for. All that remained, in his view, was to bring in the special Bill as soon as possible, and to sort out the matters of detail.

We think this is a fair assessment of the meeting, given how the proposals had been framed and Seddon’s responses to them. What Pere did not perceive – perhaps because he had his own view (which was different again) – was the total disjunction between how the delegation had framed the respective roles of the people and the special commissioner in respect of land titles, and how Seddon expressed those roles in his supposed agreement to the proposal. There was in fact no agreement as to how titles should be investigated and determined, a point stressed by counsel for the Tuawhenua claimants.

Other explicit disagreements seemed minor. The disagreement over who should decide about gold mining – the hapu or General Committee – was a non-event, since mining never transpired in Te Urewera. What it underlined, however, was that almost nothing had been specified about the roles and powers of the committees. There was broad agreement that they were to manage land as well as all hapu and tribal affairs, and to advise the Government on those affairs. There was as yet no explicit talk of ‘local government’, which came later. But Edwards and Marr drew our attention to an editorial in the New Zealand Times of 9 September – the day it published its account of the meeting. The editor saw the agreement of 7 September as similar to Sir George Grey’s arrangements (see chapter 3), and as the safest way to provide what Kotahitanga wanted:

It is the best antidote to the Home Rule policy now advocated by many of the most thoughtful of the Maori leaders. And it is so because it is a real ‘Home Rule’ policy, which gives the Natives the maximum of local self-government with the minimum of local friction.

267. Ibid, p 38 (p 202)
268. Ibid, p 40 (p 204)
269. Ibid, pp 49–50, 54 (pp 213–214, 218)
270. Counsel for Tuawhenua, closing submissions (doc N9), pp 126–127
272. New Zealand Times, 9 September 1895 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 259)
An article in the *New Zealand Herald* of the same date also saw the arrangements as self-government: ‘they [the delegation] desired to set up committees to govern their own internal affairs’ – a proposal to which the Premier had consented.\(^273\)

What did Seddon mean, when he said that ‘all power’ in the district would be given to Tuhoe to manage affairs within their boundary? Ms Marr concluded:

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\(^{273}\) *New Zealand Times*, 9 September 1895 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 257)
Seddon’s promise regarding local self-government was certainly regarded as marking a distinct milestone in government concessions to Maori self-government . . . this was recognised by Wi Pere (a Kotahitanga supporter) and the liberal newspaper the *NZ Times* in its report of the meeting of 9 September 1895. . . . This report was not rescinded or contradicted by Seddon or the government and in fact, after it appeared, Seddon reaffirmed his commitment to ‘local government’ for Tuhoe in a later meeting of 24 [actually 23] September 1895. 274

For those proposals that had been agreed between the parties, the detail still had to be worked out.

### 9.5.2.4 23 and 25 September 1895: a second meeting between Seddon and the Urewera delegation, and the Premier’s key memorandum

The next stage in the discussions between the delegation from Te Urewera and the Crown would culminate in a crucial document issued by the Premier, setting out the Government’s understanding of what had been agreed. We discuss the memorandum in detail in this section.

The written sources about this important phase in the negotiations are sparse – a cause of some frustration to us now. There were a number of meetings and discussions between the Government and the Urewera delegation, as Marr and Edwards have outlined. As noted above, we have virtually no information on the negotiations between Carroll and the delegation, prior to their presentation of joint proposals to the Premier on 7 September. By the end of that hui, Te Urewera leaders had said very little. Carroll had presented the proposals that he and the delegation had agreed upon, and then Seddon had talked at great length for the rest of the meeting (which lasted three and a half hours). At the end of the hui, Te Maronui, one of the Ngati Manawa delegates, told the Premier that they would like a chance to reply to him on the matters that had been discussed. There were more speeches at the Premier’s residence afterwards, and also when the delegation visited the Governor on 9 September. These speeches were either not recorded or reported only very briefly in the newspapers. 275

The next major meeting occurred on 23 September (the Premier had not been present at their meeting with the Governor). There may have been other discussions in the meantime. Work must have begun on trying to flesh out the broad and very briefly defined agreements that had been reached on 7 September.

The only surviving account of the 23 September meeting is a brief report in the *New Zealand Times*. This time, Wi Pere acted as spokesperson for the delegation, with Carroll as translator. The reported speeches focused on new matters which had not been raised at the 7 September meeting. First, the delegates wanted the Government’s help to construct breeding establishments for exotic fish, which the

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274. Marr, answers to questions of clarification (doc D11), pp12–13
people would be taught to manage, and breeding places for game birds. (Seddon later explained this as a request both for new sources of food and for game species to attract tourists.) Secondly, they asked for responsibility to maintain the roads in their own areas – it is not entirely clear, but this appears to have been a request for paid work on their own sections of the roads. The delegation also wanted a draft Bill or ‘the headings’ of such to take back to their people for consultation, and for Wi Pere and Carroll to visit Te Urewera and explain it to the people. In his reply, Seddon agreed to these new requests.

The Premier made three further points that we need to note:

- he reiterated his view that the commissioner would decide hapu boundaries;
- for the first time, he used the term ‘local government’ in reference to the committees; and
- he told the delegation he was planning to ‘embody in the measure some portions of Mr Wi Pere’s Bill’ after having gone into it carefully.

This latter point raised the possibility of extending the committee system to lands that had passed the court, which was the subject of Pere’s Bill (see the sidebar opposite); but, as Edwards noted in her report, no part of Pere’s Bill was included in the Urewera legislation.

The meeting was followed two days later by the drafting of one of the most critical documents in our inquiry. Seddon wrote a memorandum setting out what the Wai 36 Tuhoe claimants called a ‘Heads of Agreement’. According to the claimants, it captured some of the broad principles of agreement. This memorandum was later attached to the Urewera District Native Reserve Act 1896 as the second schedule to ensure that no part of the agreement was left out of the Act. (We have reproduced the Act and schedules as appendix III.) The memorandum, written in the form of a letter to the delegation, was composed in English then translated into Maori. Marr noted that Seddon had multiple copies of the letter made for the chiefs to take back to their district for consultation. In subsequent months, several hui were held to discuss the proposals.

According to Carroll, Seddon’s letter to the delegation perhaps best represented the Government’s understanding of what was agreed and what it therefore proposed to implement. He told Parliament, when introducing the Urewera District Native Reserve Bill:

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276. *New Zealand Times*, 24 September 1895 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 267)
277. Seddon to ‘the persons who came hither to represent Tuhoe’, 25 September 1895, Urewera District Native Reserve Act 1896, sch 2
278. *New Zealand Times*, 24 September 1895 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), pp 267–268)
279. Ibid, pp 268–269
281. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 86
283. Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p 64
9.5.2.4

Ko te Ture Motuhake mo tōhoe

The Hon the Premier wrote them [the delegation] a memorandum, which is referred to here, setting forth the lines upon which the Government were agreeable that legislation should be carried out. The lines embodied in that memorandum have been closely adhered to throughout every clause of the Bill from beginning to end.

284. James Carroll, 24 September 1896, NZPD, vol 96, p 158

The memorandum put the stamp of Seddon’s officials on the agreement, in Cathy Marr’s view. In seeking advice on practical aspects of carrying out the broad principles, the Premier must have given officials a chance – in her view – to ‘claw back’ some of what Maori had gained. 285 In drafting the memorandum, we note that Seddon characterised what the delegation had requested in terms of his own views (not necessarily theirs). Having studied the minutes of the 7 September hui closely, it is our view that the Premier did read down or modify some of the proposals that had been put to him.

284. James Carroll, 24 September 1896, NZPD, vol 96, p 158

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Wi Pere’s 1894 Bill: The Replacement of the Native Land Court by Committees

The Native Lands Administration Bill 1894 sought to repeal the Native Land Court Act 1886 and its amendments and all other Acts ‘that affect Natives and their property’. Its main feature was that all Maori land that had been investigated as to ownership would be administered by elected, seven-member, block committees. The land subject to the Bill’s provisions included land held by Maori in fee simple and ‘all Maori land held by Maori under any title whatsoever issued to them under any Act’. A district committee, constituted under the Native Committees Act 1883, would investigate title to customary land, and would also determine the respective interests of owners (so that profits could be paid out) where a block committee and owners could not agree on that matter. Alienation of land could be effected where owners agreed, and would be administered by a board of five members (three Maori and two European) nominated by the Kotahitanga and appointed by the Governor. A block committee could mortgage land to the Government, if a majority of owners consented, and the block committee or the board would manage farming operations with the revenue going to the board until any mortgage was repaid. Rates, at half the rate per acre of European-owned land, would be due only when all borrowed money had been repaid.


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Defining the Boundary of Te Rohe Potae

In the discussions of September 1895, and in the Bills of 1895 and 1896, the question of how to define the external boundary seemed to seesaw between setting it out in the legislation or appointing a commissioner to define it. The claimants and the Crown have not made submissions on this point. In response to a question from counsel for the Tuawhenua claimants, Professor Judith Binney argued that the point was irrelevant.1 It appears to us that a major question – whether the Te Whaiti lands would be included – had already been settled amicably between Carroll and the tribes before 7 September. But there was also the question of Ngati Kahungunu interests. An investigation by a commissioner – if, as the delegation asked, it was done together with hapu – might well have resulted in informal discussions at Lake Waikaremoana and elsewhere as to whose interests were to be included in the Reserve, and how those interests were to be protected. On the other hand, the naming of the boundaries in the 1896 Bill, some four months before the legislation was enacted, did give time for Ngati Kahungunu to be notified that land in which they claimed rights was to be included in the Reserve. We agree with Anita Miles that James Carroll and Wi Pere ‘would have been aware of Ngati Kahungunu interests in the matters under negotiation’.2

1. Judith Binney, statement in response to questions of clarification from the Tuawhenua claimants, 1 April 2005 (doc M19), p 12
2. Anita Miles, summary and response to Issues of ‘Te Urewera’ (Wai 894 ROI, doc A11), no date (doc D5), para 18

9.5.2.4.1 Creation of a Reserve

This most fundamental of the proposals was not mentioned in the memorandum. The closest statement was that the ‘rohe-potae of the tuhoe land’ would be ‘permanently determined’, defined by a commissioner with the aid of the trig survey.286

9.5.2.4.2 Title Determination

A commissioner would ‘inquire into the title of the persons owning land’, determine hapu boundaries, record his decisions in writing, and mark the boundaries using a sketch plan or a full survey, depending on what the owners wanted. The commissioner had to pay ‘due consideration to Native manners and customs’, and blocks were to be hapu blocks. Seddon added an unexpected rider: ‘In dealing with the title of a person and his family they must be deemed to be joint tenants.’287

286. Seddon to ‘the persons who came hither to represent Tuhoe’, 25 September 1895, Urewera District Native Reserve Act 1896, sch 2
287. Ibid
Marr noted a tension in how Seddon referred to title, which he evidently saw as existing at both the hapu and individual level. She commented that joint tenancy may have been supposed to prevent fragmentation and thereby ‘protect land in hapu or family control’. Edwards agreed with Marr that land titles under the agreement were supposed to be hapu titles. Counsel for the Tuawhenua claimants noted that Seddon saw the commissioner as an adjudicator, which was not what had been intended by the delegation of Te Urewera leaders. We agree with that submission, but note that the Premier had now presented his differing view at least three times: on 7 September, on 23 September, and now again on 25 September. The question was: whose view would prevail in the legislation that followed? We note here that it was not a straight victory for either side, as we shall see in the next section.

**9.5.2.4.3 COMMITTEES**

After title investigation, the ‘Maoris who are in a block of land belonging to a hapu may elect a Local Committee’ (emphasis added). The committee was to have a maximum of seven members. It was to administer the land on behalf of the owners. Each local committee ‘or hapu’ would elect one of their members to a General Committee, which was to ‘deal with the tribal lands’. According to Seddon, the delegation had asked that the General Committee’s decisions be binding on ‘the Local Committees and hapus’, but what he agreed to was that its decisions would be communicated to the local committees ‘for their guidance’. On the matter of gold, the Premier preferred to deal with the ‘hapu owning the land in which gold is found’, not the General Committee. Thus, the only matters specified for the committees were land management. There was no mention of ‘local government’ or of the power to manage ‘tribal affairs’, or even what Seddon had mentioned on 23 September – that the General Committee would represent the tribe in communications with the central Government. The Premier did, however, note the chiefs’ acceptance of the Government’s authority: ‘you acknowledge that the Queen’s mana is over all, and that you will honour and obey her laws.’

**9.5.2.4.4 SOCIAL ASSISTANCE**

Schools would be built ‘forthwith’, and Maori would be given sections of the roads to build and maintain. To provide additional food and a tourist attraction, Maori had requested that arrangements be made to introduce English birds and fish.

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291. Seddon to ‘the persons who came hither to represent Tuhoe’, 25 September 1895, Urewera District Native Reserve Act 1896, sch 2
293. Seddon to ‘the persons who came hither to represent Tuhoe’, 25 September 1895, Urewera District Native Reserve Act 1896, sch 2
Seddon committed to a single practical act: to ask the curator of the Masterton fish ponds if trout could be supplied for Te Urewera, and to get information as to where and how best to establish trout in their waters. He also assented to the ‘request that your forests and birds should be suitably protected’, without specifying how. Some (but not all) of the general principles – summarised above in our discussion of the 7 September hui – were captured in the way Seddon recorded the delegation’s requests on these matters, but here, as with self-government, he did not offer much.

**CONCLUSIONS ABOUT THE PREMIER’S MEMORANDUM**

Overall, this document committed the Government to:

- ‘permanently’ defining Te Rohe Potae;
- instituting an alternative form of title investigation in the person of a commissioner;
- determining title on the basis of sketch maps, unless the owners wanted a full survey;
- listing all individual owners but essentially defining title at a hapu level and treating hapu as the owners of the land; and
- giving powers of land management to elected hapu/block committees, overseen and guided by a General Committee representing all the hapu.

The Government would also build schools and roads (using Maori to build the roads), look into supplying the district with exotic fish, and ‘protect’ the forests and birds. At the same time, the peoples of Te Urewera were understood to be accepting a commissioner and colonial land titles, schools, roads, the admission of tourists to their district, and the authority of the Government and its laws. Both sides, it was understood, had made concessions.

How far did the memorandum reflect the agreement of 7 September? Counsel for the Tuawhenua claimants submitted that it had missed out some key things that had been agreed on that date, failed to foreshadow things that Seddon would later put in his Bill, and distorted the matters that it did cover. She concluded: ‘Seddon had resiled from almost every one of the agreements reached in Wellington.’ We think this overstates the position. Some of the broad principles were captured in the memorandum. Some do have Seddon’s slant, in that they are put differently from Carroll’s representations on behalf of the delegation. Other matters are either missing or notably narrower in their compass. We accept that a number of matters were put in the Bill a month later (October) that had not been mentioned before, either in the discussions (as recorded) or in this memorandum. We will return to this point below. But, in our view, the agreement cannot be confined to the wording of the Premier’s memorandum. Despite what Carroll told Parliament, the 1896 Bill did not follow it slavishly. Moreover, as the Crown noted, the Premier had the ‘minutes and notes of the 7 and 23 September meetings translated and

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294. Seddon to ‘the persons who came hither to represent Tuhoe’, 25 September 1895, Urewera District Native Reserve Act 1896, sch 2
295. Counsel for Tuawhenua, closing submissions (doc N9), p.120
sent to the communities as well. In our view, the full range of what had been discussed and agreed can only be appreciated by having regard to the accounts of the 7 September meeting (in particular) together with the 23 September meeting and Seddon’s memorandum.

We turn next to consider the full nature and content of the September 1895 agreement.

**9.5.2.5 What was the content of the September 1895 agreement?**

The claimants and the Crown considered what the Government had agreed to over the month of September. The claimants, putting together the discussions of 7 September and 23 September with Seddon’s memorandum of 25 September, argued that the Government had agreed to deliver on the following matters:

- A legally recognised reserve within which land ownership would be settled outside of the Native Land Court system, in accordance with Tuhoe customs and at no cost to the people.
- An unspecified form of title at a hapu level, not individual title.
- Self-government within the reserve through the establishment of tribal committees.
- No imposition of costs for the triangulation surveys, and no need for costly subdivisional surveys of lands within the reserve.
- A package of assistance to improve the general welfare of Te Urewera people, including schools, medical assistance, sanitary measures, and improved methods of cultivation, etc.
- The protection of native birds, flora and fauna.

The Wai 36 Tuhoe claimants relied on the conclusions of Cathy Marr:

There would be legislative protection for the Urewera district or reserve, that ownership would be determined by means other than the Native Land Court at no cost to the people and acknowledging hapu authority. It was also agreed that the chiefs and people would retain a significant degree of control and management of their own district expressed variously as ‘local government’ or ‘home rule’. Of great significance to later events was the clear understanding, in accordance with Tuhoe’s consistent wishes, that land title was not to be individualised but to be dealt with at a hapu level.

The Crown’s view of what it called the ‘broad’ principles of agreement was based on the evidence of Anita Miles, and was much the same as that put forward by

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296. Crown counsel, closing submissions (doc N20), topics 14–16, p 21
297. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 44. The claimants included the exclusion of gold prospectors from Te Urewera as part of the agreement, but we do not consider this a material point (because gold was not an influential factor after the mid-1890s, and none of the discussions about it were ever put to a practical test).
298. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 85
Tuho (as quoted above). Based on Edwards’ evidence, the Crown argued that there was little or no real change between what had been proposed on 7 September and what had been summarised by Seddon on 25 September. But in terms of the ‘set of principles that had to be worked into legislation if the government was to be able to give them effect’, the Crown’s adoption of the evidence of Ms Miles meant its position was so close to that of the claimants that we can say the parties seemed in virtual agreement on this question. We quote at length from the Crown’s submission to show how close the parties seemed to be on this point:

Miles pinpoints the letter from Seddon to the Urewera chiefs on 25 September 1895 as confirmation of the agreement reached. She articulates this as an agreement at the principle level. The main principles agreed were in respect of: ‘... legal definition of the Urewera district; the determination of ownership with regard for native customs and usages with the aid of a commissioner; that land ownership and land boundaries would be determined at the hapu-level; that only sketch plans of the hapu blocks were necessary; the provision of local self-government through the provision of committees established to administer hapu lands (for example, to administer any goldfields within their blocks) and manage tribal affairs; that the General Committee’s decisions would be binding on the block committees.’

She emphasised the importance of Seddon’s acknowledgement of the need to provide for the appointment and powers of the committees in future regulations.

At a broad level, Miles argued that the agreement constituted an acknowledgement by the government that the district was a ‘Maori district’. In this context, the district was to be reserved ‘in order to protect the people, the forests, flora and fauna’. There were also several important acknowledgements. These were that legally-recognised ownership was important to protect the land, governance structures were required to manage the lands and affairs of the owners, Te Urewera was unsuitable for widespread settlement purposes, Urewera Maori needed development assistance (roads, more food sources, some agricultural advice, schools, better health), and the potential for economic development existed in the form of minerals, timber and tourism. She noted an expectation of further negotiations on the implementation of the agreement.

Despite this submission, which appeared to create significant agreement between the parties, the Crown took a much narrower view of what Seddon had actually promised to deliver in concrete terms:

Seddon undertook to bring a bill before the House to put into effect the promises he had made in his letter to the chiefs of 25 September 1895. These were title determination through an alternative process to the Native Land Court involving hapu,

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300. Ibid, pp 20–22
301. Ibid, pp 19–22
9.5.3 Was the agreement between Te Urewera leaders and the Crown given legislative effect in the Urewera District Native Reserve Act 1896?

**Summary Answer:** The claimants and the Crown are in broad agreement that the Urewera District Native Reserve Act captured most of the principles that had been agreed in September 1895. At the end of the year, a Bill was introduced into the House, and it was probably circulated in Te Urewera. The evidence is not certain, but the historian witnesses who gave evidence agreed that some of the changes in the 1896 Bill must have come from Tuhoe. A second Te Urewera delegation came to Wellington in June 1896, but it appears to have had little influence on the Bill’s content. A limited number of changes were made by the Native Affairs Committee, but they were significant ones. The committee reduced the scope of alienations provided for in the Bill, taking out the power of leasing to settlers, and introducing a requirement that alienations to the Queen be carried out at the level of the General Committee. It also increased the scope for public works takings. The Bill passed through Parliament with virtually no other changes.

As discussed above, there were seven core principles, or broad areas of agreement, that had to be given effect in the Act. The first was the creation of an inalienable reserve to protect not just the land but also the natural resources and the customs and way of life of the Maori people. This principle was well understood in Parliament, which accepted it on the basis that the district was useless for European settlement but could be useful for tourism and mining. There were, however, some important qualifications. The first of these was a power to alienate land to the Queen. The claimants accepted that this power (vested in the General Committee) was sufficiently circumscribed and was not a significant violation of the agreement. We agree. Secondly, the power to lay out roads in the reserve came with no explicit protections, but roads had been agreed to in September 1895, and seemed likely to come under the local government powers of the General Committee. On that understanding, the roading provision was not unreasonable. Thirdly, the Crown was vested with power to take land for other public works. This had not been discussed and agreed with the delegation from Te Urewera,

303. Ibid, p 21
304. Ibid, p 28
which it should have been. However, one of the two specified public purposes for which land could be taken (tourist accommodation) was an agreed purpose of the reserve. For any taking, compensation would have to be paid, and there was to be a cap on takings of 400 acres, after which the consent of the General Committee was required.

The second broad principle was the exclusion of the Native Land Court from the reserve, and the establishment of an alternative process to create State-recognised land titles. The Act provided a compromise between the views of Seddon and of the delegation, as they had been articulated in September 1895. A seven-person commission (five Tuhoe, two Europeans) would adjudicate titles, with input from the people and in accordance with Maori custom. Carroll believed this would place control of title determination in the hands of the owners. We accept that this may have been a reasonable compromise, given Seddon’s view that a single commissioner should adjudicate. Everything would depend on how it worked in practice, which will be examined in chapter 13. Ngati Kahungunu claimed they were disadvantaged by the specification that the owner representatives on the commission be Tuhoe. We agree that a district-based system of electing commissioners might have been more appropriate, but note the evidence of the Ngati Kahungunu claimants’ historians that no actual prejudice followed. We also note that the Urewera commission was supposed to stop after the initial title determination, and that the Act made it possible for the Native Land Court to take over at that point, and to determine successors. This provision was against the known wishes of the owners, who should have been empowered to regulate their own shareholdings through their committees.

The third principle agreed in 1895 was that land titles would be awarded at a hapu level. Section 8 of the Act, however, required the commissioners to list all owners in a block, then group them into families and define not only each family’s share of the block but also each individual’s share. The Crown defended these more detailed requirements on the basis that owners had to be identified to elect committees; their relative shares had to be identified so that any proceeds from the land could be distributed; and key powers of ownership (such as the power to alienate) rested with the General Committee, not individuals. We accept that electors had to be identified. We also accept that they could not exercise all the powers of owners. But what was created, in effect, was a virtual individual title, established on paper but never resulting in title to specific lands on the ground. Thus, under the Act, hapu would remain in actual possession of the lands, but individuals with relative shares had to be listed, and this created an opportunity for the Crown later to purchase them. There was no need for this determination of relative shares – the hapu committee should more properly have had the role of deciding how to use (or apportion) any proceeds from the land. We agree with counsel for Ngati Whare that the ‘allocation of interests down from a hapu to a family to an individual level, irrespective of the governance mechanisms in the Act, contained within it seeds of radical individualisation.’

305. Counsel for Ngati Whare, closing submissions (doc N16), p 60
The fourth principle was that the peoples of Te Urewera would be self-governing by means of committees. Here, the principal problem with the Act was that the Government claimed to have allowed full self-government (characterised by some as Home Rule), yet the Act specified almost no powers for the committees. The Crown was left to do that later, by means of regulations. In Parliament, Carroll explained the Government’s intention to have these regulations drawn up by the seven-member Urewera commission, which would have given Tuhoe a significant role in defining the functions and powers of the committees. Also, we are convinced by Seddon’s many statements, both before and during the parliamentary debate on the Bill, that he intended to fulfil the 1871 promises of Donald McLean, and that he intended to honour the Government’s commitment to provide self-governing powers for the committees. We do not accept that Tuhoe were deceived on this point, as was claimed at the time (and by some witnesses in our inquiry). Rather, the peoples of Te Urewera were entitled to trust in the good faith of the Crown.

The fifth principle of the 1895 agreement was that the peoples of Te Urewera acknowledged the Queen and the Government and would obey the law. This principle did not need to be specified in the Act, although it is implicit in its provisions.

Finally, there were two broad areas of agreement in 1895 about social and economic development. These related to the Urewera delegation’s acceptance of development – in the form of roads, tourism, and other possibilities – and the Government’s undertaking to protect their interests and (as they requested) provide social and economic assistance. None of this was specified in the Act, other than the provision for roads. The Crown argued before us that it had agreed to very little in concrete terms, and that everything it had agreed to could be delivered under existing laws or policies. We accept that the details of the ‘package’ did not have to be specified in the Act for the Crown to be obliged to deliver them. We also accept that the details had not been agreed. Carroll had been more expansive, Seddon more restrictive. Health, education, and the increase of food supplies were (at a minimum) agreed as areas for Government assistance. In our view, it would have been reasonable for the Government to have assisted with farming, as Carroll seemed to anticipate (and as the Liberals were prepared to do for settlers). But full agreement still needed to be negotiated between the Crown and the General Committee on these matters.

9.5.3.1 The introduction of the Urewera District Native Reserves Bills to the House

In the Crown’s submission, ‘The test for the Crown is whether it translated the agreed principles into the legislation, and whether in implementing the Act it derogated from those key principles.’\(^\text{306}\) We deal with the first part of this test in this section. The second part of the test is addressed in chapter 13, which deals with the fate of the self-government provisions of the UDNR Act and the nature and extent of Crown purchasing in the Reserve from 1910.

\(^\text{306}\) Crown counsel, closing submissions (doc N20), topics 14–16, p 6
Counsel for the Wai 36 Tuhoe claimants acknowledged: ‘At a broad level the Act was generally consistent with most of the measures sought by Tuhoe in the negotiations leading up to the Act.’

But, according to the claimants, the Act had some key differences from the September agreement:

- it allowed alienation of land;
- it gave the Crown power to take land for public works;
- it failed to ‘provide for any of the promised development package’; and
- it changed the concept of hapu ownership to individual shareholdings.

This final change was, in the claimants’ view, ‘the single greatest feature of the Act to undermine the understandings of Tuhoe.’ In addition, the Act had a key weakness: it lacked detail on so many key issues, including the powers of ‘local government’ and the General Committee, that it may or may not have granted what it said it did. These are the claims which we explore in this section.

At the end of October 1895, Seddon introduced the Urewera District Native Reserves Bill into the House. The Urewera delegation had left Wellington at the end of September. Its members are unlikely to have had any role in the formulation of this Bill. The Premier brought it late in the session, not expecting to pass it but wanting to have it translated and sent to Te Urewera for consultation. We have no direct evidence that this occurred, but Cathy Marr thought it ‘possible.’ It seems to us that some of the changes in the new Bill in 1896 must have been the result of requests from Te Urewera. Cecilia Edwards analysed the differences between the 1895 Bill and the revised Bill that had its first reading in June 1896, concluding that the some of the changes were, by their nature, likely to have been made ‘in favour of Tuhoe requests.’ Binney agreed that the changes were probably suggested following several hui during the summer.

The Government funded a further Urewera delegation to travel to Wellington in June 1896 to see the passage of the revised Bill through Parliament. Its members included Hetaraka Te Wakaunua, Te Makarini Tamarau, Mehaka Tokopounamu, Te Tuhituhi Pihopa, and Tutakangahau’s son, Tukua Te Rangi. We do not know whether it included Ngati Whare and Ngati Manawa representatives, as the 1895 delegation had done. We do know that Ngati Whare’s leader, Wharepapa Whatanui, had written to Seddon in October 1895, informing him that his people ‘very much approved’ of the September agreement. In any case, there was a four-month delay before Seddon finally met with the delegation on 8 September 1896. The main reported topic of discussion at the meeting was the recent death
of Kereru Te Pukenui. A further meeting was promised at which details of the Bill could be discussed, although no record of such a meeting has been found.\textsuperscript{315}

On 10 September, the Bill was referred to the Native Affairs select committee, of which Seddon was a member, and the opportunity for Te Urewera leaders to give evidence at this committee may have removed the need for further discussions. Unfortunately, most papers relating to the workings of the select committee and the drafting of the 1896 Act appear to have been lost, probably in the fire which destroyed Parliament in 1907. The workings of the committee also went unreported in the press.\textsuperscript{316} When Carroll introduced the Bill at its second reading, he informed the House: ‘We took evidence from the Natives themselves, and found that it would meet the general wish of the tribe if we conceded to them some form of local government by which they can administer their own affairs within a prescribed circle.’\textsuperscript{317}

It is not clear whether this refers to the Native Affairs Committee or the meetings in 1895, but Wi Pere also implied that the delegation had had direct input to the Bill, presumably at the select committee stage: ‘I have already told you

\textsuperscript{315} Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), pp 79–80
\textsuperscript{316} Ibid, pp 80–81
\textsuperscript{317} Carroll, 24 September 1896, NZPD, vol 96, p 158
The Native Affairs Committee’s Changes to the 1896 Bill

The Native Affairs Committee made three significant changes to the 1896 Bill:

- It removed the power of leasing directly to private settlers from the Bill, so that alienation could only take place to the Crown.
- It inserted a new clause (clause 20A in the Bill, section 21 in the Act), specifying that alienations to the Crown had to be carried out at the level of the General Committee.
- It amended the public works section (clause 22 in the Bill, section 23 in the Act). The original clause was a very limited one, providing for the Government only to take land for accommodation houses. The committee extended this to include ‘camping grounds for stock’, and any other ‘purposes of public utility’ at all. It did not, however, change the maximum amount of land (400 acres) that could be taken without the consent of the General Committee. The original clause provided for the taking, without consent, of four blocks of up to 100 acres each (for the accommodation houses). The committee removed the requirement that the land be taken in four blocks, but kept the maximum of 400 acres in total.

1. The Urewera District Native Reserve Bill, as reported from the Native Affairs Committee, 18 September 1896 (Cecilia Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1: Prior Agreements and the Legislation’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc D7(a)), app)

yesterday that the Tuhoe themselves struck out certain clauses in that Bill. They insisted that the power of leasing should still be left open, because they thought that perhaps in future they might find a payable goldfield there.318

The Tuhoe delegation was clearly not able to rewrite the 1896 Bill. Cathy Marr has noted that we have no firm evidence on what the 1896 delegation understood the Bill’s provisions to mean, how far they had input to them, and whether their views were reflected in amendments.319 If this was the main opportunity for the delegation’s input to the Bill – as it seems to have been – we can say only that few changes resulted.

The Native Affairs Committee made three changes to the Bill, and no clauses were actually struck out.320 So Wi Pere may have had in mind the 1895 Bill, which had been more fundamentally revised. Nonetheless, there was agreement among

318. Pere, 25 September 1896, NZPD, vol 96, p 192
319. Marr, answers to questions of clarification (doc D11), pp 16, 17–18
320. Urewera District Native Reserve Bill 1896, as reported from the Native Affairs Committee, 18 September 1896 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), app b)
Carroll, Wi Pere, and almost all other members that the 1896 Bill faithfully represented both the wishes of the tribe and the promises and agreements made by the Premier in 1895. Some members of the Opposition, including Hone Heke, argued that, even so, the Bill would not deliver what Tuhoe wanted; the tribe had been deceived.

9.5.3.2.1 Creation of a reserve

The Urewera District Native Reserve Act created a permanent reserve of some 650,000 acres. One of the key issues to consider is: what was the Act intended to reserve? First, it reserved the land permanently for its Maori owners. In Parliament, the Government emphasised the unsuitability of the district for settlement, combined with its natural tourist attractions. Secondly, it was supposed to reserve these ‘natural beauties’, the forests, and the birds of Te Urewera. Thirdly, it was supposed to create a reserve for the Maori people, their customs, and their way of life. For some of the settler members of the House, this was related to the idea that Te Urewera would be a resort for tourists, who would view New Zealand in its original state – people as well as scenery.\textsuperscript{321} As Cathy Marr put it, the Act was intended to create a ‘living museum’.\textsuperscript{322} While the peoples of Te Urewera would have found offensive the idea that they were ‘curiosities’, the important thing for them was Parliament’s explicit recognition that they, their customs, and their way of life would be protected and preserved. This sat uneasily alongside statements in the House that European ‘civilisation’ would also be promoted in Te Urewera, especially through schools. But it was nonetheless a core part of the agreement, reflecting what had been proposed (and assented to) on 7 September. We agree with counsel for Nga Rauru o Nga Potiki that the protection of the people and their way of life was a fundamental concept underlying the Urewera District Native Reserve Act, and that it was understood on both sides.\textsuperscript{323}

How would protection be achieved? The member for Clutha, Thomas Mackenzie, wanted to exclude ‘direct interference’ of Europeans from the reserve, so that Maori customs and way of life would be preserved.\textsuperscript{324} Parliament was not willing to go that far. But, in the Legislative Council, the Minister of Education said that the Government was going to ‘go very much further than any other legislation has done in giving legal sanction to those customs and habits by putting them into an Act of Parliament’.\textsuperscript{325} Basically, the protective powers were placed in the hands of Maori themselves. As William Jennings put it in the Legislative Council, ‘it gives the Maoris the right to protect themselves’.\textsuperscript{326} Their lands were

\begin{footnotesize}
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\item 323. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 92, 117, 145–149
\item 324. T Mackenzie, 24 September 1896, NZPD, vol 96, pp 171–172. We note that the Premier expected that Europeans (presumably other than tourists) would in fact be excluded from the reserve.
\item 325. Walker, 29 September 1896, NZPD, vol 96, p 262
\item 326. Jennings, 29 September 1896, NZPD, vol 96, p 262
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to be inalienable, and they were to control them (and the affairs of the district) through committees with ‘local government’ powers.

The question of Treaty rights was raised by Hone Heke. He wanted to specify in the Act that it ‘reserved to the Natives all their rights as conferred upon them by the second article of the Treaty of Waitangi’.\(^\text{327}\) In his view, the Premier had promised this at the 7 September meeting. He tried to get an amendment inserted in the preamble that the purpose of the reserve was for ‘preserving to the Native owners the full enjoyment of their rights to the lands within the said district, and to the forests, fisheries, and other properties which they may collectively or individually possess (as provided by the second article of the Treaty of Waitangi)’.\(^\text{328}\)

This amendment was rejected three times – by the Native Affairs Committee, by the House in committee, and at the third reading of the Bill. We note the significance of this rejection. Firstly, the Act without the amendment gives no explicit protection to forests, birds, fisheries, or any other property or taonga other than land, apart from what might be inferred from Seddon’s memorandum (attached as a schedule). Secondly, Parliament’s rejection of any reference to the Treaty meant that the Crown missed an opportunity to give it due weight.

Nonetheless, the Act created a unique Native Reserve, unlike any other in New Zealand, in which the intention was to preserve the people, their customs, their lands, and the beauty of their environment. It was the only such reserve that would actually be controlled by its Maori owners. The jurisdiction of the Native Reserves Act 1882 was excluded from Te Urewera.\(^\text{329}\) Under that Act, native reserves were controlled by the Public Trustee and often leased to settlers. The absolute inalienability of the reserve was qualified, however, by a provision that land could be alienated to the Crown.\(^\text{330}\) The 1896 Bill originally included two powers of alienation: an unrestricted power to alienate to the Crown; and a power to lease (which would have included direct leasing to settlers). These parts of the Bill were changed in the Native Affairs Committee, probably in response to objections from the Urewera delegation. The power to lease to settlers was removed, and the power to alienate land to the Crown was reserved to the General Committee.\(^\text{331}\) In Parliament, Wi Pere objected even so, saying that his constituents (Tuhoe) wanted this provision struck out of the Bill. The only exception, he said, was that they wanted to be able to lease land for a goldfield if gold was found in Te Urewera.\(^\text{332}\) He was unable to persuade the Government that the alienation provision should be deleted.

The claimants pointed out that the power to alienate had never been discussed in September 1895. Tuhoe had wanted a ‘blanket exclusion of alienations’: that was the whole point of an inalienable reserve.\(^\text{333}\) The same was true for Ngati

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\(^\text{327}\) Heke, 25 September 1896, NZPD, vol 96, p.188
\(^\text{328}\) Ibid
\(^\text{329}\) Urewera District Native Reserve Act 1896, s 3
\(^\text{330}\) Ibid, s 21
\(^\text{331}\) Urewera District Native Reserve Bill 1896, as reported from the Native Affairs Committee, 18 September 1896 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part i’ (doc D7(a)), app n)
\(^\text{332}\) Pere, 24, 25 September 1896, NZPD, vol 96, pp 164, 192
\(^\text{333}\) Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 48
Whare and Ngati Manawa. As Richard Boast argued, ‘both groups saw the main reason for the reserve as being a means of preventing alienation’. Nonetheless, the claimants accepted that the alienation provision was relatively restricted and included significant protections. Land could be alienated only to the Crown and by the decision of the district-wide General Committee. This ought to have enabled the corporate tribal body to make deliberate decisions about whether to lease or sell land, and, if so, how much and for what price, and how the proceeds would be distributed or invested.

The Crown, relying on the evidence of Cecilia Edwards, agreed that alienation had not been discussed in 1895, but pointed out that it had not been ruled out either. There was what the Crown called a ‘future clause’ in the agreement, based on Seddon’s underlying view that ownership must always carry a power to alienate, and that such a power would be wanted some time in the future. The Crown agreed with the claimants that the act was supposed to restrict alienation decisions to the ‘collective Urewera leadership’ to prevent ‘unwanted and piecemeal alienation’. The Crown did not accept, however, that provision for alienation was in itself a breach of the 1895 agreement. It was included in both the 1895 and 1896 Bills, and must have been known to the Urewera delegation of 1896. At first, there had been no restrictions or protections in the Bill. In the Crown’s view, the late insertion of a requirement that the General Committee approve alienations must have been instrumental in securing the Urewera delegation’s agreement.

We cannot accept the Crown’s argument in its entirety. Counsel suggested that the Urewera delegation must have agreed to the alienation provision, but Wi Pere stated more than once in the House that they had not. We have to accept Pere’s self-determination.

In the Legislative Council, the Urewera District Native Reserve Bill was introduced by the Honourable WC Walker, Minister of Education. He told the council: ‘in short, the design of the Bill is that these people might be allowed to work out their own destinies very much in their own way, and the measure simply provides the necessary machinery for the purpose’.1

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1. WC Walker, 29 September 1896, NZPD, vol 96, p 262
information as accurate. It was not challenged by the Government at the time. Nor do we accept the argument that because alienation was not explicitly ruled out in September, it was somehow ‘left open’ as a ‘future clause’. The whole thrust of the discussion had been the creation of an inalienable reserve, with the sole exception of mining. There, indeed, Seddon contemplated the establishment of goldfields. The power to lease land for such a purpose was clearly envisaged by both parties in 1895. Wi Pere argued that it was the only circumstance in which Tuhoe would agree to alienation. We do, however, agree with the claimants and the Crown that the power to alienate was a restricted one, vested in the General Committee and thus under the collective control of the Urewera leadership. Also, only the Crown could deal with the General Committee for land, and Seddon had assured the Urewera delegation in 1895 (and Te Urewera communities in 1894) that the Crown would act in a manner that protected their interests and provided for their long-term prosperity. We note too that the Government did not anticipate extensive alienation. From the speeches of Carroll and others in the House, it is clear that the Government truly intended to reserve the entire district for its owners.

In addition to the power of the General Committee to alienate land to the Crown, the Act gave the Government power to take land for public works. Section 22 provided for roads and landing places. There was no mention of the Public Works Act or of any protections (no notification, consultation, or compensation provisions). This resembled the Crown's right under the native land legislation to take 5 per cent of any block for roads. Section 23 empowered the Crown to take land for accommodation houses, stock paddocks, and any other ‘public purposes’. These takings were to be governed by the Public Works Act. The specified purposes were related to tourism and the Government’s expectation that farmers would in the future drive stock through Te Urewera. There was, however, a unique restriction on public works takings (except for roads). The Crown could take a maximum of only 400 acres for any and all works, after which it would require the permission of the General Committee.

These provisions were new. There had been no power for compulsory (or any) takings in the 1895 Bill. In September of that year, the peoples of Te Urewera had agreed to roads for the purposes of communications, commerce, and the facilitation of tourism. That they took tourism seriously was demonstrated in 1901 when, once the road to Ruatahuna was finished, the people of that district began to build a model ‘fighting pa’ for tourists to visit and inspect. Governor Glasgow had suggested this in 1896, but it had to await the completion of the road; Tuhoe saw the pa’s construction as an integral part of the ‘passing of the Act’. They had also asked for control of (and paid work on) sections of roads in their respective areas.

341. Crown counsel, closing submissions (doc N20), topics 14–16, p 25
342. See, for example, Premier Seddon’s speech, 24 September 1896, NZPD, vol 96, pp 166–168
343. Carroll, 24 September 1896, NZPD, vol 96, p 158
344. Urewera District Native Reserve Act 1896, s 23
345. Urewera District Native Reserves Bill 1895 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part I’ (doc D7(a)), app b)
346. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), p 100
The 1896 Act gave the Crown the power to make such roads. Although there was still not full agreement to roads in the district, the Tuwhenua researchers clarified that opposition by 1896 was related to the route, not the fact, of the Ruatahuna

An Inalienable Reserve?

One of the matters that was not discussed in September 1895 was the possibility of sales in the future. Yet, subsequently, section 21 was introduced in the Urewera District Native Reserve Act 1896. This raises the question why – if the agreement created an inalienable Reserve – section 21 provided for the General Committee to alienate land to the Crown.

At the first week of hearing Crown evidence, held at Taneatua School from 28 February to 4 March 2005, Cecilia Edwards was cross-examined by counsel for the Tuawhenua claimants, Kathy Ertel, on the meaning and content of the September agreement. During that discussion, Ms Edwards introduced the idea of a ‘future clause’ in the agreement, which was her explanation for the later introduction of section 21 in the UDNR Act:

**Ertel:** You note that there was no discussion [in September 1895] about possible future sales of land.

**Edwards:** Yes.

**Ertel:** Now, could that be because that reflects the reserve status of the land, that there was to be no purchases by the Crown for Pakeha settlement because it was going to be a reserve?

**Edwards:** Yes, that’s highly likely, although I think Seddon always reserved this, sort of, unless the owners want it, kind of, the future clause. But, he probably also had in mind his own, if you like, possibly limited understanding of the agricultural potential of the district, based on his tour the year before... .

**Ertel:** Yes. And, in fact, Carroll, during the [Parliamentary] Debates, refers to this district being an absolute native reserve.

**Edwards:** Yes.

**Ertel:** So, that further strengthens the argument that it wasn’t to be purchased. Wasn’t to be encroached upon by purchase.

**Edwards:** I think you have to read that comment of his bearing in mind that there was still the, what became the section 21 ability of the General Committee to have the power to alienate or cede to the Crown. So... [it] didn’t mean sealed off, perpetual, never-never-never-never.¹

We think it reasonable for the Crown to have included a power to acquire land for roads, but not without consent. We are concerned that there were no restrictions or protections. But it was noted in the House that local authorities should have charge of roads. So long as the General Committee was treated as the local authority for that purpose, the Act would have provided for Maori interests.

Other public works were neither discussed nor contemplated in 1895. As we said above, this was an innovation in the 1896 Bill. The Wai 36 Tuhoe claimants argued that the power itself, and the fact that it was included without their consent, was a violation of their tino rangatiratanga. The Crown did not agree. Nobody else in New Zealand had a cap on the amount of land that could be taken without their consent. In the Crown’s view, this was likely to have been persuasive. The Urewera delegation was ‘likely’ to have been consulted about this provision in 1896, and was ‘likely’ to have accepted it. Wi Pere, as we noted above, disagreed. In his view, the only alienation power wanted by Tuhoe was the ability to lease land for goldfields. Hone Heke also criticised the provisions, arguing that they would open Maori land in Te Urewera to rates and taxation, something which had not been contemplated in the agreement. As we noted above, we know that only a handful of changes were made by the Committee. These included an extension (not a reduction) of the Crown’s power to take land for public works.

In our view, it was not unreasonable to include provisions for public works, so long as there were appropriate protections. We note the proviso that after the Crown had taken 400 acres it would require the consent of the General Committee for more takings. We see no reason why an arbitrary figure should have been settled on. The General Committee should have consented to all takings, as it did with other alienations. Also, there was potential for the General Committee to serve as the local authority responsible for public works. But Hone Heke raised a legitimate concern about the cost of such works. If they were to be paid for by rates, he did not see how the peoples of Te Urewera could afford them. It seems clear that the Crown did not envisage extensive takings of any kind in 1896, and expected that it would pay for roads itself. On that basis, so long as the people had a say in how and where the roads were built, we do not see a problem with the Act.

9.5.3.2.2 TITLE DETERMINATION
There had been no real agreement in earlier discussions between the Urewera delegation and the Premier on the question of how titles were to be decided, as we

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348. Hall, 24 September 1896, NZPD, vol 96, p 169
349. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 91
350. Crown counsel, closing submissions (doc N20), topics 14–16, p 44
351. Heke, 25 September 1896, NZPD, vol 96, pp 188–189
352. Urewera District Native Reserve Bill 1896, as reported from the Native Affairs Committee, 18 September 1896 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part i’ (doc D7(a)), app B)
353. Heke, 25 September 1896, NZPD, vol 96, p 189
have pointed out. The delegation accepted the Government’s main goal, which was to create a title recognised by the colonial law. Only then, the Premier had assured them, could he be certain which lands were theirs and use his powers to protect them as required by the Treaty. Only then, too, could goldfields be established (one of Seddon’s main hopes). The delegation had proposed an informal process by which a single commissioner would meet with the people and together they would draw up a list of all owners. After that, the hapu would decide block boundaries, which the commissioner would help them locate on a map. The Premier, however, wanted the commissioner to adjudicate and decide titles: a roving judge, rather than a mediator-facilitator of the people’s own decisions.

The 1895 Bill provided for seven commissioners – five Maori, two European – to ‘define the boundaries and investigate the ownership of the district, and to issue titles in respect thereof’. This seems to have been the outcome of an effort, probably by Carroll, to keep Seddon’s concept of an adjudicative commission, but to put it under Maori control. The commissioners were to have ‘due regard to Native customs and usages’, to use ‘hapu boundaries’ as much as possible, and to arrive at a ‘just and equitable decision’. Although we cannot be certain this Bill was circulated in Te Urewera, it is probable that it was. In the 1896 Bill, the Government made two important changes: the commissioners were no longer to define the boundary of the district; and the five Maori commissioners were to be Tuhoe.

This requirement for the commissioners to be Tuhoe is likely to have been asked for by the tribe, but we cannot be sure of that. Carroll was enthusiastic about this clause. In explaining the Bill to Parliament, he said that it placed title decisions under the control of the owners themselves. He thought it would ensure that Tuhoe were ‘working out their own destiny’. Seddon himself seems to have come around to this way of thinking. He told the House that the Bill would ‘give the owners of the land – the Tuhoe – the opportunity of ascertaining amongst themselves who were the owners of the land’. Thus, the Government very clearly intended the commission to be a practical vehicle for the owners to decide their own titles. Whether it met that test will be seen in chapter 13. We note the concern of the Tuawhenua claimants that, even with a majority of Tuhoe commissioners, the decision-making would not be with hapu, as their delegates had sought. Again, we will return to this question in chapter 13.

Here, we note that the seven-person commission, with a majority of Tuhoe

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354. Urewera District Native Reserves Bill 1895 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), app b)
355. Ibid
357. Urewera District Native Reserve Bill 1896 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), app b)
359. Carroll, 24 September 1896, NZPD, vol 96, p 158
360. Ibid, p 173
361. Seddon, 24 September 1896, NZPD, vol 96, p 166
members, was a significant modification by the Government of Seddon’s original
position. We accept the Crown’s submission that the Act provided for significant
Tuhoe input in the process of title determination.\textsuperscript{363} We also accept the submission
of Ngati Whare that the exact process the commission would follow (and there-
fore the degree of Maori involvement and control) was not ‘well articulated’ in
the Act.\textsuperscript{364} No one was sure how it would work. Much was left to be decided later,
either by regulation or by the commission itself. It was noted in Parliament at the
time that this was experimental legislation and it was dangerous to be overly pre-
scriptive in advance. Carroll, however, was clear that the commission would not
be a long-lived body; it would put in place structures and systems essential to the
reserve’s operation and then disband:

I may state that the Commissioners will cease to exist immediately they have per-
formed their duties as set forth in the first instance – that is, after they have investi-
gated the title, after they have grouped the families, after they have subdivided the
country into the tribal or family estates, and after they have appointed a provisional
[local] Committee. And then, after they have ceased to exist, the Act will be self-work-
ing amongst the Natives, and in their interests, assisted by the Governor in Council or
the Government of the day.\textsuperscript{365}

Nonetheless, the legislation was very specific that five of the commissioners
were to be Tuhoe, and the other two were to be Europeans. In this context, most
members of Parliament, including Carroll, spoke of the reserve as land belonging
to Tuhoe. There were two exceptions. The Premier himself stated that the land
‘belongs to these Tuhoe people and the Natives living on the lands adjoining.’\textsuperscript{366}
The member for the Bay of Plenty, W Kelly, pointed out that Maori groups who
had supported and fought for the Crown had an interest in the lands. The Bill, in
his view, would ‘have the effect of putting the lands belonging to those friendly
Natives into the hands of the Tuhoe people.’\textsuperscript{367} Because he spoke during the
third reading, which was too late to introduce an amendment, Kelly wanted the
Legislative Council to change the Bill ‘so that the Natives living on the bound-
aries may be represented on the Commission.’ ‘I do not think,’ he said, ‘the Tuhoe
should be given the whip-hand of the Natives who have been so long at variance
with them, and who have always fought on the European side.’\textsuperscript{368} The Government
took no notice of this suggestion. Carroll did not mention it during his reply to the
matters raised in the third reading.\textsuperscript{369} This seems particularly significant because
an amendment could still have been introduced in the upper House. Carroll’s evi-
dent decision to refrain from urging the claim of Ngati Kahungunu at this late

\textsuperscript{363} Crown counsel, closing submissions (doc N20), topics 14–16, pp 28, 46, 49
\textsuperscript{364} Counsel for Ngati Whare, closing submissions (doc N16), p 59
\textsuperscript{365} Carroll, 24 September 1896, NZPD, vol 96, p 159
\textsuperscript{366} Seddon, 24 September 1896, NZPD, vol 96, p 166
\textsuperscript{367} Kelly, 25 September 1896, NZPD, vol 96, p 192
\textsuperscript{368} Kelly, 24 September 1896, NZPD, vol 96, p 166
\textsuperscript{369} Carroll, 25 September 1896, NZPD, vol 96, pp 193–196

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stage may mean that their claims had never been considered and that he did not want to jeopardise the Bill. Why Ngati Kahungunu’s claims were never considered we simply do not know. The Legislative Council did not amend the composition of the commission, as hoped for by Kelly.

In our inquiry, Ngati Manawa and Ngati Whare did not object to the requirement that the commissioners be Tuhoe. Counsel for the Wai 621 Ngati Kahungunu claimants did, however, on the grounds that it stacked the deck against Ngati Kahungunu. He submitted that Ngati Kahungunu faced a ‘combined pakeha/tuhoe decision-making process’, which confined them to the role of applicants – and, even worse, applicants in contest with Tuhoe. The Act should have provided for Ngati Kahungunu representation on the commission. The claimants’ historians, Michael Belgrave, Grant Young, and Anna Deason, said that the composition of the Urewera commission had the ‘potential’ to seriously affect Ngati Kahungunu interests, but they came to the conclusion that it did not. By the end of the second commission, Ngati Kahungunu interests were in fact recognised in the Waikaremoana, Paharakeke, and Manuoha blocks. The Crown took the same view, submitting that the real issue was therefore whether Ngati Kahungunu would be properly represented on the governing committees after they were found to be owners.

The title determination provisions in the Act were a compromise between the Urewera delegation’s wish for the owners to decide titles themselves and Seddon’s desire for an outside adjudicative commissioner. As such, we think it right for the Act to have specified that the majority of commissioners be from among the owners, but not for it to have specified the tribal affiliation of those owners. We note that the first action taken in Te Urewera to implement the Act was to divide the district into five sub-districts and elect commissioners. That, it seems to us, pointed to the solution to the dilemma. The Act should simply have provided for representation of all places (and peoples) in Te Urewera on the commission to ensure that it provided fairly and properly for the communities of owners to be decision-makers. We accept, however, that there may have been no real prejudice to Ngati Kahungunu from the composition of the first Urewera commission, as suggested by the claimants’ historians. We leave this question for consideration in chapter 13.

In addition to the composition and process of the commission, there was also the much-debated issue of surveys. The Act did not require blocks to be surveyed; the boundaries could be recorded on a sketch plan as ‘approximately correct’, and

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371. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 23
373. Crown counsel, closing submissions (doc N20), topics 14–16, pp 27, 35, 37
the Government would pay for the plan. This was clearly in line with the 1895 agreement.

In its provision of a possible role for the Native Land Court in respect of reserve land titles, the Act departed significantly from the 1895 agreement. Very little in the way of specific or practical detail had been worked out at the September meetings (or even in Seddon's memorandum). It seemed to be assumed that the single commissioner and the people, working closely together, would ‘easily’ work out the titles to everyone’s satisfaction. Wi Pere sounded a caution on this point. He suggested that it would be necessary for interim decisions to be reached, and then time allowed for disagreement or late claims to be worked out with the commissioner. But there was firm agreement in September 1895 that the Native Land Court was not to be involved.

Seddon’s first Bill, drafted in October 1895, abandoned this aspect of the agreement. It provided for the Governor in council to ‘confer jurisdiction on the Native Land Court to determine succession claims or for any other specific purpose in connection with orders made by the Commissioners.’ The court was not, however, expressly identified as having a role in the appeal process provided by the 1895 Bill. Rather, the Native Minister would receive an appeal, direct some kind of (unspecified) ‘expert’ inquiry, and then decide to confirm, vary, or amend the original order. Thus, the Government (in the form of the Native Minister) and the Native Land Court (if given jurisdiction by the Governor in council) took on key roles in title determination. The 1896 Bill went further, in two respects, towards the Native Land Court having a role in the Urewera District Native Reserve. First, by clause 14 the jurisdiction able to be conferred on the court was for succession claims and ‘for any other specific purpose relating to the said district; as opposed to any other specific purpose relating ‘to the orders of the Commission’. Secondly, the Native Land Court was expressly identified in clause 12 of the 1896 Bill as being able to determine appeals from the commission’s orders, if the Native Minister chose to refer appeals to the court. Both of those elements of the 1896 Bill were enacted.

As we have noted, the debate in Parliament made it clear that the commission was expected to have a very short life. It would do the initial title work and disband. We agree that in any process designed to confer legal titles there ought to be provision for an appeal and for the recognition of successive generations. But the procedures for this should have been discussed with the owners and agreed to by them. We are not sure why the Government decided to have the owners control the task of title investigation (by a majority on the commission), only to place all

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375. Urewera District Native Reserve Act 1896, s 7
376. 'Urewera Deputation, Notes of Evidence', p 3 (Marr, supporting papers to 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21(b)), p 167)
377. Ibid, pp 52–53 (pp 216–217)
378. Urewera District Native Reserves Bill 1895, cl 7 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 1' (doc D7(a)), app b)
379. Ibid, cl 9
380. Carroll, 24 September 1896, NZPD, vol 96, p 159
The Native Land Court and the Urewera District Native Reserve

Section 3 of the Urewera District Native Reserve Act 1896 said that the Native Land Court Act 1894 would not apply in Te Urewera, except as provided for later in the Act, or in regulations made under the Act.

Sections 4 to 11 provided for a commission to decide titles (in the form of ‘orders’). An appeal from the commission’s order could be made to the Minister of Native Affairs, who could direct an ‘expert inquiry’ and either confirm or vary the commission’s order. If no appeal was made, the commission’s order was to be confirmed by the Governor. Once finalised, an order was registered as a certificate of ownership under the Act.

Section 12 authorised the Minister of Native Affairs, instead of dealing with an appeal, to refer it to the Governor in council, which could confer jurisdiction on the Native Land Court to deal with it.

Under section 14, the Governor in council could also confer jurisdiction on the court to determine succession claims, or for ‘any other specific purpose relating to the said district’. This provision gave very broad scope for the court’s potential role. The Act made no other provision for determining successions, or for dealing with other matters ‘relating to the said district’ but it was possible that the local committees or General Committee could have been given such powers by regulation. Section 15 provided that, if the Native Land Court did decide successions, the successors’ titles would be registered as certificates of ownership under the 1896 Act. In other words, even if the court appointed the successors, their titles would be titles under the Urewera District Native Reserve Act, not full land court titles.

subsequent title decisions in its own hands or those of the Native Land Court. We do not think that was a fair translation of the September 1895 principles into action. We see no reason why the Urewera commission, or some other body established by or in agreement with the General Committee, could not have continued to make title decisions for Te Urewera. The possibility of a role for the Native Land Court for title matters was against the known wishes of the owners.

9.5.3.2.3 INDIVIDUALISATION OF TITLE

Hapu titles were a key part of the September agreement, as Cathy Marr and Cecilia Edwards agreed. Thus, section 8 of the Urewera District Native Reserve Act aroused much debate in our inquiry. Counsel for the Wai 36 Tuhoe claimants suggested that the Act ‘arguably changed the concept of hapu ownership in accordance with “Native customs and usages” to ownership orders which identified families and individuals and the “share” they were entitled to in each block.’

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381. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 87
Section 8 required the commissioners to make an order declaring the names of the owners of the block, ‘grouping families together, but specifying the name of each member of each family’. After that, the commissioners had to determine each family’s share of the block, and then the relative share to which each individual family member was entitled. If no appeal was made to the Native Minister, the commission’s order was to be confirmed by the Governor (section 9) and registered as required, at which point it operated as a certificate of ownership under the Act. If an appeal was lodged, the Minister could adopt one of two courses. He could direct an ‘expert inquiry’ and then make a final decision on the matter (section 10), or he could refer the matter to the Governor in council, for it to confer jurisdiction on the Native Land Court to deal with the appeal (section 12) (see the sidebar on page 967).

Carroll explained that the certificate of ownership provided for by the 1896 Act was an ‘interim’ or ‘provisional’ title, not ‘an absolute state of perfection’ or a full title under the recently enacted Land Transfer Act. Some members of the House understood it to be an individualised title. Carroll seems to have seen it as a step in that direction. Land transfer titles were not needed because land was not to be alienated and the ‘interim’ title was adequate ‘for the present period’ and ‘I dare say for a lengthened time yet to come’. His hopes that the peoples of Te Urewera would ‘advance’ in that time and one day assume the same full responsibilities as other citizens, would seem to indicate that he anticipated a time when the ‘interim’ titles would be turned into ordinary land titles.

How different was this from the 1895 Bill? The earlier Bill had vested the land in the block committee, declaring the committee members to be the ‘owners’. This clause was dropped from the 1896 Bill. Also, there had earlier been provision for family members to be joint tenants, an idea first mentioned by Seddon in his 25 September memorandum. We have no concrete information as to why joint tenancy was suggested by Seddon and included in the 1895 Bill, nor why it was dropped from the 1896 Bill. The earlier Bill had provided for the commission to determine ‘the relative shares of the owners, grouping family interests together’. The language used in the Bill was unclear; it may or may not have required each individual family member’s share to be defined. The 1896 Bill, in contrast, was much clearer.

382. Urewera District Native Reserve Act 1896, s 8
383. Carroll, 24 September 1896, NZPD, vol 96, p 159. Carroll told the House that this was an ‘interim’ title in the same manner that titles under the Native Land Act 1873 had been, whereas, he said, the Native Land Court under the Native Land Court Act 1894 now granted full ‘Land Transfer titles’.
384. Hall, Stevens, 24 September 1896, NZPD, vol 96, pp 169, 170
385. Carroll, 24, 25 September 1896, NZPD, vol 96, pp 159, 195
386. Carroll, 24 September 1896, NZPD, vol 96, p 159
387. Urewera District Native Reserves Bill 1895, cl 6(1) (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), app B)
388. Ibid, cl 5
389. Ibid, cl 4(3)
Varying views were presented to the Tribunal concerning the interpretation of section 8 of the 1896 Act. On one side of the debate was Richard Boast, who considered this section to be unambiguous: ‘The Commissioners were being required to do no more or less than to identify the rights of every single individual of Te Urewera, or, in other words, to completely individualise title to the entire region.’

Cathy Marr saw the provisions as being ‘capable of a wide interpretation’, including something ‘very close to an individual form of exclusive title such as was created by the Native Land Court, as appeared to be anticipated by a number of Members of Parliament at the time.’ The Tuawhenua claimants agreed with Professor Boast, submitting that ‘the UDNRA compelled the individualisation of title’. It did so in part because the Act was ‘the first step to enabling individuals to transact their land interests without reference to their hapu’.

On the other side of the debate was Cecilia Edwards, who cited Robert Hayes’ report for the Hauraki inquiry in support of her position:

In his [Hayes’] view, the critical question is whether the title conferred a right (ie legal ability) on the named owners to deal with their interests without the consent of the community of owners. The certificate of ownership [under the UDNR Act] conferred no such right. The right to deal with interests was not even vested with the Local Committee, which represented the interests of the community of owners. It lay with the General Committee under s 21 of the Act.

Thus, the form of title provided for under the Act was to enable the community of owners ‘to elect their Local Committees, and derive financial benefits from their ownership rights’. Only the General Committee had the right to deal in land interests. Crown counsel put this argument in more detail:

The form of title under the UDNR Act 1896 was not simply a replication of Maori freehold title under the native land legislation of the time. The Act required the naming of individuals and families and definition of relative shares. The purpose of this was two fold: for electoral purposes under the local government provisions of the Act, and for the distribution of proceeds of leases and sales. The form of title, in terms of the rights that individual owners could exercise, was constrained against individual dealings of any kind. It was therefore compatible with the general principles discussed in 1895 and 1896, given that all powers to alienate in any form rested with the General Committee, and not individual owners, under s 21 of the UDNR Act 1896.
Counsel for the Wai 36 Tuhoe claimants made a similar submission. He agreed with Ms Marr that the Act was unclear, but disagreed that it was intended to individualise title. Instead, he submitted that, under section 8, the interests identified were not a ‘property interest’ but rather an ‘electoral interest’ only. That interest, he suggested, ‘is comparable (though not identical) to a shareholder’s interest in a corporate entity which gives rise to a shareholder’s right to vote and right to share in the benefits, but where there is no separate and divisible right in the property of the corporate entity’. Counsel for the Wai 36 Tuhoe claimants submitted that, under section 8, the interests identified were not a ‘property interest’ but rather an ‘electoral interest’ only. That interest, he suggested, ‘is comparable (though not identical) to a shareholder’s interest in a corporate entity which gives rise to a shareholder’s right to vote and right to share in the benefits, but where there is no separate and divisible right in the property of the corporate entity’. Thus, the real problem arose later when the Crown decided to ‘raid’ the shares.

Counsel for the Tuawhenua claimants responded to Ms Edwards’ argument that the Act needed to establish ownership down to an individual level to enable the community of owners to elect local committees. Counsel submitted that, for this purpose, there would be no need to determine the relative shares of each owner: ‘One owner one vote, relative interest was not required for this end.’ We agree. The determination of relative shares was not required for an electoral roll, even though Commissioner Percy Smith later suggested that the commission was merely creating ‘electorate localities’. The commission was doing much more than creating an ‘electoral college’ when it defined relative shares, just as counsel for the Wai 36 Tuhoe claimants submitted. Counsel appeared to blame the commission itself for this, and for the type of orders it produced, but in our view section 8 of the Act clearly prescribed what had to be done in this respect.

John Hutton, an anthropologist, commented on how the form of title created by the Act would affect Maori kin groups. He argued that the relative shares were similar to those created by the Native Land Court. This was because they existed only on paper and were not defined in terms of pieces of land (either for individuals or for whanau), and because there was no effective or flexible means of changing them for future generations. The Act gave the power of deciding successions to the Native Land Court. Mr Hutton argued that the communities themselves (through their committees) should have been empowered to adjust their own shareholdings. ‘What was needed,’ he said, ‘were better mechanisms of distribution and investment within the communities of owners, and a means by which the community could self-regulate share-holding over time (as succession would always lead to problematic imbalances of shareholdings).’

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396. Counsel for Wai 36 Tuhoe, submissions by way of reply (doc N31), p 19
397. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 98
398. Counsel for Tuawhenua, closing submissions (doc N9), p 127
399. Miles, Te Urewera (doc A11), p 290
400. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 91, 94
401. Ibid, p 94
402. Hutton, answers to Crown questions of clarification (doc G27), p 16
404. Hutton, answers to Crown questions of clarification (doc G27), p 16
Nonetheless, John Hutton considered that because the shares were not defined in any meaningful way (that is, as pieces of land), ownership still ‘rested with the higher kin-group, and not individuals.’ This was especially so because the power to alienate was vested in the General Committee, not the individual, thus reinforcing ‘community and regional control.’ Counsel for the Tuawhenua claimants, however, argued that ‘the Tribunal can take no comfort’ from the General Committee’s role, because it was not established ‘in a timely and effective way.’ Such an argument takes us beyond the scope of the Act itself.

We are left with the question: was the provision for the commission to determine the relative shares of individuals a ‘fatal flaw’ in the Act? In one sense, any listing of individuals was a potential flaw: the Crown had shown itself prepared to purchase undivided shares in the past, whether equal or relative. But the Act was clear. Only the General Committee could alienate land. So long as the Act was implemented properly, the determination of relative interests for individuals did not put ownership of land at risk. As the Crown put it, decisions to alienate would be made collectively and would not result in ‘unwanted and piecemeal alienation.’ As the Crown conceded, however, the Act was not properly implemented. We will return to that point in more detail in chapter 13, but we cannot discount it entirely here. We agree with counsel for Ngati Whare that ‘the UDNR Act was not absolutely flawed’ but the ‘allocation of interests down from a hapu to a family to an individual level, irrespective of the governance mechanisms in the Act, contained within it seeds of radical individualisation.’ We also agree with Mr Hutton that communities should have been able to ‘self-regulate’ their shareholdings.

**9.5.3.2.4 SELF-GOVERNMENT**

The Crown and claimants agreed that the Urewera District Native Reserve Act was intended to give effect to the claimants’ tino rangatiratanga or mana motuhake. The vehicles for this were ‘local self-government’ of the Urewera district by a General Committee; hapu corporate management of their own lands through block committees; and tribal management of lands and all tribal affairs by the General Committee. Most of the detail about the role, functions, and powers of the committees was left for future definition. The act empowered the Crown to carry out this definition by regulation. It did not provide for the committees to have any role in defining their own powers or procedures. Nor did the terms of the Act require consultation, although in our inquiry the Crown accepted the need for consultation was implicit.

405. Ibid
406. Ibid
407. Counsel for Tuawhenua, closing submissions (doc N9), p127
408. Crown counsel, closing submissions (doc N20), topics 14–16, p69
409. Counsel for Ngati Whare, closing submissions (doc N16), p60
410. See, for example, counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p89; Crown counsel, closing submissions (doc N20), topics 14–16, pp34, 48
As we noted above, the Wai 36 Tuhoe claimants suggested there was a key weakness in the Act – it specified so little detail that it may or may not have granted what the Government said it granted. The Act was certainly striking in the number of substantive issues it left to regulation. These included ‘the mode of election of members of the Local committees and the General Committee, and fixing their term of office’; the powers and functions of these committees; and additional powers and functions of the commissioners.\(^{411}\)

The number of issues left to be settled by regulation attracted criticism from Northern Maori member Hone Heke when the Bill was debated in Parliament. The Bill, he claimed, was ‘simply a shadow’, because the real Act would be ‘entirely governed by regulations made by the Governor in Council’. The result was that the Bill was supposed to ‘give the Tuhoe Natives the right to administer their proper- ties as they think fit’ but ‘no such power is given’. The committees’ power ‘is or will be entirely limited by regulations’.\(^{412}\) Cathy Marr agreed that this was a serious risk:

The Government retained considerable powers through the regulatory provisions. These not only left the Urewera people open to the risk that new unanticipated regulations might be brought in at some future time, but if the Government failed to act to make the necessary regulations and appointments, very little could happen in the way of establishing the system provided.\(^{413}\)

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\(^{411}\) Urewera District Native Reserve Act 1896, ss 5, 16–20, 24
\(^{412}\) Heke, 24 September 1896, NZPD, vol 96, p 163
\(^{413}\) Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p 118
Section 19: All decisions of the General Committee are binding on all owners (subject to regulations).

Section 20: The local and General committees will have such powers and functions as are prescribed by the Governor in council; the only proviso is that the powers and functions of the local committees will be confined to the ‘internal affairs of the block’.

Section 21: The General Committee will have power to alienate any part of the district to the Queen, and to cede land for mining purposes.

Section 23: The Governor cannot take more than 400 acres in total for public works (excluding roads) without the consent of the General Committee.

Section 24: The Governor in council may make such regulations as he thinks necessary for certain purposes including the mode of election of the local and general committees, fixing their term of office, to give effect to anything in the Act whose effect is expressed to be prescribed, anything he deems necessary to ‘give full effect’ to the Act, and for giving effect to Seddon’s memorandum of 25 September 1895.

But there was an unwritten clause in the Act. Carroll told Parliament that the regulations would actually be drawn up by the Urewera commission, with its Tuhoe majority. In introducing the Bill, he explained that the powers of the General Committee had deliberately been left vague because

it is very difficult at the present time to treat with a new thing like this, a new area under exceptional circumstances and conditions, and prescribe with any exactitude what will be absolutely necessary for the best interests of the Natives. Therefore we have left that, as far as we can, quite open, so that when the Commissioners undertake their duties . . . it will leave them the power to suggest a set of regulations to meet every contingency, and they will be given effect to accordingly by the Governor through the Ministry.\textsuperscript{414}

Thus, as Ms Marr put it, there would be some flexibility and ‘powers could be granted as needed’.\textsuperscript{415} In her view, the members of the delegation probably accepted the provisions because they were ‘reassured by the fact that there would be a majority of Urewera people on the Commission. Any of its suggestions would therefore be likely to come from, or at least have the support of, the Maori commissioners.’\textsuperscript{416}

\textsuperscript{414} Carroll, 24 September 1896, NZPD, vol 96, p 159
\textsuperscript{415} Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p 102
\textsuperscript{416} Ibid, p 103
In our view, the chiefs must have relied on the many promises made in 1894 and 1895 that the Government would listen to them and protect their interests. The Act itself, as the fulfilment of the 1895 agreement, which in turn was seen as fulfilling the 1871 compact, must have seemed proof of that. We agree with Ms Marr that they were "placing a great deal of trust in the Crown and in the Native Minister that their recommendations would be heeded."\(^{417}\)

In contrast to Heke, Maori members Wi Pere and Te Ao appeared confident the Act would deliver self-government. Wi Pere, in particular, was jubilant.\(^{418}\) Many Opposition members were also confident (or, more accurately, fearful) that the Government intended to allow extensive self-government of the Urewera district, and therefore criticised the proposal. The Leader of the Opposition, Captain William Russell, along with R Thompson, the member for Marsden, complained that 'home rule' was being given to a group of Maori who mixed little with Europeans and were therefore less likely than others to competently manage their own affairs.\(^{419}\) Carroll attempted to allay such fears and win Pakeha support for the Bill by emphasising that the land had limited value apart from as a sanctuary for tourism and for Maori.\(^{420}\)

At the same time, some Opposition members agreed with Heke’s position (though from different motives) that the Act did not actually provide the powers of self-government that Ministers said it would. Captain Russell argued that Tuhoe had been deceived, that the Native Minister would control everything, and that the Bill would prove the ‘thin edge of the wedge’ for land alienation and settlement. As he told the House, he did not object to such an outcome, merely to getting there by deceitful means. Perhaps more telling was Charles Hall’s response to Russell: having been through the Bill, he could not see how it gave the peoples of Te Urewera any power other than deciding their own land titles.\(^{421}\) Hall contrasted this to the early New Zealand provinces, which – with populations not much bigger than Tuhoe’s – had had the power to pass laws and truly govern themselves.\(^{422}\) Judith Binney thought the Opposition’s criticisms were accurate, revealing ‘the extent of the latent government control inserted in a law which ostensibly acceded to Tuhoe’s wish to retain their existing autonomy’.\(^{423}\)

Premier Seddon, however, insisted that the Act would give self-government within the reserve. He reminded the House of the situation in the early 1890s when even a Governor could be turned away from Te Urewera, and pointed out that self-government existed on the ground whether members liked it or not. But, in his view, they should like it, and should give it the sanction of colonial law. His

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418. Ibid, pp 105–106
419. Ibid, pp 106–107
420. Ibid, pp 107–108
422. Hall, 24 September 1896, NZPD, vol 96, p 169
speech is critical to our understanding of the Act and its constitutional significance, so in the following discussion we quote from it at length:

I believe myself, that by leaving these people to manage their own affairs, seeing they are not interfered with and no Europeans are allowed in their midst, they can govern themselves in accordance with their own traditions, and are a people self-contained . . . I am satisfied that there are exceptional circumstances in connection with the Tuhoe, and that those circumstances are favourable to the attempt being made, as provided by this Bill, to give them, in respect to the several matters mentioned in this Bill, self-government. 424

The Premier went on to say that, in his opinion, the ‘greatest evil that overtook the Natives arose from the fact that they were essentially a people governing themselves’, yet settlers had taken away from them ‘all control and administration of their own affairs’. As a result, a ‘people who are essentially a self-governing and self-contained people’ had been ‘set aside’, having ‘no responsibility and no government’. This had had a detrimental effect on Maori. For decades they had sought self-government from ‘respective Governments and respective Parliaments’, but without success. ‘What is asked for by this Bill,’ he said, ‘is not at all unknown; it has been pressed upon Parliament time after time.’ The Native Committees Act back in 1883 had not actually given effect to ‘what was proposed’. But now the time had come to

try what the result will be – finding the Tuhoe as we find them, where there is no difficulty arising as between the Europeans and the Natives – of allowing them to elect Committees, and giving the Committees power to deal with their affairs as mentioned in this Bill. 425

There were two features that Seddon saw as unique to this situation: European interests would not be affected; and Te Urewera was already (or rather still) self-contained and self-governing, but without the protection of colonial law:

If matters had continued as they were it was practically a reserve, but not a reserve supported by legislation; it was a stronghold of the people who were determined that Europeans should not be in their midst – that our Courts and our present course in respect to Native lands procedure would not obtain in their part of the colony. That was the position. It was practically so, for years, under the old Maori custom. I say it would be much better to have a reserve such as this is made now, with the sanction and approval of our Parliament, with the mana of the Queen admitted freely and without the slightest reservation, than to have, as we had only a few years ago, a representative of Her Majesty the Queen going to the borders of the Urewera Country and

425. Ibid, p 167
then turning back, deeming it not to be advisable to proceed further. I say, contrast that condition of affairs with what we have to-day in the Urewera Country, and with what the Tuhoe have asked for, and which they are only too pleased to assist us in working in the shape of this Bill, and I say it is very much in favour of having a reserve granted under the conditions mentioned.426

At this point in his speech, Seddon added that schools were now being built and roads were being pushed ‘from one end of the Tuhoe country to the other’; ‘that reserve [aloofness] which has hitherto been maintained has entirely broken down.’427 He went on to say:

I never was so gratified at anything that has arisen as at seeing a prospect under this Bill – and under what has been done – of preserving a large slice of country, which is essentially a Native country, to the Natives, keeping them clear as far as we possibly can, of the dark side of our civilisation, and having positive proof, as I think we shall have if this Bill becomes law, that they are able to look after themselves, and to manage their own affairs in such a way as will reflect credit upon themselves and upon the Parliament that has granted them the powers which, I say, they ask for, and which, in my opinion, they are entitled to receive. An honourable member representing the Native race said this afternoon that if this is granted to the Tuhoe Natives it will be asked for by the Natives in other parts of the colony. If it proves a success with the Natives in the Urewera Country, then, I say, by all means grant the request alluded to.428

Seddon assured the House there was no intention to deceive Tuhoe.429 Anita Miles thought this was correct: although Russell’s predictions later became ‘a chilling reality, the Act was not designed to deceive Tuhoe.430

We will return to Seddon’s speech below, when we consider the constitutional implications of what the Government and Tuhoe were doing in 1896. Here, we note that the Premier recognised an existing state of self-government in the Urewera and he very deliberately intended to provide mechanisms and powers to recognise and protect self-government in the reserve under colonial law.

Did the Act fail in this respect? The Crown’s argument is that the Crown breached the Treaty later, when it lost sight of this purpose of the district reserve, and when it failed to give practical effect to the promises of self-government and tribal land management.431 In the Tuwhenua claimants’ view, as we have seen, the failure to define the powers of the committees in the Act itself – and the reservation of the power to do so to the Crown – placed the Crown in an important

426. Seddon, 24 September 1896, NZPD, vol 96, p 167
427. Ibid
428. Ibid
429. Ibid, p 168
430. Miles, Te Urewera (doc A11), p 284
431. Crown counsel, closing submissions (doc N20), topics 14–16, p 34
position of trust. This allowed for flexibility in working out the details, and iwi ought to have been able to trust the Crown: ‘The honour of the Crown was a key component that could determine the success or otherwise of the legislation.’ The Wai 36 Tuhoe claimants argued, however, that the Crown’s reservation of these powers to itself was a breach of the agreement and of their tino rangatiratanga. We will return to these arguments when we make our findings.

Here, we note how Tuhoe have remembered the Act in their history. From Tamati Kruger’s account, they saw Seddon’s actions as the fulfilment of the promises made by Donald McLean in 1871. Tuhoe had quite deliberately sought a law to protect them from the law, following the word of Te Kooti. They saw Numia Kereru as the ‘co-architect’ of the agreement with the Crown: ‘It was his life’s work. A passage by which Tuhoe would avoid savage colonisation.’ Numia flew a flag at Ruatoki bearing the words ‘Ko te Ture Motuhake mo tuhoe’ which Mr Kruger translated as ‘A Separate Law for Tuhoe’ and ‘Te Urewera District Reserve Act.’ The Act was good but the sequel was not:

That was the new strategy, new leaders . . . They were going to get all of the Tuhoe area and put it under its own Act. A general committee of all of the rangatira o nga hapu to govern over it. That’s a good concept except that the government manipulated it . . . Huri, hurihia, [turning it on its head] that whole general committee Urewera Act thing was hijacked . . .

Tama Nikora looked back on the Act from the perspective of what followed and called it ‘a law for the acquisition of land for Pakeha settlement.’ Seddon and Carroll are not kindly remembered in Te Urewera. Ani Hare, in her evidence for Ngati Haka Patuheuheu, made a pun on Seddon’s name: was he Te Hetana (Seddon) or Te Hatana (Satan)? She said:

He teka nona oati a Hetana, nana hoki te ki, ka riro i a Tuhoe, te mana whakahaere, te mana rangatira o ratou whenua o Te Urewera. Engari, he oati teka noa iho tenei na Hatana pea, na Hetana ranei.
Seddon’s oaths were untrue because he said Tuhoe would have the authority and administration over their lands of Te Urewera, but it was just a false oath by Seddon – or is it Satan?\[^{441}\]

And the Tuawhenua researchers pointed to a waiata that is not complimentary to Carroll.\[^{442}\] Subsequent events have overshadowed and soured the claimants’ memory of the Urewera District Native Reserve Act, and of the two political leaders with whom such a promising relationship had been forged between 1894 and 1896.

### 9.5.3.2.5 Social Assistance

For the claimants, a key problem was that the Act left out what they saw as a fundamental part of the September agreement. This was the promised ‘development package’ of social assistance, including ‘schools, protection of indigenous flora and fauna, land improvement, and introduction of new food sources.’\[^{443}\] Without legislation requiring the Crown to act, nothing happened to deliver this package (apart from schools).\[^{444}\]

The Crown, in response, argued that what was promised in this respect was in reality very little, and that it could have been delivered under existing laws and policies; there was no need to legislate for it in the Urewera District Native Reserve Act. Further, the Crown argued that specific promises about these matters in Seddon’s 25 September memorandum could have been provided for by regulations, without their having to be specified in the main part of the Act. The memorandum was attached as a schedule to the Act, and section 24 empowered the Governor in council to give effect to it by regulation.\[^{445}\]

In large part, the debate over this question focused on the contrary evidence of Cecilia Edwards on one side, and Cathy Marr and Anita Miles on the other. Ms Marr and Ms Miles put together the many statements about active protection and prosperity that had been made in 1894 (see above) with the 7 September proposals, the 25 September memorandum, and the continued assurances of active protection and future benefit that took place in 1895 and 1896. They argued that a ‘package’ of social assistance was promised. Its particular elements can be derived from the Urewera delegation’s proposals on 7 September and Seddon’s apparent agreement to them.\[^{446}\]

As we saw above, Carroll proposed on 7 September that, in the measure he anticipated (the Act), the Government would act as ‘the parent and the father

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\[^{441}\] Ani Hare, simultaneous translation of oral evidence, 11 December 2003, Tataiahape Marae, Waimana

\[^{442}\] Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), pp 102–103

\[^{443}\] Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 92

\[^{444}\] Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 51

\[^{445}\] Crown counsel, closing submissions (doc N20), topics 14–16, pp 25, 28–29, 47, topic 29, pp 8–9

Fulfilling the Compact of 1871

For the Tuhoe claimants, Tamati Kruger gave evidence at Ruatoki in January 2005. He told us that Seddon’s promises and the 1896 Act were seen as fulfilling the promises made by Donald McLean in 1871. For the Crown, Cecilia Edwards gave evidence at Taneatua in March 2005. She quoted extensively from Seddon’s speech in the House in September 1896, and from a speech he gave at Wairarapa in January of that year, to explain how the Premier saw it at the time.

In Seddon’s own words (in January 1896):

There had been a promise made to them by Sir Donald McLean that their country, at all events unless they consented otherwise, should be protected against encroachment in the form of alienation of their land, and they stipulated that a line should be drawn within which they should have the administration of their lands; and it was owing to the attempts being made from time to time to ignore that promise and pledge and to encroach upon that line, and to endeavours being made to break through that arrangement, that caused the Natives of the Urewera to become pouri [distressed]. They did not openly violate the law, but they said ‘Do not come near us; the hospitality that we are proud of we cannot offer you with freedom, nor can we use you as well as we would like to. In the meantime we must keep faith with those who have passed away. We must insist on the Government keeping the promise made by Sir Donald McLean.’

Seddon then described the 1894 tour, the face-to-face explanation of grievances, and the relationship that was forged. An arrangement was made (in September 1895) ‘by which they will be able to manage their own affairs, subject of course to our laws. A responsibility has been cast on them, they have accepted that responsibility, and the Urewera difficulty has gone, in my opinion, for all time.’

Later in the year, when the Urewera District Native Reserve Bill was debated in Parliament, Seddon put great emphasis on the Bill as fulfilling McLean’s pledge to the peoples of Te Urewera. He told the House:

this measure has been asked for by the Tuhoe people, and, tracing back, I have no hesitation in saying that in bringing this Bill before the House now the Government

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1. Tamati Kruger, brief of evidence, 17 January 2005 (doc J29(b)), paras 10.3–10.6
4. Ibid, p 242
are redeeming a promise made by Sir Donald McLean to the Tuhoe people many years ago. And, Sir, I must say that, after having seen the country, and after having listened attentively to what was put forward by the Tuhoe people, I have come to the conclusion that if the promise made many years ago by Sir Donald McLean to the Tuhoe had then been kept, if we had given the same powers and privileges which we are proposing to give under this Bill, a lot of the trouble that has arisen – which has been the cause of an otherwise well-disposed people being estranged from the rest of the colony – would have been avoided.⁵

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5. Seddon, 24 September 1896, NZPD, vol 96, p 166

of this people. It would establish schools and ‘other measures for the welfare of the natives living in that District; such as the introduction of a medical attendant and sanitary laws; improved methods of cultivation and matters connected with the general welfare of the District, for the people within the District. This would enable the people to save their lands, save themselves, and ‘improve the condition of their families.’⁴⁴⁷ In response, Seddon had agreed that the Government would act as parent and ensure the welfare of the people, but (as Ms Edwards pointed out) specifically mentioned only building schools and roads. He advised that schoolteachers, rather than doctors or nurses, would supply medicines to their local communities.⁴⁴⁸ Also, Wi Pere had suggested that the Government provide finance to help the committees farm the land – a point to which the Premier did not respond.⁴⁴⁹

Then, on 23 September, the delegation had asked to be provided with exotic fish and animals to attract tourists and increase local food supplies. In his 25 September memorandum, Seddon had promised schools, roads, paid work on the roads, and a favourable response to the request for English birds and fish. But, on the question of food supplies, the only concrete thing he undertook was to get information about whether (and how) trout could be introduced.⁴⁵⁰ During the parliamentary debate on the 1896 Bill, the Premier renewed his statements that he wanted to see the people of Te Urewera prosper and their health and population improved. He told the House: ‘I hope, by the benefits we can give – by introducing the bright light of our civilization, and eschewing the dark side – the result will be

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⁴⁴⁷. ‘Urewera Deputation, Notes of Evidence’, p 5 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 169)
⁴⁴⁸. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 195
⁴⁴⁹. ‘Urewera Deputation, Notes of Evidence’, pp 55–56 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), pp 219–220)
a very large increase of the Tuhoe.'\(^{451}\) This was an echo of the many similar statements he had made while visiting Te Urewera in 1894.

In evaluating this evidence, Ms Edwards mainly confined her attention to the 25 September memorandum, which she considered was a ‘heads of agreement’ and contained the Government’s commitment of what needed to be put into the Act. She concluded: ‘No general promises were made in respect of social assistance. There was a specific commitment to have schools built at certain kainga.’\(^{452}\) In terms of economic development, ‘There is no explicit mention of Government commitment to economic development of the Ureweras, although the tourism development contemplated in the memorandum implies a possible indirect economic benefit.’\(^{453}\) In addition, she noted a broad statement that forests and birds would be protected; a specific statement that the Premier would look into providing trout; and a commitment to building roads. Based on this summary of the agreement, Ms Edwards concluded that the Act was a faithful execution of all that the Government had promised. It provided for roads. Schools could already be built under existing legislation. Trout could be provided as a matter of policy.\(^{554}\) Other legislation, such as the animals protection laws, may already have protected birds.\(^{455}\)

Cathy Marr’s view was that Seddon’s memorandum, with its promises of roads, schools, protection of forests and birds, acclimatisation for food and tourism, and possible goldfields, indicated agreement to ‘a development package for the district.’\(^{456}\) The Crown questioned Ms Marr on this point, suggesting that the memorandum contained specific responses to specific requests, and no ‘regionally based development package.’\(^{457}\) She replied that the document was indeed framed in that way, but it had to be considered together with the evidence of the 1894 tour and the 7 September hui. The context was Seddon’s ‘promises of government protection and assistance for the district, so that as he claimed, the people might have their lives improved and their lands conserved.’ From these many sources and promises arose the ‘package’, which was the subject of ongoing discussion and expansion. The acclimatisation proposals, for example, had been added just before the Premier wrote his memorandum. Further additions were still possible.\(^{458}\) Ms Marr conceded, however, that Seddon did seem to be narrowing what she thought had been agreed.\(^{459}\)

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\(^{451}\) Seddon, 24 September 1896, NZPD, vol 96, p 166

\(^{452}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), p 232

\(^{453}\) Ibid, pp 232–233

\(^{454}\) Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1’ (doc D7(a)), pp 232–234

\(^{455}\) Cecilia Edwards, under cross-examination by counsel for Nga Rauru o Nga Potiki, Taneatua School, Taneatua, 3 March 2005 (transcript 4.14, p 105)

\(^{456}\) Cathy Marr, summary and response to issues for ‘The Urewera District Native Reserve Act 1896 and Amendments, 1896–1922’, no date (doc D6), p 9

\(^{457}\) Marr, answers to questions of clarification (doc D11), p 13

\(^{458}\) Ibid

\(^{459}\) Marr, ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21), p 65
Cecilia Edwards, in her summary of her report, responded further to Ms Marr's evidence, accepting that the Government intended to help with health and education, and that the Urewera delegation's proposals had included definite elements of 'social and economic assistance.'\textsuperscript{460} On this point, she suggested that Carroll may well have nurtured hopes of State assistance for Maori development, but she suspected that Seddon meant nothing more than the standard 'benefits of civilisation': health and Western-style education.\textsuperscript{461} We agree with Ms Edwards that there was not much scope for modern-style 'planned and integrated government interventions, and associated development grants in order to achieve a significant economic transformation'.\textsuperscript{462} But, as Ms Edwards put it, Seddon wanted to provide Te Urewera with article 3 benefits enjoyed by other New Zealanders.\textsuperscript{463} In the 1890s, Liberal policies included significant social and economic assistance for settlers, not just in the areas of health and education, but also generous assistance to obtain land and development capital for farming.\textsuperscript{464} Seddon, it will be recalled, had envisaged the people developing pastoral farming in addition to their cropping.

We do not accept that the social assistance 'package' envisaged by the Government can be evaluated only in terms of Seddon's memorandum. We agree with Ms Marr and Ms Miles that, putting together the many statements made in 1894 and 1895 – particularly the delegation's 7 September proposals, supposedly endorsed by the Premier – there is strong evidence that the Government promised help with social and economic development.

As geographer Brad Coombes pointed out, Carroll considered help with food supplies to have been a binding part of the agreement. (Food shortages had been evident to the Government party that toured in 1894, and there were to be serious shortages and famine in the mid- to late 1890s.) In 1902, Carroll suggested that Maori should not be prevented from hunting imported or native game at Waikaremoana 'because one of the conditions upon which the Urewera Reserve Act was passed was that we should augment their food supply and not exclude their rights to taking game for food.'\textsuperscript{465} We will consider the issues of birds, forests, and the protection of flora and fauna in later chapters. Here, we note Carroll's belief that increasing the food supply was part of the 1895 agreement (and a condition for passing the Act). This strengthens our view that the Government was bound by much more than just the undertaking to consider introducing trout.

The Crown argued that some of the statements of Seddon and Carroll must be taken simply as an expression of what they expected or hoped would happen.\textsuperscript{466} In other words, if long-term prosperity was not the outcome of getting legal

\textsuperscript{461} Ibid
\textsuperscript{462} Ibid
\textsuperscript{463} Ibid
\textsuperscript{465} Coombes, summary of evidence for ‘Making “Scenes of Nature and Sport”’ (doc H3), p 11
\textsuperscript{466} Crown counsel, closing submissions (doc N20), topics 14–16, p 47
titles for their land, though they told Tuhoe it would be, then an expectation was disappointed but a promise was not broken. We have some sympathy for this view. In cross-examination by counsel for the Tuawhenua claimants, Cecilia Edwards clarified that the expectations raised were nonetheless important, and that Seddon did ‘clearly flag’ future prosperity several times during his 1894 tour. In any case, as we noted during our discussion of the 1894 hui, many of the Ministers’ statements were about how the Government quite deliberately intended to act. That is, the Ministers promised that the Government would protect Maori interests and promote their welfare (socially and economically). This was not just an expectation of what might happen if Tuhoe and the other tribes dealt with their lands in the economy; it was a guarantee of how the Crown would behave. The communities at Ruatoki, Ruatahuna, Galatea, Te Whaiti, and Waikaremoana were entitled to believe these assurances.

Also, the Urewera delegation’s proposals (as hammered out with Carroll) were not contingent on future economic outcomes – they were tied to Government assistance. The Government was to protect the people’s interests, provide roads and schools, help improve farming and food supplies, help with doctors and improved sanitation, and generally take measures for the ‘welfare’ of the district. Ms Edwards is correct to point out that little of this appears in the 25 September memorandum but, as we found above, that document was only part of the agreement, and its specific undertakings are only part of what was required of the Crown. There would have been no self-government in the Act if the Crown had seen itself as bound only to deliver the strict undertakings of that memorandum.

Thus, we agree with the claimants that a package of social and economic assistance was part of the 1895 agreement. We also agree with the Crown that Seddon had not promised everything that was requested in September of that year. The Premier and the Urewera delegation had not agreed on all the components of such a package, but its general character was not in doubt. It would provide for improvements in health, education, farming, and other matters for the ‘welfare’ of the people. We agree with the Crown that the details did not need to be in the Act if the package could be delivered under existing legislation. Whether this would be by doctors and improved sanitation, as Carroll and the delegation requested, or by the local teacher dispensing medicines, as Seddon offered, one overall goal was for the Government to help improve the health of the people of Te Urewera. The details had not yet been worked out. Presumably, that could be done in future discussions between the Government and the General Committee. It would then be seen whether Carroll’s more generous view, or Seddon’s more restrictive view, would prevail in Government circles. This issue was one of many waiting to be worked out after the passage of the Act. The question then becomes: was agreement ever reached on the details of the ‘package’, and did the Crown deliver (at least) what had already been promised? We will return to that question in forthcoming chapters.

9.5.4 Treaty analysis and findings

Our Treaty analysis and findings in respect of the Urewera District Native Reserve Act are central to our report on Te Urewera claims. Of particular importance is whether the Act formalised a Treaty relationship between Tuhoe and the Crown. As we saw in chapter 7, matters had reached a stalemate between the Crown and Te Urewera leaders by 1889. This was resolved in the wake of the Governor’s 1891 visit, when some Tuhoe hapu and leaders applied to survey Ruatoki and put it through the Native Land Court. Te Rohe Potae remained closed, however, to gold prospectors. In February 1894, Tuhoe held a month-long hui to try to heal the divisions and restore unity. In this they were successful. In exchange for an agreement that Ruatoki would remain outside Te Rohe Potae, all the leaders reaffirmed the core Te Whitu Tekau policies: no surveys, no leases, no roads, no land sales, and no Native Land Court. They presented a united front to the Government when the Premier and the Minister ‘representing the Native race’ came to visit Te Urewera in April 1894 partly to restore relations after the survey crisis, arrests, and imprisonments of 1893. At that time, the relationship between the Crown and the peoples of Te Urewera was still of the kind we discussed in chapter 3. By the terms of the Treaty of Waitangi, the Crown was obliged to fulfil its promises to all Maori, whether or not they had signed it. But for the peoples of Te Urewera who had not signed the Treaty, and had not even been given the opportunity to sign, the reality (if not the law) was that they could not, without more, be bound by its terms. In our view, the Treaty’s binding effect in Te Urewera would remain one-sided unless and until such time as the Crown and the peoples forged a relationship in which the authority of each was formally recognised in terms consistent with the Treaty. As we discussed in our chapter on Te Whitu Tekau, the peace of 1871 was a watershed in the development of that relationship. Tuhoe and Ngati Whare saw that arrangement as their compact with the Crown. The Crown accepted that Tuhoe leaders would have full authority in their districts. On the basis of that understanding, Tuhoe and Ngati Whare established Te Whitu Tekau and established policies within Te Rohe Potae to protect the people and their lands, which were maintained from 1872 to 1893. Te Whitu Tekau tried to work with the Crown, but the Crown failed to provide a mechanism through which the authority of tribal leadership in Te Urewera could be recognised in colonial law. Thus the events of 1871 fell short of establishing a reciprocal Treaty relationship. The question that arises here, as we consider the discussions and negotiations leading up to the UDNR Act 1896 and the agreement reflected in it, is whether these events forged a reciprocal, Treaty-based relationship.

None of the claimants who endorsed the ‘constitutional claim’ (discussed in chapter 3) saw the events in question as establishing such a relationship. They maintained that they have never, to this day, ceded to the Crown the ‘sovereignty’ that it claims to possess. The result, they say, is that they have never entered a Treaty-based relationship with the Crown. Nor did the Crown see the events of 1894–96 as forging a Treaty-based relationship with the peoples of Te Urewera. But that is because, as we saw in chapter 3, the Crown’s understanding is that the Treaty has bound all Maori from 1840, regardless of whether they signed it.
Despite those positions, the Tuhoe and Ngati Whare claimants’ submissions on the events of 1895 and 1896 painted them as a defining moment in their relationship with the Crown and in New Zealand’s system of government. The Wai 36 Tuhoe claimants argued that the ‘understandings reached between the Tuhoe delegation and Crown representatives in Wellington in September 1895 were a solemn compact of constitutional significance’. Seddon himself referred to the 1871 compact with McLean and the Treaty of Waitangi. As such, the agreement was intended to give effect to both kawanatanga and tino rangatiratanga. Together, the agreement and the Act had a significance akin to a treaty with the Crown. In particular, the Wai 36 Tuhoe claimants felt that the Act entrenched their autonomy and their tino rangatiratanga in colonial law.

Counsel for Ngati Whare agreed, adding that the constitutional significance of the agreement was enhanced when it was ratified and enacted by Parliament. It could not be broken lightly by the Crown; in fact, ‘having regard to the principles of utmost good faith and active protection, it is difficult to see on what basis in Treaty terms it could be broken at all. Yet, ultimately that is precisely what occurred.’ Counsel for Ngaru o Ngapotiki argued that the legitimate authority in Te Urewera remained the mana motuhake of the claimants but the challenge was to find ways ‘to maintain Te Mana Motuhake o Tuhoe within the demands of Te Ao Hurihuri the new world.’ Counsel suggested to Cecilia Edwards in cross examination that there was an opportunity for Maori authority to be exercised in partnership with the Crown, through the committee structure to be set up under the Act. Ms Edwards agreed, although she suggested that a Treaty partnership today would involve more than what was offered in 1896.

The Crown did not agree with the claimants that either the 1895 agreement or the 1896 Act had constitutional significance. Because the degree of self-government to be accorded to the peoples of Te Urewera was, in the Crown’s view, ‘not unlimited’, it was nothing out of the ordinary in terms of constitutional arrangements. The Crown’s sovereignty was not affected or altered by the agreement or the Act, and the constitutional situation of the Urewera district ‘at law’ did not change. The Crown did accept, however, that the agreement was ‘an important symbolic affirmation of a new relationship with the government, which was of immense significance for the Urewera chiefs as well as Seddon and Carroll as the representatives of the government.’

We are mindful of the parties’ depth of commitment to their opposing positions. The claimants would have it that the agreement and the Act discussed in this chapter were full of promise but because that promise was ultimately not realised,
there was no change to the pre-existing relationship between the Crown and the peoples of Te Urewera. Those who had not signed the Treaty remained outside its fold and the Crown continued, for them, as an unwelcome pretender to sovereign authority. The Crown would have it that the claimants have been, since 1840, bound to it in a relationship founded in the Treaty, and that the events discussed in this chapter neither promised to alter the balance of governmental power defined by the Treaty, nor altered it in fact.

Our analysis of the significance, in Treaty terms, of the matters examined in this chapter is different from that of the claimants and of the Crown. We turn now to review the events that are material to our conclusion.

The 1894 hui, which we have discussed in some detail, represented the first truly positive engagement of the Crown with Te Urewera leaders since 1871. At those hui, the Crown’s Treaty promises were affirmed, and Te Urewera leaders acknowledged the Queen and the Government and for the first time, promised to obey the law. In his own compelling language, the Premier affirmed the Treaty’s promises of active protection and mutual benefit, and the Crown’s duty to consult the peoples of Te Urewera on matters of importance. He made many promises of protection, as we have detailed: his Government would protect Maori from the settler majority, and in the retention of their land. He maintained, however, that modern circumstances required a legal title; the Queen’s protection could no longer be guaranteed for customary land. Seddon told Tuhoe that if they obtained a legal title for their lands, and used their lands in the settler economy, they would ‘never be landless – never be without money, food, or clothes. They will be more prosperous than Tuhoe have been since they have been Tuhoe’. These assurances were a critical part of the dialogue that led to the enactment of the Urewera District Native Reserve Act in 1896.

One of the fundamental elements of the Treaty is that Maori and settlers would both benefit and prosper. Seddon explained what the settlers wanted that would also benefit the peoples of Te Urewera: they wanted roads and schools for Te Urewera; they wanted legal titles for its lands; they wanted to settle ‘surplus’ lands (if there were any); and they wanted economic development for the region – including the possibilities of gold mining and tourism. On the basis of the promises made to them, Ngati Manawa and (to a lesser extent) Ngati Whare and Ngati Haka Patuheuheu were prepared to consider opening their remaining lands. In particular, they agreed to roads and schools. But Tuhoe were more sceptical that they would benefit from the settlers’ plans. The Waikaremoana people put it to Seddon that they were living on small reserves with no ‘surplus’ land – a point the Premier seemed to accept. At Ruatoki and Ruatahuna, the leaders pointed to the ruinous costs of surveys and the court, and to the fact that wherever the Crown got control of tribal lands, the lands evaporated with no lasting benefit for the people. The Premier promised reforms in response to their criticisms, to demonstrate that they would genuinely prosper if they engaged. Court and survey costs would be slashed, individual dealings would be stopped, fair prices and rents would be paid, and the Government would be a protective backstop – it would be ‘strong’ to protect them and ensure that they prospered.
But the Premier was not (yet) prepared to give up on the Native Land Court as the only instrument for deciding titles. This was a sticking point in the discussions. Another was the principle of Maori autonomy. Seddon was prepared to go part of the way in recognising Tuhoe autonomy. He was already experimenting with the idea of block committees and collective decision-making for lands. He affirmed that hapu could either have a committee or could act directly, but from now on groups could make collective decisions about which land was ‘surplus’ and whether to lease or sell any of it. At Ruatoki and Ruatahuna, the Premier was presented with requests to acknowledge their authority, their mana motuhake. Tuhoe wanted a tribal/district committee to control and administer their lands and all the affairs of their district (and a prescribed boundary for that district). They did not want the Government to control their lands. They did not want or need the Government to control their affairs. What they did want, however, was for the Government to recognise their committee – something they had been asking for years – and give it legal powers so that it could deal with the law and the institutions that did have such powers. The Premier, in response, was prepared to accept what he called an advisory committee: a permanent committee, representing Tuhoe, which would be the organ for future consultation between the Government and the tribe. But he was not – at this stage – willing to accept that a tribal committee could exercise what he considered to be government powers.

Seddon impressed the people, and leaders such as Kereru Te Pukenui quite deliberately decided to trust him and his promises. The gift of the taiaha Rongokarae reaffirmed the 1871 compact, and that Tuhoe would live in peace with the Government and obey its laws. Seddon, in his turn, recognised that a great trust was being placed in him – a perpetual trust for the Government to keep. A dialogue was opened but was interrupted before real progress was made. It was understood that Seddon would complete his tour, consulting with all communities, and that he would then be willing to consider further discussion and settlement of the key issues in Wellington. Recognising the difficulty that this would impose, he offered to fund a delegation of Te Urewera leaders to come to the capital. At the hui, the leaders welcomed this initiative as a way to allow further discussions among the people before reaching deliberate positions on the many issues that Seddon had raised with them. As it turned out, the Government failed to keep this undertaking. As the Crown’s historian noted, Te Urewera leaders pressed for the resumption of talks that Seddon had offered, but the Government did not fund their delegation or resume negotiations in 1894.

Instead, the Government sent surveyors in 1895 to carry out a trig survey for mapping purposes. Unfortunately, the Surveyor-General had explained at a hui in January that the trig survey would also be useful for the court. Seddon and Carroll had said the same thing the year before. The Crown conceded before us that Tuhoe and Ngati Whare were right to be alarmed and suspicious of this survey. When they obstructed the surveyors – thus breaking the law – Seddon was quick to send troops to Te Urewera for a ‘show of force’. One question that arose was the genuineness of the leaders’ 1894 commitment to obey the law. Hone Heke reported Tuhoe’s views, as expressed to Carroll in April 1895. The gift of Rongokarae had not meant
that the Premier could do whatever he wanted to Tuhoe. Nor did their covenant with the Government bind the people to accept anything the Premier desired to impose upon them without consulting them in the first place. The essence of that message is also found in Waitangi Tribunal statements of the Crown’s Treaty responsibilities when making law relating to Maori land. The Turanga Tribunal found when examining the native land legislation that the Maori promise to obey the law was not unconditional: the Crown had a reciprocal duty to ensure that its laws did not defeat or neutralise its Treaty guarantees to Maori.

On this occasion, the Government mixed negotiation with its show of force. Carroll arrived on the heels of the troops. At the hui that followed, Kereru Te Pukenui reaffirmed his promises of the year before. Tuhoe would obey the law, and the survey would be permitted to go ahead. In return, Carroll agreed that a full settlement of issues should be negotiated in Wellington and that Tuhoe lands should be ‘conserved’ to them – also renewing promises made the year before. But a further crisis arose: the Government decided to force roads through Te Urewera at this time, and began surveying for them in May. Again, the surveys were obstructed. Again troops were sent, with Carroll following behind to negotiate.

Our view of these events is that the Crown may have acted within the law, but the law was clearly unjust. The Public Works Act permitted the Government to put roads wherever it wished, so long as notification was given. The parties did not agree on whether notification was in fact given properly, but that is beside the point. The law allowed the Government to force roads through an entire district without paying the slightest heed to Maori authority. The fundamental concept behind the Public Works Acts was that the Crown (or local authorities) would make these decisions on behalf and in the best interests of the whole community. In this instance, the community was Maori, and it had had no say in whether or where roads would be built through its territories. But, as Ngati Whare leaders stated at the time, the Government was prepared to use force and Maori were not – so the road surveys went ahead. Perhaps more importantly, Carroll also contributed to securing agreement on the basis that a full settlement of issues would be negotiated in Wellington, and that (this time) Urewera lands could be protected by a special Act of Parliament.

In our view, Tuhoe and Ngati Whare were compelled to agree to road surveys in May and June 1895 because of the threat of force. In light of the Crown’s obligations under the Treaty, this was entirely inappropriate. But Carroll’s diplomacy had also played a part in securing their agreement. It remained to be seen whether the acceptance of roads could be placed on a better footing through the promised negotiations in Wellington. We consider that the Crown did not act consistently with the Treaty in forcing roads on the peoples of Te Urewera. However, it is a separate question, which we consider in a later chapter, whether the people were prejudiced as a result.

475. New Zealand Herald, 3 June 1895 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 183)

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As counsel for Wai 36 Tuhoe observed, there was some irony in the fact that the ‘small war’ over surveys actually brought the Crown to the point where it was willing to negotiate a broader settlement and make genuine concessions. We turn now to the September 1895 negotiations and the agreement that was reached. In large part, as we have already found, the basis for this agreement was laid in the hui of 1894, and in Carroll’s promises of April to June 1895. Again the Crown’s Treaty promises of active protection of the peoples of Te Urewera and of mutual benefit for both Maori and settlers were affirmed in Wellington in September 1895, as they had been in Ruatoki, Ruatahuna, Waikaremoana, Galatea, and Te Whaiti in 1894. Te Urewera leaders acknowledged the Queen and the Government and promised to obey the law. In Wellington, the Premier (and Carroll) promised to protect and to reserve for all time the peoples’ lands, their treasured forests, birds, and waters, their customs, and their way of life. In return, Te Urewera leaders would give up some of the Te Whitu Tekau policies, and allow roads, tourism, gold mining (if gold was found), and the creation of land titles that the colonial law would recognise and protect. Although the district was not suitable for close settlement – and hence could be reserved to Maori – regional economic development was still expected, in the form of tourism, mining, and Maori farming. This would be to the advantage of the peoples of Te Urewera and settlers. At the same time, the people sought active social and economic assistance from the Crown in the fields of health, education, farming, and all matters for the ‘welfare’ of future generations. As Cecilia Edwards noted, there was a disjunction between the level of assistance that Carroll thought the Crown should give, and what Seddon was prepared to offer in concrete terms.

Of vital importance to our consideration of the issue under examination is that in September 1895, in order to secure the agreement of the peoples of Te Urewera to land titles, roads, and the use of their district in the economy, the Crown was willing to give way on the two key matters that had been sticking points in the 1894 discussions. First, it was willing to accept that the Native Land Court should be excluded from the district. There was no agreement, however, on the degree of Maori control in the proposed alternative process. Maori would either decide their own titles, with the assistance of a commissioner (favoured by Carroll and the Urewera delegation), or would work with a commissioner who would make the final decisions (favoured by Seddon). The claimants and Crown agreed, however, that the Crown promised titles at a hapu level in September 1895. Seddon had agreed to this in practice in 1894, when he had posited that hapu should make collective decisions about their lands.

Secondly, the Crown was now willing to give effect to the Treaty principle of autonomy, and the article 3 right of the peoples of Te Urewera to govern themselves by representative institutions, which we discussed in chapter 8. The peoples of Te Urewera would have the authority of Parliament’s law conferred on their unique tribal institutions in order to protect themselves and their lands, and to decide their own destinies (as the Government put it in the Legislative Council in 1896). As we saw above, in 1894, Seddon had been willing to have hapu/block committees, but not a tribal/district committee unless it was an advisory body and
a mechanism for Crown-tribal consultation. Now, he agreed to powers of self-govern-ernment for a general (district) committee which would conserve the authority of rangatira and their communities, with its members to be elected from the local hapu/block committees. The powers to be accorded the committees, Seddon indicated, had been preserved and protected by the Treaty. Wi Pere understood this when he told Seddon: ‘I have felt deeply impressed by your reference to the Treaty of Waitangi to show that what they are asking for and ask of you come within the powers mentioned in that treaty, that this was a fitting time and fitting subject in connection with that Treaty.’

These were very significant concessions on the part of the Crown. Once they had been made, the Crown and the leaders of Te Urewera reached agreement on broad principles that covered almost everything at issue. The agreement was not recorded in any one document. Rather, it was the sum total of the Urewera delegation’s proposals on 7 September (and Seddon’s recorded agreement), the further requests of 23 September, and the Premier’s written undertakings of 25 September 1895. Taken together, we find that the agreement provided for:

- The creation of an inalienable reserve, in which the peoples of Te Urewera, their lands, forests, birds, waters, and taonga, their customs, and their way of life were to be protected.
- The exclusion of the Native Land Court from the district, and the creation of land titles through an alternative process, involving a single commissioner working with hapu. The extent to which the commissioner would be an adjudicator, as well as the degree of control the owners would exert in the process, had not been fully agreed. Titles were to be decided according to Maori custom, free of cost for the owners. Also, titles could be awarded on the basis of sketch maps (rather than full survey plans), to be paid for by the Government. The owners could request full surveys if they wanted. Otherwise, there would be no block surveys.
- The award of land titles at a hapu level, to facilitate hapu and tribal control of lands.
- Self-government for the peoples of Te Urewera, by means of elected hapu/block committees to manage their lands; a General Committee to manage their lands and all their affairs, and to act as the organ for consultation with the Government; and legal powers of ‘local government’ for the General Committee within the boundaries of the reserve.
- The acknowledgement of the Queen and the settler Government by the peoples of Te Urewera, and their agreement to obey the law.
- A ‘package’ of social and economic assistance, as part of the Government’s promises to protect their interests and promote their welfare. The details of the package, however, were not agreed. It clearly included improvements in

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477. ‘Urewera Deputation, Notes of Evidence’, p 51 (Marr, supporting papers to ‘Urewera District Native Reserve Act 1896 and Amendments’ (doc A21(b)), p 215)
health, education, farming, and food supplies, but Carroll seems to have had a more extensive programme in mind than Seddon had (yet) agreed to.

- Forms of economic development consistent with the fundamental principles of the reserve, including roads, tourism, the possibility of gold mining, and the possibility of pastoral farming. To what extent such development, including mining, farming, and timber extraction, would be consistent with the core principles of the reserve was yet to be worked out in practice.

Both sides had made reasonable concessions to get to this point. All major issues seemed either to have been settled to the satisfaction of the parties or to be capable of settlement when the details were worked out. For those who had been part of the negotiation process, the provisions of the agreement were clearly in accord with the principles of the Treaty.

But Ngati Kahungunu and Ngai Tamaterangi claimants stated that they had not been involved in the negotiations or consulted about the terms of the agreement. Crown counsel accepted that the Crown was obliged to consult all interested hapu. Having reviewed the evidence, we concluded that Ngati Kahungunu hapu were not involved in the negotiations, although the Crown must have known of their interests. We find the Crown in breach of the Treaty for its failure to consult or obtain the consent of those Ngati Kahungunu hapu with interests in the reserve. It is startling, however, that neither Carroll nor Wi Pere spoke out in this regard to safeguard Ngati Kahungunu interests. The question of whether the hapu were prejudiced by this Treaty breach will be returned to in later chapters.

The September 1895 agreement was a broad one, with many of the details yet to be worked out. As we have seen, the Crown and claimants did not agree on whether it was fully translated into legislation in 1896. In one sense, the question depends on the degree of consultation involved in turning the 1895 Bill into a significantly revised Bill in 1896, and then amending that Bill in the parliamentary process. In our view, the evidence shows one of the fullest processes of nineteenth-century consultation this Tribunal has seen. In addition to the negotiations of September 1895, the documents produced by those negotiations were translated and circulated in the district, and hui were held to discuss them. It appears that the 1895 Bill was also circulated, and amended in response to at least some of the people’s suggestions. (One example may be the change from five Maori commissioners to five commissioners specifically representing the owners, who were to be ‘Tuhoe’.) A second Urewera delegation had input to the 1896 Bill, but the changes to that Bill were very few. As Wi Pere observed in Parliament, Tuhoe objected to some of its provisions. On the whole, though, the 1896 Bill was understood at the time to represent what both the Crown and the peoples of Te Urewera wanted.

The fundamental concept of an inalienable reserve was provided for in the Urewera District Native Reserve Act. At the time, as the speeches in Parliament make clear, it was understood to provide protection for the people, their lands, and the natural beauties (tourist attractions) of the district. But it was also understood to protect the customs and way of life of the peoples of Te Urewera. We agree with counsel for Nga Rauru o Nga Potiki that this concept underlay the Act.
Although some of the language used was condescending – Richard Boast used the word ‘quaint’ – it nonetheless provided for one of the core objectives of the peoples of Te Urewera. Their tikanga and taonga would be protected, and (as the people in charge of the reserve) they would have the legal powers to protect them.

This Tribunal has seldom seen an agreement more promising in Treaty terms. For Tuhoe and Ngati Whare, the process by which it was devised not only ensured that their aspirations were known and considered by the Crown, it also secured critical concessions from the Crown in recognition of their autonomy. It was the repeated assurances given by Seddon – and by Carroll in his role as facilitator of the negotiations – that persuaded the leaders of Te Urewera to commit to the arrangements that were written into the 1896 Act. Those assurances were compelling: the strong power of the Crown would always be behind the peoples of Te Urewera and they would never be poor if they controlled their lands and their lives in the manner that had been agreed. Those promises caused the leaders to trust that the Act would be implemented in the spirit of good faith that had now brought them so close to the Government’s leaders. There can be no doubt that Maori were entitled to trust the repeated assurances of Ministers of the Crown.

On the evidence before us, we are satisfied that the leaders of Te Urewera recognised the authority of the Crown to protect their mana motuhake through its power to make law for New Zealand. And we are satisfied that the Crown sincerely recognised the mana motuhake of the peoples of Te Urewera and intended to give it legal recognition so that it would endure despite the changes in New Zealand society. The question we have had to answer is whether this meeting of minds about the future prospects of the peoples of Te Urewera, and its enactment into law, is of such moment that it marked the beginning of a reciprocal Treaty-based relationship between the Crown and the peoples of Te Urewera who were parties to it. From the claimants’ standpoint, the obstacle to regarding the events of 1894–96 in this way is that the Act was not implemented so as to give effect to their aspirations. Quite the contrary. Within a mere 25 years, the Urewera District Native reserve was destroyed, together with the trust that its peoples had placed in the Crown. The Crown has conceded that the fate of the Urewera District Native Reserve involved it breaching the Treaty. We examine the full extent of those breaches, and their impact, in later chapters.

It is our conclusion that, despite the later dramatic change in circumstances, a Treaty-based, reciprocal relationship between Tuhoe and Ngati Whare and the Crown was in fact established by the events that culminated in the enactment of the 1896 Urewera District Native Reserve Act. We believe that those events show a genuine meeting of minds on the fundamental element of the Treaty relationship: the recognition by each party of the authority of the other. And once that accord was reached, we consider, it could not later be negated – just as a marriage in which the parties’ original vows are sincere is not negated by later changes in circumstance. That is not to deny that a marriage may become unhappy, or that one party may suffer far more than the other; but a marriage made on firm foundations

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persists nevertheless. Even divorce, which ends a marriage, does not mean that the marriage did not take place. But it is our view that there is no equivalent to divorce from the Treaty relationship. Once that relationship is established it endures to guide both parties’ behaviour and to serve as the measure of their regard for one another. We are well aware that history has disclosed many departures from the Treaty standards: it is our responsibility to identify the Crown's lapses and recommend redress for the harm they have caused. But as we understand it, the fact of those lapses does not end the relationship that was previously forged.

Our conclusion would be different if the 1896 Act was so defective in reflecting the parties’ recognition of each other’s authority that it could not fairly be said to have brought the peoples of Te Urewera into a Treaty-based relationship with the Crown. The claimants contended that there were many defects in the Act. Their purpose was to establish that the Crown had breached the Treaty by enacting legislation that misrepresented the parties’ 1895 agreement. Our purpose is broader. Of course we are concerned to establish whether the Crown breached Treaty principles as the claimants contend. But if we were to find instead that the Crown faithfully translated the 1895 agreement in the 1896 Act, what then? The claimants would still say that later events would negate that fact. Our view, as we have explained, is that if the 1896 Urewera District Native Reserve Act was a faithful rendition of the parties’ agreement, then that would mark the establishment of a genuine relationship based on the Treaty of Waitangi. It is with this in mind that we turn to examine the claimants’ criticisms of the 1896 Act.

The claimants’ first point was that the reserve was not made as inalienable as had been intended by the agreement. In the 1896 Bill, the Government had included an unlimited power of leasing (to settlers) and an unlimited power of alienation to the Crown. But as a result, it seems, of the Urewera delegation’s objections, these powers were significantly modified in the Act. The power to lease land to settlers was struck out. The power to alienate land to the Crown was vested in the General Committee alone. These changes did not go far enough to reassure the delegation, which wanted all powers to alienate removed (except for leasing land for gold-fields). But the claimants admitted in our inquiry that the power to alienate was appropriately circumscribed, and ought to have allowed the tribal leadership to make collective decisions as to whether or when to exercise it. We agree. It seems to us that the Government made appropriate concessions to the tribe on the point. In part, the power to alienate was a ‘future clause’: the Government did not anticipate buying land in the reserve in 1896. In our view, the inclusion of a power to alienate, in the manner provided for in the 1896 Act, did not detract from the fundamental agreement reached between the Crown and the leaders of Te Urewera. Nor was it inconsistent with Treaty principles.

The second exception to the inalienability of the reserve was the Crown’s unlimited power to take land for roads and its power to take land for other public works, which had a cap of 400 acres, after which the consent of the General Committee was required. There are several relevant considerations here. The building of roads was a compromise agreement in September 1895. The delegation from Te Urewera saw the utility of roads, and even asked that their communities be made
responsible for work on the stretches of road in their rohe, and to be paid for this work. In our view, the reluctant agreement to roads that had been forced on the people earlier in the year was now placed on a sounder footing. As the claimant historian witnesses observed, future trouble arose over the route rather than the fact of the Ruatahuna road. On this basis, it is our conclusion that the power to make roads was appropriately included in the Act.

If the General Committee had been given appropriate powers to control the making and routes of roads, we think little trouble would have resulted. This should not have been a problem. As was pointed out in Parliament, local bodies could control roads, and Maori would be forming the local bodies in the reserve. Such powers, however, like the committees' other powers, were not prescribed by the Act but needed to be conferred by regulations to be made by the Governor in council. We are concerned that the Crown had power to take land for roads without any protections for the landowners and communities concerned. Breaches of the Treaty could arise if the General Committee was not given appropriate authority. We also note Hone Heke's concern that rates – not part of the 1895 agreement – might be introduced by this means.

The additional power to take land for any other kind of public works, but under the Public Works Act, was, we consider, inserted without agreement. It was never part of the September discussions and consensus, and – as Wi Pere told Parliament – Tuhoe did not agree to any alienations other than for goldmining. The Crown pointed out that a 400-acre cap on takings was a unique protection in New Zealand, and suggested that the 1896 delegation must have agreed to it for that reason. Wi Pere's speeches in the House do not support that contention. Despite that, one of the specified public purposes for which land could be taken – tourism – was a purpose that had been agreed for the reserve. For any taking, compensation would have to be paid and the 400-acre cap was to apply. On balance, in light of the Crown's kawanatanga – its general authority to govern – and the limits placed upon its public works powers in the reserve, we consider this provision in the Urewera District Native Reserve Act did not breach Treaty principles. (We note that no takings under the Act were brought to our attention.)

As we have discussed, the first core principle of the agreement was the creation of an inalienable reserve. The second principle was that the Native Land Court should be excluded, and that an alternative process would decide titles without expense, and with significant input from the owners. The question of how far the owners would control the process had not been agreed. As we found earlier, Carroll went some way to revising Seddon's original position. The creation of a seven-member commission, with a majority of its members to be Tuhoe, provided for some owner control of title determination. Counsel for the Tuawhenua claimants criticised this for not providing what the delegation from Te Urewera had requested – hapu control of the process. And counsel for Ngati Whare criticised the Act for not properly articulating how it would work, and how much control the owners would exert. Counsel for Ngati Kahungunu condemned the Act for requiring that the Maori commissioners be Tuhoe rather than representatives of
all owners in the reserve. Ngati Kahungunu’s historians gave evidence that this was a ‘potential’ problem, but that Ngati Kahungunu interests were in fact recognised in an appropriate way by the end of the title determination processes in Te Urewera. Accordingly, we do not find any Treaty breach here. In chapter 13, we consider the separate issue of the substance and outcomes of title determination under the Act.

Carroll explained at the time that the process was experimental. No one knew how it would work in practice, but there was room for the commission (with its Tuhoe majority) to work it out and then recommend appropriate procedures for regulation. We accept the claimants’ view that the process might have worked better if hapu had had full control, assisted by a commissioner – the original proposal. But, it seems to us, the Act provided a reasonable compromise between the respective views of Maori and the Crown, and was an improvement on the Premier’s original decision. The Crown is to be congratulated for agreeing to an alternative to the Native Land Court, and to a process which (in theory) was to provide for Maori control of title determination. In our view, in light of the Crown’s intentions at the time, no Treaty breach arises from the design of this part of the Act. We consider it to be a separate issue whether it provided in practice – as both Carroll and Seddon said in Parliament it would – for significant owner control in the process of determining their titles. We return to that issue in chapter 13.

Other features of title determination were that sketch maps could be used instead of full surveys, and the process would be free of cost. We find that the Crown faithfully translated this part of the agreement into the legislation.

On the other hand, the Native Land Court was not excluded from the reserve. Against the known wishes of the owners, the Act provided that the court could be empowered to decide appeals from the commission’s title orders and to determine successions. No alternative process – owner designed or owner controlled – was provided in the Act for the tasks that might be undertaken by the court (if it was so empowered by the Governor in council and the Native Minister). But the power of the Governor in council to make regulations to implement the Act was very broad. Conceivably, especially if the commission was to be involved in designing the processes needed to implement the Act, as was envisaged by Carroll, processes acceptable to the peoples of Te Urewera would have been put in place by regulations. We accept, as anthropologist John Hutton argued, that the Act should have provided for communities, through their tribal committees, to regulate shareholdings from generation to generation. We also consider there was no reason to limit the Urewera commission to the first decisions about titles, as Carroll assumed would occur (although this was not expressly provided for in the Act). A commission could have continued to play a role and to assist the owners. There is no doubt that the Crown’s failure to provide in the Act for committee management of titles (once created), and its provision, instead, for officers of the Crown to trigger the Native Land Court’s role, was against the known wishes of the peoples of Te Urewera. However, the provision was only for a possible role for the court: the Act did not provide that it would definitely operate in the reserve. There was scope for
the court to have a role but it need not have come to pass. And even if the court were to be given jurisdiction in the reserve, it would have been a jurisdiction separate from that exercised under the Native Land legislation.

It seems to us that the provision for a possible role for the court in the reserve was a ‘plan B’ inserted by the Government at the last minute: a backstop provision should the scheme for joint Government–Tuhoe regulations founder in practice. For these reasons, and without denying that the agreement of the leaders of Te Urewera should have been sought, we consider that the act’s potential for the Native Land Court to be involved in the reserve narrowly escapes being in breach of Treaty principle. Again, however, what happened in the course of implementing the Act is a separate matter, for our later examination.

The third core principle in the September agreement was that title would be awarded at a hapu level. The evidence on that point is uncontested. The overwhelming wish of the peoples of Te Urewera, as expressed in 1894 and 1895, had been against individualisation of title. As a result, the September agreement had provided for hapu titles. But section 8 of the 1896 Act went beyond that. As we discussed in some detail above, we received differing evidence and submissions about whether section 8 individualised title. In essence, we agree with both sides of the debate. As counsel for Ngati Whare put it, the ‘allocation of interests down from a hapu to a family to an individual level, irrespective of the governance mechanisms in the Act, contained within it seeds of radical individualisation’. As a result, ‘the UDNR Act was not absolutely flawed’, but it ‘contained the significant and ultimately insurmountable problem of individualisation’. Given this conclusion, we need to ask: was there a compelling reason to require that the relative shares of individuals be determined?

The Crown made two arguments. First, it suggested that individuals had to be identified for each block so that the correct owners would elect the local committee. We accept that a list of owners was needed for this purpose, but we also agree with counsel for the Tuawhenua claimants that this did not require the determination of relative shares. The Crown’s second argument was that any proceeds from use of the land – possibly from goldfields – needed to be allocated fairly as between individuals. This argument was based on the premise that distribution would be to individuals or, at least, individual families, as opposed to the benefit being held by, and distributed for, the benefit of the community. In our view, this was an unnecessary qualification to the tino rangatiratanga of the owners. Under custom, the community through its leaders would have decided how to expend such proceeds. If (and only if) that decision included a distribution to all members of the community, then the leaders would apportion funds accordingly. This power and responsibility ought to have rested with the local committees. It may well be that the committees would have welcomed the assistance of tribal leaders in the form of the General Committee or the Urewera commissioners. But, in our view, that was a decision for the hapu. It may also be that, in a situation where the

479. Counsel for Ngati Whare, closing submissions (doc n16), p 60
colonial economy called for settled titles, some kind of master list of relative shares was appropriate, if controlled by the community.

We conclude, therefore, that there was no compelling reason for section 8 of the 1896 Act to provide for the identification of individual owners’ shares. Was this defect in the design of the legislation in breach of Treaty principle? In our view, it was not. Our view would be different if there was evidence that a reason for the Government’s inclusion of section 8 was a desire to facilitate its own later purchase of interests in the reserve. But under the Act, only the General Committee had the power to alienate reserve land – a restriction that was fundamental to the very concept of the reserve. We can see no basis for concluding that at the time the Crown gave legal recognition to the self-governing tribal reserve, it had in mind that it could more easily destroy the reserve in future if only the provisions for identifying owners were worded in a particular way. Certainly, section 8 is overly prescriptive in an Act otherwise remarkable for its lack of detailed prescription. Certainly too, section 8 reflects a view of income distribution (for example, from leases) that does not accord with Maori custom. But these were not fatal flaws in the Act’s specification of the reserve’s design. Section 8 did not create a situation in which it was inevitable that the General Committee’s exclusive power to alienate reserve land would be undermined: the concept of the reserve was perfectly capable of being translated into practice with section 8 worded as it was. As long as the exclusive legal power of the General Committee to alienate reserve land was upheld, the identification of individual shares in the reserve posed no threat to its continued existence.

It is, however, the case – as was conceded in our inquiry – that the Crown later ignored the General Committee’s exclusive power of alienation and purchased the shares of individuals (or ‘raided’ them, as counsel for Wai 36 Tuhoe claimants characterised it). Those shares had been identified in accordance with section 8 but it would be wrong to attribute the Crown’s unlawful purchase of them to the wording of the section. The Crown’s conduct shows that, once it resolved to purchase the reserve land, it would not let the provisions of the law stand in its way. It could have achieved its aim regardless of whether individual owners’ relative shares were identified as required by section 8. Even if the section had specified the minimum requirement – that all owners be listed – the Crown could have approached those individuals in the course of an unlawful purchase programme. Therefore, it is our conclusion that it is not the requirements of section 8, but the Crown’s later ‘raiding’ of individual shares, that constitutes a breach of Treaty principle. We will consider the extent of any prejudice from this Treaty breach in chapter 15.

The fourth core principle of the agreement was its recognition of tribal autonomy through the mechanism of local committees and the General Committee. As we discussed earlier in this chapter, much was promised in this respect – and, it appears, those promises were genuine. Premier Seddon intended to provide legal powers of self-government, to which he said the peoples of Te Urewera were ‘entitled’. The flaw in the Act, however, was that it failed to confer powers on the committees. Almost everything remained to be prescribed by regulation. We received varying interpretations of this state of affairs. Cathy Marr noted Carroll’s
expectation that the Urewera commission, with its Tuhoe majority, would draw up the regulations for the Crown to promulgate. She argued that this gave flexibility and room for Tuhoe leaders to suggest the functions and powers of their committees. Ms Marr also argued that in light of the many promises of protection and consultation that had been made, the chiefs could reasonably have trusted the Government to deliver on this point. Judith Binney, on the other hand, thought the Act was ‘Janus-faced’. In her view, its failure to define the powers of the committees, and its reservation of that power to the Crown alone, was fatal to any real legal protection of Maori autonomy.

Counsel for the Wai 36 Tuhoe claimants concluded:

The Crown had a duty of active protection of Tuhoe tino rangatiratanga or self-government. The principles agreed on with Seddon in 1895, and the general ambit [of] the UDNRA, represented a Crown acknowledgement of that obligation and (at least initially) an effort to implement self-government. However . . . the actual implementation fell well short and was actively undermined by the Crown. The UDNRA was a Trojan Horse.

Counsel for the Tuawhenua claimants summed up the situation best: Te Urewera leaders ought to have been able to trust the honour of the Crown to deliver what had been promised. We agree. For that reason, we do not find the Act in breach of the treaty on this point. Crown counsel conceded that the treaty was breached when the Crown later failed to deliver either the powers of local government or collective decision-making about land, despite the requirements of the 1895 agreement and the intentions supposedly embodied in the Act. That is a separate matter, and we examine the Crown’s actions in that respect in chapter 13.

The fifth core principle of the agreement was that the peoples of Te Urewera would acknowledge the Queen and the Government and obey the law. In our view, the reliance by Te Urewera leaders on the Crown’s lawful authority to protect their mana motuhake was fundamental in marking the advent of a new relationship between them. The compact of 1871 was to be fulfilled and their commitment to one another placed on a genuine Treaty footing. The developing reality of this was tested by surveyors and the stationing of armed forces in Te Rohe Potae in 1895, but Tuhoe chose – as their rangatira Kereru Te Pukenui said – to uphold the Queen and her laws. Even so, a necessary precursor to a truly consensual Treaty relationship was the settlement of issues still unresolved at that point. In our view, this happened in Wellington in September 1895, and was given legislative force in 1896.

The sixth core principle of the agreement was that the Crown would protect the peoples of Te Urewera and promote their prosperity, and that it would give social and economic assistance to meet those ends. As we have found, there was no agreement on the details of the ‘package’. Carroll seemed to envisage more than
Seddon was willing to offer, at least in 1895. Counsel for the Wai 36 Tuhoe claimants was right to point out that almost nothing of this assistance made it into the Act. The Crown, however, was also right to stress that legislation was not necessarily needed to deliver the kind of assistance discussed. The Crown preferred to rely on Seddon's memorandum as the sum total of its undertakings in this respect. We noted, however, evidence from Brad Coombes that Carroll thought the Crown bound to increase food supplies in Te Urewera, and a concession by Cecilia Edwards that social and economic assistance had been discussed on 7 September in broader terms than Seddon's memorandum captured. The historians who gave evidence to us agreed that Seddon intended to provide assistance in health and education. Assistance with economic development, especially for farming, had been agreed between Carroll and the delegation of Te Urewera leaders, but Seddon was yet to be convinced. In our view, it ought not to have been a stretch for the Liberals to contemplate economic assistance, at least of the kind they were offering to settlers in the 1890s. Overall, the details of the package (like other details in the agreement) needed to be worked out in the future, in partnership between the Crown and the General Committee.

We do not consider that the Crown breached the Treaty in 1896 by not including specific details – or a general undertaking – for social and economic assistance in the Act. It was put to us that only some such legislative undertaking could have compelled the Crown to act. We find that the Crown's undertaking to assist the peoples of Te Urewera was integral to the promises it had made of active protection, and of promoting their welfare and prosperity. The Crown was obliged to deliver on those promises. We will consider the question of whether it did so in forthcoming chapters of this report. We make no findings here on what the Crown had agreed to in terms of future protection and management of forests, birds, flora and fauna, and waterways. We will consider those issues too in forthcoming chapters.

Having considered the content of the September agreement and the question of whether the Act gave it effect, we are left to answer the final question in this chapter: did the 1896 Act faithfully represent the agreement of the Crown and the leaders of Te Urewera and bind them together in a genuine Treaty-based relationship? Or were the defects which we have found to exist within it so serious as to be fatal for that purpose?

In our view, the Premier’s speech on the Bill to the House of Representatives makes it clear that Donald McLean's compact was being honoured and given effect by the Crown. In attempting to do so, the Government of the day recognised that the peoples of Te Urewera were already self-governing in a self-contained district, although – in the Premier’s view – this was beginning to break down. This is a fundamental point. Parliament was not conferring self-government on Te Urewera. It already existed. Under the Treaty of Waitangi, it was to be honoured and protected by the Crown. The Act’s provision for tribal/district and hapu/block committees, with powers to be defined in the future, was meant to give recognition (and powers recognised by the law) to the tribes. The Crown's intention was to change a de facto situation to a de jure one. As we found in chapter 8, the peoples of Te
Urewera had long been ready to adapt the form of their governing committee to one acceptable to the Crown, so long as this won it recognition and legal powers from the State. But we emphasise that the Act did not create self-government where none had existed before. Maori authority – tino rangatiratanga or mana motuhake – was to be given a vehicle: tribal committees.

Our second point is that any Act of Parliament which accorded legal powers to institutions for the purposes of ‘local self-government’ has constitutional significance. The exercise of public power by local representative institutions is a core part of our constitution. In the Urewera District Native Reserve Act, the Crown was recognising that Maori were ‘entitled’, as Seddon put it, to have their own district authorities and to exercise the powers of self-government. The Crown argued before us that nothing unusual was happening here in constitutional terms. We disagree. This was the first time the colonial State had recognised a Maori district in this way: to be set aside entirely as a reserve for its people, and to be governed by them through a legally empowered local authority. For many decades previously, New Zealand Governments had steadfastly refused to grant Maori requests for legal powers of self-government, as Seddon acknowledged in the House. The Central North Island Tribunal has traced the long history of Governments’ refusal to create self-governing ‘native districts’ under the Constitution Act of 1852, or by other means.  

The Urewera District Native Reserve Act was a constitutional first for New Zealand, and for Maori.

Nor was the Urewera District Native Reserve Act about ‘local government’ in any restricted sense. First, full control of all tribal affairs had long been discussed as a role of the General Committee. Inside the reserve, Maori custom was to continue and to be protected. As the Government’s representative had put it in the upper house, the Government was going to ‘go very much further than any other legislation has done in giving legal sanction to those customs and habits by putting them into an Act of Parliament’. Maori in the reserve were, as the Premier said, ‘to govern themselves in accordance with their own traditions’. This was Maori self-government – mana motuhake – and it enshrined the operation of Maori law (or ‘custom’ and ‘traditions’, as it was referred to in Parliament). This was surely a unique constitutional feature at that time.

Thirdly, the General Committee was to be the body with which the Government consulted on matters affecting the district. There was an expectation at the time that dialogue with – and consultation by – the Government would continue. The events of 1894 to 1896 must have encouraged this belief. The Premier told the chiefs of Te Urewera in 1895 that as part of the ‘local government’ arrangements, ‘in matters that arose between the Government and the Tuhoe the central committee would act as the medium of communication’.

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482. Waitangi Tribunal, He Maunga Rongo, vol 1, pp 165–410
483. Walker, 29 September 1896, NZPD, vol 96, p 262
484. Seddon, 24 September 1896, NZPD, vol 96, pp 166–167
The fourth point is that all the land in the region came under the power of the governance bodies, through the Urewera commission (which was supposed to have a Tuhoe majority and to work with hapu), through the block committees, and through the General Committee. This control of all land (and with it, all resources) in the district gave the collective leadership of Te Urewera greater power than the average local authority. We agree with the Central North Island Tribunal that for Maori people at this time the ability to fully manage and control their own resources as a community was a significant part of self-government.\footnote{486} ‘Land management’ is, on the face of it, too restrictive a term.

Fifthly, the full range of the committees’ local government responsibilities and powers had not yet been prescribed. We presume that they could have exercised judicial as well as executive functions (such had been the case for the native councils planned by McLean in the 1870s, and for Bryce’s native committees in the 1880s).\footnote{487} In any case, they were supposed to have the full powers of local government. This aspiration had the potential to be realised (as opposed to what the Central North Island Tribunal found with regard to the limited responsibilities given to Maori Councils in 1900).\footnote{488}

In all these ways, the argument that the term ‘local government’ would be something less than self-government or tribal autonomy is not supported by the context in which the Act was passed.\footnote{489} But it is fair to say, as we believe the claimants have acknowledged, that full independence was no longer a political reality. Colonial laws would have force in Te Rohe Potae from now on. In a sense, this was at the heart of Tuhoe’s strategy, as Tamati Kruger explained it: they used the law to protect themselves from the law. As counsel for Nga Rauru recognised, the key would now be a partnership between the General Committee and the Crown.

This brings us to consider the relative weight of the flaws in the 1896 Act: the elements within it which failed to best reflect the Crown’s agreement with the leaders of Te Urewera. The two most serious flaws were the requirement in section 8 that individual shares in the land be identified, and the role provided potentially, although not definitely, for the Native Land Court. In our view, it was these provisions of the Act that might have undermined the very concept of the Urewera District Native Reserve as agreed between the Crown and the leaders of Te Urewera. Importantly, however, those provisions did not prescribe that result, and nor can it be said that, when seen in their true context, they anticipated or encouraged that result. That is why we have concluded that a fully consensual relationship under the Treaty of Waitangi was established by the negotiations of 1894 to 1895, the agreement of September 1895, and the consequential honouring of that agreement in the enactment of the Urewera District Native Reserve Act.

Tamati Kruger stated that this was not so much a treaty in its own right as a fulfilment and renewal of McLean’s compact between a new generation of leaders.

We agree. We see a clear line between the compact of 1871 which was never formalised in law, the failure to honour it in the intervening years, the explanation of the compact to Premier Seddon in 1894, and his decision to formalise, honour, and carry it out in 1895 and 1896. As he said in Parliament, the reservation of the district, and the placing of its administration in the hands of its Maori people, would honour the promises of Donald McLean, and was long overdue. It seems clear to us that there is a constitutional significance to such arrangements between the Crown and tribes when they recognise and respect each other’s existence and authority.

Overall, we find that – with few exceptions – the Crown acted consistently with Treaty principles in 1894 to 1896. It placed its relationship with the peoples of Te Urewera on a genuine Treaty-based and unique constitutional footing. It sought and acquired the people’s agreement to recognise the Queen, the Government, and the law. It provided for the legal recognition of their self-government. And it promised them the active protection and mutual benefit inherent in the Treaty.