

Ngati Toa Lands Research Project
Report Two: 1865-1975

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CHAPTER 1

Introduction

1.1. Coverage of this Report

General Introductory Remarks

The history of Ngati Toa is well-known and the subject of a large literature, but this literature is almost entirely concerned with the years up to Te Rauparaha's capture and detention. Ngati Toa's history after 1860, the subject of this report, is an almost wholly unexplored subject. Our report deals with Ngati Toa's forgotten years – we do not mean to suggest that they have been forgotten by Ngati Toa – that is, the years of their engagement with the Native Land Court. The main focus of the report is on the period from 1860 to around 1960, concentrating mainly on the earlier decades and ranging backwards and forwards in time to some extent. Writing and researching this report has to a large extent involved the somewhat unrewarding task of traversing large quantities of Maori Land Court records, many of them still held in the Maori Land Court office in Wanganui. But it has yielded its own rewards and surprises, not the least of which has been the discovery that the legal history of the much-contested Whitireia block seems to have been almost completely misunderstood by virtually everyone who has written about it. This report is the first occasion where the story of Whitireia has been presented in full. It is also the first time, as far as we are aware, that a comprehensive history and analysis of the acquisition of Kapiti Island by the Crown has ever been done.

This report takes the tenurial history of Ngati Toa forward from the point at which the story left off in Report No.1, in the years around 1860. The reason for the chronological break between the two reports is an obvious one: the arrival of the Native Land Court. It is true that the bulk of Ngati Toa's lands were lost in the years before 1860, in the earlier, pre-emptive purchase era. Most importantly with the two key transactions of 1847, the Porirua and Wairau deeds, imposed on the iwi by Grey following the government's capture and detention in 1846 of Ngati Toa's principal chief, Te Rauparaha. Yet this fact should not be allowed to obscure the fact that the later Native Land Court era also had its effects on Ngati Toa as well. It is these impacts which will be concentrated on in the present study.

This report has been co-authored by Dr Bryan Gilling and Richard Boast. Mostly the detailed work on the tenurial history was written by Dr Gilling, and the more contextual chapters of the report (including this introduction and the next chapter) by Richard Boast – who also wrote the chapters on Whitireia and on the South Island cases and who took the final responsibility for completing the report as an integrated text. In this last task Hannah Boast

and Ryan O’Leary provided a great deal of assistance, for which the authors would like to express their gratitude. The authors would also like to thank Dr Terry Hearn for his detailed and helpful Q.A. on this report. We have made the stylistic corrections he drew our attention to and have done our best to act on his other helpful suggestions to make our arguments more clear and to add to make the report more readable and user-friendly.

It can sometimes be easy to assume that Ngati Toa’s 19th century history comes to an end sometime around the mid 1850s with continued population decline and the last of the principal Crown pre-emptive purchases. As this report will show, however, this was far from the case. The iwi’s post-1860 history has also been very eventful.

To take the above general points a little further, the key objectives, main arguments, main conclusions, principal source materials, and the various difficulties encountered in writing it will be briefly addressed.

Key objectives of this Report

The key objective of this report is uncomplicated. The main purpose of the report is to discover what became of the remainder of Ngati Toa’s lands after the great pre-emptive transactions of the 1840s and 1850s. Those transactions were covered fully and sited in their general historical and political context in Report One. It was in that earlier phase of their history that the overwhelming bulk of Ngati Toa’s lands were lost. This report deals with the later part of Ngati Toa’s land alienation history, which was not at all on the same scale. However land alienation is not simply a matter of scale, and in this later part of Ngati Toa history there were some key developments which remain of great importance to the iwi: Whitereia, Kapiti Island, and the Taupo No 2 Block at Plimmerton. We are well aware of the importance of these areas to Ngati Toa people today and so a further objective of our report was to analyse these areas thoroughly.

The main arguments and conclusions

Ngati Toa’s history before 1860 is in many ways unique, as the Crown’s behaviour towards Ngati Toa was in the first two decades after the Treaty strongly influenced by considerations of strategy and the distribution of political power in the Cook Strait region. This was the main argument developed in Report One. But in the period analysed in this report Ngati Toa’s history becomes essentially much more ‘normal’ (if that is the right word for it). Ngati Toa was no longer a strategic threat of any importance. Years of warfare, of epidemics and the other consequences of culture contact decimated the population of Ngati Toa who were seen by the Crown as just one of a number of groups of Maori in the Cook Strait region of which

the largest in terms of numbers was actually Ngati Raukawa based at Otaki. Ngati Toa's history in the years after 1860 became more like that of other iwi, as their lands became subjected to the standard effects of the Native Land Court and the Crown land purchasing system.

However it is also argued that given the immense losses that Ngati Toa had already experienced the Crown ought to have made some effort to not contract Ngati Toa's land base any further. But this did not happen. Ngati Toa lands continued to be subjected to all kinds of pressures. At no stage did the government of the day ever consider the needs and requirements of the iwi as a whole. If particular blocks or areas were required for government objectives (such as Kapiti Island) then the government proceeded to acquire them. No sense of Ngati Toa as a Treaty partner existed. On occasion the government did, admittedly, act to assist Ngati Toa obtain long-delayed redress (as with the Ngati Toa Commission in the 1880s) but these efforts do not, in our view, impact on our general interpretation as stated here.

Principal sources employed

The main source employed in this report are the records of the Maori Land Court. Before the report was written an extensive research exercise was undertaken in the holdings of the Maori Land Court at Whanganui. All documents in the Court's correspondence and Block Order files relating to Ngati Toa lands were copied and indexed and collected together in a Document Bank which will be filed along with this report. As well as the Court correspondence and orders the minutes of the Court and its judgments have also been extensively drawn on for this study. This detailed work has allowed the post-1860 history of Ngati Toa lands to be explored in this report at a level of detail that has not been attempted before.

As well as Land Court records recourse has also been had to files held at National Archives (see list of relevant files as set out in Appendix 5). Sometimes this material duplicated correspondence on the Court files held at Whanganui. Secondary sources were used to a certain extent, but in fact the secondary material on Ngati Toa, while voluminous and often of very high quality (such as the relevant chapters in Ian Wards' *Shadow of the Land*) focus on Ngati Toa in the years up to around 1850. Far less has been written about Ngati Toa in the years covered in this report. The one exception is the *Wi Parata* decision and the history of Whitireia, but it is our belief that notwithstanding the importance of this case and others relating to Whitireia in New Zealand legal history this report is the first occasion on which the full history of Whitireia is set out in full. This has revealed that a number of assumptions that other writers have made about the effect of the case are not in fact correct, or at least are of limited applicability to the precise circumstances of Ngati Toa.

Some difficulties

We believe that we have explored the tenurial history of Ngati Toa in these later years as thoroughly as possible. What has proved more difficult to reconstruct and to understand, however, is Ngati Toa's internal political, social, and economic history at this time. Ngati Toa were not a particular focus of government interest in these years. There is very little useful information on Ngati Toa, for example, in the sequence of *Reports from Officers in Native Districts* found in the *Appendices to the Journals of the House of Representatives* [AJHR]. Government attention had moved away from the Cook Strait region, of critical importance in the 1840s beyond any doubt, to such areas as the Waikato, the Bay of Plenty and the East Coast as these districts now became the main theatres of warfare and contestation between the Crown and iwi. To the extent that there is much information Ngati Toa are typically bracketed in with Ngati Awa and Ngati Raukawa. This has meant that unfortunately much of the information in this report deals with land and land tenure issues but in a way which is a little isolated from its historical and political context. Block Order files in the Native Land Court are useful for working out sequences of partitions and the like but in other respects are a rather unrewarding source. However for some issues, especially the issues of Whitiareia, Kapiti and Taupo No 2 the situation is ameliorated given the amount of correspondence that has survived directly from members of the iwi which has allowed the issues to be discussed rather more fully and (we hope) brought more to life.

1.2. Looking back on the 1840s

In the period from 1830-1850 central New Zealand was a zone of massive transformation at virtually every level: economic, political (including transitions in the spheres of governance and law), socio-demographic (Maori population decline and European immigration), and ideological and religious (the Christian and literacy revolutions). All of these processes of change had major consequences for Ngati Toa, consequences which have been analysed in Report No 1.

Ngati Toa's story in the later 19th century is essentially a story of a shift from centrality to marginalization. In the 1820s and 1830s the Ngati Toa leadership, by means of a combination of military skill, ruthlessness, strategic kin linkages and diplomacy had built up an impressive polity in the Cook Strait region. Although weakened by the devastating epidemics which affected all Maori groups in the 1830s and perhaps to some extent by destructive dissension between Ngati Toa's Raukawa allies and the Ngamotu refugees from North Taranaki there is little doubt that the Ngati Toa polity was still a very real and powerful

presence at the time of the arrival of the New Zealand Company settlers and the Treaty of Waitangi. The accounts of William Wakefield and others make the extent and significance of Ngati Toa authority very clear. Ngati Toa was a power base in its own right, a military and strategic obstacle to the government's plans. (This does not of course mean, as was noted in Report One, that a *modus vivendi* between the tribes and the settlers at Port Nicholson and at Nelson could not have been worked out.).

On no less than three separate occasions there were armed confrontations between Ngati Toa and the government, these being at the Wairau (in 1843), in the Hutt Valley (in 1846), and at Pauatahanui (also in 1846). Although the Wairau affair essentially involved New Zealand Company settlers at Nelson, those settlers were attempting to execute a judicial process against Te Rauparaha and the force was led by the Police Magistrate at Nelson, enough to give the process an official character even if the military force, if it can be called that, arrayed against Ngati Toa was comprised of special constables armed with fowling pieces and cutlasses rather than British army units armed with muskets. It was the main thesis of Report One that the Ngati Toa polity based on Cook Strait was a powerful rival to the Crown's authority in central New Zealand, and because of this Governor Grey went out of his way to do everything he could to shatter Ngati Toa authority as a way of furthering the objectives of the British and New Zealand governments. In this task he was largely successful.

In saying this it is also important to not neglect the complex ways in which the Crown, Ngati Toa and the New Zealand Company settlers interacted during the early 1840s. The history of an encounter zone such as central New Zealand involves an admixture of the imperial and the local, where both impinge on the other. Central New Zealand was of course profoundly itself and formed its own world. But it was also part of the history of empire and of Greater Britain (or Anglo-America). Central New Zealand was a true "middle ground", to borrow the term used by Richard White's celebrated history of the Great Lakes region, *The Middle Ground*, the subtitle of which is 'Indians, empires and republics in the great lakes region, 1650-1815'.¹ White's subtitle conveys the sense of a plurality of players in a complex and evolving scene, which was also the case in the Cook Strait region in the 1840s. Rather than a monolithic "Crown", there were, rather, governments – a plurality of governments, based at London, Sydney, Hobart, Auckland, Wellington, Nelson and other places – and governments are, as is obvious, composed of politicians and officials of widely varying aims and aspirations.

It is also vital for the purposes of analysis to be able to differentiate the migrant communities, which indeed had their own elaborately-organised regimes and politics, from

¹ Richard White, *The Middle Ground: Indians, Empires and Republics in the Great Lakes Region, 1650-1815*, Cambridge University Press, Cambridge, 1991.

the various official governments. Sometimes settlers and chiefdoms joined forces against governments (as shown with the connection between the alliance that developed between the Port Nicholson settlers and the Ngati Awa groups around Wellington harbour); there were alliances between governments and chiefdoms; settlers and chiefdoms might combine against other chiefdoms, or governments and chiefdoms against settlers. Settlers might form even combinations with some governments against other governments, as indeed the New Zealand Company settlers did in 1845 when they managed through adroit political management in London to create a political combination between themselves and the imperial government to bring down Governor Fitzroy at Auckland and reverse his policies. Fitzroy had irretrievably blotted his copybook in their eyes by failing to take the coercive against Ngati Toa that they had hoped for in retaliation for their humiliating reversal at Ngati Toa hands at the Wairau in June 1843. At Wellington the settlers, notwithstanding their generally racist beliefs, did not oppose ‘Maori’; what happened, rather, was that they formed an alliance with some chiefdoms and opposed others. Taking a long-term view, of course, the chiefdoms were to lose influence and disappear from the scene as political actors, and the settlers were eventually to take control of the New Zealand government, but that was not by any means an obvious outcome in 1843.

By the mid-1850s, however, a number of things had happened in central New Zealand which set the pattern for the years analysed in this report. The complex and shifting political scene of the 1840s had changed out of all recognition. First, the New Zealand Company had disappeared as an independent political actor. In 1850 the Company, facing bankruptcy, surrendered its charter to the British Government. As a result the Crown now became the owner in dominium (beneficially) of all of the Company’s lands in New Zealand – that is, all its lands that had not yet been on-granted to third parties – an area of some 1,092,000 acres, some of which, of course, would have earlier belonged to Ngati Toa.² Under the terms of an agreement between the Company and the British government in 1847, the Crown was obliged to pay the Company £268,000 for these lands as a first charge on New Zealand’s land revenue. The disappearance of the New Zealand Company enhanced the power and authority of the New Zealand government. From 1850 onwards land purchase transactions from Maori carried out by government officials were no longer nominally on the Company’s behalf but were rather carried out directly by the government under Crown pre-emption on behalf of itself. The Company’s collapse also left third-party claims and the state of land titles in much of New Zealand in a state of total confusion, a confusion which took a number of years to

² The figure of 1,092,000 acres is given by McLintock: see A H McLintock, ‘New Zealand Company’, *Encyclopaedia of New Zealand*, 1966, 658-661, at 660.

resolve.³ The “disposal of the Company settlers’ claims proved to be an involved and tedious business”.⁴ Meanwhile Grey and his new right hand man, Donald McLean, proceeded with the new policy of Crown pre-emptive purchase. Secondly, the powerful Ngati Toa chiefdom⁵ or polity had also been eliminated as a serious political rival, largely as a result of Grey’s actions in 1846-47. The military and political dimensions of this, involving the kidnapping of Te Rauparaha and the military campaigns against Te Rangihaeata and his supporters were fully covered in Report I, and there is no need to traverse any of this again here. It is however important to note the scale of Ngati Toa’s territorial losses that followed in its wake. As is pointed out in Report One, the scale and rapidity of Ngati Toa’s loss of land in the period from 1847-1859, just twelve years, is staggering. The collapse began with the Wairau and Porirua deeds of 1847. Vast areas in both the North and South Islands were acquired by the Crown in the shadow of Te Rauparaha’s illegal detention by Grey and the Crown’s attack on Te Rangihaeata in the preceding year. Then in the following year (1848) Governor Grey dramatically expanded the Wellington Crown grant, which extinguished Ngati Toa interests not only in Port Nicholson and the Hutt Valley, but also in Ohariu, Makara and other areas on the western coast.

With the New Zealand Company gone from the scene - although not the growing settler communities at Wellington and Nelson - and the defeat of the Ngati Toa-based Cook Strait Maori polity by 1847, Grey and his talented subordinate, Donald McLean, were able to

³ Few historians seem to feel the inclination to grapple with the complexities of this. The best analysis is probably that in Rutherford, *Grey*, 191-4.

⁴ *Ibid.*, 191.

⁵ It has not been easy to think of a term which accurately characterises Ngati Toa as an organized political and economic formation: ‘chiefdom’ seems as good as a term as any, but of course all Maori political formations were ‘chiefdoms’. Anthropologists and archaeologists use the term ‘chiefdom’ to describe societies that lie in between small-scale tribal societies and true states (see e.g. P V Kirch, *The evolution of the Polynesian chiefdoms*, Cambridge University Press, Cambridge/New York, 1984, 1-5). Kirch emphasises (*ibid.*, 2) that one can use the term ‘chiefdom’ without having to subscribe to the neo-evolutionary schemes that dominated American anthropology in the 1960s and 70s. However the term ‘chiefdom’ – even when confined only to Polynesia - as Kirch also notes, (*ibid.*, 4) characterises a wide range of societies, from comparatively simple societies at one end of a spectrum to incipient or proto- states or kingdoms at the other (e.g. Hawai’i):

Within Polynesia we find societies in which chiefs were inseparably linked as kinsmen to commoners, where redistribution was minimal, and production almost entirely a household matter. On the other hand were elaborate chiefdoms such as Hawai’i, where the chiefly class claimed descent independent from commoners, ranked themselves internally into seven or eight grades, practised sibling marriage to maintain those grades, mobilized corvée labour and organized production on a grand scale, and most notably, alienated land from ownership by commoners.

The Ngati Toa ‘chiefdom’ in Cook strait seems to fall somewhere in the middle. There are some indications of large-scale labour control, for example, and enslavement; to what extent Te Rauparaha’s special position at the head of Ngati Toa and at the head of the confederacy was in some way different or distinctive in terms of traditional Maori social organization is hard to say, although arguably there is some difference. Also the Ngati Toa polity was not simply the product of a process of social evolution within Maori society but was in fact a response to new opportunities for trade and commerce with the outside world.

continue with a program of large-scale pre-emptive purchase which continued to have major impacts on Ngati Toa. (As these policies were in the interests of the settler community there was no challenge to them from the latter, although by the early 1860s, of course, the settler community – led often by former prominent New Zealand Company people such as Stafford and Fox – had gained ascendancy over the colonial governors.) In 1853 came the Te Waipounamu transactions, which obliterated Ngati Toa’s remaining interests in the South Island (notably in Te Hoiere) and also reduced the formerly extensive reserves in the Wairau block to practically nothing. In 1858 the Crown acquired the Waikanae block from Ngati Toa and Ngati Awa, and then in 1859 the substantial Wainui block was acquired. An area at Papakowhai was acquired in 1862 and then in 1865 Mana Island was acquired as well. By the mid-1860s the iwi was reduced to the Porirua and Wairau block reserves, Kapiti Island and some small interests in the Northern South Island, as well as whatever remained of Ngati Toa’s interests to the north of Waikanae (which were not defined at this stage),

These events also had significant long-term consequences for New Zealand history. The verdict of Ian Wards was quoted in Report One, but his words can bear repeating:⁶

Grey’s inability to set a course strictly within the confines of enunciated policy and established law, and his refusal to distinguish between fomenting rebellion and disturbances, and defending guaranteed rights and property, between the dilemma of a once all-powerful chief faced with the acceptance of, and on the evidence trying to come to terms with, a newer, higher form of civilisation and an active “traitor”, at the same time demonstrated once more that moral considerations, in dealing with the Maoris, meant little to the Colonial Office when it came to practical politics, and that Grey was opportunist rather than statesman. For his lack of good faith in his dealing with Te Rauparaha nourished the feeling of distrust that led to the King Movement and the wars of the following decade.

1.3. Ngati Toa in later 19th century: a portrait

A. Introduction

Four aspects of Ngati Toa’s circumstances in the later part of the 19th century need to be emphasized: kin connections, which lost none of their importance and complexity; secondly, the astounding scale of land loss before the establishment of the Native Land Court; thirdly, the hopes and aspirations of what might be called the ‘second generation’ of the Ngati Toa leadership, especially Tamihana Te Rauparaha, Matene Te Whiwhi, Rawiri Puaha and (especially – perhaps more ‘third generation’) Wi Parata Kakakura, who will feature very

⁶ Wards, *Shadow*, 281.

prominently in this report; and finally, the effects of population decline brought about endemic and epidemic introduced diseases combined with general impoverishment. These four aspects of Ngati Toa's situation form an essential background to the land and tenurial issues which form the central focus of our report.

Professor Parsonson has noted that 19th century Maori society took a long time to change in response to the pressures that confronted and beset it. She writes:⁷

During the nineteenth century the nature of Maori society was very little altered. There were, it is true, superficial changes. People ate and dressed differently, generally lived in different sorts of houses, and were married and buried differently. Men – though not women – had long since abandoned the painful process of moko (tattooing). Many people were literate and had been to school. Many had Pakeha blood, and aspired to be bilingual. But it was still an old man's society, where the opinions of the kaumatua (elders) were consulted first. It was still a society in which makutu (sorcery) was practiced – or thought to be practiced – and was blamed for the death of anybody from sick children to successful parties in Land Court cases. It was a society in which, after people had recovered from initial daring bouts of deliberate tapu-breaking as they experimented with Christianity, many tapu were rigorously observed; and in which tohunga were still consulted by the sick. It was still a chiefly society, where the traditional chiefly families retained their influence in the community.

If this report has any longer-term historiographical interest, it lies in Ngati Toa as a kind of test case: was Ngati Toa really “very little altered” in the course of the nineteenth century? This question will be returned to in the conclusion. However a provisional answer can be given here: like any really complex and important question the answer is both yes – and no.

B. Far-flung kin linkages

The first matter to emphasise about Ngati Toa is its far-flung kin connections arising out of the tumultuous events of the 1820s and 1830s. Despite overall demographic collapse, these kin linkages – characterized by their amazingly extensive geographical spread, extending all over the Kapiti Coast, the Northern South Island, Taranaki, the Waikato, and the Chatham Islands – continued to be important. Two connections need to be emphasised, those between Ngati Toa people and Ngati Awa (in particular Ngati Mutunga) and with Raukawa. To some extent Ngati Toa politics in the 1830s reflect these distinct orientations: some leaned more towards their Ngati Mutunga/Ngati Awa connections, others – including Te Rauparaha himself – towards Ngati Raukawa. These ‘orientations’ – it would be going too far to call

⁷ Ann R Parsonson, “The Expansion of a Competitive Society: A Study in Nineteenth-Century Maori Social History”, *New Zealand Journal of History*, vol 14 (1980), 45, at 58.

them ‘splits’ or ‘divisions’, as that implies a kind of absoluteness which is inexact – continued to be important after 1850. *How* important they continued to be, given the general population decline and impoverishment is however very difficult to say.

Of all the ‘Ngati Awa’⁸ descent groups, it is with Ngati Mutunga that Ngati Toa had the closest relationships. The connexion by intermarriage between Ngati Mutunga and Ngati Toa was especially tenacious and complex, creating links that have definitely lasted to the present. Wiremu Piti Pomare (also known as Pomare Ngatata), chief of Ngati Mutunga, was married to Tawhiti, of Ngati Toa, although according to Ballara, Pomare sent Tawhiti back to her people after Haowhenua.⁹ But this aside, connections between the two groups were very close. Inia Tuhata of Ngati Mutunga, for example, who was an important landowner in the Chatham Islands and a rangatira of Ngati Mutunga, was a grandson of Te Rau-o-te-Rangi of Ngati Toa (he said that “I belong to the Ngati Toa tribe, through my grandmother”¹⁰). His mother, Mere Rangiaanu (Ngati Toa) married (i) Inia Tuhata the elder (Ngati Mutunga) and (ii) Wi Naera Pomare (Ngati Toa, Ngati Mutunga). Wi Naera Pomare, chief of Ngati Mutunga, was a son of Te Rongo (Ngati Toa) by her first marriage to one Captain Blenkinsopp; Te Rongo’s second marriage was, of course, to none other than Te Rangihaeata (she died at the Wairau, hit by a stray bullet, and it was for her sake that Te Rangihaeata exacted utu on the captives). Te Rau-o-te-Rangi, also known as Kawhe or Kahe, was a formidable Ngati Toa woman, one of only five women who were signatories to the Treaty of Waitangi in their own right, who was herself half Ngati Mutunga: her parents were Te Matoha of Ngati Toa and Te Hautonga of Ngati Mutunga. She married Jock Nicholl, a whaler, and in later years the couple ran a well-known inn at Paekakariki.¹¹ Wi Naera Pomare, who was thus

⁸ As was noted in Report 1, the term ‘Ngati Awa’ needs to be used with some care. See the Waitangi Tribunal’s *Wellington* report at p. 20:

Rather like the conglomerate names for the Whatonga-decent groups (most notably ‘Ngati Kahungunu’), people from the Taranaki region were often lumped together under a common name (usually ‘Ngati Awa’ by outsiders. This has led to some confusion in the historical record. According to Professor Alan Ward, the name ‘Ngati Awa’ appears most often in the nineteenth-century literature and ‘generally refers to tribes of north and mid Taranaki’ – ‘It is often used inclusively of Ngati Mutunga and Ngati Tama.’ ‘Te Atiawa’ became more commonly used in the documentary record from the 1860s: ‘Its core reference seems to be the tribes on the north and south banks of the Waitara, southward to Nga Motu (New Plymouth) but exclusive of Ngati Mutunga and Ngati Tama’.

Certainly to be avoided is equating ‘Ngati Awa’ with ‘Te Ati Awa’ and then with the Wellington Tenth Trust.

⁹ Ballara, “Pomare, Wiremu Piti”, *DNZB*, vol 1, 348.

¹⁰ (1883) 2 Wellington MB 163.

¹¹ On Te Rau-o-te-Rangi see Eleanor Spragg, “Te Rau o te Rangi, Kahe”, *Dictionary of New Zealand Biography* vol 1, 504; W.C. Carkeek, *Kapiti Coast*, Reed, Wellington, 1966, 140. She signed the Treaty at Port Nicholson on 29 April 1840. James Cowan describes Te Rau o te Rangi as follows: “a very fine and handsome woman. for she was straight and tall and deep bosomed, beautifully and generously proportioned and muscular of limb, a woman well fitted to mother warriors. She excelled in swimming and diving. No one on Kapiti, man or woman, was a more strenuous diver for shellfish: no one could fell a basket more quickly or remain under water longer; and in every swimming race she distanced her rivals, just as in later years she defeated all white sailors who challenged her”: *Evening*

half-Pakeha, half Ngati-Toa, was adopted by Pomare of Ngati Mutunga, presumably after the boy's mother died at the Wairau;¹² Pomare succeeded Patukawenga as the leading chief of Ngati Mutunga and Wi Naera Pomare became chief of the tribe in his turn, and married (as stated) Mere Rangaiānu (Ngati Toa). Their son was Sir Maui Pomare, who was educated at Te Aute, spent his summer holidays in the Chathams, received a medical degree in the United States, became Minister of Health and Internal Affairs in Massey's Reform government, and was regarded as belonging to Ngati Toa and Ngati Mutunga.¹³ Mere's sister, that is to say Wi Naera Pomare's sister-in-law, and Inia Tuhata the younger's aunt, was Hane Te Rau, also known as Jane Brown, (the same for whom the Te Kanae manuscript was composed in the 1880s). She (Hane) was adopted by Apitea¹⁴, another prominent Ngati Mutunga landowner in the Chathams, and lived at Porirua, in the Chatham Islands, in Auckland, and at Taranaki (she once served as an interpreter for Edward Chudleigh, a well-known Chatham Islands landowner when he was negotiating land purchases in the Chathams from Ngati Mutunga chiefs who had returned to Taranaki in 1870¹⁵): she is also said to have been at one time Sir George Grey's mistress. Grey took Mere and Hane's younger sister Margaret with him to South Africa when he became governor of the Cape, where she died. Hane Te Rau too was Ngati Mutunga and Ngati Toa, Ngati Mutunga mainly by adoption but also by descent through her grandmother, and Ngati Toa from her mother (and Scottish as well, through her father Jock Nicholls). So we have here a tangled web which includes Ngati Toa, Ngati Mutunga, Pakeha such as Captain Blenkinsopp and "Scotch Jock" Nicholls (and even Sir George Grey, no less). The connection was a strongly Anglican or 'Mihanere' one: Te Rau-o-te-Rangi, baptised by Octavius Hadfield in 1844, and Hane Te Rau were both committed

Post, July 27 1912, cited in Cody, *Man of Two Worlds*, 12. Te Rau-o-te-Rangi was born at either Kawhia or Urenui and took part in Te Rauparaha's journey to Kapiti in 1821. Jock Nicholl left his whaling ship in Cloudy Bay and he and Te Rau-o-te-Rangi were married and living on Kapiti by 1832-33. The couple were much engaged in trade and were married by the Presbyterian minister at Wellington in 1841. Te Rau-o-te-Rangi was baptised by Hadfield in 1844 and became a firm supporter of the CMS (Anglicans). From 1845 Te Rau-o-te-Rangi and Jock Nicholls ran the tavern at Paekakariki and Sir George Grey came to know the family well.

¹² See Angela Ballara, "Pomare, Wiremu Piti", *Dictionary of New Zealand Biography*, vol. 1, 348. Ballara says (ibid) that Wiremu Naera Pomara was Wiremu Piti Pomare's nephew. (Qu: is this correct? He would be his nephew, one assumes, in the sense of being his *wife's* nephew: that is that Pomare's wife, Tawhiti, was a sister of Te Rongo. This may be the case.)

¹³ Sir Maui Pomare still lacks a reliable and comprehensive biography. Till one appears see generally Cody, *Man of Two Worlds*, Wellington, 1953. Maui was eleven when his father, Wi Naera Pomare, died. His mother continued to live in the Chathams. Maui first went to Christchurch Boys' High School; his mother died in 1889 and his aunt, Hane Te Rau, at that time living in Auckland, had Maui transferred to Te Aute. Sir Maui Pomare acquired a medical degree in the United States and became a Cabinet Minister in the Reform Government.

¹⁴ Apitea was one of the Ngati Mutunga rangatira who stayed on in the Chathams when most of Ngati Mutunga and Ngati Tama returned to Taranaki and Poutama in 1868; he left Hane his property at Owenga.

¹⁵ E.C. Richards (ed.), *Diary of Edward Chudleigh*, Simpson and Williams, Christchurch, 1950, 270-71.

Anglicans, as was Pomare of Ngati Mutunga, baptised as Wiremu Piti (William Pitt) by Hadfield at Wellington in 1842.

Ngati Mutunga are, of course, closely lined to the hapus of Te Ati Awa (such as Ngati Te Whiti) as well. Through them, Ngati Mutunga in the Chatham Islands became closely involved as supporters of Te Whiti o Rongomai and Tohu Kakahi of Parihaka.¹⁶ The Pomare family were also closely linked with Parihaka, and the young (later Sir) Maui Pomare was there with his father when Bryce and his volunteers rode into the village on 5 November 1881 and was one of the few casualties of that unhappy affair (a horse stood on his foot).¹⁷ Wi Parata, who was of course the plaintiff in the celebrated litigation over the Whitireia Block discussed in chapter 8 of this report, regarded himself as Ngati Toa, Ngati Raukawa and Ngati Awa). He too was closely connected with events at Parihaka, and was also there at the time of the invasion led by Bryce.¹⁸ At the Ngati Toa s.30 case heard at Porirua in 1994, Maui Pomare, Sir Maui Pomare's grandson and thus a descendant of Te Rau-o-te-Rangi and Te Rongo, appeared as kaitiaki of the taonga of Ngati Toa and explained to the Maori Land Court the significance of a number of prized items, including Te Rangihaeata's greenstone mere and musket (in Te Rangihaeata's possession at the time of the Wairau affair) and Te Rau-o-te-Rangi's cloak and her tiki, which she wore when signing the Treaty of Waitangi.

Turning to Ngati Raukawa, it is well-known that the connections between Ngati Toa and Ngati Raukawa were close and long-standing. As Hohepa Tamaihengia put it in the Himatangi case (the context of which is explained fully in chapter 3) in 1868:¹⁹

Ngati Toa and Ngati Raukawa were connected from time immemorial.

Te Rauparaha had been accepted by Ngati Raukawa as one of their own rangatira. According to Rawiri Te Whanui (Ngati Raukawa), also speaking in the Himatangi case in 1868:²⁰

Ngati Raukawa only [were] at that meeting. No chiefs of other tribes. Te Rauparaha was there - he is Ngati Raukawa. Don't know if he was of Ngati Toa and Ngati Raukawa. He was a chief of both tribes. He had equal mana over Ngati Toa and Ngati Raukawa.

¹⁶ See R.P. Boast, *Ngati Mutunga and the Chatham Islands: a report to the Waitangi Tribunal*, 1995, 13-24. Huge quantities of food (eels, grey duck, swan, mutton bird and young albatross) were shipped from the Chathams to Parihaka.

¹⁷ Maui Pomare was five years old at the time. The women of Parihaka had prepared 500 loaves of bread to feed their invaders (Hazel Riseborough, *Days of Darkness: Taranaki 1878-1884*, Allen & Unwin, 1989, 164) and in keeping with this Wi Naera Pomare sent Maui to offer a gift of a loaf of bread to the soldiers in obedience to Te Whiti's command to feed one's enemies: E.C. Richards, *Chatham Islands*, 1952, 158.

¹⁸ See Hohepa Solomon, "Wiremu Te Kakakura Parata", *DNZB*, II, 375.

¹⁹ Evidence of Hohepa Tamaihengia, Himatangi case, (1868) 1 C Otaki MB 401.

²⁰ In the Himatangi case, at (1868) 1C Otaki MB 231:

In the Waiorongomai case (1869), Rota Te Tahiwī (Ngati Raukawa) stated that Te Rauparaha sent to Taupo "to fetch over *his people the Ngati Raukawa* to occupy the land."²¹ Given these close links it is not surprising that in the later 19th century there was constant interaction

²¹ Evidence of Rota Te Tahiwī (Ngati Raukawa), (1869) 1 G Otaki MB 99 (emphasis added).



Sir Maui Wiremu Pomare, 1923.

Alexander Turnbull Library, Wellington.

Sir Maui Pomare (Ngati Toa, Ngati Mutunga) was the son of Wi Naera Pomare (Ngati Mutunga, principal claimant for Ngati Mutunga in the Chatham Islands Native Land Court case in 1870) and Mere Rangiaanu (daughter of Te Rau o te Rangi) of Ngati Toa. Maui was present at Bryce's invasion of Parihaka as a small child and went on to attend Te Aute college and then trained as a doctor in the United States. He became Member of Parliament for Western Maori and a Cabinet Minister in the Reform government which took office in 1912. Sir Maui was a close colleague of Apirana Ngata and Peter Buck (Te Rangihiroa). His particular interest and responsibility was in the field of Maori health, but he was also interested in Maori traditional history and mythology.

between the communities at Porirua, Paremata-Mana and Otaki: in fact many Ngati Toa people seem to have spent much of their lives at Otaki, which seems to have formed the largest solidly Maori community in the lower North Island in the difficult and constrained circumstances of the later 19th century focused on in this report. Nevertheless a distinct Ngati Toa community at Porirua also continued, even if much reduced.

Te Rauparaha's hapu within Ngati Raukawa were the Ngati Huia, who preserve a strong sense of their connection to Te Rauparaha to the present day, as was explained by Iwi Nicholson in 1994:²²

Now Te Rauparaha's mother belonged to Ngati Huia and Ngati Huia have a story that's been handed down for all those generations to use. They are fiercely proud of Te Rauparaha although he came from the baby of that family, his mother did. But the interesting thing in the story, they have that might may or not be in conflict with the other stories is that the coming of Te Rauparaha was predicted by Koroua Puta. He ariki of Ngati Huia, and because it was predicted by Koroua Puta, so when it happened it was a prediction and it was bound to happen, so when it happened it was a fulfillment of a prediction and he was a rangatira. That made him a rangatira; he was brought up a rangatira. And Ngati Huia won't stand for any nonsense that says otherwise. One of the interesting things about that is that Uncle Pat [Pateriki Rei] told some of the story yesterday, was that when Werawera asked for Parekohatu, Koroua Puta is meant to have said, "Heioi ano raku te mea e mahue mai nei ko taku mokai e mea harihari wai maku, ko Parekohatu. Hei ano, ki te whiwhi tamariki tamariki tera kaore kore te te tamariki e taniwha. Na Koroua Puta te korero hei ki a Ngati Huia" and that was a prediction so that when the first child was born they took the baby back to Maunga Tautari to Koroua Puta to find out whether this was the taniwha that he predicted. And it was due to that incident how the first child got his name. And Koroua Puta was meant to have looked at the baby, and don't know how he would have told, but he said, "Kao, waiho ma te rangi ka tukua. Ko tupangia taua tamati ko te rangi ka tukua. Ko enei te putanga mai o tena ingoa ki taku mohio he ai kia Ngati Huia", and it wasn't till Rauparaha was born, who we are told was an unusual person. We are told that he wasn't a very big person but he was unusual that he had six toes on one foot and the most unlikely person to pull a prophecy and I suppose the mother and father thought and when Koroua Puta saw that baby he said "Ko tena, koia tena" and that was the reason he was brought up as a Chief and Ngati Huia say it was predicted. It was bound to happen. And he was the result and [they] won't stand for anyone that tells us otherwise.

Matene Te Whiwhi also belonged to Ngati Huia.²³ Ngati Huia's marae at the present day is located near Otaki. Ngati Huia played a key role in the litigation over a number of the Land

²² In the Ngati Toa Rangatira s. 30 case, (1994) 20 Nelson MB 196.

²³ Evidence of Heni Te Whiwhi, at 1905 AJHR G-5, 8. Heni Te Whiwhi was the son of Matene Te Whiwhi.

Court blocks in the Kapiti-Horowhenua region (over the Horowhenua block, for instance), during which Matene Te Whiwhi and other rangatira of Ngati Toa supported them as best they could. In fact it could be argued that if the pre-1847 'Ngati Toa' polity in the Cook Strait region had a dominant lineage, that lineage was actually Ngati Huia, Raukawa and Toa at the same time, and to which many – not all, of course – of the dominant rangatira belonged (Te Rauparaha, Te Rangihaeata, Matene Te Whiwhi, Tamihana Te Rauparaha). Interestingly when fighting broke out in Taranaki in 1860 and Wiremu King asked for support from his relatives and friends in the Cook Strait region, it was to Ngati Huia he seems to have turned, and Ngati Huia seems to have been a bastion of support for the Kingites in Taranaki. This is not altogether surprising when it is recalled that the idea for a Maori King had originally been developed by none other than Tamihana Te Rauparaha and Matene Te Whiwhi.²⁴

The Ngati Raukawa presence and connexion was a crucial one. Ngati Raukawa seems to have been one of the largest iwi in the Kapiti region, especially so after most of the North Taranaki people went home in the late 1840s. Like Ngati Toa, Ngati Raukawa came south as a heke, a true migration; they came to stay, and are still dominant at Otaki. Relations between Ngati Toa and Ngati Raukawa remain close, and a number of individuals have standing as kaumatua of both groups. In 1994 Iwi Nicholson explained the relationship between Ngati Toa and Ngati Raukawa as follows:²⁵

[In 1987] Ngati Raukawa or more correctly, I guess, Ngati Pareraukawa section of Ngati Huia, invited Ngati Toa to open a meeting house known as Nga Tokowaru, my own family's meeting house. And the reason for doing that was, and I might say there was a little bit of a dispute before we got to that. But the reason for doing that is that we're settled on land given to our ancestors by Te Rauparaha, not unlike other sections of Ngati Toa that are living elsewhere. And while we're Ngati Raukawa predominantly, Ngati Raukawa are interesting people. After they came down here, you'll find that strategically, members of Ngati Toa were intermarried with them, so that there was a conqueror in each camp. And if you look at all Ngati Raukawa hapu, the whole lot, you'll find there's Ngati Toa bloodlines in all of them.

C. Extent of land loss before 1862

It can hardly be emphasized enough that Ngati Toa's major land losses were experienced well before the establishment of the Native Land Court in 1862. Losses and difficulties brought about by the Court are a kind of a postscript to the main story, which are of course the great pre-emptive purchases of 1847-53. As an iwi who suffered the bulk of the land alienation –

²⁴ See Searancke to McLean, 29 August 1860, 1861 AJHR C-1, 296.

²⁵ Ngati Toa s. 30 case, (1994) 20 Nelson MB 198.

and on a truly massive scale – before the advent of the Native Land Court and the post-1869 system of Crown purchasing by undivided share-buying, the historical experience of Ngati Toa more resembles that of Ngai Tahu than it does say Te Arawa, Tuwharetoa or Ngati Porou.

The circumstances which led to the deeds of 1847-53 were traversed in Report One. The decisive transformation of Ngati Toa's circumstances came with the 1847 Porirua and Wairau deeds, extorted – it is fair to say – by Grey and his officials out of a depleted Ngati Toa leadership left somewhat rudderless with Grey's illegal detention of Te Rauparaha in 1846 and the military campaigns against Te Rangihaeata which left the latter chief in exile amongst his Ngati Huia kin at Poroutawhao and unable to influence events. The Wairau deed ceded to the Crown the bulk of Toa's interests in the South Island, the Porirua deed in the North. Both disposed of very large areas, but the area contained within the limits of the Wairau deed was much larger than that of the Porirua deed. The Porirua deed reserved a number of areas to Ngati Toa, shown much more clearly on the sketch plan attached to the deed. Three principal areas were reserved, these being:

- a very substantial coastal block essentially running from Plimmerton to Wainui, the landward boundary seeming to run along the high ridge lines on the seaward side of the Horokiwi Valley. The area reserved included Taupo Pa, Pukerua, and Paekakariki;
- a much smaller area on the southeastern side of Porirua harbour, running from the Porirua stream outlet about half-way up the harbour and then inland (this area later became known as the Aotea block); and
- another quite substantial area taking in the whole of the Whitiorea peninsula and Titahi Bay and following the coast down to Ohariu and the Port Nicholson Block boundary and then from there back to the Porirua stream outlet. (As is explained below, however, 500 acres at the northern end of the peninsula was soon gifted by Ngati Toa to the Church of England for the establishment of a school: this is the area often referred to as the "Whitiorea Block". It was to have a tumultuous history.)

Title to the rest of the Wellington region was extinguished with Grey's all-important Crown grant to the New Zealand Company in early 1848. The grant partly gave effect to earlier agreements and understandings, but also vested a large area in the Crown which had never been paid for at any time (as the Waitangi Tribunal has emphasised). Ngati Toa, along with the other Upper South Island tribes, sold their remaining South Island interests to the government in the course of McLean's complex Te Waipounamu transactions of 1853-55, in

return for certain rights to reserves. But the Te Waipounamu deed also massively reduced the former substantial reserve at the Wairau. When Grey bought the Wairau block from Ngati Toa in 1847 a comparatively large area was set aside as a reserve (117,000 acres). In 1853 this area was reduced by over 99%, to about 1,000 acres. (The Waitangi Tribunal has set this dramatic change into a context of changing policy relating to reserves and Crown purchase).

Quantifying the areas lost is difficult because the deeds themselves often do not even attempt to give acreages for the lands acquired, or (in the case of the Te Waipounamu deed) relate just to an extinguishment of interests within a broadly defined region. The Wairau deed gave no defined boundaries at all: the only boundaries described with any precision were the various reserves. To quantify these areas would require the deeds to be plotted out on a map and the acreages calculated, to which would need to be added areas lost to Toa through the formation of the Wellington Crown grant. The Waitangi Tribunal has calculated the acreage of the ‘remainder’ lands in the 1848 grant as 120,626 acres, some of which were taken from Ngati Toa.²⁶ Just the Wairau *Reserves*, nearly wholly lost to Toa in 1853, are over 100,000 acres; the parent block must be several million acres. How much was lost by the Te Waipounamu deeds in Te Hoiere and other areas is very difficult to say, but could run to the millions of acres, with perhaps another several hundred thousand acres with the various North Island deeds. The Kapiti Coast purchases of the later 1850s were also of substantial areas. The Wainui block was estimated to contain about 30,000 acres,²⁷ and the Waikanae block about 95,000.²⁸ And this is only with regard to what could be called Ngati Toa’s *core* areas, although admittedly where Ngati Toa’s interests within the Wairau block shade into those of Ngai Tahu is certainly a matter of debate. The loss of land was certainly on a scale which can only be described as colossal.

D. After-effects of the Christian revolution: Ngati Toa’s hopes and aspirations after 1850

After 1850 the leadership of Ngati Toa fell largely to the triumvirate of Matene Te Whiwhi, Tamihana Te Rauparaha, and Rawiri Puaha – or at least, to put it more accurately, that is the impression one gains from the written record (the reality may have been a little different) Wi Parata later said that “Tamihana Te Rauparaha and Matene were the chief men in the tribe – the other chiefs took their lead from them and supported what they did and said”.²⁹ While Matene Te Whiwhi and Tamihana Te Rauparaha were oriented to Ngati Raukawa, and in fact

²⁶ Waitangi Tribunal, *Te Whanganui a Tara*, 255.

²⁷ *Servantes to McLean*, 6 July 1859, 1861 AJHR C1, 285.

²⁸ *Servantes to McLean*, 6 August 1858, 1861 AJHR C1, 279.

²⁹ Evidence of Wi Parata to 1905 Royal Commission on Whitiareia and Otaki Trusts, 1905 AJHR G-5, 20.

could (and did) say they *were* Ngati Raukawa, Wi Parata belonged more to the Ngati Toa-Ngati Mutunga connection.

Matene Te Whiwhi³⁰ was the son of Rangi Topeora (Te Rangihaeata's sister), and was born before the heke to the south, and he worked closely with Tamihana Te Rauparaha (Katu). Tamihana Te Rauparaha was Te Rauparaha's son by his fifth wife, Te Akau – who was Tuhourangi – and is said to have been born at Pukearuhe in North Taranaki and carried as a baby to Kapiti³¹. Katu was present at the fall of Kaiapoi and was also present when Ngai Tahu attempted to ambush his father around 1833 (Katu describes the scene very vividly and fully in his biography of his father). Tamihana Te Rauparaha and Matene Te Whiwhi taught themselves to read by studying Maori translations of the Gospels.³² Both men, who were, of course, cousins, were deeply committed to the Anglican Church. They journeyed together to the Bay of Islands in 1839 to seek a missionary to come to the Cook Strait region and became close associates of the Reverend Octavius Hadfield, who was based first at Waikanae and then at Otaki. The advent of the CMS mission in the area was later described by Heni Te Whiwhi, Matene's daughter, in 1905 (when she was giving evidence on the events leading up to the gift of Whitireia):³³

My father was Matene Te Whiwhi; he was one of the givers of the land at Porirua and of the land at Otaki. He was a Ngati Huia, a sub-hapu of the Ngati Raukawa; he was also Ngati Toa. Before the battle of Te Kuititanga, Matene Te Whiwhi and Tamihana Te Rauparaha decided to get a missionary of the Church of England to come and reside in the midst of Ngati Raukawa. They told the people of their intention, and said they were going to Paihia, Bay of Islands, to ask for one. The people endeavored to dissuade them from going, fearing that Ngapuhi might do them harm for some early acts of Ngati Raukawa against Ngapuhi. They, however, did not heed their people's warning, as their desire to have a minister in their midst to preach and teach the gospel of Christianity to their people was great. They left for Paihia and saw the head of the mission there, and told him of their wish. Mr. Hadfield was sent here, and he set up at Waikanae and Rangiuru (Otaki).

Wi Parata gave an interesting twist to this narrative when in evidence he gave to the Royal Commission on the Whitireia and Otaki Trusts in 1905 he said that Ngati Raukawa had decided to seek a missionary following their defeat at the Battle of Kuititanga:³⁴

The first person who brought the news of the Gospel to these parts was a Maori, and Waikanae was the first place where he announced the Gospel. Ngatiawa were the people living there

³⁰ See W H Oliver, "Te Whiwhi, Henare Matene", *DNZB* I, 528.

³¹ Steven Oliver, "Te Rauparaha, Tamihana", *DNZB*, I, 507-8.

³² Our thanks to Paul Thomas for this point; see also W H Oliver and S Oliver, *supra*.

³³ 1905 AJHR G-5, p. 8.

³⁴ 1905 AJHR G-5, 20.

then, and Ngatitōa. After this trouble arose, known as the fight at Kuititanga; at that time Ngatiraukawa had not embraced Christianity. Ngatiawa and Ngatitōa only had done so. After the battle of Kuititanga, the Ngatiraukawa thought that they had been beaten because the Ngatitōa and the Ngatiawa were Christians. Tamihana Te Rauparaha and Matene Te Whiwhi went to Ngapuhi to get the new religion and a clergyman, and Mr. Hadfield came and took up his residence at Waikanae. He went there because the people there had embraced Christianity. After that, Ngatiraukawa embraced Christianity.

Wi Parata's chronology does not quite fit, as it happens, but his view that Raukawa particularly wanted to have their own missionary in order to maintain parity with Ngati Toa and Ngati Awa seems very plausible.

Hadfield, for his part, had been keen to go to central New Zealand, notwithstanding his own poor health and the fact that the region had a bad reputation at the CMS mission at Paihia.³⁵ Matene and Tamihana came back home with Hadfield and Henry Williams on the CMS vessel, the *Columbine*. They arrived in the region at the same time as William Wakefield and the *Tory* – in fact the *Columbine* sailed into Port Nicholson just after Wakefield and the *Tory* had left after completing the Port Nicholson deed.³⁶ Hadfield and Williams were amazed by the extent to which the Christian revolution had preceded them in the district, not only at Porirua and Waikanae but at Port Underwood as well. Henry Williams preached to large groups at Mana and at Waikanae. Williams then left Hadfield at Waikanae and set off – astonishingly – on foot to Tauranga. Hadfield was alone, with the nearest CMS missionary 300 miles away. In December 1840 Hadfield crossed Cook Strait and was gratified by the enthusiasm for the mission he found he found in Queen Charlotte Sound. He was much less gratified, however, to find to his surprise to find the Wesleyan missionary, Samuel Ironside, already *in situ* at Port Underwood and attracting large congregations of his own.³⁷ (On behalf of the Wesleyan Missionary Society (WMS) Ironside had established his mission at Cloudy Bay in December 1840.³⁸) Few missionaries were able to shake off denominational prejudices in New Zealand, prejudices they passed on sometimes to their Maori congregations. While Ngati Toa mostly became Anglicans, those at Cloudy Bay gravitated to Ironside's mission and absorbed from him the distinctive Methodist Christian evangelical style.

³⁵ See Lethbridge, *Wounded Lion*, 39-40.

³⁶ On Henry Williams' journey and his reaction to the NZ Company transactions see Lawrence M Rogers, *Te Wiremu: A Biography of Henry Williams*, Pegasus Press, Christchurch, 1973, 141-45.

³⁷ Hilary and John Mitchell, *Te Ara Hou* (2007), 75.

³⁸ Ironside is the subject of an excellent biography by W.A. Chambers, *Samuel Ironside in New Zealand*, Ray Richards, Manurewa, 1982. The CMS and the WMS did not always co-operate with each other; Hadfield being particularly reluctant to acknowledge any clergy other than those of the Church of England. What Maori made of such sectarian jealousies is unclear.

From 1840 onwards Hadfield played a central and sometimes controversial role in the religious and political history of the region – his opinions on the Taranaki and Waikato wars were later to prove unpopular with the government and with some politicians (not all: some agreed with him) and sections of the settler community.³⁹ The scale of interest in Christianity in the early 1840s is astonishing. On a visit to Te Tau Ihu in early 1843 Hadfield “reported daily congregations of 300-400, and about 700 on Sundays during his stay at Okukari where he baptised forty-five male adults, fifteen female adults, and twenty-one children”.⁴⁰ It was the same at Waikanae and Porirua. It is not inappropriate to speak, in fact, of a “Christian revolution” in the Cook Strait region in the years immediately before and after 1840.⁴¹ Both Hadfield and Ironside could not keep up with the demand for copies of the scriptures. The Christian revolution was a literacy revolution as well. Some historians have seen the latter as more important than the former, but they seem hard to disentangle in fact.

Otaki became a major centre of Christian evangelisation and teaching under Octavius Hadfield and Samuel Williams. Years later Heni Te Whiwhi described what it had been like:⁴²

In.1853, I think, the Rev. Samuel Williams opened the boarding-school. I think the Reverend S. Williams arrived here in 1845. The children who came to this school came from Hawke’s Bay, Wairarapa, Manawatu, Rangitikei, and the Ngatitōa and Ngatiawa settlements at Waikanae, Wainui, and Porirua. The boarding-school was made to board the children from kaingas away from this locality. The Ngatiraukawa children who lived here lived with their parents and attended the day-school. I think there were about 150 boys boarded here, and about 50 girls boarded with the Rev. S. Williams. At the boarding-school the Rev. S. Williams always conducted a short service, morning and evening. The elders in the place used to go to these services. After morning services the Rev. S. Williams used to teach the elders, after dismissing the boys and girls, the lessons of the Church. The boys and girls were taught religious lessons in the Church of England only on Sundays, when Sunday-schools were held. During Mr Hadfield’s time the Ngatiraukawa always attended services in the Rangiatea Church in very large numbers. The church, on almost all occasions, not being able to hold the people. The same was the case in the Rev. S. Williams’s time.

³⁹ See Hilary and John Mitchell, *Te Ara Hou* (2007), 399.

⁴⁰ Hilary and John Mitchell, *Te Ara Hou* (2007), 76.

⁴¹ See Hilary and John Mitchell, *Te Ara Hou* (2007), 113-14:

It is clear that Christianity was eagerly sought after by Maori, and that it had very strong impacts on the lives of individuals and communities. There are numerous conversion stories of individuals who altered their way of life because of their new beliefs: Hori Te Karamu of Massacre Bay, whose changed behaviour so surprised Pakeha; the shooting victim at Wakapuaka who so readily forgave his attacker; Rawiri Kingi Puaha who tried to avert the disaster at the Wairau by begging both sides to observe the teachings of the New Testament...Community life changed significantly too. Morning and evening prayers, and Sunday observance became important patterns in the lives of the new Christian communities...

⁴² Evidence of Heni Te Whiwhi to Royal Commission on Porirua and other School Trusts, 1905 AJHR G-5, 8.

Katu took the name Tamihana (i.e. Thompson) when he was baptised by Hadfield in March 1841. Both Matene and Tamihana missed the Wairau affair as they were away on a long missionary journey amongst the Ngai Tahu of Murihiku (where their somewhat over-zealous Anglicanism had managed to annoy the local Methodist missionary James Watkin).⁴³ The fact that two of Ngati Toa's leading chiefs were in effect Anglican missionaries among Ngai Tahu also serves to counter some of the more usual stereotypes of Ngati Toa. Both men were married on the same day, 11 September 1843, Tamihana to Te Kapu, daughter of Tawhiri (Raukawa) and Matene to Pipi Te Ihurape, with Hadfield officiating. The two lived as Christian gentlemen and adopted European styles of dress and aspects of material culture. In November 1845 William Williams was invited to visit Tamihana's house, which he did, finding it to be "neat with 4 glass windows and is intended to be divided into four rooms".⁴⁴

Matene Te Whiwhi and Tamihana Te Rauparaha both spent some time at St John's College in Auckland, and in fact were there when Te Rauparaha was brought to Auckland on HMS *Calliope*. Te Rauparaha requested both young men to return home to their people, which they did. Matene Te Whiwhi and Tamihana Te Rauparaha were both signatories to the Wairau and Porirua deeds. Along with Te Rauparaha himself Hoani Te Okoro, Wiremu Kanae, Watarauhi Nohorua, and Rawiri Hikihiki they both acted as donors of the 500-acre block at Whitireia. It seems likely that Tamihana and Matene were hoping to see an equivalent of St John's College at Auckland built at Whitireia (although of course this never happened – the full story of Whitireia is narrated fully below). Tamihana's most amazing journey, however, was the one he made in 1851-2 when he traveled to England with William and Jane Williams and other members of the CMS mission and on 30 June 1852 he was presented to Queen Victoria. Tamihana was impressed with the British monarchy and began to develop the idea that Maori should have a monarchy of their own. He discussed this with his cousin Matene on his return, and the two made a number of journeys around the North Island making the case in favour of a Maori monarchy and ending the sale of land to the government. Matene Te Whiwhi was a prominent supporter of the building of the great house Taiporohenui set up as a meeting place to discuss land issues.

All these factors add up to a complex and fascinating picture. Matene and Tamihana had evidently put together in their minds a new and hopeful vision for their people based on peace, accommodation, partnership with the Crown and close association with the Anglican Church. It is tempting to see their idealism as at the same time being flawed by a certain amount of gullibility, exploited brilliantly by Grey, but whether that completely captures the complex reality of things is not clear. They were prepared to acquiesce in formerly 'slave'

⁴³ McLintock, *The History of Otago*, 123.

⁴⁴ Frances Porter (ed), *Turanga Journals*, 355.

tribes being able to sell lands to the Crown or later to press claims in the Native Land Court – although the latter institution must have sorely tested their friendship, given the fact that in the Himatangi case the two cousins found themselves on opposite sides. They wanted schools and saw the institution of a Maori monarchy as a peacemaking and unifying force. The exact details are hard to see clearly but taken together their actions do reveal a certain coherence and vision. Rawiri Puaha seems to have been of a similar outlook, but his denominational affiliations were quite different, as he had lived mainly at Port Underwood and Cloudy Bay before the Wairau Affair and became a close associate of the Wesleyan minister, the Reverend Samuel Ironside. Rawiri Puaha, Tamihana Te Rauparaha and Matene Te Whiwhi assisted the government in 1850 by persuading Maori “squatting” on alienated lands at the Wairau to leave peaceably, albeit at some personal cost and grief to themselves. It must have been this intervention in 1850 that Grey later remembered when giving his evidence to the Smith-Nairn commission in 1879. Grey recalled an occasion when it had been necessary to carry out some arrests of Maori. Rawiri Puaha (“one of the best men I have ever known in my life”), Tamihana and Matene assisted with the arrests “and I saw tears running down their cheeks as they did so, but they considered it a duty and performed the disagreeable duty accordingly”.⁴⁵ All three, it seems to us, were honourable men trying to live up to a Christian ethic of peace and concord. Whether the response of Crown and settler lived up to this ethic is a central question of this report.

Tamihana Te Rauparaha and Matene Te Whiwhi, although proponents of the idea of a Maori king, worked hard to prevent the Taranaki and Waikato wars from leading to conflict in the lower North Island. They also attempted to mediate in the complex land disputes involving Ngati Raukawa, Ngati Apa and Rangitane over the Rangitikei and Horowhenua lands. The two chiefs accompanied Featherston when he went to meet Ngati Apa in February 1864. Featherston noticed that the two were regarded with considerable respect by Ngati Apa:⁴⁶

The proceedings were opened by Governor Hunia, addressing a few compliments to Matini [sic] Te Whiwhi and Tamihana Rauparaha. The Ngatiapas recognized them as chiefs, and would to some convenient extent be guided by them, but as to Ihakara he was nobody, and they utterly ignored him and his people.

Tamihana was also a historian of his people, who wrote a biography of his father which has to stand as one of the most remarkable texts written in the Maori language in the 19th century. Historians have been concerned to emphasise Tamihana’s partiality for his

⁴⁵ Statement of evidence of Sir George Grey to Smith-Nairn Commission, MA 67/4, WNA. Grey was discussing the chiefs’ motivations for selling the Wairau block at the time.

⁴⁶ Featherston to Fox, 18 February 1864, 1864 AJHR E-3, 36.

father's achievements – which is true, and understandable – but seem unable to come to terms with Tamihana's book as the amazing literary monument that it is. That someone who was born on the journey to Kawhia in the days before literacy came to New Zealand could later write a comprehensive biographical history in an indigenous language seems no less an achievement than the writings in indigenous languages using Latin script of the indigenous peoples of Mexico and Peru after the Spanish conquest which have attracted such historiographical attention. That no full transcription and translation of this great work has yet been published is indeed hard to fathom. Matene, too, was steeped in the history of his two iwi, Ngati Toa and Ngati Raukawa. In 1872⁴⁷ Matene gave evidence describing Ngati Toa's travels from Kawhia and the history of the tribe's settlement at Kapiti and Porirua and of its relations with the Ngati Apa, Muaupoko, Rangitane, Ngati Kahungunu, Te Ati Awa, Ngati Tama, and Ngati Raukawa. The evidence took three days to present in the Court and covers many pages of the Court minutes. He gave evidence in the Court on many other occasions, not only in the sittings in Otaki, but also in complex cases in the southern Waikato.

After Matene's death his daughter Heni, also a committed Anglican, became a prominent leader and spokesperson for her people. In 1905, when giving evidence before the Royal Commission into Whitiareia and related lands she introduced herself in the following manner:⁴⁸

My age is sixty-nine years; I was born at the time of the Battle of Haowhenua, which was, I think, between Te Rauparaha and his tribe against the Ngatiawa....I was born at Cloudy Bay in the other island. My father was Matene Te Whiwhi; he was one of the givers of the land at Porirua and of the land at Otaki. He was Ngatihuiua, a sub-hapu of the Ngatiraukawa; he was also Ngatitua.

The other key personality in the pages that follow is Wi Parata (Wiremu Te Kakakura Parata).⁴⁹ Wi Parata was born on Kapiti in the mid-1830s, and died in 1906. His mother was Metapere Waipunuhau, daughter of Te Rangihiroa (Te Pehi Kupe's brother). His father was American, a whaler and merchant named George Stubbs. Hohepa Solomon writes that "the name they gave to their son, Te Kakakura, said to have been taken from the dying speech of Te Pehi Kupe, refers to the red fathers under the wing of the kaka, symbolic of high chiefs".⁵⁰ When his father was drowned in a boating accident near Pukerua Bay, Wi Parata moved with his brother Hemi Matenga and his mother to the great Ngati Awa pa at Kenakena at the Waikanae River mouth, and it was here that he grew up. Wi Parata became a well-to-do

⁴⁷ In the Kukutauaki case, (1872) 1 Otaki MB, pp 135 et seq.

⁴⁸ 1905 AJHR G-5, 8.

⁴⁹ See Hohepa Solomon, "Parata, Wiremu Te Kakakura", *DNZB* vol II, 374-5.

⁵⁰ *Ibid*, 374.

landowner in the region after most of Ngati Awa returned home to Taranaki in 1848. He was a wealthy and very prominent person in the Waikanae district with a “large and imposing” house in Waikanae and an impressive farm property. Some of his land dealings were in fact controversial, and led to an investigation by the Native Affairs Committee in 1888 following a petition by Inia Tuhata (of Ngati Mutunga).⁵¹ He was married twice; his second wife, Unaiki, was Ngati Raukawa and Ngati Toa, and they had many children. In 1871 he became Member of Parliament for Western Maori, but he was also closely connected with the community at Parihaka, was present at the time of the invasion, and did what he could to assist Te Whiti and Tohu after they had been arrested and detained. Wi Parata was and remained committed to the pacifist principles of Te Whiti: one of the reasons for his dislike of the scheme approved by the Supreme Court for the expenditure of the Whitireia educational trust funds was that an aspect of the proposal was that the children be taught military drill.⁵² He of course played a leading role in the litigation over Whitireia as well as over other land issues. He died at Waikanae in 1906 from injuries from falling from a horse. He is buried near St Luke’s Church at Waikanae. The headstone reads:

Hei tohu aroha he whakamaharatanga ki WI PARATA TE KAKAKURA WAIPUNAAHU,
rangatira nui o roto i ona iwi [] rua - i a Ngatittoa me Ngatiawa...

E. Mortality, health and wellbeing

The other factor to emphasise about Ngati Toa’s circumstances is population loss. Exact figures are impossible to obtain, but by 1880 or so Ngati Toa were certainly a very small group. Epidemics began to devastate the tribes of central New Zealand in the 1830s, if not before. McLintock mentions a retaliatory expedition that Ngati Toa and its allies planned to launch against Ngai Tahu in 1836 which had to be abandoned because of an epidemic.⁵³ Dieffenbach has provided a census of the Maori people of the Cook Strait region as at 1840.⁵⁴ By his count the Maori population of the northern South Island at that time stood at only

⁵¹ Petition of Inia Tuhata, 12 June 1888, MA 70/3 and 70/4; Ngarara Commission MA 70/1, WNA; on this rather involved affair (which does not seem to be relevant to this report see Anderson and Pickens, *Wellington Region*, 283-299.

⁵² This comes out very clearly in Wi Parata’s evidence given to the Royal Commission on the Porirua and Otaki Trusts in 1905. He said:

The object of giving the land was with the object of teaching the new religion, with a view to cause the intertribal wars and the killing of men to cease. Now I hear to-day that it is suggested that the children are to be taught how to kill and destroy human beings....Speaking for myself, I disapprove of the present scheme. The part I most disapprove of is the part where it is suggested that Maori children should be taught how to kill human beings – military drill. That is not the work of religion; that was not the purpose for which the land was given.

⁵³ McLintock, *History of Otago*, 92; McLintock’s source for this is the Weller correspondence, MS A1609, Mitchell Library, Sydney.

⁵⁴ Dieffenbach, *Travels in New Zealand*, John Murray, London, 1843, vol 1, 195.

1410. Dieffenbach's reckoning would make Ngati Toa the largest single group (500 people are directly identified as "Ngati Toa", but Dieffenbach does not mention Ngati Koata and Ngati Rarua, presumably classifying all these groups as Ngati Toa.) Dieffenbach's figure for Ngati Toa living in the North Island at this time at Porirua, Kapiti and Mana is 320: that is to say that more Ngati Toa lived in the South Island than in the North – a situation which changed significantly after the Wairau. How reliable Dieffenbach's maths might be is impossible to say, but a combined population of 850 people or affiliating to Ngati Toa in both islands, this figure probably including Rarua and Koata, is obviously not large – although one could not describe it as insignificant. And the population clearly continued to fall throughout the 19th century.

In 1843 George Clarke jr., Native Protector at Wellington, drew attention to Ngati Toa's declining numbers. Clarke attributed this to disease and also to the sheer loss of life caused by years of campaigning. His comments are made in the context of explaining his concerns to his father about the growing tension between Maori and settlers in 1843:⁵⁵

The natives will not let the Europeans go upon Land which they declare they have never sold and how can we expect it. Is it likely that they would sacrifice what has cost them the blood of their old nobility and for which thousands have already sacrificed their lives? Look at the Ngati Toa tribe. Where are the thousands that migrated here more than twenty years ago with Rauparaha - they are gone - all gone with the exception of about two hundred 50 fighting men. It is true that disease has carried off some but the many have died in conquering and retaining possession of their lands.

When G F Angas visited Mana Island in 1846 he found it nearly deserted, "not more than a dozen houses".⁵⁶ In 1848 many Te Ati Awa people living at Waikanae returned home to Taranaki, where of course war and confiscation was to assail them in the 1860s. A few Te Ati Awa stayed on in the area, however, most notably Metapare Waipunahau, the widow of a whaler, and her two sons Hemi Matenga and Wi Parata - both of whom are of course also regarded as Ngati Toa.⁵⁷ Charlotte Godley passed through Waikanae in 1850 and found it deserted (the 'most desert-looking place that perhaps ever was seen'⁵⁸). Four years later Richard Taylor went to look for the large decorated church built under Octavius Hadfield's

⁵⁵ George Clarke jr. (sub-Protector, Wellington) to George Clarke sr. (Chief Protector, Auckland), 24 May 1843, qMS 0469 WATL (original in DHL).

⁵⁶ G.F. Angas, *Savage Life and Scenes in Australia and New Zealand*, Smith, Elder and Co, London, 1847, 264.

⁵⁷ C. and J. Maclean, *Waikanae past and present*, Whitcombe Press, Waikanae, 1988, 22.

⁵⁸ Charlotte Godley, *Letters from early New Zealand*, Whitcombe & Tombs, Christchurch, 1951, p. 106.

supervision by Ngati Toa and Te Ati Awa in 1843 and found it empty and in ruins: a 'most melancholy' scene:⁵⁹

Waikanae when I first visited it contained 6 or 7000 persons and I could scarcely reach Mr. Hadfield's house for the press. The buzz of man has given way to the dash of the ocean waves.

According to Hohepa Solomon land left behind by Ngati Awa on their return to Taranaki in 1848 was to form the basis of a "substantial estate" which came into the possession of Wi Parata.⁶⁰ Certainly some Ngati Awa people were living on the land at the time it was purchased by the government in 1858.

In 1852 Major Richmond was saddened by the extent of population decline obvious in the Golden Bay area:⁶¹

In my progress through the District of Massacre Bay I was grieved to find so many pas deserted and those that were occupied so miserable in appearance and containing so few Inhabitants that I suggested to them the advantages of congregating in one or two places where villages might be formed, schools established for their children, and places of worship erected and pointed out to them at the same time the impossibility of their improvement while living in this isolated state. I anticipate that this advice will be acted upon except in one or two localities where the old Inhabitants expressed great reluctance to leave the places where they had buried their fathers and children - such an appeal could not be resisted, and I promised that Reserves would be made for them.

While in 1840 Dieffenbach had counted 400 "Ngati Toa" people living in the Port Underwood area by 1847 there were just fifty or so:⁶²

⁵⁹ Taylor, Journal, 4 April 1856, Vol. 8, ATL, p. 174.

⁶⁰ Hohepa Solomon, "Parata, Wiremu Te Kakakura, ?-1906, Ngati Toa and Te Ati Awa leader, farmer, politician", *DNZB*, II, 374-5, at 375. Wi Parata was born on Kapiti in the mid 1830s. His mother, Matapere Wai-punuhau was the daughter of Te Rangihiroa (i.e. Te Pehi Kupe's younger brother). His father was an American, a whaler named George Stubbs, who was drowned at Pukerua Bay in 1838. Wi Parata grew up at the Ngati Awa community at Kenakena (Waikanae). Hemi Matenga was Wi Parata's brother. According to Hohepa Solomon:

Wi Parata's father was drowned in a boating accident off Pukerua Bay in 1838, and Parata had only one brother, Hemi Matenga. His mother moved her family from Kapiti to the palisaded pa at Kenakena at the mouth of the Waikanae River, where Parata spent his childhood. A woman of high standing within Ngati Toa and Te Ati Awa, she was influential in early land dealings, particularly in 1848 when Wiremu Kingi Te Rangitake and his followers left the Kapiti coast and returned to Waitara. This land was the foundation of a substantial estate which was to come into Wi Parata's possession. It was to be further enhanced in 1860 when more Te Ati Awa returned to Waitara, leaving all their land interests in the Waikanae district to Parata.

⁶¹ Richmond to Colonial Secretary, 5 January 1852, NM 8/52/680.

⁶² Report by C.W. Ligar, 8 March 1847, Mackay vol I, 203.

The Natives residing at Port Underwood, and with whom I had communication, consist of twenty men and about the same number of women belonging to the Ngatitōa tribe, and nine men and one woman of the Rangitane tribe.

This decline may have been due to a number of factors, including the continuing effects of epidemics, the decline of the whaling industry at Cloudy Bay, and the abandonment of the area by many Ngati Toa people after the Wairau affair.

The decline continued. In 1854 representatives of Ngati Toa and the other Northern South Island tribes asked McLean for their installment payments for the Te Waipounamu deed to be paid in a lump sum, "urging as a reason that some of their Chiefs had recently died of the measles epidemic".⁶³ The 1874 census reveals that Ngati Toa were living at Waikanae (34 people, along with 47 of Ngati Awa), at Wainui (i.e. Paekakariki) (6), Porirua (60), the Wairau Valley (83 people of Ngati Toa/Ngati Rarua/Rangitane) and Pelorus Sound (where a mixed group of 63 people of Ngati Toa/Rangitane were recorded).⁶⁴ There were 48 people of Ngati Koata living at Croizelles and D'Urville Island, 42 Ngati Rarua/Ngati Awa people living at Motueka.⁶⁵ In fact by this time the greater number of the descendants of the Kawhia descent groups were actually living in the South Island, although the centre of Ngati Toa tribal life continued to be Porirua. About 120 Maori people lived at Wellington by this time, classed as Ngati Awa, Taranaki, and Ngati Manui. By far the biggest group in the region was Ngati Raukawa, living at Ohau, Otaki, Waikawa, Poutu and other places (about 750 people). And by 1876, according to evidence given by Wi Parata, there were no more than "seven or eight" children of school age at Porirua.⁶⁶ The lack of children was in fact a principal reason why the Church of England decided to abandon the project of constructing a school for Maori children at Whitireia.

By the time of the *Wi Parata* decision in 1877 Ngatitōa were described as "greatly reduced in numbers, not now exceeding between 30 and 40 persons in all, and scattered all over the North Island".⁶⁷ But this probably overstated matters: it seems unlikely that the population actually became quite that small. The 1886 census for example gives a Maori population of 295 for Hutt County, 353 for Rangitikei, 203 for Oroua, 257 for Manawatu, and 623 for Horowhenua, although no figures are given by iwi.⁶⁸ This is not a large population,

⁶³ McLean to Gore Browne, 7 April 1856, CO 209/135.

⁶⁴ See (1874) AJHR G-2. Of course census records at this time are notoriously unreliable. As these descent groups were living for the most part in readily accessible villages in a long-settled area the records for the Wellington region may, however, be somewhat more reliable than most, but it is of course impossible to be certain.

⁶⁵ Ibid.

⁶⁶ Evidence of Wi Parata, 1876, Le 1/1876/7.

⁶⁷ *Wi Parata v Bishop of Wellington and the Attorney-General* (1877) 3 NZJ (SC) 72, at 73.

⁶⁸ Census of the Maori Population, 1886 AJHR G-12, 17. At this time the Maori population of the North Island was estimated at 39,387, a decrease of 2,525 on the preceding (1881) census.

obviously, but it is not impossible that the Ngati Toa population could well have been several hundred rather than a few dozen (the population of the iwi today is a bit over 5,000).

This population decline is in line with national trends, although in the case of the northern South Island and the Wellington-Kapiti region the effects of the decline may have been especially visible in the sense that this decline took place in a region of expanding British settlement and a burgeoning Pakeha population. Ngati Toa, along with Maori people in central and southern New Zealand generally, was in a sense in danger of becoming ‘invisible’: a marginalized group that the majority population could simply forget about. Probably only at Otaki was there a really noticeable and substantial Maori community, and it seems to be the case that Otaki was the real centre of Maori political life in the lower North Island west coastal region in the second half of the 19th century. For example it was at Otaki that all of the iwi of the region met in 1860 to decide what action they should take following the outbreak of war in Taranaki.⁶⁹ And of course in earlier years Te Rauparaha had from time lived at Otaki himself. William Williams met him there in late 1845, for example.⁷⁰

Anne Parsonson has commented that Maori population decline “wrought havoc with land claims”.⁷¹ “Havoc”, in the case of Ngati Toa, might be putting it a little strongly, but population decline definitely had an impact. A small and far from wealthy group, Ngati Toa had to be selective when it came to defending the multifarious challenges to their mana and rights that beset them in the years after 1860. Despite the fact that Otaki seems to have been the largest community in the region, and that many Ngati Toa people lived there, the iwi tended to concentrate its energies on lands and resources close to Porirua, shown by its efforts to acquire protection of their fishing rights in Porirua harbour in the Native Land Court – a matter of sheer survival, probably – and by the long and costly struggle over the Whitireia Block.

The extent of Maori population decline on the lower North Island West Coast became politicised in the latter decades of the 19th century due to the endless inquiries and litigation over the Whitireia block. The Church of England continually justified its decision to not build a college on the gifted land at Whitireia because of the low Maori population. But political critics of the Church were not prepared to accept this at face value, and argued instead that there was a comparatively large Maori population in the region: certainly enough to support a school. Mr. Field, the Member for Otaki, who worked closely with Ngati Toa and Ngati Raukawa, disputed in 1900 the Church’s contention that few Ngati Toa were left.⁷²

⁶⁹ *Further Papers Relative to Native Affairs*, 1860 AJHR E-1A, 155.

⁷⁰ Frances Porter (ed), *Turanga Journals*, 355.

⁷¹ Ann R Parsonson, “The Expansion of a Competitive Society: A Tudy in Nineteenth-Century Maori Social History”, *New Zealand Journal of History*, vol 14 (1980), 45/

⁷² 115 NZPD (16 October 1900) 432.

I have no doubt that the trustees did it in good faith; but to say that twenty years ago there were less than forty members of the Ngatitōa Tribe living in New Zealand is inexcusable. Why, at the present moment, they are one of the largest tribes in the colony. There are about one hundred pure Ngatitōas living at Porirua – men, women, and children – and there are at Otaki, Paekakariki, Porirua and down at Wellington large numbers belonging to the same tribe.

After 1900 the population, in line with national trends as before, began its slow process of recovery.

1.4. “A general sympathy among the younger men for the Natives at Taranaki”: Politics in the time of the New Zealand wars

No detailed study of Maori politics in central New Zealand during the 19th century exists. The attention of historians is elsewhere – on Taranaki, the Waikato, Te Urewera and the East Coast. But of course Maori people living at the Wairau, Port Nicholson, Porirua and Otaki in the 1860s and 1870s were not outside the Maori political world of the day. It is true that the South Island and the lower North Island was not directly affected by the New Zealand wars – in the sense that there was no actual fighting there. The closest the actual fighting came to the region seems to have been the battle at Moutoa, on the lower Wanganui, on 14 May 1864, when Upper Whanganui Pai Marire forces were prevented from advancing on Wanganui town by lower Whanganui Maori.⁷³ However as Tainui groups with close connections to the people of North Taranaki neither Ngati Toa nor Ngati Raukawa could remain indifferent to the Maori King movement or to the war in Taranaki and then in the Waikato. Many of Raukawa had remained behind in the Waikato and became caught up in the Waikato war and the confiscations of the 1860s. Ngati Awa people at Waikanae and at Port Nicholson could hardly remain indifferent either.

This report cannot give a full account of the political history of the New Zealand wars period in the lower North Island, which is a complex subject in its own right and one which became intertwined with government land purchasing. But it seems important to illustrate the points made above with some closer analysis of some key documents. The documentary evidence says little about Ngati Toa as such, although it is clear from the evidence that Matene Te Whiwhi and Tamihana Te Rauparaha continued to play an important role in the political history of these years, primarily as advocates for peace and a moderate response to events in Taranaki and the Waikato. But it seems likely enough that the same concerns and

⁷³ On Moutoa see Belich, *New Zealand Wars*, 205, 212; Report by Featherston, *Papers Relative to the Native Insurrection*, 1864 AJHR E-3, 80-81. This was an entirely Maori v. Maori battle. Featherston’s report is very vivid with an abundance of detail about the people involved.

loyalties that impacted on Ngati Awa and on Ngati Raukawa would have impacted on Ngati Toa as well.

At the outset of the New Zealand wars, following the startling news of Gore Browne's attack on Wiremu Kingi - which seems to have come as a complete surprise to many Maori - the various iwi of the Kapiti coast region met at Otaki and decided what action they should take. The feeling was that Wiremu Kingi's claims ought to have been submitted to a full investigation, and that the attack on him and his people was completely unjustified. Gore Browne's actions were deplored and it was decided to petition the Queen to have him recalled.⁷⁴ A petition was drawn up dated 3 May 1860 by which many individuals of Ngati Raukawa and the other southern tribes petitioned the Queen expressing their support for Wiremu Kingi at Waitara and asking for the recall of the Governor.⁷⁵ The petitioners were at a loss to understand why Gore Browne would launch an attack on, of all people, Wiremu Kingi, regarded by both Maori and European as a loyal subject of the Crown and as a chief well-disposed towards Europeans. Gore Browne however took action to prevent the petition from being forwarded, an action which itself became controversial, the subject of criticism from Octavius Hadfield and others. Raukawa and the other southern tribes for their part greatly resented this interference with their right to petition the Crown and complained about it to the General Assembly:⁷⁶

We have heard of the suppression of our letter which was written to the Queen concerning Governor Browne, that he should be recalled. We are much grieved that our letter should have been found fault with. We thought that it would not have been stopped by Governor Browne, inasmuch as he is the medium of communication with the Queen, and we are not novices in this work of writing to the Queen.

The progress of the war was keenly followed at Otaki, and accordingly to W R Searancke the young men of Ngati Huia in particular hoped to travel to Taranaki to assist Wiremu Kingi (Ngati Huia, it will be recalled, is the prominent Raukawa hapu to which Te

⁷⁴ On the meeting see memorandum from Ngati Raukawa to the General Assembly. 11 July 1860, *Further Papers Relative to Native Affairs*, 1860 AJHR E-1A, 155:

[T]he principal ground of our meeting at Katihiku in Otaki was the public announcement by the Governor of the War at Taranaki, on the 25th day of January 1860. Immediately after this, were the soldiers who had occupied Waitara. When we heard this we were all grieved; all these tribes were taken by surprise. Then all the tribes of this end (of the Island) were called together to consult as to what we should do, and a conclusion was come to. The conclusion was this: That Governor Browne ought to be recalled for this groundless proceeding of his in taking possession of Waitara without a complete investigation...

⁷⁵ Petition to Her Majesty from Parakaia Te Pouepa and others, *Further Petitions relating to Native Affairs*, 1860 E-1A. Browne and H A Turton claimed however that the petition was instigated by the Reverend Octavius Hadfield.

⁷⁶ Ngati Raukawa to the General Assembly. 11 July 1860, *Further Papers Relative to Native Affairs*, 1860 AJHR E-1A, 155.

Rangihaeata and Te Rauparaha had both affiliated and of which they were both chiefs). By late 1860 the fighting in Taranaki had caused a certain amount of tension and divided opinions in the Kapiti Coast region, tensions which were exacerbated by the government's land-purchasing efforts in the Horowhenua and Manawatu districts. Searancke's report of 29 August 1860 paints a vivid picture of the political situation at this time:⁷⁷

I left Wellington on Monday evening the 20th instant. At Paekakariki I found that the Natives who had emigrated with their chief Paramata to settle on the Middle Island, on some reserves there, had all returned, accompanied by about thirty of the Ngatihinetahi tribe from the South. These latter are all settled at Waikanae where they are busily employed planting potatoes, &c. At Waikanae the Natives are all anxiously looking forward to the arrival of Wi Tako and the Hutt Natives, (the women and children) left the Hutt yesterday.

The whole of the Waikanae Natives were absent from the village busily occupied clearing for their cultivations. They appear to be badly off for food, sulky, and uncommunicative. At Otaki village a few women and children only were to be seen, all the men being engaged on their plantations, and they appear to be working harder this year than usual, having between three and four hundred acres of wheat sown. The same activity prevails at all the smaller settlements between Otaki and Manawatu. From Manawatu southward to Taranaki there is a general sympathy among the younger men for the Natives at Taranaki, and there is an ill concealed anxiety to join them by many openly expressed.

This may be attributed to a natural desire for excitement together with the constant arrival of letters from Wi Kingi Te Rangitake and others at the seat of war, giving glowing accounts of their successes over the Europeans. These letters are principally addressed to the Ngatihuias, to a Chief of which tribe, Karanama, a letter arrived from Te Rangitake asking him why he did not come and see him; all the young men of this tribe are anxious to proceed to the seat of war, and I believe are only held in check by the influence of the old men.

The Natives at Waikanae have been invited by the Ngatihuias to join them, but until Wi Tako's arrival at Waikanae no decision will be come to. At present with some few exceptions the Waikanae Natives are opposed to any active measures.

Despite, however, the widespread sympathy for Wiremu Kingi, locally affairs remained very peaceful. Sympathy and a willingness to assist were one thing; violence locally between Maori and Pakeha quite another. Searancke, who seems to have been rather prone to seeing conspiracies and incipient insurrection everywhere, was nevertheless careful to stress local tranquility:⁷⁸

⁷⁷ Searancke to McLean, 29 August 1860, *Commissioners' Reports relative to Land Purchases*, 1861 AJHR C-1, No 71, p 296/

⁷⁸ Ibid.

Amid all these feverish anxiety it is singular that with one exception there is not any apparent disposition to molest or the slightest appearance of any ill feeling towards the Europeans living amongst them. The exception is an appropriation by the Ngatihuias of about 200 sheep belonging to some Europeans at Manawatu and renting Maori land there. The sheep straying across the boundary of the land were seized by the Ngatihuias for the trespass, and notwithstanding repeated efforts made for their recovery are still in their possession....At Manawatu and up the river, the Natives are both quite and peaceable, and although the majority have given in their adherence to the King Movement, they have no present intention to do anything inimical to European interests.

Another snapshot of politics in the region, and their interconnection with intra-Maori tensions over land rights in the Horowhenua and Manawatu regions is afforded by the long report sent to Fox in February 1864 by Isaac Featherston, Provincial Superintendent of Wellington. By this time, of course, Sir George Grey had returned to New Zealand as governor and the invasion of the Waikato and the Battle of Rangiriri had taken place. Sympathy for the Kingitanga remained strong in the region, but many believed that a policy of armed resistance to the Crown was simply futile; nor was there any desire to see the war spread from the Waikato to southern New Zealand. Featherston's report is a fascinating document, very revealing as to the complex interconnections between the Maori iwi inter se, as well as with settlers and the provincial and general governments. Politics was already becoming a matter of shared experience and negotiation between Maori and Pakeha, early steps towards New Zealand's rather unique political culture which has lasted to the present day. The report also shows how the violence unleashed by the Crown's unprovoked attack on the Waikato in 1863 could have engulfed other parts of the country had it not been for the determination of many rangatira on the Maori side to preserve the peace in their own districts:⁷⁹

I started from Wellington for the West Coast on the 13th ultimo, partly on provincial business, but chiefly with a view of endeavouring, in compliance with your request, to adjust the long-pending land dispute between the Rangitane and Ngatiraukawa on the one side and the Ngatiapa on the other.

The following day I visited, by a written invitation, Wi Tako and his people; their welcome was more than cordial, and a long korero ensued. Reminding me that they had faithfully redeemed their pledge to keep the peace during my absence at Auckland, they evinced great anxiety to learn what had taken place at Waikato, and at the great pakeha runanga. They listened with deep interest to the account of General Cameron's operations (Wi Tako showing that he had a thorough knowledge of the country, by explaining the nature of

⁷⁹ Featherston to Fox, 18 February 1864, 1864 AJHR E-3. On 29 February Grey forwarded a copy of Featherston's report to the Duke of Newcastle.

each position), and were highly pleased with the fraternizing of the soldiers with the natives at Rangiriri, with the compliment paid them by General Cameron, and the kind treatment the prisoners were receiving. Wi Tako remarked that he had always said that the battle of Kingism would have to be fought at Waikato; the battle had taken place, and the Waikatos were conquered; admitting repeatedly that all I had told him at my meeting with them last year had come true, and that the Maoris were engaged in a hopeless struggle; still *he gave no intimation that he intended to abandon the king movement* [emph. added], although he expressed uneasiness at the future of himself and his people. Wi Tako finds himself between two fires; he is afraid that he will be punished by the Government for the part he has taken in kingism, but he is still more thoroughly convinced that if he gave it up he would be murdered by his own people. The opinion I have long held, that had Wi Tako, not on more than one occasion, at a sacrifice of his personal influence, restrained the more violent of the ultra-kingites, the peace of this province could not have been preserved, remains unchanged. Neither surprise nor dissatisfaction was expressed when I explained the measures passed by the Assembly [Featherstone is presumably referring to the Suppression of Rebellion Act, New Zealand Settlements Act and related legislation passed at the end of 1863], and the determination of Governor to crush the rebellion at once and forever, and to trample out kingism in every part of the Colony. While freely confessing the part they had taken in hoisting the king's flags, in issuing proclamations in his name, in arming and drilling, &c., they laid great stress on their not having disturbed the peace of the province, and upon none of them having gone to the war either at Taranaki or Waikato, pleading also that they in common with many others had been disappointed with the results of the king movement. After suggesting to them that the time had arrived when it became them calmly to consider the position in which they would stand towards the Government if they did not soon return to their allegiance, I left them, with many thanks from them for my visit, and the exaction of a promise that I would see them on my return.

Featherston then travelled on to the Rangitikei via Otaki:

On passing through Otaki, on the same day, I found that most of the natives had already proceeded to Rangitikei, but I saw Heremia and promised to meet them on the way home. Manawatu was also deserted for the same reason. Arriving at Rangitikei on the evening of the 15th, I immediately proceeded to Ihakara's pa, where I found about 400 (including women and children) of the Rangitanes and Ngatirauka [wa] was assembled. Hiepa is not in any sense fortified; and there are not more than a few, probably four or five, acres in cultivation. All the principal chiefs of the two tribes were present; Ihakara being evidently the recognized leader in this land dispute. He has, in fact, by the prominent lead he has taken in it, acquired an influence which he never previously possessed, and seems inclined to foment the quarrel rather than abdicate the position he has obtained by it.

Featherston first discussed political affairs and the land dispute with Ngati Raukawa and Rangitane, who seem to have worked as allies on this occasion. Featherston essentially threatened that any fighting between Ngati Raukawa and Ngati Apa over the Rangitikei block would simply be regarded as an act of rebellion against the Crown and would be ‘punished accordingly’ – no doubt a reference to the confiscation legislation:

I begged them distinctly to understand that the Government would not permit any fighting in this or any other case; that the time had for ever gone by when one tribe would be permitted to make war upon another; that the Queen’s government was prepared to preserve the peace and protect all Her Majesty’s subjects, whether Pakehas or Maoris, and that whichever of the three tribes engaged in the dispute dared to fire a shot, or strike the first blow, would be regarded as being in arms against the Queen’s government, and punished accordingly.

It has not been possible, unfortunately, to pursue a full political narrative of events at Otaki in the 1860s. But as the above documents show, there was considerable support for the King movement there, especially amongst Ngati Huia. The above texts also show how the broader issue of the New Zealand wars moved into a particularly local political problem, that of competing claims to lands in the Horowhenua and Manawatu region between Ngati Apa, Ngati Raukawa, Muaupoko and Rangitane.

1.5. Conclusion

By 1860, then, Ngati Toa had shrunk to a shadow of its former imposing self, and it was to continue shrinking for decades to come. The 19th century population of the iwi seems to have been very small: some sources put it as low as forty people. And by 1860 as well the iwi’s once-great estates had been stripped from them. Not much was left: just Kapiti, various reserve areas around Porirua, Plimmerton, Paekakariki and in the Wairau. One might have hoped at least that Ngati Toa might have been left in peace to enjoy such lands as they had left to them. But as this report will show, this was not to be. Land loss continued, through a variety of means. And the iwi seems to have become embroiled in endless controversy and trouble over its remaining lands, as is shown by the involved history of Kapiti, the Taupo No 2 Reserve at Plimmerton, and – above all – by the outcomes of Ngati Toa’s efforts to recover its lands at Whitireia. To crown all Ngati Toa found itself excluded from any share in the beneficial interests in the Wellington and Nelson Tenths allocation, principally because of the arrogant and misguided assumptions made by Judge Mackay of the Native Land Court.

Nothing seems to have been in any manner easy or straightforward. Those involved in managing the iwi’s affairs today, or in giving advice to Ngati Toa, might be forgiven for

thinking that nothing has changed.

CHAPTER 2

The Legal Framework: the Native Lands Acts and the Native Land Court

2.1. The Native Lands Acts 1862 and 1865⁸⁰

Until 1862 New Zealand had followed a variant of the pre-emptive land purchasing system which was standard practice in British colonies. As has been explained in Report 1, it was by means of this system of land acquisition that large areas of Ngati Toa land were alienated to the Crown at a comparatively early date – most notably in the case of the Wairau, Porirua and Te Waipounamu purchases. However –as is, of course, well-known - in the years from 1862-65⁸¹ the New Zealand colonial state broke permanently with standard imperial constitutional law and created a new system of indigenous land tenure unique to this country (with the exception that is, in those parts of the Pacific, such as the Cook Islands, which subsequently fell under New Zealand control and to which Land Courts on the New Zealand model were exported). The change was brought about by legislation: the Native Lands Acts of 1862 and 1865. These Acts privatised land-buying and replaced customary tenures with freehold grants. A key feature of the new system was the abandonment of the doctrine of Crown pre-emption, which had underpinned the earlier Ngati Toa deeds. Pre-emption was replaced with an open market in Maori land purchasing.

The Native Lands Acts ‘individualised’ customary tenure by establishing a legal mechanism which transferred title from groups and entities defined by Maori customary practice to named individuals, ten owners per block from 1865-1873, and to an unrestricted number of owners, from one to hundreds, after that. The legislation was initially accompanied by a complete withdrawal of the government from land purchasing, an important ingredient of the policy considered as a whole. This aspect of the new regime was, however, soon rejected - although the tenurial regime brought about by the Acts stayed in place and indeed has lasted until the present.

The Native Lands Acts were part of a programme of individualisation and tenurial revolution imposed on indigenous peoples which characterised a number of nineteenth-

⁸⁰ The next few pages are based largely on the relevant sections of R P Boast, *Buying the Land, Selling the Land*,

⁸¹ It is a moot point whether the decisive turning point was the Native Lands Act of 1862 or of 1865. Although a number of historians primarily emphasise the 1865 Act, as one of the authors has argued elsewhere the decisive conceptual changes were made with the 1862 Act (see Boast, *Buying the Land, Selling the Land*, Victoria University Press, 2008, 66-7).

century regimes. Within the British Isles customary tenures were swept away by a process of ‘enclosure’⁸² – individualisation of title to the commons lands – and by various legislative attacks on customary tenures in Ireland and the highlands and islands of Scotland. The changes that were imposed in New Zealand have many similarities pursued around the same time by governments in Mexico and Central America, the United States⁸³ and Hawai’i.⁸⁴ These parallels seem important, pointing to a consistent ideological and political stance characteristic of 19th century governments.⁸⁵ In a sense the origins of the Native Lands Acts are might be said to lie outside New Zealand. Nevertheless there is little evidence as to what politicians and officials hoped to achieve with the Native Lands Bill in terms of social and economic policy, or to what extent they were influenced by earlier British Isles precedents or by contemporary developments elsewhere. But at least it can be said that individualisation was the norm and if New Zealand was unique in jettisoning Crown pre-emption, in other respects government policies had much in common with programmes in other parts of the British Empire, Latin America and in the United States.

Individualisation was halted in the United States in the twentieth century with the Indian Reorganization Act (IRA) of 1934.⁸⁶ Sections 1 and 2 of the Act prohibited any further individualisation of reservation lands. The chief architect of IRA was John Collier, a key figure in the history of Federal Indian law and the inspiration for a new era in Indian policy in the 1930s and 1940s.⁸⁷ Wilcomb E Washburn, a prominent historian of Federal Indian policy,

⁸² See R H Tawney’s *The Agrarian Problem in the Sixteenth Century* (Longmans, London, 1912; J M Neeson, *Commoners: Common Right, Enclosure and Social Change in England*, (Cambridge University Press, Cambridge, 1993).

⁸³ The principal statute was the Dawes Act (General Allotment Act) 24 USC 338. The Act had disastrous consequences, and was repealed by the Indian Reorganization Act 1934. For general overviews of US Federal Indian policy see the chapters by Reginald Horsman, Francis Paul Prucha, William Hagan and Lawrence Kelly in Wilcomb E Washburn (ed) *History of Indian-White Relations, Handbook of North American Indians* (vol 4, Smithsonian Institution, Washington, 1988); and Frederick Hoxie’s chapter “The Reservation Period, 1880-1960” in Bruce Trigger and Wilcomb E Washburn (eds) *Cambridge History of the Native Peoples of the Americas* (vol 1 (North America) part II, Cambridge University Press, Cambridge and New York, 1996) 183-258.

⁸⁴ See N Levy “Native Hawaiian Land Rights” (1975) 63 *California Law Review* 848; 797-810; C F Wilkinson “Land Tenure in the Pacific: The Context for Native Hawaiian Land Rights”, (1989) 64 *Washington Law Review* 227; M C Lam “The Kuleana Act Revisited: The Survival of Traditional Hawaiian Commoner Rights in Land” (1989) 64 *Washington Law Review* 233.

⁸⁵ For a comparative discussions see especially John C Weaver, whose *The Great Land Rush and the the Making of the Modern World*, McGill-Queen’s University Press, Montreal and Kingston, 2003; Stuart Banner, *How the Indians Lost Their Land*, (Belknap Press, Cambridge [Mass] and London, 2005), especially *ibid.* ch. 8, ‘Allotment’, which sets allotment in the United States in its historical context, including parliamentary enclosure in the British Isles.

⁸⁶ Indian Reorganization Act of June 18, 1934, 48 Stat 984 (25 U.S.C. ## 461-479). On the IRA see generally Bradley B Furber “Two Promises: Two Propositions: The Wheeler-Howard Act as Reconciliation of the Indian Law and Civil Law” (1991) 14 *University of Puget Sound L Rev* 211.

⁸⁷ On Collier see Lawrence Kelly, *The Assault on Assimilation: John Collier and the Origins of Indian Policy Reform*, University of New Mexico Press, Albuquerque, 1983; Kenneth R Philp, *John Collier’s Crusade for Indian Reform*, University of Arizona Press, Tucson, 1977; E A Schwartz, “Red Atlantis Revisited: Community and Culture in the Writings of John Collier”, (1994) 18 *American*

has written that “Collier’s work as commissioner of Indian affairs is probably the most impressive achievement in the field of applied anthropology that the discipline of anthropology can claim”.⁸⁸ In Mexico during the twentieth century, following the revolutionary constitution of Queretaro (1917) large areas of land were returned to Indian communities under communal title, especially during the governments of Lazaro Cardenas (1934-38) and Adolfo Lopez Mateos (1958-1964). In New Zealand, however, the system was never halted at any time and individualisation has been complete. The machine was allowed to run on until there was nothing left to individualise; nor has the remaining stock of Maori freehold land been *de*-individualised at any time, and such a project would now be politically impossible in the face of owner opposition.

In terms of investigation of titles the Native Land Court had largely completed its work by around 1900. It needs to be borne in mind, however, that the Native Land Court did not only conduct investigations of title and ‘follow-up’ cases such as partitions and successions. As will be explained below, one aspect of the Court’s work which had particularly important implications for Ngati Toa came about from it being given the task of allocating beneficial interests in various categories of reserves, in particular the ‘tenths’ reserves in Nelson and Wellington.

The Native Lands Acts of 1862 and 1865 were the product of a process of debate amongst politicians and officials – there being no process of debate and discussion with Ngati Toa or any other Maori iwi to speak of - which began as early as 1856. In that year Governor Browne set up a Board of Maori Affairs to report on Maori land tenure and Maori land purchasing.⁸⁹ The Board recommended the establishment of a “complete registry of the native lands” - a national inventory or ‘Doomsday book’ of existing land claims based on customary tenures - and proposed that Maori should be eligible to receive Crown grants for individual parcels of land.⁹⁰ In 1858 the General Assembly enacted a group of statutes designed to provide the legal underpinnings for a system of government-sponsored Maori runanga (councils). Two of the Acts, the Native Districts Regulation Act and the Native Circuit Courts Act were directed primarily to that end. The third measure, anticipating the Native Lands

Indian Quarterly 507. Collier began his career helping to organise immigrant workers in New York and was a committed New Dealer.

⁸⁸ Washburn, “Indian Reorganization Act”, 287.

⁸⁹ Earlier accounts of the evolution of the Native Lands Acts have now been superseded by D M Loveridge *The Origins of the Native Lands Acts and Native Land Court in New Zealand*, Report to the Crown Law Office (October 2000). This report was prepared as part of the Crown evidence in the Hauraki claim currently being heard by the Waitangi Tribunal, and is an eminently fair-minded and thorough discussion of the evolution of the legislation from 1856-65. Loveridge sites the process of debate firmly in its context of the broader struggle between the colonial governors and local politicians over control of Native Affairs. One looks forward to Loveridge’s publishing his monograph.

⁹⁰ See the analysis by Loveridge *Origins of the Native Lands Acts and Native Land Court*, 52-53. The Board’s report is published at 1856 AJHR B-3 and in GBPP 1860/2719, 236-337 (IUP[NZ], vol 10, 509-611).

legislation of the 1860s, was the Native Territorial Rights Act, which empowered the circuit judges set up under the Native Circuit Courts Act to investigate titles to land with the assistance of a Maori jury. Land so investigated could then be sold directly to settlers. This Act was an initiative of settler politicians seeking to challenge Governor Browne's control of Maori affairs. Browne, only too aware of that, required that the Bill be reserved for the royal assent, and the following year the Act was disallowed by the Colonial Office.⁹¹

In July 1862 Henry Fox introduced a Native Lands Bill into the House which was but this was unable to be proceeded with in the political turmoil of the time. The Fox ministry was replaced in August 1862 by Alfred Domett's new "hard-line administration ... entirely unsympathetic to the runanga system".⁹² Francis Dillon Bell was Native Minister in the new government. It was this regime which enacted the Native Lands Act 1862, implementing three critical changes. Crown pre-emption was waived,⁹³ a judicial body was set up to investigate titles, and the investigation was the first part of a two-step process by which the customary title was extinguished and replaced by a Crown grant in freehold to named individual owners.

The Native Land Court set up from 1862-65 remains a thriving institution today (as the Maori Land Court). It is New Zealand's oldest specialist tribunal, and in the most recent legislation relating to it its powers have been considerably expanded.⁹⁴ The Land Court has long been, and remains, an important part of the New Zealand legal system. Historians have not been kind to the Court. In a celebrated phrase Professor Kawharu once described it as an "engine of destruction for any tribe's tenure of land, anywhere".⁹⁵ Other writers have been even harsher in their criticisms, Judith Binney, going so far as to refer the Native Lands Act 1865 as an "act of war".⁹⁶ Some of these remarks may be going a little far, or at least confuse effect with intention. In fact Francis Dillon Bell, who introduced the 1862 Bill into

⁹¹ See Loveridge *Origins of the Native Lands Acts and Native Land Court*, 109-24; and Alan Ward *A Show of Justice: Racial 'Amalgamation' in Nineteenth-Century New Zealand*, (Auckland University Press, Auckland, 1973, reprinted with corrections 1995), 107.

⁹² This is O'Malley's judgement: see *Agents of Autonomy*, 25.

⁹³ Crown pre-emption was recognised in section 73 of the New Zealand Constitution Act 1852, which created an issue as to whether, as a matter of imperial constitutional law, the New Zealand legislature could legally override this by a domestic statute. The Imperial Parliament's New Provinces Act 1862, however, allowed the colonial legislature to repeal the pre-emptive provisions of the Constitution Act. See Philip Joseph *Constitutional and Administrative Law in New Zealand*, 82-83; and Loveridge, *Origins of the Native Lands Act and Native Land Court*, 152-57, 194-95. Section 73 of the Constitution Act was repealed by section 4 of the Native Lands Act 1873.

⁹⁴ The current Act, the most recent in a long chain of Native and Maori Lands Acts, is Te Ture Whenua Maori/Maori Land Act 1993. Section 6 provides that "there shall continue to be a court of record called the Maori Land Court".

⁹⁵ I H Kawharu *Maori Land Tenure: Studies of a Changing Institution* (Clarendon Press, Oxford, 1977), p 18.

⁹⁶ Binney "The Native Land Court and the Maori Communities" in Judith Binney, Judith Basset and Eric Olssen (eds) *The People and the Land: Te Tangata me te Whenua: An Illustrated History of New Zealand 1820-1920* (Allen & Unwin, Wellington, 1990) 143, 143. Binney's view is supported by D Williams *'Te Kooti Tango Whenua': The Native Land Court 1864-1909* (Huia Press, Wellington, 1999), 81-83.

Parliament, claimed that the legislation would allow the Maoris the full benefit of their lands.⁹⁷ Other politicians, however, correctly predicted that the Act would lead to chaos and confusion on a vast scale. J C Richmond told Parliament that "the Bill would be letting loose of a flood".⁹⁸

It would act like the rent in a dam ... The Bill was a perfect revolution among Maori; it would tell more in a year than all the proclamations of Native districts, of district and village runangas ... The whole race would be sifted; they would be purged with fire.

Nevertheless Richmond voted for the Bill: he saw the colony as having no choice. The reality, he thought, was "that the colony was at bay; it was reduced to abandon preconceptions and take any means that offered for escaping from its difficulties". Although a new system had been discussed for some years, it seems that it was the Waitara crisis of 1859 and the drift to war which led to the new legislation being enacted in 1862. The Rees-Carroll commission of 1891 made the point explicitly:⁹⁹

After the commencement of the Waitara war in 1859 it became evident that if lands were to be peacefully acquired from the Natives some competent tribunal must be set up which should, in cases of disputed titles, decide the question of Native ownership prior to the sale or leasing of the lands themselves.

The legislation represented a major policy shift. It is hard to imagine two systems more different than Crown pre-emption and the free trade regime established in 1862. Dillon Bell said, quite correctly, that the legislation would "reverse the policy that has guided the Government in its relations to the Natives on the land question for the last twenty years".¹⁰⁰ Pre-emption was expressly waived in the preamble to the 1862 Act and was replaced by free trade. Maori could now sell their lands to whomever they liked - provided, that is, that they had first obtained a certificate of title from the Court and a Crown grant from the governor.¹⁰¹ The strictures of historians notwithstanding, there is no indication that Maori were alarmed at first or that they mourned the departure of pre-emption. I have not seen any evidence that Ngati Toa were disturbed by the abolition of Crown pre-emption, which, after all, had led to the alienation of the vast bulk of their lands in both the North and South Islands. One way of testing Maori reaction is to consider the much-disputed Manawatu block in the lower North Island, which was in 1862 and again in 1865 specifically excluded from the new free trade regime (the Wellington provincial government was in the middle of trying to negotiate its

⁹⁷ (1861-1863) NZPD 608.

⁹⁸ (1861-1863) NZPD 630-631.

⁹⁹ Rees-Carroll commission report, 1891 AJHR G1, vi.

¹⁰⁰ (1861-1863) NZPD 608.

¹⁰¹ Native Lands Act 1862, s 17; s 47 of the Native Lands Act 1865 is to similar effect.

acquisition).¹⁰² Title investigation in this region is a vexed issue, and is fully traversed in the next chapter. Far from welcoming exemption from the new regime, Ihakara Te Hokowhitukuri and others of Ngati Raukawa who were the customary owners of the Manawatu block were indignant.¹⁰³

We have heard from the Pakehas that all the lands of this island have been thrown open ... by this new law, and that our lands only are left in prison and that we are now just like pigs confined in an enclosure. As we view the matter our names are no longer upon our lands.

In fact, as will be seen, Ngati Raukawa – with Ngati Toa support – pressed strongly for a Court to sit in the region and adjudicate on the various competing claims. They got their wish, even though a purchase had completed over some of the area investigated, but as things turned out the advent of the Court in their region was something that Ngati Raukawa came to regret.

2.2. Establishment of the Native Land Court

The central institution in the new system was the Native Land Court. In the 1862 Act the Court was an impermanent body convened from time to time “under the Presidency of a European magistrate”.¹⁰⁴ Chaired by the local resident magistrate with Maori co-judges and a jury, the Court conducted some hearings in the Kaipara region in June 1864 and in other parts of Northland later in the year, apparently to general satisfaction. As far as we are aware the 1862 Court did not conduct any sittings in the lower North Island.

The 1865 Act, as is well-known, transformed the Court into a permanent and formal Court of Record, with all the judicial trappings of the Supreme Court.¹⁰⁵ The 1865 legislation was not merely drafted but was actually designed by Francis Dart Fenton¹⁰⁶ who became the first chief judge. Fenton had earlier served as Resident Magistrate in the Waikato and had developed very firm views about the necessity for clear judicial determination of Maori land titles. He seems to have been given a free hand to draft the new legislation, which was much

¹⁰² Section 31 of the Native Lands Act excluded the “Manawatu Block” from the operation of the Act. The Manawatu Block was defined in the Schedule to the Act as commencing at “the mouth of the Ohau river and proceeds thence by a line bearing 90 degrees to the Tararua range, thence along the summit of the Tararua and Ruahine Ranges to the source of the Oroua river, thence by a line bearing 282 degrees to the Rangitikei River, and thence by the Rangitikei River to the Sea Coast, and thence by the sea coast to the commencing point.

¹⁰³ Ihakara Te Hokowhitukuri to Featherston [Provincial Superintendent, Province of Wellington], 14 June 1865, 1865 AJHR E2, 9.

¹⁰⁴ Native Lands Act 1862, s 5.

¹⁰⁵ Native Lands Act 1865, s 5

¹⁰⁶ So says Fenton himself: in 1891 he referred to “the Act of 1865, which I may say was my Act”: 1891 AJHR G1, 46. Although one of the law officers in 1862, Fenton had not been involved in the design of the 1862 Act.

more detailed and elaborate than the earlier 1862 Act. (Fenton was even careful to ensure that his own salary - £800 a year - was protected by the law.¹⁰⁷) The Act also stipulated that “there



**Chief Judge Francis Dart Fenton, 1870s.
Alexander Turnbull Library, Wellington.**

¹⁰⁷ Native Lands Act 1865, s 7.

Francis Dart Fenton was the first Chief Judge of the Native Land Court and key figure in the history of the Court. He was the presiding judge in the Rangitikei-Manawatu decision of the Court in 1869. Fenton edited and published a collection of leading judgments of the Court in 1879.

shall be no decision or judgment on any question judicially unless the Judge presiding and assessors, but it meant also that the two Maori assessors could not outvote the judge, possible under the 1862 Act. The Assessors were such “aboriginal Natives of New Zealand as the Governor shall from time to time appoint by warrant”.¹⁰⁸

Fenton’s Native Land Court was given two principal functions, these being, first, “the investigation of the titles of persons to Native land” and, secondly, the “determination of the succession of Natives to Native Lands and to hereditaments of which the Native owner shall have died intestate.”¹⁰⁹ Maori had the option of bringing a claim to the Court seeking an investigation of title to a specific block (parcel) of land. Should the application be succeed, the applicants were listed in the court documents as the owners, and were then entitled to obtain a Crown grant to the block in question. Once the grant was issued by the Governor the applicants became grantees and freeholders, holding a Crown-derived title which overrode the pre-existing native title governed by Maori customary law.¹¹⁰ So, to take as an example one of the Ngati Toa blocks, the Kenepuru block was investigated by the Court in 1873 and was awarded to five individuals of Ngati Toa: Ngahuka Tungia, Raiha Puaha, Ropata Hurumutu, Nopera Te Ngiha and Raiha Te Tatua.¹¹¹ This was in turn followed up by a Crown grant to the same owners issued on 20 August 1874. Putting to one side the effect of the alienation restrictions imposed by the Court in this case, the net effect was that these five individuals now became the owners of the block in fee simple. Title to Kenepuru was now ‘feudalized’ and ‘individualized’.

Thus by 1865, Maori could sell to whomever they liked, but first the owners had to be defined by an authoritative tribunal and in receipt of a Crown grant. Shortly after the 1865 Act was passed the Land Court settled down to business, and despite the fact that the New Zealand wars were far from over huge quantities of land were soon passing through it. In June 1872 Chief Judge Fenton reported that the Court had issued titles to 5,013,839 acres in its first seven years of operation, principally in the provinces of Auckland, Wellington and Hawke’s

¹⁰⁸ Native Lands Act 1865, s 6.

¹⁰⁹ Native Lands Act 1865, s 5.

¹¹⁰ Native Lands Act 1865, ss 23, 46, 48.

¹¹¹ Order, 22 November 1873. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

Bay.¹¹² In July 1869 to June 1870, the Court investigated nearly 916,280 acres. The 1869-1870 total was mainly made up of substantial blocks in the Wairarapa, Auckland and Hawke’s Bay, but included also the entire Chatham Islands, investigated in a notorious sequence of investigations by Judge Rogan in 1870.¹¹³ (Title to the islands went mainly to Ngati Mutunga: as explained in vol. 1, this descent group had close kin connections with Ngati Toa; after being placed by Te Rauparaha at Wellington harbour the whole iwi moved to the Chatham Islands in 1835, leaving Port Nicholson to be settled by the Ngamotu groups leaving Taranaki in the aftermath of the battles of Pukerangiora and Ngamotu itself).

After the mid 1870s the acreages investigated fell. There remained, however, some large areas not investigated until some years later, the most important of which was the Aotea (King Country) block, off-limits to the government and settlers until King Tawhiao’s surrender at Pirongia in 1881. The King Country block, for example was not investigated until 1886. One of the iwi allocated title to this huge block was Ngati Raukawa, and at the hearings some Ngati Toa rangatira – but appearing under their Raukawa connections (Matene Te Whiwhi is an example) – gave evidence. Acreages investigated in the first years of the Court’s existence are tabulated below.

Table: Acreages investigated by Native Land Court 1865-1877¹¹⁴

period	acreage
1 November 1865-1 November 1866	778,649
1 December 1866 - 30 June 1867	441,827
1 July 1867 - 30 June 1868	705,154
1 July 1868 - 30 June 1869	791,988
1 July 1869 - 30 June 1870	916,280
1 July 1870 - 30 June 1871	485,913
1 July 1871 - 30 June 1872	895,124

¹¹² *Return of the Proceedings of the Native Land Court 1872* AJHR F6.

¹¹³ “Notorious” because of the Court’s controversial decision to grant virtually all of the islands to Ngati Mutunga, who, along with Ngati Tama, invaded the islands in 1835, leaving the indigenous Moriori people with only a few small reserves. The Ngati Mutunga claim to the main Chatham Island block (Mangatu Karewa, also known as Kekerione) was advanced on the basis of take raupatu, or conquest, by Ngati Mutunga chiefs such as Wi Naera Pomare and Rakatau Katihe (see for example Rakatau’s evidence at (1870) 1 Chatham Islands MB 7). These hearings and the history they document, recently dramatised in a feature film, are now the subject of a substantial literature: see especially Michael King *Moriori: A People Rediscovered* (Viking, Auckland, 1989) and Michael *Historical Frictions: Maori Claims and Reinvented Histories*, (Auckland University Press, Auckland, 2005). For an attempt to see these events through Ngati Mutunga eyes see Richard Boast *Ngati Mutunga and the Chatham Islands*, Report to the Waitangi Tribunal (March 1995, Wai 64 [Rekohu/Chatham Islands Inquiry] Doc#J6). The Waitangi Tribunal reported on the Chatham Islands Inquiry in 2001 (*Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands*, Wai 64, 2001).

¹¹⁴ The figures from 1865-1872 are set out in 1872 AJHR F7, and for the following years in 1873 AJHR G5, 1874 AJHR G3, 1875 AJHR G9, 1876 AJHR G6 and 1877 AJHR G8.

1 July 1872 - 30 June 1873	504,430
1 July 1873 - 30 June 1874	647,395
1 July 1874 - 30 June 1875	771, 416
1 July 1875 - 30 June 1876	527, 660
1 July 1876 - 30 June 1877	488,997

By 1890 the position was as follows (these figures do not include land which had passed through and which had then been acquired by private buyers or the Crown in the period from 1865-1890):

Table: Investigated and uninvestigated land as at 1890¹¹⁵

Land passed the Court and under lease	2,444,469 [acres]
Land passed the Court and still in Maori ownership	5,629,808
Uninvestigated Maori land	2,777, 209

Shortly after the first large blocks began passing through the Court however, a number of problems became apparent. Richmond’s warnings proved prescient, although some of the difficulties were unforeseen and were caused by ambiguities in the 1865 Act. The first problem concerned the kind of title acquired by the successful grantees. From 1865 to 1872 the practice of the Court, following section 23 of the 1865 Act, was to confine the number of grantees in any one block to ten, who became tenants in common (that is with heritable shares).¹¹⁶ The 1865 Act did provide that blocks over 5,000 acres could be awarded to a tribe by name, an option virtually never exercised.¹¹⁷ Were they, however, absolute owners or trustees for their kin-groups? It seems clear enough from the legislation that those named in the Crown grant were in fact tenants in common who took interests absolutely.¹¹⁸ This was an

¹¹⁵ See 1891 Sess II AJHR G10.

¹¹⁶ It is sometimes doubted whether the 1865 Act created a tenancy in common, but as the Act also gave to the Native Land Court a jurisdiction over successions this is in my opinion clear. Nineteenth century judges and commentators certainly acted on the assumption that the Act created a tenancy in common: see e.g. Thomas Mackay’s report, 1891 AJHR G-1A, 19.

¹¹⁷ Native Lands Act 1865 s23. Five thousand acres was a substantial block, but some blocks would have exceeded this even so. See below ch III part E.

¹¹⁸ The principal section was s 48; this said that the grants from the governor were “valid and effectual to all intents and purposes as grants made by the Governor of Waste or Demesne Lands of the Crown” (i.e. they had the same status as ordinary crown grants); that they barred “all estates, rights, titles, and interests of all persons whomsoever therein *except the grantees named therein*”; and that the only exception was “their heirs, devisees, assigns or persons named in any testamentary order” (i.e. the interests of the grantees were heritable and they were thus tenants in common, not joint tenants). The Court was empowered to make its certificates of title subject to restrictions as to alienation “or of attaching any condition or limitation to the estate to be granted” (s. 28); the design of the Act appears to be that it was a matter for the governor as to whether such restrictions etc. were ultimately embodied in the grant (ss 46, 48). These restrictions might conceivably have extended to taking the land on trust; but it does not seem to have been Fenton’s policy to recommend trusts.

acute issue in the case of large and valuable blocks, where many owners suddenly found themselves at risk of dispossession should the grantees, or any one of them, decide to sell. As the inevitable scandals occurred Parliament found itself confronted with a torrent of petitions and complaints.¹¹⁹

Usually the ten owners included leading chiefs, indicating that Maori regarded the grantees as representative owners or trustees rather than as absolute owners. Joy Hippolite has found, for example, that chiefs such as Ihaka Whaanga of Ngati Rakaipaaka (of the Wairoa area) were included in virtually of the Land Court blocks on the Mahia Peninsula.¹²⁰ However, once the Crown grant had been issued the ten became individualised grantees, who found that they could sell without reference to the rest of their kin group. Whether this was the intention of the legislation or not is unclear, but certainly individuals soon began selling their one-tenth interests, with the net result that many blocks became part-owned by European purchasers and by the remaining Maori grantees.

There were a number of amendments of the Native Lands Acts between 1865-73. The most important amending Act was the Native Lands Amendment Act 1867, which according to Fenton was drafted by J C Richmond and Prendergast J.¹²¹ Section 17 of the 1867 amending Act appears to give to the Court the option of recording all the names of those with an interest in the block, but the section is very confusingly worded and its effect uncertain.¹²² Then in 1873 the whole Maori land law system was completely remodelled by McLean's Native Lands Act of that year. The 1873 Act is fully equal in importance to the 1862 and 1865 Acts and in many ways is the true progenitor of the system of Maori land tenure in existence today. McLean's legislation destroyed the ten owners rule and replaced it with a radically different alternative; instead *all* owners were to be inserted into the title.¹²³ They then all became tenants in common holding such shares in the block as the Native Land Court decided in each case. McLean's intention seems to have been to create something resembling hapu or

¹¹⁹ Most of the major complaints arose in the province of Hawke's Bay where the impact of the Land Court in the ten-owner period seems to have been especially pronounced: see Renata Kawepo's petition of 1872 at 1872 *Appendices to the Journals of the House of Representatives*, I-2; *Report of the Hawke's Bay Native Lands Alienation Commission 1872* AJHR G-3.

¹²⁰ Hippolite, *Wairoa*, 54.

¹²¹ See 1891 AJHR G-1, 47.

¹²² Section 17 begins by reciting s 23 of the 1865 Act and then directs the Court to inquire into the titles not just of the applicant and notified parties "but also the right, title, estate or interest of every other person who and every tribe which according to Native custom owns or is interested in such land whether such person or tribe shall have put in or made a claim or not". How the Court could do this is not made clear: obviously the Court was constrained by such evidence as happened to be in front of it. The section then goes on to state that the Court has the power to record the names of other persons other than the ten representative owners separately in the Court records, but it is very unclear, at least to me, whether this power is permissive or mandatory or operates only on the request of the applicants. See Ward, *Unsettled History*, 135.

¹²³ Native Land Act 1873 s 47. The term "memorial of title" was used to prevent confusion with a certificate of title under the Land Transfer Act 1870. The older term of "certificate of title" was restored by s 25 Native Land Court Act 1880.

whanau titles (claims that the 1873 Act was designed by McLean to facilitate individual sales are quite untrue), and his Act contained a number of protective provisions. However, the 1873 Act in fact led to further departures from Maori customary law. By vesting blocks in many individuals, all of whom were tenants in common whose shares passed to their successors, a situation was created by which titles could easily become impossibly crowded and very unwieldy within a generation or so. McLean's protective provisions were overwhelmed by the imperatives of purchase, as will be seen. Another, and unforeseen consequence of the 1873 Act was that it created a confusing new type of tenure, neither customary nor Crown-granted.

2.3. Direct and Indirect Costs of the System: An Overview

It is very clear that the Native Lands Acts imposed a costly regime on Maori. The most expensive single direct cost of the process was surveying.¹²⁴ From the beginning the Native Lands Acts allowed the Court to investigate surveyed blocks only.¹²⁵ The title to section 33 of the Native Lands Act 1873 explicitly stated that surveys were "imperative in every case".¹²⁶ If the applicants were unable to produce a survey plan the case was simply struck out of the Court list.

Claimants had two options: they could have their land surveyed by a private surveyor, or they could ask the government to do the work. Section 68 of the Native Lands Act 1865 allowed the Native Land Court to grant survey liens, and this was repeated in the Native Lands Act 1873. Section 69 of that Act allowed the government to survey lands coming before the Court, although applicants could commission private surveyors if they wanted to. All surveys had to comply with the survey regulations and be certified by an inspector of surveys. No person could recover survey costs as a debt unless the survey had been approved (section 74). Section 73 allowed the Crown to take land in payment for surveys. This basic structure was repeated in all the subsequent Native Lands Acts, with some fine tuning.

The Native Lands Acts distinguished between authorised and unauthorised surveys, and between surveys and certified survey plans. A surveyor could agree to undertake a survey privately, but in so doing had to run the risk that his plan might not be certified by the Surveyor-General, leaving him (the surveyor) out of pocket. On the other hand, once a survey was approved by the Surveyor-General, even when undertaken by a private surveyor acting on commission, that survey then acquired a kind of official or public character, and it became

¹²⁴ Giselle Byrnes has written extensively on surveying as a mode of representation and discourse: see her "Surveying – the Maori and the Land: An Essay in Historical Representation", *NZJH*, vol 31, 1997. My emphasis here is rather different, on surveying as a cost and a contributing factor to land alienation.

¹²⁵ Native Lands Act 1862, s 13; Native Lands Act 1865 s 13.

¹²⁶ See also Native Land Court Act 1880, ss 26 and 27; Native Land Court Act 1886 s 13.

a criminal offence to obstruct it. As far as the Native Land Court was concerned, approval of the survey was much less significant than certification of the survey plan by the Surveyor-General. Without such a plan, no case could proceed. Once a plan had been certified, however, it was the practice of the Court to proceed with a case, even if the majority of the owners objected both to the survey and to the case.

Surveys were not the only costs the system imposed. Court hearings could take a long time. Investigations of title could routinely last for months. The Himatangi case, for example, heard at Otaki, lasted for six weeks. Typically, especially where large and valuable blocks were at stake, there would be many claimant groups, all tenaciously advancing their own claims and ready to produce large numbers of witnesses. Some groups would have legal representation (often very senior counsel); others might be represented by para-legals known as ‘Native agents’ or ‘Native conductors’. All the groups would want to cross-examine one another. Court fees could all too easily pile up. The most onerous of the Court fees were the daily hearing charges for witnesses (£1 a day). This was perceived by many Maori as costly and irksome and was the subject of frequent complaint. The judges had a statutory discretion to waive the fees, but did so, accordingly to one contemporary, “very rarely”: “they are very chary of exercising that power”.¹²⁷ The same costs were imposed, moreover, on applicants and objectors. Moreover the complexity of Maori land tenure and the contestability of tribal history necessarily dictated numerous appeals and rehearings.

One important aspect of the cases discussed in the next chapter is the very active role in the cases played by the Crown and by Crown counsel. This makes the cases in the Horowhenua-Manawatu region somewhat unusual, as the Crown did not as a rule take an active role in investigations of title in the Native Land Court – although certainly from time to time government officials did meddle in the process from behind the scenes. The special role of the Crown arose from a conjunction of the statutory provisions relating to these cases (in particular, s 40 of the Native Lands Amendment Act 1867) and out of the fact that the Crown was actively engaged in land purchasing in the region. Governmental interest in land purchasing in the area in fact went back to the late 1840s. In the 1868 Himatangi case the Crown was represented by William Fox, a prominent politician and barrister, later to be Prime Minister, who went out of his way to attack the Raukawa claimants at every turn. The Crown was involved in the case because it was actively engaged in land purchasing in the region, which meant that it played a partisan role in supporting the claims of Ngati Apa in court (Ngati Apa being the principal sellers of the Rangitikei-Manawatu block). The presence of the Crown contributed to the length of the hearings and the costs that it imposed on Raukawa, of course. The Porirua and Kapiti cases discussed in successive chapters are typical of more

¹²⁷ Evidence of E H Harris to Rees-Carroll commission, 1891 AJHR G-1, 1.

ordinary cases in the Native Land Court; these cases were not significant to the government and the Crown played no role in them. The only exception was Ngati Toa's claim to Parumoana, where there was some involvement by Crown counsel at the start of the case, but the case was an unusual one in a different way in that it related to an area below high-water mark.

Some historians, registering the obvious importance of the Court in Maori life after 1865, and noting also the evidence for Maori population decline in the later nineteenth century, have concluded that the Land Court process was a major agent of demographic collapse in its own right. Maori, it is said, sat for months on end in draughty, damp courtrooms in such country towns as Otaki, Cambridge, Marton, Waipawa and Kaitiaki in all seasons. In such places they were rendered more susceptible to disease, impoverished by having to pay for food and accommodation, and further put at risk by drinking up the proceeds of advance payments in the nearby taverns, which tended to do a roaring trade whenever the Court was in town.¹²⁸ There is certainly plenty of general evidence to support this picture. An example is this perhaps surprisingly candid passage in the government's own official *Yearbook* for 1894:¹²⁹

Some persons maintain that one result of the Court is to demoralise the Natives by taking them away from their homes and their usual occupations, causing them to herd together in idleness and under insanitary conditions, but the evil, if it exists, seems at present unavoidable.

Whether the Native Land Court had a specific impact on Maori health and well-being in the Porirua to Manawatu region is very hard to demonstrate, although some kind of impact cannot be ruled out. Ngati Toa's population had already been massively impacted upon by epidemics before the Native Land Court arrived in the region, as discussed in chapter 1. The endless hearings over Himatangi, Horowhenua and Kukutauaki may can hardly have been good for Raukawa and other groups involved in them, economically and in terms of general health and well-being, but this is a point that requires some more detailed research to establish.

When given the chance Maori themselves, more prosaically, tended to complain not so much of the risks of 'demoralisation' but rather about the sheer expense of the process. This included not only the direct costs of surveying and Court fees, but more importantly the indirect costs of food and lodging at the Court towns. The interminable disputes over the Rangitikei-Manawatu and Horowhenua blocks described in the next chapter certainly were very expensive. A contemporary of the process, Rod A. McDonald, had this to say about the

¹²⁸ See M.P.K. Sorrenson, "Land Purchase Methods and their effect on Maori population, 1865-1901", (1956) *Journal of the Polynesian Society* (Auckland), 183. For a full study of Maori demography in this era see Ian Pool, *Te Iwi Maori: A New Zealand population past, present and projected*. Auckland University Press, Auckland, 1991.

¹²⁹ *New Zealand Official Yearbook*, 1894, Government Printer, Wellington, 1894.

costly struggle between Major Kemp and Warena Hunia of Ngati Apa (which “practically beggared both parties”) fought out in the Native Land Court over the Horowhenua XI block:¹³⁰

Anyone who knows anything of Maori land court procedure, of how cases drag on indefinitely, and of the immense number of witnesses brought forward by each side, will appreciate the huge expense incurred by the opposing parties in these successive actions. The cases were heard in Palmerston North; dozens of witnesses attended from Horowhenua; they all had to be fed, even if they were not paid for attending; Court expenses had to be met; counsel and conductors were engaged to act for both parties, all of whom would appear to base their fees on a sliding scale proportionate to their probability of ultimate payment, but always high. Charge piled on charge, and expense on expense.

2.4. Procedure and Evidence in the Native Land Court

It is generally assumed that the Land Court was totally foreign to Maori in terms of its process and procedure, at least at first. It is also assumed that Maori law was only a kind of social practice applied within kin groups: Maori may have had ‘law’ but not ‘laws’ or courts of law. In discussions of this topic I have had with Maori people many are careful to insist that Maori had ‘lore’ rather than ‘law’.¹³¹ Yet some early visitors to New Zealand describe Maori processes of dispute resolution which appear on the face of things to be fairly formal, even forensic, in their approach. In 1843 Edward Shortland, a sub-protector of aborigines in George Clarke’s Protectorate Department, visited Otago where he happened to observe an inquiry into disputed land titles. Shortland’s description is admittedly heavily flavoured with English legal terminology, partly introduced into the text, one suspects, for literary effect. All the same, murkily visible behind his highly-coloured description, is some kind of real investigatory process and even possibly the existence of something like legal specialists.¹³²

It is worthy of mention also, that the more important families of a tribe are in the habit of devoting one or more of their members to the study of this traditionary knowledge, as well as to that of their “tikanga” or laws, and the rites connected with their religion. Persons so educated are their books of reference, and their lawyers.

When the right to a piece of land, or its boundaries, is disputed, these native lawyers are appealed to, and the case is investigated before all interested, generally near the spot in dispute. The counsel for the plaintiff opens his case by naming in a loud voice some ancestor, A, or his party, whom he calls the root of the land, “Ko Mea te taki o te kainga [sic]. Na....”

¹³⁰ Rod A. McDonald and Ewart O’Donnell, *Te Hekenga* (1929), 186.

¹³¹ One hears this said so often that it must have a source, but I am not aware what it might be. It seems to me that to describe Maori rule-making as “lore” does nothing to elucidate it and can even be said to denigrate it.

¹³² Edward Shortland, *The Southern Districts of New Zealand*, Longman, London, 1851, 95-6.

“So-and-so is the root of the estate. Now then....” is the form of words in which they invariably commence. He then endeavours to prove that this root exercised some right of ownership undisputed by any one, and deduces, step by step, the descent of his clients from this ancestor or root. If the adverse party cannot disprove the fact of original ownership, or find a flaw in the pedigree, the case would be decided *nem. con.* against them. The cases, however, which I have heard discussed have never been so simple. Counsel for the defendants has perhaps set aside the claim derived from A, by proving that the ancestor only exercised a right of possession as the husband of a daughter of B - the root from which his clients derived their claim - that A had no children by his wife, and that the land therefore, on her death, reverted to her brothers, from one of whom his client was descended, - and did not belong to the offspring of A’s other wife, the present claimants.

The type of inquiry Shortland describes in this remarkable passage is very similar to the way in which the Land Court went about hearing its cases after 1865. The usual manner in which a claim was argued was to ‘set up’ a particular ancestor, generally accepted by one and all as a key figure in local history, and then prove descent from him (or her, sometimes) by producing a whakapapa, or ‘pedigree’ as they were usually styled. The term ‘take’ - used by Shortland - was also used in the Court to describe something like a cause of action or a root or basis of title. This was then supported by evidence as to cultivations and land management. Shortland’s description indicates that the Land Court process was perhaps much closer to traditional Maori dispute resolution than is sometimes thought.

Shortland’s description indicates also that a proper role and task for the chiefs was to argue out land claims in a very public manner. This was a role which they also assumed in the Land Court. Although the eventual outcome of the Land Court process may have been to diminish the power and wealth of the Maori chiefly class, there is no doubt that the business of arguing claims in the Court was seen as a proper function of the chiefs - as an exercise of rangatiratanga in fact. Time and again one sees the familiar names of leading chiefs in the court records: Matene Te Whiwhi, Henare Te Pukuatua, Akuhata Tupaea, Wiremu Maihi Te Rangikaheke, Wi Naera Pomare, and so on.

As might be expected, the Land Court evidence is given in a highly traditional idiom, employing categories of thought and ordering very typically Maori, and thus not readily translatable into the concerns of modern historiography. Historians might be interested in such matters as structural changes to Maori society brought about by the coming of the musket and the musket wars, or the rise of small hapu-based personal followings as the main means of Maori social and military organisation in the early nineteenth century, but the history found in the minute books is of a static, unchanging kind. Historical events are explained in terms of killings and revenge-killings, utu and retaliation for utu, putting out one’s enemies’ fires, fights and battles, withdrawals and invasions, peace-makings and

diplomatic marriages. One exception to this is the discussion of the effects of the coming of Christianity, some witnesses claiming that the missionaries had induced formerly subject tribes to become 'whakahi' (cheeky) and to pursue unwarrantable claims in the Native Land Court. Often the history will be presented as a straightforward linear narrative with not much commentary, but a comparison of a number of descriptions of the same events by different witnesses makes very plain that this apparent simplicity is deceptive. In fact the material presented is often highly selective, carefully chosen to back up a particular reading of history which gains its force from an abundance of circumstantial detail. Although sometimes the evidence-in-chief is somewhat disjointed and is obviously only a set of responses to questions, in other cases (such as Matene Te Whiwhi's evidence in the Kukutauaki case or Te Wheoro's in the Rohe Potae case) the evidence is quite obviously a carefully prepared self-referring narrative, carefully structured, with quotations chosen to underscore important points and for dramatic effect. In short, such narratives are (to use an over-worked term these days) 'texts' and can be analysed as such. It is likely that to someone such as Matene Te Whiwhi, presenting a compelling, clear and dramatic narrative in the Native Land Court was very important in itself, a demonstration of leadership, knowledge and oratorical skill. One gets only a poor reflection of the original with the line by line, often unparagraphed, English translation in the Minute Books of the Court.

Much of the material in the Otaki, Te Waipounamu, Wairarapa, Wellington and Chatham Islands Minute Books of the Native Land Court is concerned with proving claims to land based on *take raupatu*, conquest, a significant factor being that the 'conquests' in question did not take place in ancient times but were in fact participated in by most of the witnesses to the proceedings. The evidence seems to follow a fairly schematised pattern, and in my opinion probably does reflect a fairly well-recognised body of Maori custom as to the constituent elements of a valid conquest. It seems, for example, that the emphasis placed on keeping 'fires burning' was not at all metaphorical but was on the contrary highly specific and concrete. A fire, burning visibly by day, is a highly objective and verifiable statement of a right of ownership. A tribe that confidently burns its fires in the day-time is asserting its mana and control; if the putative conqueror is unsuccessful in extinguishing the fires then the conquest is not established. If a tribe is able only to light its fires in invisible places or at night then its claim to territory is for that reason questionable. This emphasis on fires is quite frequent in the minute books. An example is the following passage from Matene Te Whiwhi's evidence (in cross-examination by Hoani Meihana of Ngati Apa) in the Kukutauaki case:¹³³

The fires we saw were at the first. All the fires we saw we put them out. We saw none afterwards. There are only ashes of those fires left. The place of residence at this time of the

¹³³ At (1873) 1 Otaki MB 148.

Muaupokos was in the mountains. Whenever they came out into the open I was there and caught them and put their fires out. I saw a fire on the coast. I went there and killed Takare. Where they were when their fires were not seen on the coast I don't know.

There are other traditional frames of reference: the importance of catching the people, of fighting by day (sneak surprise attacks at night do not prove anything), of killing but also of sparing lives and releasing captives, of formal peace-makings.

It might be thought that at the very least Ngati Toa evidence is unimpeachable evidence as to how *Ngati Toa* read their history. This, however, is to overlook the fact that on more than one occasion Ngati Toa witnesses are to be found on opposite sides in the same case.¹³⁴ These instances, however, are always either (i) where Ngati Toa is not the main claimant group to the lands in issue, and have been called as witnesses to back up the claims of competing sides; or (ii) where the block is being fought over by individuals or descent groups within Ngati Toa. Even so, clearly even within Ngati Toa there could be different emphases placed on the same events; depending on their allegiances, inclinations, or by who they happened to be related to some within Ngati Toa preferred to support, say, the claims of Ngati Apa in the Manawatu while others were partisan towards Ngati Raukawa. It seems that because of the prestige and mana of Ngati Toa other claimants liked to back up their cases with Ngati Toa witnesses if they could.

While women did occasionally speak in the Land Court, this was not typical and most witnesses and all conductors were male. Women did sometimes appear in the Court as claimants in their own right, and might announce themselves and the nature of their claim, but tended not to play a role when evidence of traditional history and descent was being presented. This may perhaps simply be a reflection of traditional gender roles in Maori society and of the allocation of functions at formal meetings, but this is a matter for judgment by those with the requisite expertise.¹³⁵ In the case of Ngati Toa women of chiefly lineages such as Heni Te Whiwhi or Raiha Puaha, both daughters of famous rangatira, do not seem to have been in the least shy ladies but rather expressed themselves fairly forcefully and at length before Royal Commissions and other bodies. Nor were they concerned about disagreeing publicly with prominent rangatira such as Wi Parata. In fact it was Heni Te Whiwhi's petition of 1896 – which resulted in a very favourable outcome in parliament – which was primarily responsible for reactivating the Whitireia affair in the 1890s, with consequences for New

¹³⁴ For example in the Himatangi case, where Matene Te Whiwhi gave evidence for the claimants (certain individuals of Ngati Raukawa), while Tamihana te Rauparaha and other Ngati Toa rangatira gave evidence for the Crown.

¹³⁵ See the discussion in Parsonson, *op.cit.*, 24. Parsonson notes that although a tradition does exist that it was decided, in some areas at least, to exclude women from giving evidence in the court, this may have arisen more from an apprehension of “the potential influence of women in court than of their exposure to the cultural challenge of its processes”.

Zealand legal history that are still being felt. On the other hand women do not seem to have played a large role in the Himatangi and Kukutauaki cases of the late 1860s and 1870s.

One can read the Minute Books of the Court today and rediscover the content of what was said, but what the Minute Books cannot convey is the immediacy and drama of the oral presentation of the material. In the Himatangi decisions, for example, a wealth of material was presented on both sides by a succession of orators. What survives of this today in the Court's minutes are merely disjointed notes, almost invariably in English. The presentations in the large investigations of title could be dramatic accounts of concentrated narrative power, fully self-referential texts. Even through the disjointed and mangled notes which survive, the clarity and effectiveness of such great orators and scholars as Matene Te Whiwhi of Ngati Toa or Major Te Wheoro of Waikato or Wiremu Maihi Te Rangikaheke of Ngati Rangiwewehi are still dramatically apparent. Ann Parsonson has found that historical evidence given in the Land Court has a certain mechanical quality and writes of its "narrow scope and rigid format"; presentation of historical evidence in the Land Court, she believes, came with a loss of "emotional intensity".¹³⁶ Parsonson's judgement must be respected, but my impression of the evidence given by Matene Te Whiwhi in many blocks in the Otaki-Kapiti area is that it is anything but mechanical.

Roger Neich, an art-historian, has argued that the process of giving evidence in the Court had important implications for Maori historical awareness. This shifting awareness had important implications in the domain of Maori art, exemplified by the paintings of contemporary historical figures in such famous Poverty Bay decorated houses as Te Mana o Turanga at Manutuke and Rongopai at Waituhi. Partly as a result of the Land Court, Maori moved from experiencing history as "repeating archetypal situations" to a "new history as text [which] became an objective entity external to the participants and accessible to alternative interpretations".¹³⁷

People whose lives had been changed forever by the intrusive events of history now turned to that history in order to find themselves and to find out how others perceived them. From this perspective, figurative painting can be regarded as a hermeneutic response by groups seeking to interpret their own special historical experience.

There may well have been important shifts in Maori historical consciousness at this time, but we would be reluctant to pronounce on what pre-contact Maori historical consciousness actually was. The precise role of the Land Court in any conceptual shift,

¹³⁶ Parsonson, *op.cit.*, 40, 39.

¹³⁷ Roger Neich, *Painted Histories: Early Maori figurative painting*, Auckland University Press, Auckland, 1993, 157.

assuming there was one, seems very difficult to delineate.¹³⁸ Neich is perhaps on much firmer ground in noting that “the process of giving evidence [in the Land Court] forced tribal groups and tribal territories to become frozen and forced into a fixed configuration”.¹³⁹ What was formerly a very fluid and contestable scene was reinterpreted into a comparatively simplified picture of permanent groupings living on defined territories.

To assess fully the effects of the Native Land Court on Maori customary interests particular cases need to be studied very carefully. Although in any given case the Court might find in favour of one particular group, other groups apparently missing out, in reality the Court’s determination would often mean only that the victorious group won the right to insert a list of names into the title. The names might in fact include a number of people from the group or groups who had been unsuccessful in the first round of the hearings. These could be inserted because of kin links, out of a sense of generosity, or because the main thing was the recognition of mana by the Court. Scrutinising lists of names and attempting to work out their iwi and hapu affiliations is a very difficult task. However, the eventual outcome in terms of who went into the titles could be a lot more flexible and subtle than is apparent at first sight.

Many scholars have accused the Court of taking a very narrow and highly doctrinaire approach to Maori custom, in effect forcing Maori tikanga into a sort of intellectual straitjacket. In fact, the Court never did manage to create a clear body of precedent which defined the criteria governing applications for investigation of title. Usually there was no need to, as groups tended to set up their cases in much the same way. Outright conflicts between competing *take* seldom occurred. The Court’s decisions were not, and indeed are not, formally reported – an authoritative reporting system being a vital aspect of the systematisation of a body of precedent. Judges and practitioners involved in any one case would have little idea of other similar decisions in the Court unless they happened to have some personal connection with them. Cases in the Court could certainly be complex, but the complexities arose from conflicting claims and divergent accounts of traditional history, not from any kind of legal argumentation over *take*. The Court certainly had its nineteenth century critics, but the criticism was never about the Court’s doctrinal rigidity – rather it was seen as being far too flexible and pragmatic, so much so that one could, so it was said, never be certain as to what the Court might do in any given case (reminiscent of the old joke about the Irish Court of Chancery of which it was said that no case was certain, but none hopeless). One has to conclude that the picture of a remote and doctrinaire court intent on imposing its own

¹³⁸ Neich believes that “the new narratives constructed under the influence of this new historical consciousness were not normally written down in formal accounts”, but were instead “inscribed’ in the arts, the oral traditions and the total culture”. There were, however, a significant number of Maori historical narratives written down during the 1870s and 1880s, and not just in response to requests by Europeans for historical information.

¹³⁹ Neich, op.cit, 156-7.

legalistic understanding on the subtleties of Maori custom seems to be something of a myth. Grant Young has argued in an important recent article that the impression of doctrinal rigidity has probably come from Judge Norman Smith's textbook on Maori custom published in 1942, which, while identifying a number of *take*, fails to provide any kind of source for them.¹⁴⁰ This book, however, has misled historians into believing that Judge Smith's take were doctrinaire formulations consistently applied by the Court in the nineteenth century.

2.5. Judges and Assessors

The judges of the Court were drawn from all walks of life. In research commissioned some years ago one of the authors found that only 13 of the 44 Land Court judges appointed from 1865-1909 were qualified lawyers.¹⁴¹ (All of the chief judges, however, were legally qualified.) Of the non-lawyers on the Court, 13 were civil servants with no prior judicial experience, 18 were civil servants with judicial experience, usually as resident magistrates, nine were former soldiers, six were non-lawyers with no known government position, and for seven there is no adequate data. These categories are overlapping ones: Fenton, for instance, was a trained lawyer, and had previous experience as a civil servant and resident magistrate. Some judges, especially in the 1890s, were pluralists in the sense that they combined their judgeship with other official positions. Judge Batham, for example, appointed in 1897, was at the same time District Land Registrar and Registrar of Deeds at Wellington, and became a judge of the Validation Court as well.

Most of the judges had some contact, and sometimes extensive involvement, with the Maori world before their appointment. This could mean that sometimes judges of the Court brought to the bench prejudices or attitudes that they had formed in their earlier professional careers. Judge Mackay is perhaps an example/ Although not a qualified lawyer, Judge Mackay was a former civil commissioner and Native Reserves Commissioner at Nelson, regarded by many (perhaps most especially by himself) as the leading authority on Maori traditional history in the northern South Island; after his appointment he specialised in South Island cases. It was Mackay, in fact, who determined the key South Island and Wellington 'tenths' decisions, both of them highly disadvantageous to Ngati Toa, and both of which can be fairly said to represent Mackay's own ideological leanings as well as his own presuppositions about traditional history in Te Tau Ihu. Some of the judges had a scholarly bent: Chief Judge Fenton and Judges Wilson and Gudgeon published books and articles on

¹⁴⁰ Norman Smith, *Native Custom and Law Affecting Maori Land*, 1942; Grant Young, "Judge Norman Smith: A Tale of Four Take", (2004) 21 NZULR 309.

¹⁴¹ See B D Gilling, *The Nineteenth-Century Native Land Court Judges: an introductory report*, Unpublished report to the Waitangi Tribunal, (Wai 64 Doc#G5), 24.

aspects of traditional Maori history.¹⁴² Before becoming a judge Mackay edited and published an important collection of deeds and other documents relating to the extinguishment of Maori title in the South Island, a compilation which remains in regular use today.

Trying to delineate exactly where the Court fitted into the prevailing political rhetoric of the time is difficult. The Court certainly had its non-Maori critics. William Rees, a radical Liberal and MHR for Auckland East, told the House in 1877 that in his view “no European judge is qualified to sit and have the absolute disposal of millions of acres of Native land”.¹⁴³ Rees worked with Wi Pere, leading chief of the East Coast, on a scheme to circumvent the Crown purchasing system, and was sympathetic to Maori, but he certainly also favoured the advance of close settlement and clear and secure titles. To Rees and other radicals the confusion and complexity in Maori land titles, which they tended to blame on the Land Court, operated disadvantageously to the “small man” and played into the hands of speculators and large capitalists. It is from this perspective that much of the contemporary criticism of the Land Court by political radicals like Rees needs to be seen. It seems to be believed today that the Land Court was consciously devised to protect the interests of “settlers”. If that was true one would expect the Pakeha community to be enthused about the Court and its work, but this was not the case. Purchasers of land from Maori, and especially their legal advisers, were among the Court’s most trenchant critics, who fulminated about the delays, legal confusions, endless rehearings and lack of certainty in land titles.

The role of the Maori assessors is a topic which requires more research. Maori certainly had their doubts about their value. In 1871 two rangatira, Paora Tuhaere of Ngati Whatua and Major Te Wheoro of Waikato – an assessor himself - complained that the assessors were “of no use”; they had “little or nothing to say...they sit like dummies, and only think of the pay they are going to get”.¹⁴⁴ This was no doubt a well-informed criticism. However the assessors cannot be entirely written off as nonentities who played only a minor role in the cases. Some of the most important Maori leaders of the time, including Paratene Ngata of Ngati Porou and Wiremu Hikairo of Ngati Whakaue served on the Court. Both were men of very great ability and were influential members of their own communities. They often had to work very hard, and it is wrong to see them as only playing a decorative and passive role in the proceedings. Paratene Ngata finally resigned from the Court after the Rohe Potae cases as he felt that he had done most of the hard work for a fraction of the salary paid to Judge Mair. Ngata claimed that “I did the bulk of the work but my colleague got the big

¹⁴² As noted above, Fenton published a collection of judgments in 1879: see F.D. Fenton, *Important Judgments delivered in the Compensation Court and Native Land Court*, Henry Brett, Auckland, 1879.

¹⁴³ (1877) 24 NZPD 275, cited Macky, *Trust and Company Management by Wi Pere and William Rees*, 2002 (Wai 814Doc#F11), 28.

¹⁴⁴ Evidence of Te Wheoro and Tuhaere to Haultain Commission, 1871 AJHR A-2A, 26.

money.”¹⁴⁵ Court records show that the assessors played an active part in the hearings and questioned the Maori witnesses closely, one example being the Chatham Islands investigations of title in 1870.¹⁴⁶

On the other hand there certainly were complaints about the probity of assessors.¹⁴⁷ Octavius Hadfield certainly had his doubts about the assessors in the Himatangi case in 1869 (discussed in the next chapter).¹⁴⁸ On other occasions Maori complained that proposed assessors were related to parties in the case and should not participate in the hearings for that reason. (Assessors did not usually sit in their own areas.)¹⁴⁹

2.6. Tenurial Revolution

While we are not opposed to a more nuanced understanding of the workings of the Court this must not, however, be allowed to obscure the fact that the tenurial changes brought about by the Native Lands Acts were genuinely revolutionary with significant consequences for all Maori who became caught up in its processes. Kawharu’s description of the Court as an “engine of destruction for any tribe’s tenure of land, anywhere”¹⁵⁰ is basically right, although it has to be added that the land-owning groups in Maori society were much smaller entities than is usually conveyed by the English word “tribe”. In an important report comparing New Zealand experience with that of other South Pacific countries Alan Ward has noted that colonial regimes in New Zealand “changed Maori land tenure far too much far too soon, and mainly for their own convenience”.¹⁵¹

South Pacific experience suggests that more economic development of land by Maori people would have been achieved by an evolutionary rather than a revolutionary approach to customary land tenure – an approach which retained an overarching ‘tribal’ tenure, with defined rights for individuals and groups beneath it. Not all would have been able to make an economic living from the land, but many more than was in fact the case.

¹⁴⁵ Paratene Ngata, Journal, cited R Walker, *He Tipua*, 61. See also footnote around 203.

¹⁴⁶ Typically cross-examination and questioning from the bench is not recorded in the Minute Books in question-and-answer format, but rather as a connected narrative. In the Chatham Islands cases, however, the evidence happens to be recorded in question-and-answer form, and it is very clear that the assessor, Charles Wirikake, played a very active and vigorous role in the case, carefully questioning both Ngati Mutunga and Moriori witnesses: see e.g. Mangatu Karewa (Kekerione) Investigation of Title (1870) 1 Chatham Islands MB 1-22.

¹⁴⁷ 1886 AJHR G13.

¹⁴⁸ See Lethbridge, *Wounded Lion*, 247.

¹⁴⁹ Mirimana Tuhoto and 12 others to J E Macdonald, Chief Judge Native Land Court, 25 April 1887, Heruiwi Closed File 14, Waiariki Maori Land Court, Rotorua (cited by Tracy Tulloch in *Heruiwi 1-4: A report commissioned by the Waitangi Tribunal for the Urewera District Enquiry*, 2001, (Wai 894 Doc # A1, 49).

¹⁵⁰ I.H. Kawharu, *Maori Land Tenure: Studies of a changing institution*, Clarendon, Oxford, 1977, 15.

¹⁵¹ Alan Ward, *Ngati Pikiao Lands*, 2001, [Wai 1200 Doc#A9], pp 2-3.

The title taken by the grantees varied from Act to Act. After 1873, however, the Acts were variants on the general theme that all owners went into the title as tenants in common with individual rights of alienation of their undivided shares. The variations were usefully tabulated by Thomas Mackay in 1891:¹⁵²

Table: Forms of Title ordered by the Land Court 1862-1890

Date of Act	Number of Act	No of Section	Form of title ordered by the Court
1862	42	3	Prescribed certificate of title to ten persons jointly.
1865	71	23	Prescribed certificate of title to all the owners as tenants in common.
1867	43	17	Prescribed certificate of title to all the owners. Ten to be placed in the certificate and the remainder to be registered in the court records.
1869	26	12	Prescribed certificate of title to all the owners. Where more than one grantee, such grantees to be tenants in common and not joint tenants.
1873	56	47	Memorial of ownership, all the owners to be declared and be tenants in common.
1877	31	34	Certificate of title. If owners more than ten, divisions to be made and certificates issued accordingly.
1877	31	56A	Memorials of title under Act of 1873 may be cancelled, and certificates of title issued in lieu thereof.
1877	31	58	Grantees to be tenants in common, unless they request in writing to be made joint tenants.
1880	38	25	Certificate of title in lieu of memorial.
1881	18	8	Crown grants to be issued in favour of the persons respectively named in the certificates as tenants in common.
1886	24	22	Certificate of title under "The Land Transfer Act, 1885" to be issued to the persons ascertained to be owners.
1886	-	3	Grantees under above certificate of title to be tenants in common, but not equally so unless stated in the grant.

¹⁵² 1891 AJHR G-1A, 19.

As tenants in common, owners owned heritable interests which were individually alienable (subject to statutory restrictions on particular categories of Maori land) and, as this book will demonstrate, owners were very often willing to sell these interests to government and private buyers.

Selling some land in order to generate capital to develop what remains is not necessarily a bad or unwise strategy, particularly where capital is hard to obtain from other sources, and it appears that this was a strategy pursued by some groups, especially Ngati Porou on the East Coast and Ngati Tuwharetoa. Such a strategy requires, however, effective leadership and careful planning. In other areas, though, much of the money seems to have been simply wasted - if, indeed, there was any money in any case. The Hawke's Bay economy in the period from 1865-73 revolved not around cash but around credit and debit entries in the storekeeper's accounts, with land sales being credited against debits for alcohol, buggies, flour, agricultural implements, seed and so on, some of which may have been of economic utility, but much of it not. Title investigation and land alienation are of course interrelated processes, but sometimes they are treated as if they were one and the same, which is quite incorrect. Maori did not necessarily sell land that they took through the Court. They might lease it, or farm it themselves, or enter into their own arrangements with sawmilling companies.

The full effects of the Court on Maori social organisation are still uncharted. Clearly there must have been substantial impacts, but in order to grasp these adequately an essential prerequisite is a sophisticated grasp of what Maori social organisation actually was, and how it was evolving. A number of scholars have recently grappled with this subject, in particular Angela Ballara, Judith Binney, Andrew Erueti, Joan Metge and Steven Webster. An earlier model that Maori society consisted of 'iwi' (tribes), split in turn into 'hapu' (clans) in turn made up of 'whanau' (extended families) has long been exploded, but the precise implications of the new scholarship of Maori social organisation for a better understanding of the Land Court and the land alienation process remain to be fully charted.

In fathoming this problem it is particularly important to differentiate between ten-owner blocks established in the 1865-72 period - many of which lasted until they were repartitioned later - and the effects of the Native Lands Act of 1873. The former readily facilitated alienation over the heads of the mass of the owners; and while some chiefs acted as conscientious trustees many did not. After 1873, however, all owners were entered into the memorial of title, and, as shown, mostly the Court awarded blocks to hapu and then left it to the hapu concerned to produce a list of names. If the ten-owner system exaggerated and distorted the powers of the chiefly class, the effect of the post-1873 system was essentially to depress them into an undifferentiated list of owners. Sian Daly has noted the sense of

powerlessness and frustration felt by Poverty Bay Maori leaders like Wi Pere by the mid 1880s.¹⁵³ Although the Court did sometimes allow hereditary aristocrats increased rights in a block, this was done by granting them two or three shares while everyone else received one. Such additional shares were known as ‘mana shares’. Court practice was inconsistent, however, and in any case the practice was everywhere declining by 1900.¹⁵⁴ Sometimes, from a sense of noblesse oblige, rangatira did not seek such entitlements in any event.

The process also impacted on hapu organisation and structure. The Land Court process froze hapu membership at a fixed point in time. From the time of the initial Land Court decision, ownership was no longer vested in a hapu as a collective unit but in a collection of individuals. At first the list of owners and hapu membership would have been coterminous, but as time went on there could be an increasing divergence. Hapu members might marry and move elsewhere, but they and their children continued to have rights in the block. This arose from the Land Court’s approach to succession: as a rule, children shared in their parents’ shares equally.¹⁵⁵ This could mean that as time went by local residents no longer necessarily owned all the shares in the local blocks, a substantial percentage of which could be owned by persons living elsewhere. By the same token, local people might own shares in blocks far away as well as, or instead of, interests in the blocks in the place where they happened to live and struggled to make a living. This growing divergence between residence and land titles could have implications for land alienation.

2.7. The Native Land Court and Ngati Toa: An Overview

The following chapters deal in detail with a sequence of investigations of title carried out by the Native Land Court impacting in various ways on Ngati Toa. We decided to be as inclusive as possible in our consideration of the role of the Court in order to consider the full range of ways in which its operations impinged on Ngati Toa. Sometimes the cases (and their effects) operated at what might be called a ‘macro’ level, and on other occasions on a ‘micro’ level. At the ‘macro’ level are the cases discussed in chapter 3, including the Himatangi, or Rangitikei-Manawatu block (first investigated in 1868),¹⁵⁶ Horowhenua (1873) and Kukutauaki. In one sense a block such as Rangitikei-Manawatu has no direct connection to Ngati Toa, as Ngati Toa – for one reason or another – did not advance any separate claim to it in the Native Land Court in their own right. The key protagonists in these more northerly

¹⁵³ See Daly, *Poverty Bay*, 171 (referring to Ballance’s meetings with the Poverty Bay Maori leadership in 1885: see also 1885 AJHR G-1, 68).

¹⁵⁴ Kekerione Reinvestigation, (1900) 2 Chatham Islands MB 327.

¹⁵⁵ Papakura - Claim of Succession (12 April 1867), 1867 *New Zealand Gazette*. 19-20; see also F.D. Fenton, *Important Judgments*, 19-20.

¹⁵⁶ The Himatangi minutes are in (1868) 1C Otaki Minute Book. See below.

blocks were Ngati Raukawa, Muaupoko and Ngati Apa (and, it should be emphasised, the government). But Ngati Toa were involved in the case as well, firstly and most importantly perhaps in the sense that the whole tenurial history of the region revolved around the earlier history of conquest and settlement led by Te Rauparaha. An example is the Himatangi (Rangitikei-Manawatu) rehearing. Judges Fenton and Maning gave judgment in this case on 25 September 1869.¹⁵⁷ The argument was almost entirely focused on Te Rauparaha's intentions with respect to Ngati Raukawa and Ngati Apa. The Court found – astonishingly – that Ngati Raukawa as an iwi had no rights in the block, which went to Ngati Apa, although three Ngati Raukawa hapu (Ngati Parewahawaha, Ngati Kahoro and Ngati Kauwhata had rights in the area by occupation). According to the Native Land Court:¹⁵⁸

There, however, is no evidence at all to show that Rauparaha, in granting or allotting lands to the different sections of the Ngatiraukawa tribe, did ever give or grant to them any lands within the boundaries of the Ngatiapa possessions, between the rivers Rangitikei and Manawatu, or elsewhere; to have done which would have been clearly inconsistent with the relations then subsisting between himself and the Ngatiapa tribe, over whose lands he had never claimed or exercised the rights of a conqueror; and moreover the Ngatiapa, a fierce and sturdy race, were on the land, no longer unarmed, but well provided with those weapons [muskets], the want of which had, on the occasion of the first invasion, reduced their warriors to seek reluctantly the shelter of the mountain or the forest. It is, however, sufficient that we have the fact that, influenced by whatever motives, Te Rauparaha did not at any time give or grant lands of the Ngatiapa estate, between the Manawatu and Rangitikei rivers, to the Ngatiraukawa tribe, nor is there any evidence to show that he had ever acquired the right to do so.

Whatever one may think of the correctness or otherwise of the Court's conclusions (which are actually contradictory), certainly the decision reflects the importance of Te Rauparaha's actions in terms of the consequences for land claims by other groups in subsequent decades.

Secondly Ngati Toa rangatira such as Matene Te Whiwhi, Tamihana Te Rauparaha, Nopera Te Ngiha and Hohepa Tamaihengia did participate in the hearings, either called as witnesses in order to lend weight to one side or another, or alternatively appearing as Raukawa rangatira in their own right.¹⁵⁹ In fact Ngati Toa rangatira sometimes appeared on opposite sides in the same case.¹⁶⁰ As has been stressed in chapter 1, the connections between

¹⁵⁷ See Fenton (ed), *Important Judgements*, 101-108.

¹⁵⁸ *Ibid*, 106.

¹⁵⁹ Most notably, Matene Te Whiwhi. As well as appearing in these cases, Matene also gave evidence in various Native Land Court cases dealing with blocks in the northern half of Raukawa's rohe around Maungatautari, the upper Waikato and Tokoroa.

¹⁶⁰ In the Himatangi case Matene Te Whiwhi (Raukawa himself, of course), appeared in support of the Raukawa claimants, who told the Court that "Ngatitoa thought to give the land as far as

Raukawa, a principal protagonist in these cases, and Ngati Toa were of close – as the cases reveal. Identities are complex, as the Land Court Minute books reveal. Thus Jane Luiten, in her report on the Whanganui-ki-Porirua claims, refers to Matene Te Whiwhi's role in negotiating the Rangitikei-Turakina purchase with McLean in 1849 as one of the 'dignatories' of Ngati Raukawa,¹⁶¹ which indeed he was, but of course Matene Te Whiwhi was also Ngati Toa, being one of the three signatories to the Wairau Deed, 18 March 1847 (Ngati Toa deed),¹⁶² one of nine signatories to the Porirua Deed, 1 April 1847 (Ngati Toa deed),¹⁶³ and one of twelve signatories to the Waikanae Deed, 20 April 1858 (a joint Ngati Toa and Te Atiawa deed).¹⁶⁴ (Matene Te Whiwhi was Te Ati Awa as well.) This triple identity was something he readily acknowledged; in his evidence in the Kukutauaki case in the Native Land Court in 1872 Matene said:¹⁶⁵

I belong to the Ngati Toa, Ngati Awa and Ngati Raukawa.

However, when giving evidence regarding Ngati Raukawa's ancestral blocks in the South Waikato, Matene Te Whiwhi stated simply that he belonged to Ngati Raukawa ("I am a chief of Ngati Raukawa"¹⁶⁶), once again showing that identity can be variable to a degree and depends on place and context.

Thirdly these blocks are part of Ngati Toa's rohe in the broader sense, given that the area of influence of the iwi is usually said to extend as far north as the Whangaehu. (Te Rangihaeata never wavered from that view.) The Court's controversial decisions with regard to these three blocks did have impacts on Ngati Toa interests in the broadest sense, as is explained at the end of the next chapter.

Finally, in the case of the Kukutauaki Block, bounded on its northern side by the Manawatu River, the Native Land Court actually found that Ngati Toa were entitled to a joint interest in the block along with Raukawa and Ngati Awa. The Native Land Court (Judges Rogan and Smith) gave judgment on the Kukutauaki case on 4 March 1873,¹⁶⁷ and found that sections of Ngati Raukawa have title in the block "together with Ngatitua and Ngatiawa,

Whangaehu to Ngati Raukawa because of the murder of Te Pou by Muaupoko at Ohau": (1868) 1C Otaki MB 197-8: see ch 3 below. But Tamihana Te Rauparaha gave evidence for the opposite side in the same case, stressing the continued mana of Ngati Toa over the entirety of the area and that Te Rauparaha had set Ngati Apa's boundary as far south as the Manawatu river. He was supported by Hohepa Tamaihengia and Nopera Te Ngiha.

¹⁶¹ Luiten, *Whanganui ki Porirua: an exploratory report*, (Wai 52 Doc#A1), 13.

¹⁶² Alexander Mackay, *Compendium*, vol 1, 204.

¹⁶³ *Turton's Land Deeds of the North Island*, No 22, p.127.

¹⁶⁴ *Turton's Land Deeds of the North Island*, No 23A, p 129.

¹⁶⁵ Kukutauaki case, (1872) 1 Otaki MB 1, at 135.

¹⁶⁶ Puahue case, (1868) 2 Waikato MB 76.

¹⁶⁷ The judgment is reprinted in Fenton (ed), *Important Judgments*, 134-35.



Matene Te Whiwihi

Alexander Turnbull Library, Wellington.

Matene Te Whiwihi was a leading rangatira of both Ngati Toa and Ngati Raukawa and worked closely with Tamihana Te Rauparaha in the management of tribal affairs and land issues. Like Tamihana Te Rauparaha he was closely linked with the Church of England and was an early proponent of the idea of a Maori king.

whose joint interest is admitted by the claimants”.¹⁶⁸ This is interesting given that this area usually is perceived as quintessentially part of Raukawa’s rohe. This presumably will have meant that Ngati Toa people would have been admitted into the Kukutauaki titles in their own right – and into the various partitions of this very large block – rather than through kin connections with Ngati Raukawa.

Ngati Raukawa’s experience of the Native Land Court was to prove especially dismal: a dismaying sequence of cruel blows and defeats, firstly losing to Ngati Apa in the Himatangi or Rangitikei-Manawatu block, and then to Muaupoko in the Horowhenua block (cut out of Kukutauaki and investigated separately by the Native Land Court in March-April 1873).

Other chapters of this report deal with the Court operating at a much more ‘micro’ level, principally regarding a sequence of cases dealing with small blocks around Porirua: Aotea, Kahutea (or Kahotea), Kenepuru, Koangaumu, Komangarau Tawhiri, Korohiwa, Onepoto, Wairere and Takapuwahia. A further separate sequence of cases dealt with Kapiti Island, investigated by Judge Rogan at Otaki in April 1874 and partitioned immediately into a number of small blocks: Te Mingi Kapiti No 1, Maraetakororo Kapiti No 2, Kaiwharawhara Kapiti No 3, Rangatira Kapiti No 4, Waiorua Kapiti No 5. The Kapiti sub-blocks all have their own various complicated histories (traversed fully in ch 11), but in the case of Kapiti there is an important difference with the alienation of the land blocks around Porirua. Most of the former were sold to private purchasers, mostly local farmers. But Kapiti, which was of course especially prized by its various Ngati Toa owners¹⁶⁹ because of its historical associations, was acquired by the Crown acting under pre-emptive purchasing powers conferred by statute in 1897.¹⁷⁰

Given that to Maori themselves matters of title and tenure were highly contestable and complicated by the fact that many individuals had standing in more than one 'tribe', the question then becomes one as to what extent were the institutions of the colonial state able to accommodate and recognise this reality. The answer varies according to the superimposed method of tenurial recognition and land alienation. In some ways the deeds of the pre-emption era could cope with the complexity more effectively than the Native Land Court system introduced after 1865 and which is analysed in this report. Quite often a number of iwi were

¹⁶⁸ Ibid, 134.

¹⁶⁹ Although, as is explained in ch 11, by the time of the enactment of the Kapiti Island Public Reserve Act 1897 the title position on Kapiti had become quite intricate, some of it owned by the original Maori grantees or their descendants, and some of it alienated to various Pakeha private individuals; other parts of the island were leased out.

¹⁷⁰ Kapiti Island Public Reserve Act 1897.

paid out in separate deeds for the same land. The most important examples are McLean's Te Waipounamu transactions of the 1850s, by which many descent groups were paid for their interests in the Upper South Island without the actual parcels being defined and described. (These transactions, in which Ngati Toa played an important role, have been described in Report 1.) McLean saw that it was simply not possible to define in an authoritative way the boundaries between Te Ati Awa, Ngati Toa, Ngati Rarua, Ngati Tama and so on: instead, there were complex and overlapping interests best dealt with by loosely-defined deeds extinguishing the interests of everyone and establishing reserves. However, with the advent of the Land Court, the situation changed; the Court developed a highly schematic and fairly rigid set of requirements which, by an ironic twist, was applied to the reserves within McLean's Te Waipounamu deeds. Ngati Toa thus found themselves excluded from interests in reserves and in such interests as the Nelson Tenth and Wellington Tenth even though they had been original "vendors" of the lands in question. The Native Land Court process also led to years of ruinous contestation between Ngati Apa, Ngati Raukawa and Muaupoko over the Rangitikei-Manawatu and Horowhenua blocks.

CHAPTER 3

‘A Commission of General Inquiry’: The Native Land Court in the Rangitikei, Manawatu and Horowhenua Districts 1867-1874

3.1. Introduction

Referring then to the terminology used in the last section of the preceding chapter, this chapter of our report deals with the ‘macro’ level cases heard in the northern part of Ngati Toa’s area of interest in the period from 1867-4. In these cases the initial allocation of interests by Te Rauparaha was a crucial issue, and Ngati Toa rangatira gave evidence even though Ngati Toa were not claimants in their own right. Soon after it was created, the Native Land Court commenced operating in the northern areas of Ngati Toa’s area of interest. It made bold and controversial decisions in the course of determining the relative rights of various iwi in the region from Horowhenua north, decisions that almost entirely blocked Ngati Toa and its allies from any ongoing claims of rights and interests. The previous chapter has discussed in general terms the creation of the court and the formation of the principles under which it operated. The present chapter discusses how those principles were applied to lands in which Ngati Toa had an historical interest, and separated the iwi from ever having any further legal interest thereafter.

The context was highly politicised and historically complex. Ngati Toa and its allies had, of course, only travelled south over some two decades prior to the signing of the Treaty. The entire region had been greatly affected by the various conflicts of the Musket Wars. The key socio-political feature thereafter was the control exercised over the region from Whangaehu south through Kapiti and across Cook Strait and within Te Tau Ihu by Ngati Toa. This control lasted until the wars of the mid-1840s, when Te Rauparaha was captured and imprisoned without trial by Governor Grey. Over the next two decades, there were various inroads made in the region into Maori autonomy and land ownership by the New Zealand Company, private settlers and the colonial government. More specifically there were two key problems at issue, both of which indirectly impacted on Ngati Toa principally – although not entirely – through their links with Raukawa. The first was the nature of the Raukawa title. Some groups, such as Ngati Apa, went so far as to claim that Ngati Raukawa had no rights anywhere in the region, and that their only lands were those traditionally belonging to them in the South Waikato. (This was not a position which either the government or the Land Court accepted). Secondly, there was the allied problem of the boundaries between Raukawa and other groups, in particular Ngati Apa and Muaupoko. The government was entangled in this

matter because it was a purchaser of land in the region principally from Ngati Apa, which meant that the Crown had a political imperative to back the claims of Ngati Apa and seek to diminish those of Raukawa.

This complex dispute, as is explained in Report 1, in fact preceded the advent of the Native Land Court in the Kapiti-Horowhenua region.¹⁷¹ It had surfaced at the time of the Rangitikei/Turakina deed, which was drawn up by McLean and signed by 200 people of Ngati Apa at Wanganui in May 1849.¹⁷² Before executing the deed McLean had met with Raukawa and Ngati Toa to discuss the sale. The discussions reflected a division of opinion between the old-school rangatira such as Te Rangihaeata, who flatly rejected any right on the part of Ngati Apa to sell any land south of the Whangaehu¹⁷³ and a group of younger chiefs, who, probably on missionary advice, decided not to oppose the sale. According to Buick, Matene te Whiwhi and Rawiri Te Whanui worked out a trade-off by which it was agreed Ngati Apa could sell "conditionally upon their undertaking never to question the Ngatiraukawa title to the district south of the Rangitikei river".¹⁷⁴ As far as Ngati Raukawa and the moderates within Ngati Toa led by Rawiri Puaha were concerned, allowing Ngati Apa to sell the Rangitikei/Turakina Block was a generous concession, not a recognition of a claim of right. According to Matene Te Whiwhi:¹⁷⁵

The Ngatiapa and Rangitane had lost all authority over these lands as far as the Wairarapa long before the Treaty of Waitangi came in 1840. At the time the treaty was signed they had no authority over the land. The Ngatiraukawa quietly handed over the other side of Rangitikei to Ngatiapa to sell to Mr. McLean, which made that sale complete.

This is not an isolated viewpoint. It is clear that Raukawa and Ngati Toa regarded the Rangitikei river absolutely as the southernmost boundary of any sale by Ngati Apa that they could possibly agree to (and even for some even that was too much of a concession).¹⁷⁶ As McLean was told in no uncertain terms: 'Do you wish for strife Mr. McLean? I will hold all this side, and the other side shall be yours. Rangitikei, Rangitikei, Rangitikei shall be the boundary.'¹⁷⁷

¹⁷¹ See Report 1, pp 275-279.

¹⁷² See Fargher, *Best man who ever served the Crown?*, 77.

¹⁷³ McLean to Col. Secretary, MS 32/3, ATL Wellington [document transcribed in Appendix to Report 1]

¹⁷⁴ Buick, *Old Manawatu*, 170. On this meeting see also Ray Fargher, *The best man who ever served the Crown? A Life of Donald McLean*, Victoria University Press, 2007, 75-6.

¹⁷⁵ Cited Buick, *Old Manawatu*, 171 [no source given].

¹⁷⁶ See the discussion in Anderson and Pickens, *Wellington District*,

¹⁷⁷ Meeting at Te Awahou Pa, Rangitikei, 15 March 1849, Donald McLean Papers MS 32(3), p 20, cited Anderson and Pickens, *Wellington District*, 57.

It is vital that it be understood that the Crown was enmeshed in this ‘dispute’ right from the start, and can indeed be said to have aided and abetted it. When Ngati Apa had first offered to sell the Rangitikei Block in 1848 the government, as Anderson and Pickens have emphasized, was eager to accept.¹⁷⁸ It seems quite clear that Lieutenant-Governor Eyre followed a policy of doing everything he could to assist the New Zealand Company settlers, many of whom wanted to take up sections in the Rangitikei:¹⁷⁹

Pressure for land was being generated from Wanganui and Wellington where New Zealand Company settlers continued to wait for the sections awarded in compensation by Spain. Lieutenant-Governor Eyre assured the Company’s acting agent that the Government understood ‘the very great importance of at once adjusting the claims of the New Zealand Company settlers who have chosen the Rangitikei neighbourhood for the selection of their compensation allotments’. The Government was ‘anxious only to meet the wishes of the New Zealand Company and if possible close this long open question’.

This set a pattern of continued close Crown involvement in inter-tribal politics in this region, which carried through right into the Native Land Court era, which saw the Crown actively taking sides in the Native Land Court in order to facilitate its purchasing activities.

Ngati Apa naturally have their own perspective on these events, and it is not the purpose of this report to attempt to assess the merits of the competing claims in terms of Maori customary law.¹⁸⁰ The points we wish to make, however, are that the respective claims were contentious, involved Ngati Toa, preceded the Court’s arrival, and were exacerbated by government purchasing from Ngati Apa. The dispute simmered on and on and was widely known. In 1864 Featherstone, in his report to Fox (cited *in extenso* in ch 1) referred to the “long-pending land dispute at Rangitikei” with Ngati Raukawa and Rangitane on one side and Ngati Apa on the other.¹⁸¹ On that occasion Isaac Featherston had travelled to the Rangitikei where he met Ngati Raukawa and Rangitane firstly, and Ngati Apa subsequently, to discuss politics generally but most particularly the Rangitikei-Manawatu block (later known as the ‘Himatangi’ block in the Native Land Court).¹⁸² Tamihana Te Rauparaha and Matene Te Whiwhi were both present. The principal leader of Raukawa in the dispute was Ihakara; of Ngati Apa Hunia Te Hakeke. As seen in ch 1, Featherston had coolly told both groups that anyone who breached the peace and resorted to violence would be regarded as at war with the

¹⁷⁸ Anderson and Pickens, *Wellington District*, 53.

¹⁷⁹ Ibid, citing Eyre to Kelham, 23 April 1849, New Zealand Company (NZC) series 3/10, p 2, WNA; Eyre to Wakefield, 20 April 1849, McLean papers, MS 32 (137), p 3, ATL.

¹⁸⁰ See David Armstrong, “*A Sure and Certain Possession*”: *The 1849 Rangitikei/Turakina Transaction and its Aftermath*, 2004.

¹⁸¹ Featherstone to Fox. 18 February 1864, 1864 AJHR E-3.

¹⁸² See Featherston to Fox, 18 Feb 1864, in *Further Papers relative to the Native Insurrection*, 1864 AJHR E-3, 36-8.

Queen's government (which, of course, would mean involve confiscation under the New Zealand Settlements Act). Featherston also told both groups that he intended to impound all rents from the area until the dispute has been settled. Ngati Apa offered to sell the land to the government as a way of ending the dispute; Featherston said he would consider it. Raukawa, dismayed, had insisted the land was not Ngati Apa's to sell, but they were now backed into a corner. Ross Galbreath has analysed the situation acutely:¹⁸³

Ngati Raukawa rejected Hunia's offer – the land was not Ngati Apa's to sell, they argued. But they were cornered. Hunia's tactics backed up by Featherstone's threat left them with Hobson's choice: fight, and risk confiscation of the land by the Pakeha; or sell to the Pakeha. And of course Featherstone's stopping of the rents further increased the pressure to settle.

Featherston returned to Wellington and left Walter Buller to conclude the negotiations. Buller managed to persuade Ihakara to drop his opposition and collaborate in the sale as a means of keeping the peace, and in April 1866 following another major meeting a sale price of £25,000 was agreed to. Those present included all of Ngati Toa, Ngati Raukawa, and many of Ngati Apa, Muaupoko, Rangitane, Ngati Apa and Whanganui.¹⁸⁴ But the distribution of the money still had not been resolved. On 25th April Tamihana Te Rauparaha wrote to the Government (Mantell) describing the April meeting, urging the government to pay no heed to the Ngati Raukawa dissentients (who were all Kingites, Tamihana alleged), and arguing that the larger share of the purchase money ought to go to Raukawa:¹⁸⁵

If you should see some letters written by Ngatiraukawa to the Government about that land, do not give them any attention. Those people have two tongues. I did not write to you because we have talked together about that place. I am now only thinking of the money, and of writing to Dr Featherston to be clear in settling with the Ngatiraukawa tribe. Let them have a large portion of the money. I shall be glad if you will write to me. The sale of Rangitikei was satisfactory to my mind. It will increase the number of the Pakehas in Manawatu, will ennoble the Natives, and cause goodwill to spring up between the two races, the Pakehas and the Maoris.

When the money was eventually divided up at Parewanui at the end of the year, however, the bulk of it was paid over to Ngati Apa.

¹⁸³ See Ross Galbreath, *Walter Buller: The Reluctant Conservationist*, GP Books, Wellington, 1989.

¹⁸⁴ Tamihana Te Rauparaha to Mantell, Otaki, 25 April 1866, in *Further Papers Relative to the Manawatu Block*, 1866 AJHR A-4, 6-7.

¹⁸⁵ Ibid.

Walter Buller had the task of collecting together the signatures. There is an excellent account of the completion of the sale process in Galbreath's biography of Walter Buller.¹⁸⁶

For the rest of the year Buller went about collecting signatures to the deed of sale. Featherston told him to get as many as he could but Buller took him too literally and laid himself open to criticism by collecting many signatures from people with only distant claims to the land. Of the 1647 who signed, only 683 were from the direct claimants Ngati Apa, Ngati Raukawa and Rangitane. More than 700 were from Wanganui people, who had only an indirect interest but were conveniently near at hand just across the river from Buller's courthouse. Some hapu of Ngati Raukawa still refused to sign, and protested to the Governor about Buller's proceedings: "our lands will not be obtained by the wheedling or artifices of Mr. Buller". But finally in December 1866 a large hui was held at Hunia's pa at Parewanui for the final settlement of the sale and the payment of the purchase price.

The meeting ran on for two weeks and was attended by about 1500 Ngati Apa, Ngati Raukawa, Rangitane, Muaupoko, Wanganui and Ngati Toa, as well as many Pakeha onlookers. Many of the latter set up stalls to attract some of the gold that was to be paid over, while others observed the proceedings. Charles Wentworth Dilke, a young English gentleman on a world tour, sat as a witness beside Buller, and later wrote a colourful account of the meeting in his book *Greater Britain*. Featherstone's official report, probably drafted by Buller, was more prosaic, but showed more insight into the manoeuvres behind the oratory.

Hunia [of Ngati Apa], the host, dominated the proceedings, with his ally Keepa Te Rangihiwini evidently supporting him behind the scenes. Initially Hunia demanded that the money be handed to him to divide, and only gradually relented during the long process of proposal and counterproposal over the next week.

In the 1860s and 1870s the areas purchased by the Crown from Ngati Apa moved southwards down the coast into the Himatangi (Rangitikei-Manawatu Block), the area south of the Rangitikei and north of the Manawatu estuary. Raukawa and Ngati Toa must have regretted the concessions they had made, or saw themselves as having made, in 1849. Certainly some Pakeha thought at the time that Raukawa's generosity and "peaceable disposition" only led to them being taken advantage of:¹⁸⁷

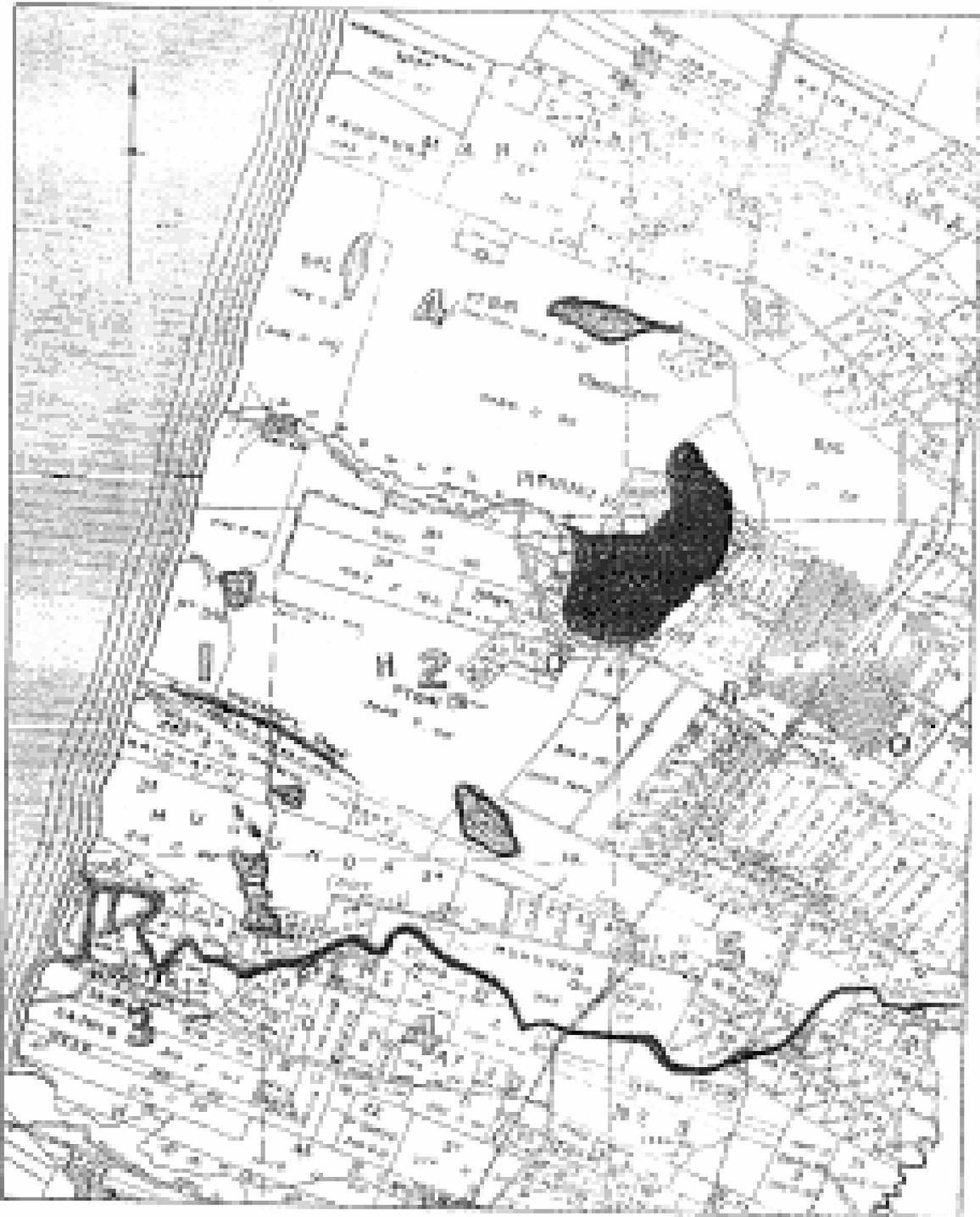
¹⁸⁶ Galbreath, *Reluctant Conservationist*, 69-70.

¹⁸⁷ See Rod A McDonald and Ewart O'Donnell, *Te Hekenga: Early Days in Horowhenua*, G H Bennett and Co, Palmerston North, 1929, 159-60:

There appears to be not a shadow of doubt that the Ngati-Raukawa were, all along, the victims of a too peaceable disposition, this applying to the whole of their dealings with land on the coast from Wanganui down to Otaki. Certainly they did not do any great amount of fighting for this land, but it was, by the law of the strong hand, held by them prior to the coming of the *pakeha*. Their generosity, which seems to have been consistent throughout, allowed the Muaupoko this district, and the Ngatiapa and Rangitane in the Rangitikei, to continue to occupy part of the conquered lands, a generosity which in both instances was abused.

Despite the fact that the Ngati-Raukawa gave back, voluntarily, to the latter tribes, the Rangitikei and Ahu-o-turanga blocks, containing the huge area of 475,000 acres, they

nevertheless laid claim to the Manawatu-Rangitikei block also. Dr. Featherstone, who was sent by the Fox Government to investigate the case, frankly did not concern himself with the merits of the dispute, but advised the Government that the quarrel was opportune, as it would probably enable them to buy the land for settlement.



Plan of Part of Horowhenua County, showing
HOROWHENUA LAKE.

Proposed Reservation coloured red.

0 1 2 3 4 Miles
SCALE

Plan of Part of Horowhenua County, date unknown.

The protracted and controversial process of the Crown purchase of the Rangitikei-Manawatu Block occupied the early and mid-1860s and was also further complicated by the New Zealand Wars. Although the fighting itself did not extend to the Rangitikei-Manawatu, people and groups were affected by it through their traditional and whakapapa connections with other groups in Whanganui, Taranaki and the Waikato.

3.2. Admission of the Native Land Court into the Rangitikei-Manawatu

Many of Ngati Raukawa had refused to sell the Manawatu-Rangitikei deed and had stayed away from the great meeting at Parewanui at the end of 1866 when the money was allocated between the Ngati Apa and Raukawa sellers by Featherston and Buller. Something now had to be done about the non-sellers in this great tract of land. Matene Te Whiwhi (Toa/Raukawa) was firmly of the view that it was vital that an independent body such as the Native Land Court become involved in the Rangitikei-Manawatu affair. On the 1st August 1865 Matene “and the whole Tribe” petitioned parliament seeking an investigation.¹⁸⁸ Parakaia Te Pouepa, leader of the Raukawa non-sellers, had also petitioned parliament on 16 August. In July 1867, 73 members of Ngati Kauwhata petitioned the General Assembly for the ability to have their lands, situated between the Rangitikei and Oroua rivers, brought before the Native Land Court for investigation of title.¹⁸⁹ Parakaia finally got the hearing he wanted in 1868, but first it was necessary to amend the Native Lands Act, from which the Manawatu block had been excluded.

As noted in the preceding chapter, s 82 the Native Land Act 1865 had excluded the Rangitikei-Manawatu region from the operation of the Native Land Court in order to facilitate the land purchasing activities in the region of Wellington Provincial Superintendent Dr Isaac Featherston. By 1867, Featherston was completing his purchases and also a new ministry was in charge of the Treasury benches in the General Assembly. In July 1867, 73 members of Ngati Kauwhata petitioned the General Assembly for the ability to have their lands, situated between the Rangitikei and Oroua rivers, brought before the Native Land Court for investigation of title.¹⁹⁰

A new Native Land Act was passed in 1867 to amend its 1865 predecessor in a number of ways. For present purposes, the significant point was that the Native Land Act 1867 opened up the Rangitikei-Manawatu region to the operation of the Native Land Court. Section 40 of the new Act provided that the Governor, at his discretion, could forward to the Native Land Court for investigation claims made to land in the region. These could of course,

¹⁸⁸ *Petition of Matene Te Whiwhi and and Otaki Natives*, 1865 AJHR G-9.

¹⁸⁹ AJHR, 1867, G-1, 13.

¹⁹⁰ AJHR, 1867, G-1, 13.

only be from Maori who had not signed the Rangitikei-Manawatu purchase deed, since by doing so they had sold the land, thereby relinquishing any ownership claim to it. The land covered by the claims of signatories to the deed had passed out of the category of Maori land into a new status as general land, owned by Wellington Province, and was therefore outside the jurisdiction of the Native Land Court. Section 40 provided:

The Governor may at his discretion refer to the said court the claim of any person to or any question affecting the title to or interest of any such person in land within the boundaries of described in the second Schedule hereto being the boundaries in a certain deed of sale to the Crown bearing date the 13th day of December 1866 and expressed to be a conveyance by Natives entitled to land within the district excepted from the operation of the said Act by section 82 thereof Provided that no claim by and no question relating to the title or interest of any Native who shall have signed the said deed of sale shall be so referred and the Native Lands Court shall in the manner prescribed by the said Act investigate and adjudicate upon such claim and the interests in and title to any land so claimed.

Native Minister J.C. Richmond had a notice gazetted in late 1867 advising that applications could now be made for investigations of title by:

... any persons having claims within the block of land described in the schedule thereunto annexed and who have not signed the deed of sale therein and who desire to have their claim referred to the Native Lands Court may send the same to the Governor for consideration and reference if he shall see fit.¹⁹¹

So the persons who could apply for a Native Land Court investigation of their land interests were ‘non-sellers’ in relation to the Rangitikei-Manawatu Block. Their claims, however, could be located throughout the Rangitikei-Manawatu Block. The intention was to have reserves set aside throughout the Rangitikei-Manawatu region for these ‘non-sellers’ so as to enable the completion of the Crown purchase. This also gave the Crown standing in these investigations of customary interests—and an interest to have the claims disposed of expeditiously and with a minimum of reserve land set aside. As matters proceeded, there were also allegations that the Crown was taking the side of the Ngati Apa, Rangitane and Muaupoko in the investigation process and opposing Ngati Raukawa. It was said the Crown was doing this because Raukawa in the Waikato had been ‘rebels’ during the New Zealand Wars, while Ngati Apa and Muaupoko had supplied a large proportion of the ‘Wanganui Contingent’ who had fought extensively alongside the Crown forces and continued to do so through the late 1860s. Keepa Te Rangihwinui, of Whanganui and Muaupoko, commanded

¹⁹¹ NZ Gazette, 28 November 1867, 6461.

that Contingent for many years and Kawana Hunia of Ngati Apa had also been one of its leaders.

3.3. The Court Sets Its Precedent: The First Himatangi Judgment 1868

A. Background

The first application in this area was not long in coming. In March 1868, Parakaia Te Pouepa and 26 other non-selling members of Ngati Raukau, Ngati Te Ao and Ngati Turanga within Ngati Raukawa duly applied for a certificate of title to the Himatangi Block of 11,500 acres. This was located at the confluence of the Manawatu and Oroua rivers, on the Manawatu's west bank, with Te Awahou to the south. This case was the first in a sequence in which the interpretation of the events of the 1820s and 1830s came to be pivotal.

There was resistance from the Wellington Provincial Government to such an investigation taking place, given that the purchase had been made by it. Crown counsel initially tried to have the case thrown out for vagueness, but the Government was committed to an investigation by the Court and Native Minister Richmond openly supported it going ahead, stating that:

... sect 17 of the Native Lands Act 1867 distinctly recognises this sort of Representative claim as within the class of claims by 'persons' independently however of any technical question the Government are bound in fulfillment of the plain intention of the legislature to secure for all claimants a full hearing without formal impediment on the part of the Crown....

The Government are necessarily and expressly pledged to have all claims treated on their merits. To impede any claim would add strength to disloyal suspicions throughout the Island, without saving us from local excitement.

The Government therefore request that Counsel may be instructed to rely on broad considerations and not to allow any smaller or semi-technical difficulties to postpone a decision by the Court which the quiet of the country requires should be arrived at without delay.¹⁹²

Here the Native Minister was openly saying that as a matter of government policy he expected the Native Land Court to 'have all claims treated on their merits'. However, he also clearly had an eye over his shoulder with regard to 'disloyal suspicions' that might inflame potential 'rebellion'.

B. The Himatangi Court

¹⁹² Richmond to Featherston, 11 March 1868. MA 13/73B.

The case took some six weeks to be heard. Three judges of the Court heard the case, Judges T.H. Smith, J. Rogan and W.B. White, and the Assessors were Ropata Ngarongomate and Matai Pene Tauī—an extraordinarily strong bench at a time when most hearings were conducted by one judge sitting alone with one or two assessors. The claimants were represented by Thomas C. Williams, New Zealand-born son of the Northland C.M.S. missionary the Rev. Henry Williams, and therefore a ‘Native man’ who spoke te reo and had a lifetime’s experience of dealing with Maori, a lay conductor who had no legal training, but who has been described as a ‘spirited advocate’, and an outspoken critic of Featherston’s purchasing activities. The Crown was represented by William Fox, former New Zealand Company agent, a large landholder in the Rangitikei, leading politician and barrister, whose litigation methodology included character assassination of all the Raukawa witnesses, Maori and Pakeha. As an ex-New Zealand Company man and leading political figure in the New Zealand Wars, Fox took particular delight in besmirching the character of his long-time critic, Archdeacon (soon to be Bishop) Octavius Hadfield—the CMS missionary in the region since the end of the 1830s.

C. Role of the Crown

The Crown was therefore not merely observing, or even acting merely to assist the court. In protection of its purchase it operated as if this were regular adversarial litigation and entirely advocated for the ‘sellers’ of Ngati Apa against the non-sellers of Ngati Raukawa. The dominance of Ngati Raukawa in this region was strongly asserted by the witnesses, often together with the prior role of Ngati Toa in placing them in the area in the first place. The conductor for the Ngati Raukawa claimants, Williams, structured the claimants’ case around the initial conquest by the northerners of the previous tangata whenua. Ngati Raukawa had then occupied up to and including the north bank of the Rangitikei River, with Parakaia himself based at Himatangi until the late 1840s, when Ngati Apa had purported to sell land. Prior to that time, he said, any Ngati Apa living south of the Rangitikei River, were ‘in a state of captivity’ and, in fact, the iwi had only moved across the river after 1854 when they had attempted to lease land there. Nor, said Williams, could the presence of Ngati Apa in the deed of purchase be used as authoritative evidence, since Featherston had used the exceptions provided in the Native Land Acts of 1862 and 1865 to thwart the desire of Ngati Raukawa to have a title investigation before any alienation of land took place.¹⁹³

D. The Claimant Case (Ngati Raukawa)

¹⁹³ 1C Otaki MB 194-195.

Matene Te Whiwhi, who of course affiliated both to Ngati Toa and to Raukawa (Ngati Huia), was the first witness and set out the region's history, beginning with the Ngati Toa conquest, led by Te Rauparaha, and moving on to the Ngati Raukawa heke to the coast. He testified:

Ngatitōa thought to give the land as far as Whangaehu to Ngati Raukawa because of the murder of Te Pou by Muaupoko at Ohau—Ngatitōa chiefs assented and gave Te Ahukarama the land. 'The land on which Te Pou was killed.'¹⁹⁴

He told the court that the various waves of the heke had forced the resident tribes—Ngati Apa, Rangitane and Muaupoko—to desert their lands and seek refuge in the Wairarapa. However, once there they were again attacked by Ngati Kahungunu and driven back to the west coast, scattering to Rangitikei, Whanganui and even Waitotara. Others went to their 'hunaonga'—Te Rangihaeata, who was now a relative since he had taken Pikinga as his wife. Matene Te Whiwhi told the court that 'the greater part of Ngati Apa' were therefore 'dependents' of Te Rangihaeata.¹⁹⁵ Ngati Raukawa extended their mana beyond the area given to them by Ngati Toa to Turakina when they then assisted Ngati Apa in the successful conflict with Whanganui.

Parakaia's account of Ngati Raukawa's arrival in the district stressed the invitation from Te Rauparaha to Te Whatanui and Te Hukiki to come and occupy land from Porirua to Turakina. He recited the battles by which Ngati Raukawa had overcome Ngati Apa, Rangitane and Muaupoko at the end of the 1820s. He then stated:

Ngatiraukawa then proceeded to apportion the lands at Manawatu and Rangitikei between themselves. In 1830 peace having been partially made Ngatiapa came and lived under the protection of Ngatiraukawa—all the land had been taken by Ngatiraukawa and Ngatiapa [and was now] occupied by their permission and under their protection.¹⁹⁶

Parakaia said that Ngati Apa had only begun to be 'whakahi' to Ngati Raukawa after the arrival of Christianity—perhaps referring to as recent a period as Hadfield's mission in the 1840s—but admitted that Ngati Apa did presently have cultivation and fishing rights in certain localities: Tawhirihoe, Te Awahuri, Kaikopu, Pukapuka and Oroua. He did, though, insist that they exercised these rights under the authority of the Ngati Raukawa chiefs.¹⁹⁷

Meihana agreed that Ngati Apa were living at Putanga (Oroua) and Parewanui, while some Rangitane were at Te Mahau, nevertheless, he said, in 1840 'Ngati Raukawa was the tribe in occupation' and 'had the mana'. He called those Ngati Apa and Rangitane who were

¹⁹⁴ 1C Otaki MB 197-198.

¹⁹⁵ 1C Otaki MB 198-199.

¹⁹⁶ 1C Otaki MB 201-202.

¹⁹⁷ 1C Otaki MB 203-204.

then living on the block ‘manakoie’ and declared that they had ‘no tikanga to the land then or from some time previous’.¹⁹⁸

Archdeacon Hadfield’s testimony strongly supported the Raukawa insistence on their dominant position:

Up to the time of the Treaty of Waitangi Ngatiraukawa was the only tribe acknowledged to be in possession of this part of the country from Kukutauaki 3 miles this side of Waikanae up to Turakina—Muaupoko were then living at Horowhenua; Rangitane were living in the neighbourhood of Oroua; Ngati Apa were living on the other side of the Rangitikei on to Turakina excepting a small fishing settlement at the mouth—kainga o Taratoa. I always understood that Muaupoko were living in subjection under Whatanui—were living under the ‘mana’ of Te Whatanui.¹⁹⁹

Archdeacon Samuel Williams testified that he had encouraged both Ngati Toa and Ngati Raukawa to give their consent to the Crown purchase of lands north of the Rangitikei, on the basis of his moral advice that they should ‘shew kindness to the tribes whom they had conquered formerly’ and his practical advice that they should ‘curtail their boundaries, and not to hold useless tracts of land’.²⁰⁰ Both statements confirmed that Samuel Williams saw Toa and Raukawa as (a) having conquered the entire region, (b) still controlling the area north of the Rangitikei when the Crown purchase agents were operating, and (c) having a right to a greater area than they actually occupied. Williams continued, saying that he believed that Ngati Raukawa—or presumably by implication Ngati Toa—had ‘relinquished their mana’ over the area north of the Rangitikei in order to enable Ngati Apa to sell the block, but that they had retained their mana over the lands to the south of that river. He thought that Ngati Apa could only assert rights over the area south of the Rangitikei if Ngati Raukawa gave their permission and set boundaries on the localities into which Ngati Apa were allowed.²⁰¹

Other Ngati Raukawa witnesses explained how their relationships with others over these lands had been a combination of control and generosity. Te Huruhuru had conflicted successfully with Ngati Apa to protect Ngati Parewahawaha’s clearings at Pakapakatea.²⁰² They told how during the process of working out the operation of pastoral leases during the 1850s Ngati Raukawa had driven off farmers’ sheep when those farmers had only Ngati Apa’s permission and not Ngati Raukawa’s.

¹⁹⁸ 1C Otaki MB 222-224.

¹⁹⁹ 1C Otaki MB 211-212.

²⁰⁰ 1C Otaki MB 228-229.

²⁰¹ 1C Otaki MB 230-231.

²⁰² 1C Otaki MB 238-243.

E. The Ngati Apa/Crown case

Matene Te Whiwhi had appeared as a witness for the Ngati Raukawa claimants. Crown counsel William Fox called other senior Ngati Toa as witnesses against them. These witnesses stressed the overall authority of Ngati Toa over the region, rather than that of Ngati Raukawa.

First was Tamihana Te Rauparaha, who testified that in 1840 Ngati Apa had mana reaching not just to the Rangitikei but to the Manawatu River and that Te Rauparaha had set it there. He spoke dismissively of Ngati Raukawa, characterising them as the mere soldiers and ‘kai mahi’ of Te Rauparaha, while those who remained after 1849 living on the north bank of the Manawatu were but ‘mokai’ of Ngati Apa, whose mana there was the greater.²⁰³ His testimony was clear and addressed the main points in general contention. He explicitly denied making often-quoted remarks that Raukawa were foolish for not having exterminated the other tribes as Te Rauparaha had advised them, or for giving back land at Rangitikei to their slaves: ‘I never said so.’

In the face of such clear testimony from such an important figure, the court could hardly have awarded all of the land to Raukawa, as the tribe’s supporters had clamoured for. However, apart from the situation of Raukawa vis-à-vis Apa, there was Tamihana’s clear statement that the mana over the area had been with Te Rauparaha and that it was now under

²⁰³

1C Otaki MB 384-391:

I know the mana of Ngati Apa chiefs is great over the land. I know that Ngatiapa fires were burning on this land. All the land and ‘mana’ went back to Ngatiapa [confirmed at a hui]. There was a little bit left for Ngatiraukawa—just their clearings and ‘mahinga kai’. The whole land was all given back to Ngati Apa and Rangitane and Pane iri [sic]. No exception of cultivation was made.... I listened to Ngatiraukawa bidding farewell to their lands.... They occupied afterwards as ‘mokais’ of Ngatiapa. Ngatikauwhata were living as ‘mokais’ and Nepia and Parewahawaha were living as ‘mokai’—all the people occupying are doing so as ‘mokais’.

In 1840 my father fixed the end of Ngati Apa ‘mana’ at Manawatu.... The land of Ihakara and Patukohuru is now under my ‘mana’. Muaupoko and Ngatiapa consented in 1840....

I have said Ngati Apa maintained their independence.... I don’t know whether any of Ngati Apa lived [as slaves] at Kapiti.... If I saw [Kawana’s father at Kapiti] it was not as a slave.... They were there as visitors and chiefs....

The fires of Ngatiapa were burning on the land at the time of the sale and had been ‘no mua iho’ [as well as Raukawa ones]....

Rauparaha acquired a ‘mana’ by his conquest—but he left the people of the 3 tribes in possession of the land. He would have been angry if any of them had attempted to sell without consulting him....²⁰³

his, Tamihana's, mana. Any reference to Ngati Toa mana over the region was ignored by the court when it delivered its judgment, presumably set aside in its pursuit of a statement of custom that would justify its sweeping inclusion of Ngati Apa and exclusion of Ngati Raukawa or any northerners. While it adopted Tamihana's evidence that seemed to explain how there could have been Ngati Apa and Ngati Raukawa together on the same land, it rejected or ignored his evidence given at the same time about Te Rauparaha acquiring mana over the land by conquest and a residual mana remaining with Ngati Toa.

Nopera Te Ngiha (Ngati Toa), also called by the Crown, explained to the court the significance of Te Rangihaeata's marriage to Pikinga, linking Ngati Toa with Ngati Apa. His version of Ngati Toa's progress south was that they had been escorted by Ngati Apa down to Kapiti when they came in numbers after the first taua. He also suggested that the reason Ngati Raukawa had come that far north at all was that they were fleeing after their defeats at the hands of Te Atiawa at Haowhenua and Kuititanga. He gave evidence that in 1840 Ngati Apa were living on their own land. The fact that they were exercising full mana over it was demonstrated by their sale to the Crown of the Rangitikei-Turakina Block in the late 1840s. He contrasted the role of Ngati Toa in the northerners' arrival in the region with that of Ngati Raukawa:

When I [i.e. Ngati Toa amongst whom he had come] fought these tribes I drove them off—when the fighting ceased, we lived together. After this Ngatiapa lived on the land and had 'mana', otherwise how could they have sold the land? Did the Ngatiraukawa gain any battle or take any 'pas' of the Ngatiapa upon which it should be said they had destroyed the Ngatiapa 'mana'?²⁰⁴

This statement, of course, begs many questions: how did Ngati Apa regain the land after the fighting? Who were the 'we' who lived together and under what conditions? Which land did Ngati Apa then live on? All the land they had held in, say, 1800? Is the only way of gaining rights on the land violent conquest, such that Raukawa had to actually fight battles and to do so themselves? Could Raukawa not therefore come in under the initial conquest by Te Rauparaha and simply control by the ongoing threat of their combined military power and fearsome reputation? What of residual Ngati Toa rights as original conquerors? Nopera did not say that any such rights or interests had withered or had been surrendered; he was merely talking about Ngati Raukawa's right.

Tamaihengia also said that Ngati Raukawa had not occupied north of the Manawatu until the mid-1830s and that the occupation had been peaceful. He said that Te Rauparaha's allocation of land to Ngati Raukawa had been only as far as Poroutawhao, i.e. south of the

²⁰⁴ 1D Otaki MB 395.

Manawatu River. He said that Ngati Apa's fires had never been extinguished on the Rangitikei-Manawatu lands and that while admittedly some Ngati Apa individuals had been enslaved by the northerners, the iwi itself had been 'elevated' by the rangatira of Ngati Raukawa.²⁰⁵ Once again, the evidence included the exercise of Ngati Toa mana through the control and placement of other iwi, but this evidence of an overarching interest in the region was not reflected in the court's decision.

Evidence was then given by rangatira from other iwi, particularly: Kawana Paipai and Mete Kingi from Whanganui, Karaitiana from Ngati Kahungunu, Peeti Te Awe Awe of Rangitane, Paramona Te Naunau of Ngati Upokoiri, together with Hunia Te Hakeke and Matene Te Matuku of Ngati Apa. These witnesses could not agree amongst themselves as to when Ngati Raukawa had arrived in the district, or why. Some said it was as the result of defeat by Ngati Kahungunu (which surely related to the events of the original heke from the north), others to the conflict at Haowhenua and others to Kuititanga—although the force of the 'push' by Te Atiawa must have been mitigated by the fact that Te Atiawa also withdrew to create something of a no man's land between the two iwi. Kawana Paipai stated that after the various conflicts Ngati Raukawa were not conquerors but rather wanderers in search of a place to live, however he also said that their very survival had depended on assistance from Whanganui, which seems highly unlikely and sounds more like Whanganui self-aggrandisement.²⁰⁶

The Ngati Apa witness Matene Te Matuku originally claimed virtually absolute rights over Himatangi from pre-1840 times. He also told how he had continued to return to use resources such as eels and had burned the houses and pou whenua of Ngati Raukawa. However, under cross-examination he admitted (a) that Raukawa rangatira 'Parakaia's fire is and has been burning on the bank of the Manawatu', and (b) that Raukawa received the rents from the land leased to Pakeha and then doled him out a portion. When asked how Nepia Taratoa could be managing the leases that he claimed for himself, Te Matuku's answer was that Nepia had stood on the boundary at Omarupapako and allocated the Manawatu lands to Raukawa and the Rangitikei lands to Ngati Apa.²⁰⁷ This seems to indicate that the Ngati Raukawa chief was exercising a right to make this allocation, hardly the role of someone who was a mere visitor permitted to remain on the land.

Rangitane spokesman Peeti Te Awe Awe also gave evidence that his iwi had continued to make use of the lakes at Himatangi to catch eels and 'took possession of the

²⁰⁵ 1D Otaki MB 399-403.

²⁰⁶ 1D Otaki MB 427-428.

²⁰⁷ *Wellington Independent*, 4 April 1868. Quoted in Anderson and Pickens, 119.



Artist unknown. [Portrait of Rawiri Puaha in European dress holding a mere. 1890s?]
Although the figure in the portrait is identified as Rawiri Puaha it is more likely that, as Puaha died in 1858, the painting is a representation of Hohepa Tamaihengia, Puaha's younger brother. The same man from the painting is shown in a photograph in Carkeek's, *The Kapiti Coast*, and identified as Tamaihengia.

Alexander Turnbull Library, Wellington.

land'. He stated that Te Matuku had originally disputed this usage with them, but that they had reached an arrangement whereby both iwi accessed this resource and cultivated different lands.²⁰⁸ Making such an arrangement does not indicate anything more than that for an unnamed reason the Raukawa rangatira had not wished to fight him. Nor does it say when this occurred. It does not mean that Raukawa had no rights and were obliged to share what their benefactors permitted them.

To counter the Pakeha appearing as witnesses for Ngati Raukawa, Fox called Amos Burr, a New Zealand Company settler in the area and ferry operator since 1841. Burr essentially confirmed the evidence of the Ngati Apa and Rangitane witnesses. He claimed to have better personal knowledge than did Hadfield, who only travelled through the area periodically, and that while Raukawa had had cultivations at Opiki, no-one had been at Himatangi in the mid-1840s (one might have thought that 'no-one' included Ngati Apa). As to the iwi movements, his evidence was that Ngati Raukawa had only occupied land in the Manawatu-Rangitikei area when Te Hakeke and Ngati Apa had given their consent, and that Ngati Apa had moved away from the area voluntarily to be nearer to their missionary, Richard Taylor at Wanganui, but had not been driven out by Raukawa.²⁰⁹ So even Fox's evidence was not an unequivocal statement in favour of Ngati Apa, denying that they had maintained the all-important occupation without a break and confirming that they had moved away, whether or not it was due to conquest by the northerners.

In closing for the Crown, Fox reiterated his central point that the evidence showed:

... a consistent record of continuous exercise of ownership in every possible way in which a Maori could exercise it, to show that Ngatiapa have never ceased to own the land which they inherited from a long line of ancestors, and their occupation of which was fully confirmed to them by the only persons who could have shaken it, Rauparaha and those who accompanied him in his first taua.²¹⁰

This is a Crown recognition of the Ngati Toa conquest of the region up the west coast to at least Rangitikei. Te Rauparaha and Ngati Toa had at this time, in the Crown's view, some ability to shake even the allegedly 'continuous exercise of ownership' of Ngati Apa. They had not done so—which in Fox's eyes confirmed Ngati Apa's position before the court—and the ultimate basis for that restraint was an apparent allocation of the area to Ngati Apa by Te Rauparaha. Beyond the immediate contest between Ngati Raukawa and Ngati Apa, here was recognition of Ngati Toa rights which had been exercised during the 1830s. What was not

²⁰⁸ *Wellington Independent*, 4 April 1868. Quoted in Anderson and Pickens, 119.

²⁰⁹ 1D Otaki MB 473-476.

²¹⁰ Fox, *The Rangitikei-Manawatu Purchase*, 24.

addressed was any residual interest or right Ngati Toa may have still had in the 1860s resulting from that original conquest, some right of control over Te Rauparaha's 'empire', for example, or some links to the lands in particular sites where Ngati Toa had dead buried.

Fox used the authority of Te Rauparaha and Ngati Toa to undermine that of the other northern groups, Ngati Raukawa and Ngati Kauwhata. He pointed to the evidence that the earliest settlement north of the Manawatu River had been made by the father of Tapa Te Whata at Te Rauparaha's direction and with the consent of Ngati Apa (although he persisted in calling this a Raukawa settlement when Te Whata and his people were actually Ngati Kauwhata).²¹¹ Fox added argument that Ngati Raukawa had never fought a battle against Ngati Apa. Hence, only with the arrival of Christianity did Ngati Apa withdraw north of the Rangitikei and Ngati Raukawa were permitted to come north of the Manawatu, by the 'friendly act of Ngati Apa'. He dismissed the Ngati Apa slaves held by Ngati Raukawa as being merely 'a few stragglers taken by their eel ponds and cultivations'.²¹² The fact that there were any slaves at all rather tells against his line of argument, though. Nor does any of this address the question of whether Ngati Apa's 'friendliness' was genuine or whether it was coerced of course. Coercion did not necessarily have to arise from open defeat in battle. It may have been more the threat of defeat by Ngati Toa (or possibly the combined threat of Ngati Toa, Raukawa and Kauwhata acting in a general context of overall Toa control). Such a possibility ran counter to the Crown's interests and its version of customary rights, interests and history and was therefore not raised.

All types of Ngati Apa use and occupation of the district, including on the Himatangi Block itself, were noted. Central elements were cultivations in the Himatangi bush at 1840 and the use of eel ponds on a large scale, such that Ngati Apa were apparently able to make a gift to Featherston of 20,000 eels. Fox argued that in order to exercise such fishing rights Ngati Apa had to have had ownership rights in the adjacent land.²¹³

F. The '1840 Rule' in Argument

Interestingly, in the context of such an early Native Land Court hearing, William Fox as former Premier and Attorney-General and as Crown counsel, argued against the 1840 Rule as devised and applied by the Native Land Court over the preceding three years or so. Clearly not feeling entirely comfortable that his 'consistent record of continuous exercise of ownership' was convincing enough, Fox argued at length against (a) the existence of the 1840

²¹¹ Fox, *The Rangitikei-Manawatu Purchase*, 27.

²¹² Fox, *The Rangitikei-Manawatu Purchase*, 27.

²¹³ Fox, *The Rangitikei-Manawatu Purchase*, passim.

Rule in the first place, and (b) the fairness of its application in the Rangitikei-Kapiti region in particular given the recentness of the disruption to its traditional ownership.

First, he suggested that the 1840 Rule was not actually legal or justifiable. He pointed out that should European nations be defeated and conquered, no-one would suggest that after a mere 30 years they would be denied the ability to re-assert their rights to their ancestral lands. Then, drawing on the Native Land Act's requirement that the court determine rights according to Maori custom, he argued:

... since the Court still respects the native law of ownership, as it existed in and long previously to 1840, and decides between native claimants in accordance with native law, there is not a shadow of a reason shown for fixing a period of limitation, either at 1840 or any other date.²¹⁴

He also challenged the court's apparent fixation with take raupatu and the precedence it apparently gave to claims based on that take as opposed to take tupuna and substantive ahi ka. If, he said, the rights of Europeans to re-assert claims to their lands after a period of conquest were not set aside by courts:

... still less ought such a rule to exist in New Zealand where if in some instance 'tribal' ownership may rest on military occupation, the 'individual' holding as distinguished from 'tribal' almost always rests on the peaceful occupation of the owner achieved by his own manual labour, or that of his immediate ancestors.

Turning to the area from Rangitikei to Kapiti, with its unique recent history, he argued that nowhere in New Zealand would it be more unjust to apply the 1840 Rule:

At that period owing to a series of events which have been related to this Court by the witnesses for the Crown, the sovereign rights of the tribes and the titles to the land were evidently in a state of fusion [sic, i.e. *con*-fusion, being broken down and re-fused in new ways]; old political landmarks were broken down; new ones hardly yet defined or established. 'In those days of Satan,' said one of the old witnesses, 'the tribes were fighting each other. I cannot say where was the mana.' At this moment this Court crystallizes, if I may so express it, the title of the lucky holders of 1840, whoever they might be; utterly regardless of the events of previous periods and the interests of those whose claims, if momentarily in abeyance, had never been abandoned or transferred.²¹⁵

Fox concluded for the Crown by asserting that the Ngati Raukawa claimants had proved their actual occupation of a mere 30 acres, and cultivation of no more than 120 acres out of the total block of some 12,000 acres, just 1% of it. They therefore possessed nothing more than a

²¹⁴ Fox, *The Rangitikei-Manawatu Purchase*, 14.

²¹⁵ Fox, *The Rangitikei-Manawatu Purchase*, 15.

‘mere encroachment’ and this conferred ‘nothing even in the character of a possessory right’. By contrast, he said, the members of Ngati Apa had an actual occupation and this occupation by two hapu was a ‘representative occupation’ on behalf of members of a tribe whose ancestral mana covered the whole district’.²¹⁶

G. The Himatangi (Rangitikei-Manawatu) Judgment

Several principles were established in this seminal judgment which greatly affected how the Native Land Court later received and adjudicated upon the Horowhenua Block and those throughout the northern regions in which Ngati Toa had interests. This judgment delineates the principle that the pre-1840 conquest had to be followed by continuous and extensive occupation to confer rights on the conquerors. However, a second principle was simultaneously recognised, that the original occupants also retained their rights if they maintained *ahi kaa* - their fires burning on the land - somehow. The third principle was that of only a small portion of the conquerors being allowed rights in a particular block of land, only those who lived on the land in question, rather than the whole of the tribe.

The judges enunciated these principles in this judgment which they deliberately intended to be applied in the other claims within the Rangitikei-Manawatu area. Although interested in Himatangi specifically, they had found it impossible to avoid the conflicting tribal claims to the entire area between the Rangitane and Manawatu Rivers, and believed they had heard sufficient evidence for them to decide that broader question of tribal right. Further:

... by recording our decision on this point in the present judgment we indicate a principle which may be conveniently and justly applied by this Court in dealing with other cases of claims in the Rangitikei Manawatu Block which have been or may be referred to it.²¹⁷

This principle was that the court must give particular weight to the enduring rights of original occupants of the land, whose fires had not been put out and who maintained a presence despite the arrival of a new group, even one that used force. They concluded:

Looking at the evidence it is clear to us that before the period of the establishment of British Government the Ngatiraukawa tribe had acquired and exercised rights of ownership over the territory in question. The prominent part taken by this tribe in connection with the cession of the North Rangitikei and Ahu o turanga blocks, the sale of Te Awahou and the history of the leases prove also that these rights have been maintained up to the present time.

²¹⁶ Fox, *The Rangitikei-Manawatu Purchase*, 30.

²¹⁷ *Ie Otaki MB*, p 719.

On the other hand the evidence shews that the original occupiers of the soil were never absolutely dispossessed and that they have never ceased on their part to assert and exercise rights of ownership.

The fact established by the evidence is that the Ngatiapa-Rangitane weakened by the Ngatitooa invasion under Te Rauparaha were compelled to share their territory with his powerful allies the Ngatiraukawa and to acquiesce in joint ownership.

Our decision on this question of tribal right is that Ngatiraukawa and the original owners possessed equal interests in, and rights over the land in question at the time when the negotiations for the cession to the Crown of the Rangitikei Manawatu Block were entered upon.

The tribal interest of Ngatiraukawa we consider vested in the Section of the tribe which has been in actual occupation to the exclusion of all others.²¹⁸

The Himatangi judgment did not emphasise take raupatu and ringa kaha—the supremacy of ‘might is right’—as other judgments of the Court at that time frequently did, and sometimes in terms as blunt as that. Nor did it stress the 1840 Rule, as the Court again generally did. Rather, this judgment asserted that occupation was what conferred ownership.

The Native Land Court’s judgment was deliberately intended by the court to settle two questions: one was, of course, the ownership of the Himatangi Block itself, but the second was the general issue of relative tribal rights over the broader Rangitikei-Manawatu district. During the subsequent argument over its judgment, Native Minister Richmond would state that in fact ‘The Court has really been acting as a Commission of general inquiry.’²¹⁹ This seems to be an accurate assessment of this pivotal case, the significance of which is difficult to exaggerate in the determination of title to the coastal regions of the lower North Island.

So Ngati Apa were found to have equal rights with Ngati Raukawa in this block. Since, though, Ngati Apa had sold their rights in the Rangitikei-Manawatu Block to the Crown and had had provision made elsewhere for them by Featherston, their half was considered to have passed into Crown hands.

Parakaia and his co-claimants, a total of 27 people, were found to comprise the section of Raukawa that had acquired rights by occupation over the Himatangi Block: ‘The tribal interest therefore vests solely in them.’ The court rejected the claim by Ihakara and the Ngati Patukohuru, based on what it found to be only temporary occupation. It also

²¹⁸ 1e Otaki MB, pp 719–20. Also printed in full in *Evening Post*, 29 April 1868.

²¹⁹ Richmond to McDonald, 15 November 1868. MA 13/73B. Quoted in Anderson and Pickens, ‘Wellington District’, 126.

disqualified two of the 27 since they had signed the deed of cession. The other 25 were awarded 5500 acres, the Ngati Raukawa half of the block less 2/27ths. This interlocutory award was conditional on the claimants submitting a proper survey within six months. The court also recommended to the governor that, except for a lease of less than 21 years, the reserved half be made inalienable.

During the hearing, Walter Buller, at that time a resident magistrate in Wanganui who had been assisting Featherston's purchasing activities, produced a list, drawn up by himself with the aid of four chiefs, that showed 320 [sic] Ngati Raukawa sellers (120 resident and 203 non-resident men, women and children) and only 49 resident non-sellers. Williams, though, claimed to be able to swear to there being 353 resident non-sellers, as well as a long list of non-resident non-sellers.²²⁰

Buick, a turn of the century commentator and champion of Ngati Raukawa, disliked the Himatangi judgment intensely. He asserted that the concept of admission of the rights of Ngati Apa was 'entirely without precedent, and contrary to all the native practice of dealing their tribal territory'. He had a very clear view of the nature of traditional Maori land tenure in which these 'proud and independent spirits... occupied isolated districts.... The dominion of each tribe was well and clearly defined, and any intrusion upon its boundaries was instantly regarded as an act of war'. In this view alliances between tribes were military only,

... and never a partnership in possessions... and where two distinct tribes were found living together, their relative positions were always those of conquerors on the one hand and slaves on the other. No instance can be quoted in which it was otherwise, because joint ownership was a class of tenure utterly repugnant to their whole system.²²¹

Because of this fixed concept of Maori customs and attitudes, Buick declares that either the Ngati Apa were living as slaves of Ngati Raukawa, or it had to have been the other way around. He insisted that the Court had blundered in its 'failure to recognise the enormous importance of separate tribal ownership', rendering a verdict that was unjust to Ngati Raukawa and unsatisfying to Ngati Apa.

The judgment resulted in the equal division of the block between the sellers and non-sellers, a result that enraged both sides. J.G. Wilson sums up:

²²⁰ *Evening Post*, 20 April 1868.

²²¹ Buick, *Old Manawatu*, 244-245.

Mr. T.C. Williams was so disgusted with this judgment that he declared he would not appear in that Court again. Dr Featherston also loudly and publicly declared his dissatisfaction, and the judgment was generally regarded as a compromise and not a judgment on the merits.²²²

The court's ruling that Ngati Raukawa *as an iwi* had no interest in the Rangitikei-Manawatu Block has been greeted with incredulity by later commentators. Petersen calls it a 'monstrous travesty of justice'.²²³ This appears to be, though, at least partly a failure to comprehend the distinction the court was making between the tribe *en bloc*, much of which was well off the block concerned and had never lived on it, and the specific hapu groups comprising it, the resident ones of whom certainly had their rights already recognised by the government to the tune of 40% of the sale monies, plus reserves. In any event, the more widespread understanding of the situation resulting from the deal is summed up by Petersen:

There seems little doubt that from both European and Maori point [sic] of view the Ngatiraukawa had by conquest established themselves as owners of the land they occupied and that by virtue of the second article of the Treaty of Waitangi (1840) were guaranteed the undisturbed possession of such lands and entitled to sell them to the Crown. When it came to the question of sale the 'weeds' who had flourished under the benign protection of their conquerors and had acquired merit and muskets by adhering to the Queen, fiercely denied that they had ever been conquered and by belligerence and vociferous demands had, as is often the case, received the attention accorded to him who shouts loudest.²²⁴

Petersen does, though, report a rather more sanguine picture of the ongoing state of affairs between Maori in the region:

... during the century that has passed since Featherston poured his sovereigns on to the table at Parewanui the bitterness over the inequity of its distribution has passed into the limbo of forgotten things, just as the site of the old pa at Parewanui has been eroded away by the Rangitikei River and vanished out to sea.²²⁵

From the day the judgment was delivered, this has been an entirely controversial decision. As Anderson and Pickens have observed:

This decision satisfied no one entirely. Ngati Apa and Rangitane continued to mount challenges to Ngati Raukawa authority. Featherston approved the action as corroborating his action 'in giving to the claims of Ngatiapa and Rangitane the weight which I attribute to them', but condemned the grant of such an extensive acreage to Parakaia. He argued that the chief should

²²² Wilson, *Early Rangitikei*, p 163.

²²³ Petersen, *Palmerston North*, p 39.

²²⁴ Petersen, *Palmerston North*, p 43.

²²⁵ Petersen, *Palmerston North*, p 43.

have been awarded only that portion of the block actually occupied by his hapu, while the remainder should have gone to the whole of the tribe [i.e. Ngati Raukawa].

The decision was an especial blow to non-selling Ngati Raukawa [i.e. those who had not participated in Featherston's Rangitikei-Manawatu Block purchase]—in their opinion it was based on a misreading of both history and principles of customary usage.²²⁶

Of course, there remains not just the Ngati Raukawa, but the 'invisibilised' Ngati Toa. Despite many references being given to the role of Ngati Toa not only in conquest of the region, but then in exercising control over it through allocation of portions and in keeping the peace through everyone being somewhat overawed or afraid of them, and Tamihana's explicit claim that he still had the mana over the region, the judgment did not consider them to have any interests in the region in general or the Himatangi Block in particular.

3.4. Ngati Raukawa Reject the Himatangi Judgment

The Ngati Raukawa who had not acquiesced in Featherston's purchase were the big losers in this decision. As Anderson and Pickens also note: 'in their opinion it was based on a misreading of both history and principles of customary usage'.²²⁷ The rangatira who had led them in Court, Parakaia, asked their conductor, Thomas Williams, to apply to the Governor for a rehearing, which was their only option for redress since no appellate process had been established for the Native Land Court. The application reiterated the position that Raukawa had held all along—that they had conquered the area and then graciously and generously admitted other tribes to re-enter upon it. Williams stated that:

... for thirty-three years they have held sole possession of the block which they obtained by conquest and that they cannot see why half of the land should be taken from them and restored to Ngatiapa and Rangitane the 'vanquished survivors'.²²⁸

For Ngati Raukawa, Williams also pointed out that although the Native Land Court purported to be setting out a guideline judgment relating to the whole region; it had ignored the strength of the Raukawa presence to the south of the Manawatu River. He stated:

Parakaia and his people object to this that Himatangi is not necessarily a portion of such block but rather a part of the country which fell to their share at the time of the conquest, the other part being on this side of the Manawatu river immediately opposite to Himatangi.

²²⁶ Anderson and Pickens, 'Wellington District', 123.

²²⁷ Anderson and Pickens, 'Wellington District', 123.

²²⁸ Williams to Colonial Secretary, 7 May 1868. MA 13/73B.

Rather than Raukawa having been allowed onto the Manawatu lands by the favour of Ngati Apa, their position was that Ngati Apa and Rangitane had been conquered and that it was Raukawa who had ‘formally returned’ large adjacent areas to those iwi. This generous action, said Williams, mean that Ngati Raukawa thereby ‘considered themselves thenceforth relieved from any joint ownership with these two tribes and entitled to be left in undisputed ownership’ of the lands which they had retained for themselves. As Anderson and Pickens note, Williams did not deny that Ngati Apa retained some interest in the region, but he did point to previous Crown acknowledgement of rights gained by conquest, to the court’s recognition that Ngati Apa had indeed been forced to acquiesce in Ngati Raukawa’s occupation, and to the inadequacies of the Crown witnesses’ evidence.²²⁹

Williams duly applied to the Governor, which was what the law required. His application was then referred to the judges whose decision he was challenging—which was not required by law. Given that the rehearing process was set up in lieu of a proper appeal process, the propriety of this is questionable—one would not expect the hearing of an appeal in the general courts to be dependent on the permission of the judge whose decision was being appealed. Unsurprisingly, the judges defended their position by rejecting all of the Raukawa assertions. They denied that Parakaia had shown either that Ngati Raukawa had taken the region by conquest or that they had had sole occupation of the Himatangi Block. They said that the boundaries referred to had not existed in 1840, that Parakaia had effectively invented them only recently, and that the Himatangi Block was not in any way an extension of the Raukawa lands south of the Manawatu River. They said:

It was not shown that the Himatangi block as defined and described in the evidence formed a portion of the country which fell to the share of Parakaia and his people or that formal possession of was taken by them until very recently. The evidence brought before the Court did not prove the conquest of Ngatiapa and Rangitane by Ngati Raukawa or any forcible dispossession of the former by the latter of the country lying between the two rivers.²³⁰

The other aspects of Williams’ arguments on behalf of Ngati Raukawa were ignored.

Thus informed by the judges whose decision was being complained of, the Crown turned down the Raukawa application for a rehearing on the basis that there were no grounds to justify the holding of one. There was no alternative pathway by which Raukawa could pursue their claims, apart from a petition to the same Government that had just rejected their application. Not until the Native Appellate Court was created in 1894 was there a more

²²⁹ Anderson and Pickens, ‘Wellington District’, 124.

²³⁰ ‘Memorandum on Mr Williams’s Letter Applying on Behalf of Parakaia Te Peneha and Others for a Rehearing of Their Claim to the Himatangi Block’. 14 May 1868. MA 13/73B. Quoted in Anderson and Pickens, ‘Wellington District’, 124.

regular appeal mechanism. The claimants wished to choose different judges to hear their claims this time. Under-Secretary Henry Halse did warn the claimants, though, that when two sides brought a case to court if a judge was appointed to please one side that very fact in itself would likely antagonise the other.²³¹

In the House on 23 July 1868, William Fox wearing his parliamentary hat asked the Native Minister about whether the Government had received any application from Parakaia and others for their Native Land Court case to be reheard, whether any of the Maori whose claims had been dismissed by the Native Land Court had applied to the government for a rehearing, and what decision had been made about any such applications.²³² Fox said that the Otaki court hearing had produced very unsatisfactory results; the only real outcome was to create a great dissatisfaction amongst Maori. Parakaia's claim (Himatangi) had been heard at Otaki and ten other claims had been withdrawn at Rangitikei rather than risk an undesired result; it was rumoured that the claimants had sought a promise of a rehearing under illegal conditions. This is an odd request for information given that Fox was also the lawyer for the Crown in the matter and so was closely involved in the ongoing matter. It seems unlikely that he was asking this question for personal information so much as for political purposes, perhaps to give the Government the opportunity to give a public explanation about how they were handling the ongoing situation, which was of high public interest in the Wellington Province. Native Minister J.C. Richmond confirmed that about three weeks previously a deputation of 16 claimants from Otaki had had an interview with the governor. Te Koro Te One had read a written statement seeking rehearings and their conditions.

The substance of the government's reply, delayed briefly while Featherston continued to seek non-sellers' acceptance of some government offers, was that Parakaia had no grounds for a further rehearing, but that the others' claims would be referred back to the court. Richmond also thought, though, that any rehearing as such would not go to the root of the problem: 'The claimants to the land at Manawatu seemed altogether to object to any decision of any Court which fell short of granting their claims in full.'²³³ This position, of course, could have been a measure of the depth of their conviction that they were being deprived of their patrimony, rather than an expression of mere avarice or a desire to make trouble and not accept a neutral and wise judicial decision, as Richmond seemed to imply.

²³¹ *AJHR*, 1868, A-19, p 1.

²³² *NZPD*, 1868, vol. 2, p 107.

²³³ *NZPD*, 1868, vol. 2, p 108. A disturbance causing present concern had resulted from a transaction which did not concern those claimants anyway, a lease by Nepia Taratoa to a sheep farmer named Gotty. Featherston had recommended Ngati Apa drive the sheep off, but they did it violently, killing some of the sheep—all of which was part of a continuing pattern of violence and injury. Meanwhile, some men, such as Keepa, Kawana Paipai, Matene Te Whiwhi and Featherston were working to restore peace and allay the concerns of both Maori and European settlers.

Williams did not content himself with the rehearing application, but, having been publicly castigated by Featherston and newspapers, also continually alleged political interference in the case. He quoted Native Minister J.C. Richmond's comments on Parakaia's petition stating that the purchase was the means of settling the 'insoluble quarrel' between the tribes and that the remaining difficulties could be resolved if the non-sellers were given a reserve proportional to their numbers.²³⁴ Williams also quoted Premier Edward Stafford as having been outraged at the actions of Judge H.A.H. Monro in a Native Land Court hearing on the East Coast and having declared in the House that he would have fired Monro. Instead, Stafford declared that he would himself:

... take such action as circumstances might require, even if it should be to suspend the operation of the Judges of the Native Lands [sic] Court, whenever such a course was for the public interests—aye, even if the Judges were swept away altogether. He and his colleagues would take that responsibility upon themselves, when they thought public interests demanded it.... He wished it distinctly understood that he should never scruple to suspend the action of a Court of so tentative a character, and one which was altogether an experiment, as that which it was proposed to hold under the East Coast Titles Act. It had been a question of policy to create these Courts, and it was every day becoming a question whether it was advisable that they should be continued. He, for one, should never hesitate ... to arrest any action, whatever, which he thought to be injurious to public interests, even though it might be taken under the name of a Court.²³⁵

Faced with such a sweeping threat from the country's political leader, the Native Land Court judges, Williams assumed, would be cowed into compliance with the government's agenda out of fear for their very positions. He stated:

They will be brave Judges who after reading the above speech which fell from the sapient lips of that great man the Prime Minister ... would undertake to adjudicate upon the claims of Ngatiraukawa non-sellers. I trust the Judges will be advised, before they enter on their very delicate mission to the Manawatu, to do themselves the honor [sic] of waiting upon the Hon. E.W. Stafford, and of ascertaining from him how the 'advisers of the Crown' would wish them to give their decisions, otherwise they will be 'swept away'. Their position and their income will not be worth one solitary week's purchase; far better for them that they should be found toying with millstones among the waters of the Manawatu, than that they should offend against the peculiar views respecting the public interests entertained by New Zealand's Prime Minister!²³⁶

²³⁴ Williams, *Manawatu Purchase*, p 61, 66.

²³⁵ Quoted in Williams, *Manawatu Purchase*, pp 65–66.

²³⁶ Williams, *Manawatu Purchase*, p 66.

So, Williams believed, the outcome of the Himatangi case was entirely predictable. Unless the imperial government intervened, ‘ere long there will have been accomplished in the Manawatu acts of bare-faced impudent injustice and of cruel oppression’.²³⁷

Williams later repeated these allegations in the newspaper after the hearing and the decision had gone against him.²³⁸ Parakaia and his co-claimants had, Williams alleged, not been given a fair hearing as they had not been allowed to be represented by counsel (although Fox, a trained lawyer and prominent politician, represented the Crown) and the government would not grant them a rehearing.

However, Parakaia and ‘his people’ refused to accept the Court’s judgment, refused also to permit a survey, and five years later were still ‘squatting’ on the land concerned. It seems fair to say that the northern iwi have never accepted that verdict on what happened when they came south, or the judicial pronouncements on the state of affairs that had existed in the Rangitikei-Manawatu since the time of the Treaty.

What does not appear in these judicial analyses is any real recognition of the role of Ngati Toa and, associated with that, the possibility that a person or group could exercise control of an area and its inhabitants, and have rights or interests associated with it, without being themselves physically in occupation. For example, how did Himatangi, or anywhere else, ‘fall to the share’ of Ngati Raukawa? Who shared the area out amongst whole iwi? If Ngati Apa forcibly acquiesced in the sharing, who exerted that force? Why was it necessary for Ngati Raukawa themselves to have fought the battles that allegedly conquered Ngati Apa and Rangitane if they were then placed on the lands by those that had fought and had thereby gained the ability to control? What of the various accounts from Ngati Raukawa and others such as Ngati Kauwhata that told of at least hunting out remnants of the original iwi, even if there were not pitched battles, per se? Whether or not Ngati Raukawa themselves fought any battles against Ngati Apa, Rangitane and Muaupoko, battles were certainly fought—by whom and with what result?

There is a feeling throughout these judgements and arguments that something else is being left unsaid. Several of the Ngati Toa and Ngati Raukawa witnesses did mention that Te Rauparaha had doled out the lands, and/or given permission to the other groups to occupy the lands they were on subsequently. Whatever their respective allocations, it seems only reasonable to conclude that he was doing so, and that they later cited his actions as having some authority, precisely because his military and diplomatic prowess and success—whether

²³⁷ Williams, *Manawatu Purchase*, p 67.

²³⁸ *Evening Post*, 28 May 1868.

or not his actions can collectively be called a ‘conquest’—gave him the right to exercise that degree of control over the lands south of Whangaehu and for his divisions and allocations to be respected well after his death.

It goes without saying that Te Rauparaha and Ngati Toa did not themselves occupy the entire region south of Whangaehu. However, they—and especially, he—did exercise a degree of control over the region. That control, and the general recognition of it, must have sprung from some sort of right. Since it was not from ancestral occupation, it must have derived from *ringa kaha* and *take raupatu*, the conqueror’s rights resting ultimately on force of arms.

When other northerners—Akapita of Kakariki, Te Kooro Te One of Mangatangi and Puketotara, Rawiri Te Wainui of Kakanui, and Te Ara Takana of Awahuri and Rairakau—wished to challenge the effect of the Himatangi judgment on their claims on nearby lands, Williams refused to act for them, believing there was no point when the precedent judgment was already against them, and they were also up against the combined forces of Crown and Province personified in Featherston, Fox and Buller.²³⁹ Similarly, his replacement as their agent, Alexander McDonald, complained that the interests of his clients were prejudiced, and their claims disadvantaged, by the weight of the Crown opposing them. This direct—not to say overwhelming—Crown involvement subverted the equal investigation of customary interests between Maori that the legislation required. McDonald also complained that the same judges who had decided Himatangi would hear his clients’ cases, and that professional legal advice had been that there was ‘little hope’ of convincing those judges that the Raukawa view of what were the correct principles should supersede the position they had already committed themselves to. Instead, they ran the danger of the ‘very strong probability’ that the Himatangi judgment would merely be confirmed in relation to these new areas. McDonald therefore told Premier Stafford that his clients would not accept the court’s decision and instead asked for its support in their withdrawal from the court.²⁴⁰

Native Minister J.C. Richmond replied to McDonald and, not surprisingly again, defended both the court’s operations and the Crown’s involvement and the position it had taken. Interestingly, he argued both that the court’s operations were not usual and that this was a good thing. He stated:

The court has evidently acted upon the opinion that their duty could only be effectually done by taking a comprehensive view of the history of the whole title and the principle of the decision in Parakaia’s case is drawn from an examination of the claims of all

²³⁹ Anderson and Pickens, ‘Wellington District’, 125.

²⁴⁰ Anderson and Pickens, ‘Wellington District’, 125.

parties. Nor have I heard of any reason to doubt that the action in the present claims will be on narrower grounds. The Court has really been acting as a Commission of general inquiry.²⁴¹

Richmond confirmed this to his Under-Secretary when he told Halse that he had advised the Raukawa claimants to proceed with their cases, but that the court would be acting as a general commission of inquiry.²⁴²

This raises the question of the authority by which the court was acting as a general commission of inquiry, when it was a court of record with a statutorily defined task, which was to investigate the ownership according to Maori custom of specific blocks brought before it by particular claimants. When it was supposed to act as a commission of inquiry, as on the East Coast, special legislation had to be passed, in that case the various East Coast Acts. Not only was it acting in that way, but the Crown was endorsing its doing so. Of course, it suited the Crown's purposes for it to be acting in this way and to be producing the decisions it was, which largely fitted the way in which the Crown and Wellington Province both wanted title awards to pan out. Self-interest prevented the Crown from intervening to stop the court exceeding the narrowly defined task it was required by statute to do.

On 16 September Hugh Carleton in the House asked what was going on with respect to a court hearing in Wellington that had been called for the previous day. He understood that some of the notices had been withheld by the Native Department and that other notices had been issued calling the Maori to Rangitikei, rather than to Wellington. His implication was that political interference was thwarting opponents to the Crown's dealings in Rangitikei-Manawatu. Richmond explained that Te Kooro's written statement from the earlier deputation had been passed by the government to Chief Judge Fenton. Fox, as Crown counsel, had then complained that the place and time fixed were inconvenient and a new message was sent to Fenton, while the original *Kahiti* notices were withheld by Richmond's direction, as an immediate adjournment was likely if the original sitting went ahead. He stated that 'The Government had not taken any side in the matter', that the withholding of the *Kahitis* was six weeks prior to the appointed sitting, and that it had been done to mitigate the disappointment the claimants might feel at having their hearing postponed. The government would make good any reasonable demands for losses they had thus suffered, if the court did not award costs.²⁴³

²⁴¹ Richmond to McDonald, 15 November 1868. MA 13/73B. Quoted in Anderson and Pickens, 'Wellington District', 126.

²⁴² Richmond to Halse, 17 November 1868. MA 13/73B. Quoted in Anderson and Pickens, 'Wellington District', 126.

²⁴³ *NZPD*, 1868, vol. 2, pp 372–73.

Fox then defended himself against rumours that were currently discrediting the Native Minister and himself with regard to this matter, giving a detailed explanation of the series of events that had unfolded. He pointed out that the claimants had themselves withdrawn from the court's previous hearing upon being deserted by their own counsel, T.C. Williams, for which Williams was 'severely censured' by the court—although Williams had given at least a fortnight's notice of his unavailability and they had done nothing to engage alternative counsel. Fox 'believed, in fact, that their whole object was to cause difficulty and delay'. Some had come to Wellington and seen the governor to request a sitting at Wellington and, he believed, the government then were in error in not referring the application to Commissioner Featherston and himself as Crown counsel to resist such an application. Fenton had therefore had no objections before him and duly set the date for 15 September, when both of the Crown representatives were supposed to be in their places in the House, and in Wellington when almost all of the Maori concerned were in the Rangitikei and it would be a great hardship for them to come 110 miles south. Richmond refused to try to influence the court's operations, 'as Ministerial interference with a Judge of that Court had already been commented on very severely in that House'. When Fox, as counsel for the commissioner, had written to Fenton objecting, it was left to Wellington Province's resident judge, T.H. Smith, to arrange a hearing, which he then did for 3 November at Rangitikei. Fox, therefore, considered that apart from a procedural mistake in not communicating with Featherston and him, the government's conduct was blameless, 'and so he thought was that of all parties concerned, except perhaps that of the opposing Natives, who endeavoured to steal a march on the other side, and get the Government to fix an inconvenient time and place for hearing the cases'.²⁴⁴

In the end, only the persistence of McDonald and his Raukawa clients resulted in the withdrawal of their claims. Richmond finally consented, provided that the Crown was not to be seen as having in any way agreed with them, but simply that the Crown was 'pledged ... only to an equitable treatment of every claim on its merits'.²⁴⁵

This was not the end of the matter, though, as Ngati Apa and the members of Raukawa who had agreed to sell became very frustrated with the ongoing delay and their consequent ability to gain clear titles and associated rents. Although both the General and Provincial governments were similarly frustrated, keeping the peace was of greater priority

²⁴⁴ *NZPD*, 1868, vol. 2, pp 406–07. The other accusations were of little or no consequence, he said. Only 6 copies of the original *Kahiti* had been printed and those were sent to Ahuriri, little inconvenience and expense if any had thus been caused, while these opposing Maori had already caused huge expense to their relatives who had laid in 40 days' worth of provisions for the previous court sitting. These had been wasted by their non-prosecution of the claims when they had the reasonable opportunity to do so.

²⁴⁵ Colonial Secretary to McDonald, 22 November 1868. MA 13/73B. Quoted in Anderson and Pickens, 'Wellington District', 126.

than a rapid but controversial completion of Featherston's purchase. Richmond continued to support the Native Land Court sitting in the region as 'a commission conducting the whole enquiry itself'.

But then, in order that 'a great deal of irritation may be escaped', Richmond took the commission concept further, proposing that an actual special commission of four members, comprising Chief Judge Fenton and Judge Maning of the Native Land Court as government appointees and 2 others to be named by the claimants and Superintendent Featherston, 'should report on the whole subject of the purchase and should make recommendations for satisfying the outstanding claims'.²⁴⁶ Anderson and Pickens explain that he wished to remove the 'adversarial element imparted by Fox, Travers, and McDonald'. That may be so, but Fox was Crown Counsel, putting the Crown's case, and so must have been acting under the Government's instructions—for which the Crown itself obviously had responsibility. Donald McLean was nominated by Featherston but declined the commission, so the idea of a special commission was dropped and Richmond reverted to the Native Land Court, which, he then told McDonald, would have greater weight with 'the country and the claimants'. In the meantime, agitation and occupations in the Manawatu from Ngati Apa and Rangitane threatened to boil over into actual violence and destruction.

The contemporary dissatisfaction was so substantial and widespread that the Government was pressured into permitting a second hearing and the Governor in Council then referred the matter back to the Native Land Court for final adjudication. Richmond was interested in framing the referral to the court so that the questions of Crown's interests were raised, but Attorney-General Prendergast gave his opinion that this was not a possibility, although the court would have to consider them when deciding the validity or otherwise of the non-sellers' claims.²⁴⁷

Even so, not until June 1869 did the Governor refer back to the Native Land Court 'all questions affecting the title or interests' of all Maori who had not signed the 1866 deed of sale. In July 1869, the court sat in Wellington, comprising judges Fenton and Maning with Ihaia Porutu as Assessor. The lawyer W.L. Travers, a senior Wellington lawyer and member of the House of Representatives, appeared for the claimants, and Attorney-General Prendergast appeared for the Crown. The hearing took six weeks and involved testimony from some 80 witnesses, many of whom had previously testified in the Himatangi case. From the claimants' point of view, however, the court's decision to hear all claims together worked

²⁴⁶ Richmond, Manawatu Block, 28 November 1868. MA 13/73B. Quoted in Anderson and Pickens, 'Wellington District', 127.

²⁴⁷ J.C. Richmond memo to Attorney-General, 15 February 1869. MA 13/71.

against them yet again, as once it had decided that the basis upon which each of the claims for title was being argued was the same, as soon as the first decision went against them, the outcome of all was pre-determined and they were unable to withdraw the remainder before the court inexorably rolled over all their claims.

The feeling amongst most Pakeha observers was summed up by the *Wellington Independent* newspaper:

Whatever the result of the enquiry may be, it can never be said that the native claimants have not had fair play in this matter. At their own request the Court is being held in Wellington instead of at Rangitikei. They objected to their claims being determined by the judges who sat in the former case, and accordingly new judges have been appointed to adjudicate afresh on the tribal question. Every facility has been afforded them in bringing forward their claims. They have the assistance of one of our ablest lawyers to plead their cause, and he is personally attended and instructed in Court by three gentlemen who had long been actively engaged in the case— Archdeacon Hadfield, Mr. Thomas Williams, and Mr. A. McDonald. It is even rumored [and was in fact true] that the Government has advanced funds to the natives to enable them to prosecute their claims against the Crown.²⁴⁸

Fenton ruled that it was necessary that the Raukawa ‘national title’ be determined and that the court’s decision on this preliminary issue ‘would be binding on every member of the Ngatiraukawa tribe whether present or not’.²⁴⁹ This was seen by Pakeha observers as being a good thing, as was the court’s intention of ruling on the rights of resident versus non-resident hapu. If the court had waded through each individual block, there was the possibility of both Maori and Crown gaining portions of each small parcel of land spotted all over the block. It would therefore be preferable to produce awards that were in substantial, continuous pieces, facilitating Maori use of theirs and systematic European colonisation of the balance.

Once again, Archdeacon Hadfield’s interest in the rights of the claimants was questioned publicly. Although it was stated unequivocally that no-one believed he would benefit personally, it came out in his evidence that, if successful, the Ngati Raukawa claimants had promised 10,000 acres on the Whakaari plains to the Anglican Church. The *Wellington Independent* newspaper wondered if it would not have been worth the Crown’s while to have bought out this promise and the associated opposition by giving the land to the Church directly. Later, though, it would congratulate Featherston for refusing to propitiate the claimants in such a manner.²⁵⁰

²⁴⁸ *Wellington Independent*, 22 July 1869.

²⁴⁹ *Wellington Independent*, 3 August 1869.

²⁵⁰ *Wellington Independent*, 27 July 1869, 4 September 1869.

3.5. The Second Himatangi Case 1869

A. The Claimant Case

The claimants' case, as argued by Travers, remained substantially the same as in the initial hearing, ultimately based upon Ngati Raukawa having come south as vital support for Ngati Toa in the conquest of the entire region. Travers explained the situation thus:

Rauparaha with the aid of his allies succeeded in completely subjugating the Ngati Apa and Rangitane tribes. Tribes were placed in a condition of submission or bondage to the conquerors. The conquest was complete within the rules of Maori custom. Joint occupation on friendly terms after this [was] almost an impossibility. [Te Rauparaha (or possibly Travers himself)] Insisted that when two tribes proceed to make peace, the ceremonial was an important one—[yet there was in this area] no evidence of any such formal establishment of peace. Ngati Apa were allowed to remain in occupation of the land on sufferance.²⁵¹

At this point, the claimants did argue for the ongoing existence of an over-arching tribal interest in relation to all the conquered territory, however their position was that in relation to the Rangitikei-Manawatu lands Ngati Toa had surrendered the over-arching right that they had originally possessed in favour of Ngati Raukawa. Ngati Raukawa (and presumably Ngati Kauwhata beside them in the more northerly portion) had continued to exercise that over-arching right and any rights or interests the original iwi might have regained were subject to that. In fact, going further, Travers stated that 'if any Ngati Apa acquired rights subsequently after conquest they were merely such individuals as actually occupied, and ... were absorbed into Raukawa or the occupying hapu'.²⁵² The claimants rejected the court's earlier denial of the existence of that over-arching right or control.

B. The Crown/Ngati Apa Case

Once again, the Crown argued against the existence of a proper conquest at all, or of any resultant over-arching interest. Prendergast gave a prominent place to Ngati Toa, though, suggesting that actually Ngati Raukawa had sought protection from Te Rauparaha after having been defeated by Waikato at Maungatautari, Ngati Kahungunu in Hawkes Bay, and Whanganui and Ngati Apa in the Rangitikei.

²⁵¹ Wellington Native Land Court, 'Notes of Evidence, Rangitikei-Manawatu Claims', 14 July 1869. MA 13/73B. Quoted in Anderson and Pickens, 'Wellington District', 128.

²⁵² Quoted in Anderson and Pickens, 'Wellington District', 128.



Maori women of Waikanae. [ca 1900].

From left to right, back row: unidentified, unidentified, Tamiti (sister of Pono Tamiti, lived at Hongoeka), unidentified, unidentified. Front row: Anni Tamihana, Rua Tamihana (child in front) and Paioke Edwin.

Alexander Turnbull Library, Wellington.

Prendergast tried to show that:

... the Ngatiraukawa, having suffered defeat by the Ngatikahungunu on the East Coast, and by the Wanganui tribes, assisted by the Ngatiapa, on the West—driven back to Maungatautari, humbled and dispirited—dreading an incursion of the powerful Waikato tribes—came down as fugitives to Kapiti, in 1829, and placed themselves under the protection of Te Rauparaha and the Ngatitōa.²⁵³

While he acknowledged that the marriage of Te Rangihaeata with Pikinga had cemented a relationship between Ngati Toa and Ngati Apa, he argued that this alliance was irrelevant to Ngati Raukawa's activities. These activities, especially the occupation in Rangitikei-Manawatu, had come only as a result of Haowhenua when Ngati Raukawa had effectively been driven north and allowed some living space by Ngati Apa.

There is an unresolved tension, even contradiction, within the Crown argument, though. On the one hand, Prendergast declared that:

Small parties under Taratoa [Ngati Raukawa] and Te Whata [Ngati Kauwhata] squatted side by side with Ngati Apa cultivating the same ground, living in the same pa and fishing the same lagoons....

And that these were only 'certain permissive rights' largely in relation to the resources, rather than full ownership rights conferred by ownership of the land. Further, this was done by the northerners only with the permission of Ngati Apa.

On the other hand, in the same breath he also stated that these rights were acquired:

... with the tacit assent of Ngati Apa who if not themselves in a position to resist, were backed by the numerous and powerful Wanganui tribes.²⁵⁴

The Crown's case rested virtually entirely on the alleged control that Ngati Apa retained over their entire lands down to the Manawatu River. According to this argument, the northerners' activities in the 1820s and 1830s had made little impression on their position and Ngati Apa were therefore able to effectively offer Ngati Raukawa sanctuary after Haowhenua. Ngati Apa had not been conquered by Ngati Toa, and nor had that conquest been reinforced by Te Rauparaha's subsequent political control and occupation by both Ngati Raukawa and Ngati Kauwhata.

²⁵³ *Wellington Independent*, 7 August 1869.

²⁵⁴ *Wellington Independent*, 7 August 1869. Quoted in Anderson and Pickens, 'Wellington District', 129.

Yet even as he argued this, Prendergast was talking of Ngati Apa having given only ‘tacit assent’ to Raukawa’s occupation, and that they had only been able to give even this because they had powerful Whanganui allies. ‘Tacit assent’ surely implies that they were in no position to refuse, while the claimed influence of their Whanganui allies was required for them to be able to give even that, as opposed to being simply pushed aside. The Crown case was, then, hardly watertight or consistent even in its own detailed presentation by the senior Crown lawyer.

In Prendergast’s submission:

The evidence of the Hon. Mr. McLean, who had been called as a witness by the counsel for the claimants, was most conclusive to the contrary. It went further, and proved that at the time of the North Rangitikei purchase, the right of the Ngatiapa to the whole of the disputed block—from the Rangitikei River to Omarupapako—was recognised and admitted by the Ngatiraukawa tribe.²⁵⁵

Clearly the court agreed with him. Even as he opened the Crown case, the chief judge advised him that it was unnecessary to present evidence rebutting the claim that Ngatiapa were conquered and enslaved, as it was already apparent that ‘the case for the claimants had entirely failed on that point’.

C. The Second Himatangi Judgment (1869)

Judges Fenton and Maning found the Crown case decidedly more convincing. Their findings were delivered in two stages, the first on 23 August dealing with general issues, especially relating to inter-tribal rights. The court’s first decision was that Ngati Raukawa had not acquired the ‘dominion’ over any part of the Rangitikei-Manawatu region in their own right or ‘through others through whom they claimed’ [i.e. Ngati Toa]. This, of course, both implicitly denied that Ngati Toa had acquired dominion themselves in the first place and made impossible any northerners’ claims of rights acquired through conquest.²⁵⁶

Having summarily disposed of any claims through conquest, the court then similarly dismissed any claim that Ngati Raukawa ‘as a tribe’ had acquired rights through occupation. It did conclude that three ‘hapu’, namely Ngati Kahoro, Ngati Parewahawaha and Ngati Kauwhata, had ‘with the consent of Ngati Apa, acquired rights which will constitute them owners according to Maori custom’. It was concluded, too, that there had been no evidence limiting those rights to just a portion of the block or any specific parcel of land, so their rights

²⁵⁵ *Wellington Independent*, 7 August 1869.

²⁵⁶ AJHR, 1870, A-25, 3.

must extend throughout the block.²⁵⁷ The court found that in 1840 Ngati Apa's ownership rights had not been extinguished but had been affected only to the extent that the other groups—the three 'Raukawa hapu'—had occupied. In practical terms, the court's position resulted in its inclusion of only 62 claimants out of some 500. McDonald was then granted an adjournment of some weeks to allow him to gather additional evidence on behalf of the excluded claimants who were absent. Featherston and Buller used the opportunity to try to strike a deal with the admitted claimants and travelled to Oroua to negotiate. The Ngati Apa chiefs tried to limit the allowance to a mere 10 acres per admitted claimant, but this was rejected out of hand. A second offer by Featherston and Buller of 100 acres each was accepted by 'the Oroua people', probably Ngati Kauwhata, but rejected by those on the Rangitikei at Matahiwi, probably Ngati Raukawa.²⁵⁸

When the court reconvened on 25 September 1869, McDonald was absent and no fresh evidence was presented. The court heard about the negotiations between Ngati Apa and Ngati Kauwhata and about the 'the absolute requirements of the hapus for whom provision was about to be made', and then the formal judgment was delivered.²⁵⁹

Within the context of the court's judgment on the rights of the Ngati Raukawa iwi and/or its constituent elements, the court had much to say about Ngati Toa as a very large proportion of the decision was a recital of what it perceived to be the nineteenth-century history of the region. In this history, 'Te Rauparaha was seen as the central figure, skillfully playing off one tribe against the other.'²⁶⁰

First, there was the original foray south in about 1818, when 'the chief Rauparaha, with the fighting men of this tribe and a party of Ngapuhi warriors armed with firearms, left his settlement at Kawhia and marched to the South with the intention of acquiring by conquest a new territory for himself and tribe'. At this time, he 'passed through the country of the Ngatiapa, remaining only long enough to ravage the country and drive back to the fastnesses of the mountains, the Ngatiapa, who ... were at that time obliged to retreat before an enemy armed with firearms'.²⁶¹

After he had taken possession of 'a large territory to the north and south of Otaki, the former possessors of which he had defeated, killed or driven off', Te Rauparaha 'had laid the foundation for a more permanent occupation and conquest'. He then returned to the north and invited his people and his Raukawa relatives to come and settle 'on the territory which he had

²⁵⁷ Anderson and Pickens, 'Wellington District', 131.

²⁵⁸ Anderson and Pickens, 'Wellington District', 131.

²⁵⁹ Anderson and Pickens, 'Wellington District', 131.

²⁶⁰ Anderson and Pickens, 'Wellington District', 131.

²⁶¹ *Important Judgments*, 101.

then but partially conquered'. When he was travelling back, he was welcomed by Ngati Apa and steps were taken to establish friendly relations; he returned some slaves captured earlier and Te Rangihaeata took as a wife the Ngati Apa wahine rangatira Pikinga who had been his slave until then. Te Rauparaha then brought his whole tribe back south 'with the intention of permanently occupying and securing the conquest of the lands which up to this time he had merely overrun'.

As Ngati Raukawa followed Ngati Toa south through the Ngati Apa lands, they 'killed or took prisoners any stragglers of the Ngatiapa or others whom they met with' when the Ngati Apa war chief had withdrawn the iwi into 'the fastnesses of the country whilst these ruthless invaders passed through, being doubtless unwilling to attack the allies of Te Rauparaha, with whom he wisely made terms of peace and friendship'.²⁶²

The Ngati Raukawa arrival was held not to be an invasion or conquest but 'a kind of *pro forma*, or nominal possession of the land, which, however, would be entirely invalid except as against parties of passing adventure[r]s like themselves who might follow; because the Ngatiapa tribe, though weakened, remained still unconquered, and a considerable proportion of their military force still maintained themselves in independence in the country under their leader Te Hakeke'. The court explained that the two iwi were strongly motivated not to antagonise each other because of their respective connections to Te Rauparaha. In fact, what 'may probably have been the cause of their [Ngati Apa] not having been entirely subjugated' was the previous establishment of friendly relations with Te Rauparaha. The court extrapolated from this peacemaking that Te Rauparaha was 'thereby wa[i]ving any rights he might have been supposed to claim over their lands'. It thought that, ever since, 'friendly and confidential relations undoubtedly were maintained' between Ngati Toa and Ngati Apa. The only exception had been a brief period when several Ngati Apa men had been killed in a Toa attack on a Rangitane pa, however once revenge had been exacted peace was again established between the two iwi.²⁶³

Considerable effort was then put into explaining why what seemed so strange to Europeans—the destruction of some of Te Rauparaha's allies (Ngati Apa) by other allies who were seeking to win his favour (Ngati Raukawa)—was not actually an indication that Ngati Apa that were in a state of 'helpless subjection'. Apparently, since Raukawa were bringing him a large additional force, Te Rauparaha would not have cared, unless the victims were individuals of his own tribe. To 'hunt and kill all helpless stragglers whom they might fall in with' was declared to be 'the pride and pleasure of the Raukawa' since it was both customary

²⁶² *Important Judgments*, 102.

²⁶³ *Important Judgments*, 103.

to do so and they were able to do so with impunity.²⁶⁴ Similarly, Ngati Apa would completely understand, would have done the same thing themselves had their positions been reversed, and would also ‘fully understand why the paramount chief Rauparaha could not notice the matter’. They would simply reserve the right to exact revenge at some future time when it would be more politic to do so. All of this taken together, said Judge Maning, simply showed that ‘no acts of the Ngatiraukawa’ at this time gave them ‘any rights of any kind whatever over the lands of the Ngatiapa tribes according to any Maori usage or custom’.²⁶⁵

Maning also said that Te Rauparaha had used his Ngapuhi allies ‘to conquer for him a great territory’, and stated that he had intended to use Ngati Apa as ‘a check upon his friends the Ngatiraukawa, who were much superior to his own tribe in numbers, and who in their turn were to be pitted against the numerous enemies by whom he was surrounded...’.²⁶⁶ As for the small number of Rangitane in the lands considered, the court thought that because Te Rauparaha had pursued them so persistently and vindictively those who remained could only have been permitted to do so and therefore retain any land rights, because they were a few half-castes who had Ngati Apa blood and were admitted on that basis.

This discussion has Te Rauparaha and Ngati Toa right at the centre of the picture. Te Rauparaha was the ‘paramount chief’, said the court. His Ngapuhi allies had ‘conquered a great territory’ for him. His control over the region was absolute and all groups were doing as he directed or being hunted persistently and vindictively. According to this narrative, Te Rauparaha disposed of the land and governed the relations between a number of substantial iwi. And yet nothing much is made of this eventually since, as had already been noted, the court had concluded that there was no conquest. There was no attempt made to reconcile these two accounts of the region’s history and Ngati Toa disappeared rapidly as the court focused on Ngati Raukawa. Indeed, having just stated that Te Rauparaha had merely taken nominal or pro forma possession of most of the Rangitikei-Kapiti region, the court then described it as being ‘conquered country’, in which Te Rauparaha granted and allotted portions to tribal groups.

Moving to about 1829, the court said that once the full body of Raukawa had arrived in the south ‘they did not immediately disperse themselves over the conquered territory’. It took them this time to amass the firearms and gunpowder they needed to be able to ‘establish themselves on their allotted lands’. After that time, though, the iwi split into several sections:

²⁶⁴ *Important Judgments*, 103.

²⁶⁵ *Important Judgments*, 104.

²⁶⁶ *Important Judgments*, 104.

... and each section went to, and took possession of, and settled on, that particular portion or district of the conquered country which had been granted or allotted to them by the paramount chief Rauparaha.²⁶⁷

However, while Raukawa had been arming themselves, so had Ngati Apa 'with the full consent of Rauparaha, and the active assistance of the chief Rangihaeata'. This the court thought very significant, concluding that had Te Rauparaha's intention been 'to depress or subjugate' Ngati Apa, he would not have permitted to 'make the Ngatiapa formidable even to Rauparaha himself'. This permission, it thought, was for two purposes: (a) to provide, with Raukawa, a protection against Te Rauparaha's enemies from the north, and (b) 'after having made Ngatiapa feel his power, to elevate them and strengthen them as a check on his almost too numerous friends the Ngatiraukawa, whom, were they not bound to him by a great common danger, created by himself in placing them on lately conquered lands, he would never have trusted'.²⁶⁸

The court continued in this vein, declaring that:²⁶⁹

There, however, is no evidence at all to show that Rauparaha, in granting or allotting lands to the different sections of the Ngatiraukawa tribe, did ever give or grant to them any lands within the boundaries of the Ngatiapa possessions, between the rivers Rangitikei and Manawatu, or elsewhere....

In fact, there was plenty of evidence that he had done so, but it came from the Raukawa and Kauwhata groups whom the court seems to have been determined to place in a secondary role to Ngati Apa. These groups were even saying that they had received their lands from Te Rauparaha when they appeared in other fora around this time. For example, Tapa Te Whata of Ngati Kauwhata was telling courts in the Waikato that his iwi's land at Oroua had been allocated to them by Te Rauparaha. Continuing its line of argument, the court explained that what it considered to be this absence of grant was for two reasons: to do so would compromise Te Rauparaha's alleged grand scheme of using the two iwi to balance each other, while, the court said, in regard to the Ngati Apa lands 'he had never claimed or exercised the rights of a conqueror'. It reiterated yet again that 'we have the fact that, influenced by whatever motives, Te Rauparaha did not at any time give or grant lands of the Ngatiapa estate, between the Manawatu and Rangitikei rivers, to the Ngatiraukawa tribe, nor is there any evidence to shew that he had ever acquired the right to do so'.²⁷⁰

²⁶⁷ *Important Judgments*, 105.

²⁶⁸ *Important Judgments*, 106.

²⁶⁹ *Important Judgments*, 106.

²⁷⁰ *Important Judgments*, 106.

Nonetheless, the court was confronted with the inconvenient fact that by 1835 at least, there were Ngati Raukawa ‘settled peaceably and permanently on the Ngatiapa lands, between the Manawatu and Rangitikei rivers’. These were not dismissible as a few stragglers but comprised at least three substantial hapu. Furthermore, the court also recognised that they were:

... unopposed by the Ngatiapa, on terms of perfect alliance and friendship with them, claiming rights of ownership over the lands they occupied, and exercising those rights, sometimes independently of the Ngatiapa, and sometimes conjointly with them; joining with the Ngatiapa in petty war expeditions, ‘eating out of the same basket’, ‘sleeping in the same bed’, as some of the witnesses say, and quarrelling with each other, and ... making peace with each other like persons who, depending much on each other’s support, cannot afford to carry hostilities against each other to extremity....²⁷¹

This settlement required some explaining, given the court’s denial that there had ever been any gift or grant by Te Rauparaha. The answer given was that those three hapu were not there ‘by virtue of any claim of conquest or any grant from Rauparaha, or by any act or demonstration of warlike powers by themselves’. Rather, the two Raukawa hapu had been actively invited by Ngati Apa themselves. As for Ngati Kauwhata, Te Rauparaha had allotted them lands on the south side of the Manawatu and they had simply ‘stretched the grant of Rauparaha’ and quietly intruded upon the lands to the north of the river. They committed no violence for fear of offending Te Rauparaha by upsetting his carefully constructed buffers and alliances, and Ngati Apa did not forcibly oppose them for the same reason but rather ‘made a virtue of necessity’ and welcomed them as they had the Raukawa hapu. Indeed, Maning said, it was well known to the court that in those days the main Maori strategic consideration was to increase one’s fighting manpower and it was a common practice to trade a portion of land to do so. By doing this, Ngati Apa gained the services of three hapu of ‘warlike adventurers’ who were now bound to help defend their common lands.²⁷² The court’s explanation of the Maori custom was that once a group had entered onto land either invited or unopposed, and had then allied with the original owners to defend it, they acquired ‘the status and rights of ownership’. So—and here there was yet more equivocation—‘be the motives of Ngatiapa whatever they were, for inviting or not opposing the settlement of these three Raukawa [sic] hapu’, by the late 1830s they were there with acknowledged rights of ownership on the specific lands they occupied, although, of course, the iwi as a whole had no such right.²⁷³

²⁷¹ *Important Judgments*, 106.

²⁷² *Important Judgments*, 107.

²⁷³ *Important Judgments*, 108.

There was, therefore, in this judgment a considerable quantity of detail explaining why there was no ownership right for Ngati Raukawa as a whole in the region. Against the explanations of the occupying iwi themselves, the court found that only a few hapu had rights there and that only by invitation or permission of Ngati Apa.

However, in all of this there is really little attempt at analysis of what rights or interest Te Rauparaha and Ngati Toa may have had originally, or retained subsequently. As noted, the discussion is internally contradictory and leaves it hard to understand how Te Rauparaha could have conquered the district without really doing so, or have been allocating tribal groups lands to occupy and use without claiming any right to do so, and so on.

The judgment concluded:

... that the three Ngatiraukawa hapu ... have acquired rights which constitute them owners, according to Maori usage and custom, along with the Ngatiapa Tribe, in the block of land the right to which has been the subject of this investigation.

Secondly, that the quantity and situation of the land to which the individuals of the above-named Ngatiraukawa sections who have not sold or transferred their rights [are entitled,] and the conditions of tenure, are described in the following order.

And the Court find, also, that the Ngatiraukawa Tribe has not, as a tribe, acquired any right, title, interest or authority in or over the block of land which has been the subject of this investigation.²⁷⁴

The court ordered the following land grants:²⁷⁵

36 named Ngati Kauwhata individuals	4500 acres
20 named Ngati Kahoro and Ngati Parewahawaha individuals	1000 acres
Te Kooro Te One and 4 other named individuals	500 acres
Wiriharai Te Angiangi personally	200 acres

The boundaries of the Rangitikei-Manawatu Block were then recited, together with the four exclusions specified in Fenton and Maning's judgment: 4500 acres at Te Awahuri, 500 acres just below the junction of the Taonui Stream with the Oroua River, 1000 acres north of

²⁷⁴ *AJHR*, 1870, A-25, p 7. Also quoted in Wilson, *Early Rangitikei*, p 166.

²⁷⁵ *AJHR*, 1870, A-25, pp 7–8.

Huakitaiore, and 200 acres at Oau for Wiriharai Te Angi Angi. Native title was therefore recognised to remain over those four reserves.

The supporters of Superintendent Featherston could not contain their delight and seized the opportunity to vilify the subversive elements who had conspired against this great man. The *Wellington Independent* crowed:

[the judgment] proves conclusively that Dr Featherston purchased the block from the rightful owners. Not only is it a triumphant vindication of the purchase, but it gives the lie to the statements that for several years past have been industriously circulated by opponents of the purchase. It proves that Williams' pamphlet is a tissue of the veriest trash, and that Archdeacon Hadfield is entirely ignorant of Maori law and custom.²⁷⁶

No further questioning of the purchase could be brooked, the *Independent* insisted, and this must be an end to the Rangitikei-Manawatu saga:

The Natives have had full justice meted out to them in the case and they know it. Any attempt to create dissatisfaction among them, and to provoke a spirit of hostility against the decision of the Court will be positively criminal, and will deserve condign punishment.²⁷⁷

The paper was in no doubt that, left undisturbed, the Maori would accept the decision, as it claimed never to have heard of a Native Land Court decision which Maori did not observe. The Crown had rested its case on the tribal rights of Ngati Apa, who had signed the deed of cession, along with Rangitane and almost all of the Raukawa actually resident on the block. The paper rejoiced in the fact that of the more than 1000 Raukawa claimants only 40 men and about 60 in total, were found actually to be valid claimants. They had all already been recognised by Featherston and would, it asserted, long since have been in possession of their reserves if innumerable 'fictitious claims' had not been drummed up by non-residents.

Buick is not backward in declaring his explanation for such a decision - he claims that the judges were influenced by political pressures. He notices that the Ngati Apa are described in the judgment in positive terms while Ngati Raukawa are consistently portrayed negatively. He can imagine no reason for the exclusion of Pakeha evidence which would have supported the Raukawa case, and observes that other early colonials with land interests such as the New Zealand Company, Edward Jerningham Wakefield and Commissioner Spain seem to have recognised only Ngati Raukawa as legitimate sellers. He also states baldly that Raukawa had arrayed against them not only Ngati Apa, but also the influence of the Governor, the Government and the Provincial Superintendent to advance the Government's cause, and

²⁷⁶ *Wellington Independent*, 4 September 1869.

²⁷⁷ *Wellington Independent*, 4 September 1869.

points out in detail the similarities between the judgment and a speech of Provincial Superintendent Featherston's.²⁷⁸ Octavius Hadfield, who was present at the hearing, described the decision in a letter to his brother Charles as "a miserable compromise – a kind of split the difference".²⁷⁹

It certainly shows up Featherston's purchase as being an incomplete one; but it does not do justice to the natives. I think there will be an appeal.

After this award, the court gave six months for the surveys to be completed, but immediately physical resistance was offered by ex-constable Miratana Te Rangi, one of the Parewahawaha/Kahoro claimants the court had admitted. Pegs were pulled up and trig stations destroyed. Chief Provincial Surveyor Jackson laid an information and Miratana was arrested at Resident Magistrate and Deputy Land Purchase Commissioner Buller's order, despite strong local opposition. He was imprisoned for three months when in default of paying the £25 fine imposed. Alexander McDonald was also convicted of 'counseling and procuring persons to commit a breach of the [Trigonometrical Stations] Act' and fined £30. The government's decisive actions briefly ended the disturbance, but it was now necessary to apply for a six-month extension from the court. When surveying recommenced, it was again disrupted, this time by a non-Raukawa group whose claims had been entirely rejected by the court. They limited themselves, though, to just their local area and by early 1870 surveying was being carried out undisturbed through the rest of the block.²⁸⁰

Subsequent to the Native Land Court's judgment being handed down, Superintendent Featherston made personal representations to the general government on immediately extinguishing the Native title over the block. On 27 September 1869, two days after the Native Land Court's ruling, he wrote to the general government. Colonial Secretary Gisborne referred this request to Attorney-General Prendergast for an opinion. He ruled that the boundaries of the reserves awarded by the court should be defined first, 'because the land over which the Native title was extinguished could not be defined until the parts excepted were defined'.²⁸¹ Featherston then approached Fox and Gisborne in person to gain the extinguishment and when Fox pointed out the need for the reserves to be surveyed first, 'a warm discussion occurred'.²⁸² (However, Gisborne later testified that if he had known Fox had had 'the slightest objection' to the issue of the *Gazette* notice, he would never have issued it.) On 7 October, Fox made a final decision that the notification of extinguishments could

²⁷⁸ Buick, *Old Manawatu*, 266.

²⁷⁹ Cited Lethbridge, *Wounded Lion*, 247.

²⁸⁰ *AJHR*, 1870, A-25, p 8.

²⁸¹ *AJHR*, 1874, H-18, p 5.

²⁸² *AJHR*, 1874, H-18, p 22.

proceed provided that Featherston satisfied the government that the boundaries of the reserves had been laid down and agreed to by all the parties concerned. There seems also to have been an understanding by both provincial and general governments that there would be no immediate occupation while this requirement was being complied with. The *Gazette* notice was drafted such that Crown title was subject to the marking out of the reserves, and the provincial government adhered to it by making no other possessory act at this time.²⁸³ On 9 October, Featherston replied that he had passed to the Attorney-General a tracing of the boundary of the lands awarded by the court and Gisborne consulted with Prendergast. As a result, on 16 October the government gazetted a notice signed by Colonial Secretary Gisborne.²⁸⁴ It stated:

It is hereby notified, that the Native Title has been extinguished over the Block of Land whereof the boundaries are described in the Schedule hereto, subject to the exceptions therein specified.

The court decision and official confirmation in the *Gazette* might have been thought to have provided a conclusive resolution, but shortly afterwards 33 members of the three hapu the court had admitted petitioned the House of Representatives. They complained that the matter had been referred to the court by the governor but without any application on their part (although they had been requesting Native Land Court involvement for five years or more, they had not made a formal application in this particular instance). They recited the issues the court was to decide on and the several adjournments in September. They claimed that on 17 September the court had adjourned *sine die* to permit the fixing of the boundaries, but that it had nevertheless then sat on 25 September ‘at the instance of the Agent for the Crown, and without any notice whatsoever to your petitioners’. Consequently, the final determination had been made and land allotted without hearing evidence from the petitioners, and they had not even been provided with a copy of the judgment to find out what had been decided on their behalf. They disputed the judgment on the grounds that: as people entitled to be informed, they had not been told of the sitting, nor therefore of its purpose; the award was therefore not made in accordance with the judgment relating to the three hapu, but only in relation to some individuals thereof; the award and allotment had been made based on either no evidence or only *ex parte* evidence (as the court itself had said in its previous statement); at the time when the court was doing this, the claimants were engaged in doing what it had previously ordered, that is, arranging boundaries with Ngati Apa.²⁸⁵

Buick concludes that historians must use their own judgment when picking their way through the complexities of the Rangitikei-Manawatu history, and states:

²⁸³ *AJHR*, 1874, H-18, p 24.

²⁸⁴ *NZ Gazette*, 1869, pp 544–45.

²⁸⁵ *AJHR*, 1870, G-16, p 18.

If that judgment should lead to conclusions opposed to those of the Native Land Court Judges, he will not be so presumptuous as to say ‘so much the worse for the Judges,’ but will rest content with the reflection that amidst such a conflict of truth and falsehood no one could well be blamed for going astray.²⁸⁶

More recently, G.C. Petersen stated that ‘this monstrous travesty of justice stunned the Ngatiraukawa, and the claimant tribes must have been almost equally affected by their unexpected good fortune’. Indeed, he went further to point out that this series of judgments facilitated the blocks’ acquisition by the Government:

The result of this and other judgments of the Court in respect of Manawatu lands was to facilitate their acquisition by the Government, and one cannot escape the conclusion that the Court, to its disgrace, was largely actuated by this consideration. It was a most convenient verdict. The land passed to the Government and a fraction only of the purchase money went to the real owners [i.e. Ngati Raukawa].

The position is summarised in the lament of a Raukawa chief: ‘Give heed. Thus far have I shown kindness to those tribes who were spared by ourselves from slaughter by Te Rauparaha. Rangitikei, a large block of land, I graciously gave to Ngatiapa. Te Ahuaturanga, a large block of land I graciously gave back to the Rangitane; and now these tribes together with the Government come openly to take away my piece remaining; outhouses and cultivations whence my tribe get their living are being taken away.’²⁸⁷

3.6 The Kukutauaki (Manawatu-Kukutauaki) Block

A. Background

The great block from the Manawatu down to the Kukutauaki Stream at Waikanae was known as the Manawatu-Kukutauaki Block. The Rangitikei-Manawatu judgment left Ngati Raukawa reduced to the Kukutauaki Block, which included Horowhenua, ‘where Te Whatanui, the brave in battle, yet gentle in spirit, had spread the mantle of protection over the supplicating remnant of the original people’ [i.e. Muaupoko].²⁸⁸ Buick declares that since Ngati Raukawa had lost Upper Rangitikei, Rangitikei and Manawatu that ‘the avarice of their enemies and the omnivorous appetite of the Government’ should have left them Horowhenua as a home. This statement, of course, completely ignores the different states and rights of the various tribes whose ancestral lands these were—the history and rights of the Muaupoko, Ngati Apa and Rangitane were not interchangeable and one did not necessarily have anything to do with another. Whatever the historical relations between Raukawa and others, they were irrelevant

²⁸⁶ Buick, *Old Manawatu*, p 165.

²⁸⁷ Unnamed chief, quoted in Petersen, *Palmerston North*, p 40.

²⁸⁸ Buick, *Old Manawatu*, 267.

to the Raukawa-Muaupoko relationship. Any challenge by Raukawa to Muaupoko's rights could never have been properly allowed simply on the basis that Raukawa had had their claims elsewhere disallowed.

Alexander McDonald, the advocate for various Ngati Raukawa parties, described the policy of the Native Land Court as 'providing for any persons of the original tribe who clung to the land and remained on it notwithstanding the incursion and overwhelming strength of the incoming tribes'.²⁸⁹

This judgment set aside Horowhenua as a separate case from the broader claims in the greater Kapiti-Manawatu region set up by the northern tribes. Even before the evidence specific to Horowhenua had been presented to the Court, the judges had heard enough to speak as though they assumed that Muaupoko would have the substantive rights in Horowhenua.

So, the next in the series of judgments moving southwards through the area was that for the Kukutauaki Block. Here, Judge John Rogan sat with Judge T.H. Smith and Assessor Hemi Tautari. Able now to rely on the Himatangi / Rangitikei-Manawatu judgment as upheld by their brother judges upon rehearing, Rogan and Smith gave a much briefer judgment in this block.²⁹⁰

Once again the claim was that of Akapita Te Tewe and others, 'representing certain portions of the Ngatiraukawa tribe'. The Kukutauaki Block ran from the Manawatu River to the north to the Kukutauaki Stream in the south and from the sea to the top of the Tararua Range.

The Claimants' application was for certificates of title

in favor [sic] of individuals and of sections of the Ngatiraukawa tribe, asserting an exclusive ownership, founded on conquest and on continuous occupation from a period anterior to the Treaty of Waitangi.

The claim was opposed by members of the five tribes in occupation of the Rangitikei-Manawatu-Horowhenua prior to the heke from the north: Muaupoko, Rangitane, Ngati Apa, Whanganui and Ngati Kahungunu. The opposition was again led by Major Keepa Te Rangihiwini. Their opposition was based on the same arguments that had succeeded further north: (a) that they owned the land through take tupuna, inheritance from their ancestors; (b)

²⁸⁹ AJHR, 1896, G2, 72. NB there were in total only about 150 Muaupoko at the time in the late nineteenth century to be included in the various lists of owners of the various portions of Horowhenua.

²⁹⁰ The judgment is reprinted in full in *Important Judgments*, 134-135.

that Ngati Raukawa had acquired no rights in the block through conquest; and (c) that they had not been displaced by the northerners, but had remained in possession of the land.

B. The Judgment in Manawatu-Kukutauaki

The Kukutauaki Block was adjudicated on by the Court and judgment given on 4 March 1873.²⁹¹ In this case, however, the Court was less sympathetic to the southerners' arguments and gave judgment largely in favour of Ngati Raukawa—although not always on the same basis that they had claimed the block on.

In the first instance, the Court held that:

Sections of the Ngatiraukawa tribe have acquired rights over the said block, which, according to Maori custom and usage, constitute them owners thereof (with certain exceptions) together with Ngatitua and Ngatiawa, whose joint interest therein is admitted by the claimants.²⁹²

So the block was awarded to sections of Ngati Raukawa in general terms, just as only sections of Raukawa had been allowed into Himatangi. The 'certain exceptions' were described elsewhere. Further, that ownership was shared with Ngati Toa and Ngati Awa—and admitted by the Raukawa representatives to be shared. This was not a court-imposed or invented sharing of rights.

However, the Court's opinion here remained consistent with its earlier view of the events throughout the Whangaehu-Kapiti region with its second finding:

That such rights were not acquired by conquest, but by occupation, with the acquiescence of the original owners.

Even this close to Kapiti, the Court was not prepared to characterise what had transpired in the 1830s as a conquest. The northerners, the Court said, had occupied and therefore had valid customary rights, but they had done so by consent of 'the original owners', who remained judicially undefined.

The Court's third finding in this block was the extent of the area over which Ngati Raukawa had these rights, and when they had gained them:

That such rights had been completely established in the year 1840, at which date sections of Ngatiraukawa were in undisputed possession of the said block of land, excepting only two portions thereof....

²⁹¹ 1 Otaki MB, 176-8.

²⁹² *Important Judgments*, 134.

This is a nod to the 1840 Rule the Court had been developing as a means first of avoiding giving legitimacy to land acquisition by violence subsequent to the theoretical imposition of British law and order, and then of establishing the customary rights as at that date, rather than the date at which a given land block was actually being investigated. The conclusion reached was that Ngati Raukawa were ‘in undisputed possession’ by then, and that as stated in the preceding point they had acquired that possession by the consent of Muaupoko, Rangitane, Ngati Apa et al in this block as was said to be the case further north into the Rangitikei-Manawatu area.

C. The ‘Excluded’ Blocks: Horowhenua and Tuwhakatupua

The two exceptions were portions within the Kukutauaki Block. First was the Horowhenua Block which was claimed by Muaupoko and ‘of which they appear to have retained possession from the time of their ancestors, and which they continue to occupy’.²⁹³ It is noteworthy that the Court had not yet even begun to hear the Horowhenua Block evidence, and would not do so for another week (on 11 March 1873), but yet this statement shows it was already leaning very strongly towards awarding it to Muaupoko exclusively, once more on the basis that they had not been conquered and that they had remained in occupation and possession.

Second was an area at Tuwhakatupua on the Manawatu River, the boundary of which had not been defined, which was claimed by a section of Rangitane, and whose interest had been admitted by the Raukawa claimants.²⁹⁴

Having admitted some interest for Muaupoko and Rangitane in this way, the Court went further to state that Ngati Apa, Whanganui and Ngati Kahungunu ‘have no separate tribal rights as owners of any portion of the said [Kukutauaki] block’. Nor, said the Court, did they have any other types of interest in it, apart from ‘such as may arise from connection with the Muaupoko resident at Horowhenua, or with that section of Rangitane whose claims at Tuwhakatupua are admitted by the claimants’.²⁹⁵

3.7. The Horowhenua Block

A. Background

²⁹³ *Important Judgments*, 134.

²⁹⁴ *Important Judgments*, 135.

²⁹⁵ *Important Judgments*, 135.

The Horowhenua Block was brought before the Native Land Court for formal adjudication in March 1873. As we have just seen, the Horowhenua Block was cut out from the Kukutauaki Block by the Native Land Court as it worked its way down the coast. It also seems to have largely made up its mind about the ownership of the Horowhenua Block as a result of hearing the evidence in the other related blocks and prior to beginning the hearing specifically on the Horowhenua Block. As in Kukutauaki, Judges Rogan and T.H. Smith sat together with Hemi Tautari as the Assessor, W. Bridson the clerk and E.T. Woon the Interpreter.

The Horowhenua Block first came before the Native Land Court on Tuesday 11 March 1873.²⁹⁶ It should have followed immediately after the Kukutauaki judgment had been delivered, but Muaupoko wished to have time to consult and plan their strategy in the light of what had happened over Kukutauaki, so there was a week of daily adjournments while matters were sorted out.

The first matter was to determine the actual boundaries of Horowhenua, within the general boundaries of the Kukutauaki block as just decided.

B. The argument on boundaries

Ngati Raukawa, as the claimants, once again presented their case first. Counsel for Raukawa was Sir Patrick Buckley, a prominent (and expensive) barrister.²⁹⁷ (Buckley's legal bills were eventually paid for by Raukawa in land: 1,000 acres near Shannon.²⁹⁸) The first witness was Karenama Te Kapukai [?] who admitted that Muaupoko had some claim. He said he had been present when Taueki, the senior Muaupoko chief, and Te Whatanui of Ngati Raukawa, had come to an agreement and he had helped Te Whatanui lay out the boundaries. It commenced at 'Tauwhitikuri-Kurakorau[?] thence to Tauateruru on the banks of the Horowhenua Lake dividing the Lake Horowhenua thence to Waitui. (Waitui is on the inland side of the Lake.) Here any talk ceases. This is the piece reserved by Whatanui for Muaupoko.²⁹⁹ This version reversed the way in which Muaupoko reported events. Here, a piece of the land was reserved by Te Whatanui for Muaupoko—contrasted with the Muaupoko assertion that Taueki reserved a section for Te Whatanui.

²⁹⁶ 1 Otaki MB, 184.

²⁹⁷ McDonald and O'Donnell, *Te Hekenga*, 142.

²⁹⁸ *Ibid*, 145:

Sir Patrick Buckley acted as counsel for the Ngati-Raukawa in this case, and as the section of the tribe for whom he was acting (Te Whatanui's relatives) had lost everything, he was for some time anxious as to where he would be able to collect his very heavy bill of costs. The Ngati-Huia Chief, Ihikara Tukumarū, for the honour of the tribe, paid the bill in the fashion usual at the time, by a gift of land, giving 1000 acres of what is now the Buckley Swamp, outside Shannon, in settlement.

²⁹⁹ 1 Otaki MB, 184.

Tamihana Te Rauparaha followed Karenama. He said that the boundary began at Tawhitikuri, went to the shore of the lake and on to Weraroa, which was where the boundary turned and went to Pouahuia, and turned again to Ngatokorua. It then went to Ngamana, a carved totara pole near the beach. Muaupoko had burned this pole when the survey began.

Hohua Te Rui, a Ngati Huia chief, was the next witness. He admitted that Muaupoko had a claim to the land beginning at Tawhitikuri, going on to Koruokorau[?] to Tauateruru on the seaward side of Lake Horowhenua, dividing the lake into a portion each for Muaupoko and Raukawa. It then went onto the shore at Waitui then along a bush through Poutahi to Weraroa, turned east to Pouahuia then seaward to Ngatokorua, then to Oioau, then to the beach at Ngamana. He stated that the southern boundary had been fixed by Whatanui the elder a long time previously, and that the northern boundaries had been fixed by Whatanui Te Tahuri recently.³⁰⁰ Taueki was present and agreed to Whatanui's southern boundary.³⁰¹ Some Muaupoko chiefs were present when the northern boundaries were fixed in 1858 and again in 1869, but he said the boundary poles were never thrown down.

Ihakara Tukumarū agreed with these boundaries and also stated that no-one ever challenged them until the recent arrival of Keepa and Hunia. The only times that Muaupoko cultivated outside those boundaries was when he himself had 'fetched' them.³⁰² Watene Te Waewae agreed with Ihakara. He had himself lived on the south side of the Hokio for 26 years and there had been no challenge of the southern boundary until 1869.³⁰³

The Court was then asked for an order awarding the title to the land, apart from that at Horowhenua admitted to Muaupoko and that at Tuwhakatupua admitted to Rangitane. However, the Court refused to make the requested order at this point as to do so would have been a decision made on *ex parte* evidence, without Muaupoko or Rangitane being able to state their cases. Instead, it proposed that a definite order be made in favour of Raukawa for only some of the land. Its suggested alternative was to draw a line around all the area to which Muaupoko might have a claim: 'from the mouth of the Waiwiri Stream to Pukemoremore on the Tararua Range and a line drawn from Waingairoa to Ngatokorua then to Pouotehuia[?] then in a line parallel to the south boundary to Tararua Range'.³⁰⁴ This offer was accepted by the lawyer for Raukawa. The more limited order was then duly made, although it is not

³⁰⁰ 1 Otaki MB, 185.

³⁰¹ 1 Otaki MB, 186.

³⁰² 1 Otaki MB, 187.

³⁰³ 1 Otaki MB, 187.

³⁰⁴ 1 Otaki MB, 191.

immediately apparent as to the extent of the difference between what was requested and what was awarded.³⁰⁵

The Horowhenua hearing itself was continued on Tuesday 25 March. The Court decided that Ngati Raukawa had to establish a prima facie case and that Muaupoko would appear in the role of counter-claimant.³⁰⁶

C. The Muaupoko Case

Keepa Te Rangihwinui was the first and clearly the dominant Muaupoko witness.³⁰⁷ In fact at one point in the proceedings Kemp apparently told the Court that if he did not get the verdict he wanted he would bring 400 Whanganui warriors down to Horowhenua and hold the land by force – a threat to which, according to the old settler Rod McDonald, the Court capitulated.³⁰⁸ After describing the boundaries in detail, Te Keepa then proceeded to talk about the origins of the recent disputes over the land, how they had been begun by Hukiki starting to sell land and laying out boundaries, while he himself was fighting in the New Zealand Wars. There had also been trouble earlier when the last Whatanui (i.e. one of the sons of senior Ngati Raukawa rangatira Te Whatanui) had leased land to Hector McDonald and Muaupoko had run off his stock. ‘They continued to do so and constantly asserted their right to the land.’³⁰⁹ Keepa himself had finally ordered that such cattle should be killed ‘to ascertain whose was the land’. Raukawa began to plant at Mahoenui. Keepa gave further orders that fences should be knocked down, crops destroyed and sheep should all be driven off, which was done.

Keepa then arranged an alternative lease with McDonald, ‘This leasing was done for a purpose - to see who was in the right - whether Karenama’s protection was greater or less than mine. Ngati Raukawa have never interfered since I leased the land and we alone have had the rent.’³¹⁰

The pas on the Islands in the lake were the principal fighting places of Muaupoko..... Ngatitu Namuiti is a very old one. My father erected the posts there. At the time of the coming of Christianity there they came to the shores of the lake at Otoi. This is a disputed boundary from

³⁰⁵ 1 Otaki MB, 194.

³⁰⁶ 1 Otaki MB, 244.

³⁰⁷ Keepa regarded himself in 1873 as the kaiwhakahaere (spokesman) for Muaupoko. AJHR, 1896, G2, 180.

³⁰⁸ The story is told in McDonald’s *Te Hekenga*, 142-3:

The case was practically finished, and the verdict a foregone conclusion, when Kemp rose in the body of the Court and told the Judges in unequivocal language that if they gave the verdict against him he would bring his 400 Wanganui warriors down to the Horowhenua, and neither the Raukawa nor the Government would put him off the land.

³⁰⁹ 1 Otaki MB, 252.

³¹⁰ 1 Otaki MB, 254.

Ngatokorua through to Oroau to the sea. Our possession of these four pas has never been disturbed.³¹¹

It was with Watene that the real dispute with Kawana Hunia of Ngati Apa had begun, leading to the burning of Watene's houses. He continued,

The line laid down by Whatanui has never been surveyed, it cuts right through Tuangaehe. I never saw any person come to drive my father or myself off this place. Whareotaura is another cultivation, he cultivated all round the borders of the lake by the Muaupoko tribe and still it is so.... I never heard of any other Ngati Raukawa than Whatanui and Watene ever living on this land.³¹²

Keepa was then cross-examined by Ngati Raukawa's lawyer, Patrick Buckley, on specific places and points at issue. He denied categorically both that Whatanui had ever had to mark out a place for Muaupoko to live under his protection and that Watene had lived on the north side of the Hokio for 26 years.³¹³

Several other Muaupoko witnesses followed Keepa, all supporting him and denying that there had ever been any traditional Raukawa presence on or use of these lands, at least until about 1859 when the present tension and trouble had begun. Muaupoko had pulled up Raukawa pou whenua and driven off their sheep and those of Pakeha to whom they had leased without Muaupoko agreement and participation. Some also denied that they had ever been beaten and enslaved by Ngati Raukawa.

On 29 March Kawana Hunia Te Hakeke, of both Ngati Apa and Muaupoko, testified, beginning with a detailed description of Muaupoko use of the area near Papaitonga.³¹⁴ He claimed that Whatanui's proper place of abode was Otaki, although he had slaves (not taken from Muaupoko) who did live on Horowhenua land with the senior Muaupoko chief, Taueki, and worked under Taueki's direction. Kawana declared, 'I have never seen any man of Ngati Raukawa making any extensive cultivation on the land described by the sketch before the Court.'³¹⁵ Te Whiti was the sole exception. Kawana insisted that none of Raukawa had any rights on the land except Watene and Te Whiti, who were entitled to 50 acres at Raumatangi.³¹⁶

³¹¹ 1 Otaki MB, 254.

³¹² 1 Otaki MB, 256.

³¹³ 1 Otaki MB, 257-8.

³¹⁴ 2 Otaki MB, 3.

³¹⁵ 2 Otaki MB, 9.

³¹⁶ 2 Otaki MB, 13.

He also put a different cast on the accepted story regarding the state of Muaupoko under attack from Te Rauparaha. He stated that Whatanui's slaves had all come from Ahuriri [i.e. were Ngati Kahungunu], and that none of them were Muaupoko, except one woman who was returned. When asked if Whatanui had protected Muaupoko from Te Rauparaha, Kawana stated, 'My father never said Whatanui come and save me from Rauparaha.'³¹⁷ When asked if Muaupoko were a strong enough tribe to resist Te Rauparaha, he replied, 'We were a strong tribe.... Rauparaha bolted away naked in the night.'³¹⁸

On 31 March, Manihera Te Rau was the final Muaupoko witness. He was both Muaupoko and Raukawa but lived with Muaupoko, having married a sister of Himiona and settled there as a teacher. He testified that Muaupoko had never been disturbed in their occupation of this land and that 'Whatanui's right [to Raumatangi] is through a pa given to him [by] Taueki after Haowhenua. No land was given only this eel weir or pa.'³¹⁹

The cross-examination by the Raukawa counsel, Sir Patrick Buckley, then followed:

Buckley asked, 'Who gave Whatanui the right to go on this land?'

Manihera replied, 'Haowhenua was the commencement. Whatanui went to see Taueki. When Whatanui went to Namuiti then spoke Rangihohia—prevent him from going—Taueki would not allow it. Whatanui came back to Raumatangi and Hokio in peace where a slave of his lived named Oreore[?], he was a Ngati Kahungunu.'

Buckley - 'Did Rauparaha afterwards threaten to annihilate Muaupoko?'

Manihera - 'No. Muaupoko never heard of it.'

Buckley - 'Did you ever hear of it?'

Manihera - 'I never heard it.'

Buckley - 'Did Whatanui ever protect Muaupoko from Rauparaha?'

Manihera - 'Namuiti Pukeiti [?] were pas of Muaupoko and when Christianity [came] they came to live on the shores of the lake.'

Buckley - 'Did not Muaupoko cultivate the places named by you as Whatanui's slaves?'

³¹⁷ 2 Otaki MB, 15.

³¹⁸ 2 Otaki MB, 15.

³¹⁹ 2 Otaki MB, 17.

Manihera - 'Whatanui had no slaves of the Muaupoko tribe to whom he could give directions of that nature.'³²⁰

D. The Raukawa-Toa Case

The Ngati Raukawa case began in the afternoon of 31 March and continued until 4 April. The first witness was Matene Te Whiwhi, who made much of his status as a chief of both Ngati Toa and Ngati Raukawa, while decrying the last Muaupoko witness, Manihira Te Rau, (both Muaupoko and Raukawa) as a 'nobody', who had been a Raukawa afraid that his wife would be taken by Muaupoko, hence he had testified on their behalf and was now no longer considered a Raukawa. Matene had chaired a meeting during the time of Governor Grey's first administration in 1846-1853, between Te Whatanui, Taueki and Te Atua, to settle the boundary at Tauateruru. This was settled with the boundary being at Tauateruru. He explained that there were four Whatanuis: the elder, who had made the original agreement and provided the protection for Muaupoko, then three sons, Tutakiawheawhe, Te Tahuri and Haua. The first major conflict over any boundary between Muaupoko and Raukawa was internal to Raukawa, with Ahukaramu challenging Whatanui's son. There was a second meeting of all Ngati Raukawa over boundaries, also during Grey's first administration. It was not until 1869—only four years prior to this hearing and after the Native Land Court had begun its work in the region as discussed above—that there was any dispute between the two tribes and came when Matene Te Whiwhi's wife called in a surveyor to survey the land north of the Hokio.³²¹ It is noteworthy that Matene portrayed his Ngati Toa status as well as his status within Raukawa. It may well be that this was the reason why he was the chair of the meeting to define the relative interests of Muaupoko and Ngati Raukawa, that is as a senior member of Ngati Toa with overarching rights to determine relations between the other two iwi.

Matene insisted that Muaupoko never cultivated south of the Hokio in the era since the northerners had come i.e. no later than the 1830s. Since then, they had not re-acquired their traditional lands either, but they had only been in the area bounded by Waiwiri, Hokio, the sea and the lakes. Ngati Raukawa had lived on the land in undisturbed possession and Muaupoko had not been consulted in any of the leasing deals made with Pakeha.³²²

Tamihana Te Rauparaha defended his father's right to give the Horowhenua lands to Te Whatanui as the people still there were living in the condition of slaves, asserting the mana of Ngati Toa and explicitly contradicting the Muaupoko and Ngati Apa witnesses. He stated, 'Whatanui lived there constantly and the Muaupoko bore the same relation to him as the eels

³²⁰ 2 Otaki MB, 22-23.

³²¹ 2 Otaki MB, 24-26.

³²² 2 Otaki MB, 31-34.

in the weirs.³²³ At the time of Wakefield's New Zealand Company payments for lands in the Wellington region, he said, 'Raukawa did not give them (Muaupoko) so much as a pipe a pin or a bit of tobacco or a ring'.³²⁴ Other payments made by Europeans towards land there were not shared at all with Muaupoko. Some land was allowed to Muaupoko by Te Whatanui 'out of consideration'.³²⁵ A few were permitted to live on his lands, provided they brought him eels. When Alexander McDonald arrived in the area, Whatanui Tutaki leased him some land and did share the proceeds with Muaupoko. Tamihana claimed that until 1869 when Hunia had come to build Kupe and had set fire to Raukawa dwellings, Muaupoko 'had no mana there whatsoever'. Nor had they attempted to assert any; they were permitted to catch eels, but that meant nothing. He did add that Muaupoko had been permitted also to enjoy the rent from 'their piece of land'. Again contradicting the Muaupoko evidence that they had never been enslaved, he admitted that he himself still had Te Rei Rongomai (son of a Muaupoko chief) and Te Hira Kahuinga of Ngati Apa on his property as slaves. Te Rei had been there for 30 years.³²⁶

Henare Te Herekau also stated that the boundary established with Muaupoko was at Tauateruru to Tauhitikuri. They did not take eels south of the Hokio, and did not run cattle there either. From the beach to Mahoenui the cattle run were tame, above Mahoenui they were running wild in the bush, but still belonged to Ngati Raukawa. A pole was erected as a boundary marker at Tauateruru in 1844 and it remained until the troubles of 1869.

Repeatedly the Raukawa/Toa witnesses insisted that all questions of who lived where, and those of where the boundaries were located, were discussed and resolved amicably until 1869 when Keepa and Hunia built Kupe and burned the houses. Ihakara Tukumarū called Kupe a wharewhakawa for Raukawa. The significance of 1869 is that it was when the Ngati Apa and Muaupoko members of the Whanganui Contingent of the colonial armed forces, by now a division of the Armed Constabulary, were largely redundant after the successful conclusion of the campaign against Titokowaru.

Hohua Te Ruinui testified that the boundary between Muaupoko and Raukawa was first set out at Ngamana and Ngatokotorua in 1858. At a second laying-off of the boundary, Peeti and members of Rangitane were also present. The pole at Ngamana was burned after first Raukawa and then Muaupoko had had the land surveyed. At the laying off of the boundary line at Tauateruru by Whatanui, Taueki and other Muaupoko chiefs were present and, Hohua said, offered no objection.

³²³ 2 Otaki MB, 27.

³²⁴ 2 Otaki MB, 27.

³²⁵ 2 Otaki MB, 27.

³²⁶ 2 Otaki MB, 28.

Watene Te Waewae testified that when he first came to the area in 1845 no Muaupoko lived south of Tauateruru and none had done so since. The boundary had already been determined prior to that time. He said, 'I found only Taueki and Whatanui in possession'. He contradicted the other Raukawa witnesses by saying that Muaupoko had asked for and received the permission of Whatanui to cultivate south of the line, but noted that they had only done so at Otaewa, and that they used no other places between Hokio and Waiwiri. Muaupoko had acquired two pa tuna from Whatanui but they had bought them for money: one was Pokahue just below Raumatangi, Tonganui was just above it. But such a purchase gave them no rights to the land. The McDonalds leased some land from Whatanui and Watene between Tauhitikuri and Waiwiri, but Hector McDonald also leased some land from Muaupoko.

Wiki Tauteka, Watene Te Waewae's wife and Whatanui's grand-daughter, emphasised repeatedly the lack of standing Muaupoko had had for the last four decades or more. She testified that Muaupoko had come to work on the land, but that they had done so from no right of their own. Wharariki, the mother of Kawana Hunia, had asked for permission to cultivate only from Whatanui Tahuri, at Otaewa, but that was the only right given. The pa tuna were bought, Pukahu by Hanita, a relative of Hunia's, and Tonganui by Noa. She had herself experienced the first trouble which occurred over the land, but it had been with the Pakeha lessees, especially McDonald, not with a resurgent Muaupoko. She had tried to alter the terms of their leases, acting because she and her sister were the only remaining descendants of Whatanui, since Pomare had gone to the Bay of Islands and Watene had gone to his people at Heretaunga. In conducting these negotiations, she had ignored Muaupoko as they had no rights. She had the Pakehas' sheep driven off, 'not to Muaupoko since we did not care whether they lived or not'. She called in the surveyor, at which point Muaupoko 'for the first time disturbed us'. She said that the members of Ngati Kahungunu and Te Ati Awa called in to adjudicate the dispute in 1870 'saw the wrong of Muaupoko'.

Several other witnesses were called, but they merely confirmed the evidence of the principal witnesses. This concluded the case and, on the following day, judgment was delivered.

3.8. The Horowhenua Judgment 1873

The judgment of the Native Land Court in the Horowhenua case was delivered on Saturday 5 April 1873. It read as follows:

Before giving Judgment in this case the Court desires to express its appreciation of the valuable assistance it has had from the counsel on both sides and of the care and ability with which the

causes of their respective clients have been prepared and put before the Court by which the inquiry has been rendered much less protracted than it otherwise would have been.

This is an application made by Ngatiraukawa claimants for a Certificate of Title to that portion of the Manawatu Kukutauaki Block which was excepted from the previous Order of the Court made in their favour excluding only the portion admitted to belong to the Muaupoko Tribe.

The application is opposed by the Muaupoko who claim the whole of the excepted portion as owned by their ancestors and still owned and occupied by them.

The Claimants [i.e. Raukawa] have brought forward evidence and have sought to prove such an occupation of the land the subject of inquiry as would amount to a dispossession of the Muaupoko.

We are unanimously of opinion that the Claimants have failed to make out their case and the Judgment of the Court is accordingly in favour of the Counter Claimants [i.e. Muaupoko].

The Claimants appear to rely principally on the residence of Te Whatanui at Horowhenua and there can be no doubt that at the time when that Chief took up his abode there the Muaupoko were glad to avail themselves of the protection of a powerful Ngatiraukawa Chief against Te Rauparaha whose enmity they had incurred.

It would appear that Te Whatanui took the Muaupoko under his protection and that he was looked up to as their Chief but it does not appear that the surrender of their land by the Muaupoko was ever stipulated for as the price of that protection or that it followed as a consequence of the relations which subsisted between that Tribe and Te Whatanui.

We find that Muaupoko was in possession of the land at Horowhenua when Te Whatanui went there - that they still occupy these lands and that they have never been dispossessed of them.

We find further that Te Whatanui acquired by gift from Muaupoko a portion of land at Raumatangi and we consider that this claim at Horowhenua will be fairly and substantially recognised by marking off a block of 10[0?] acres at that place or which a Certificate of Title may be ordered in favour of his representatives.³²⁷

As with the previous Himatangi judgment, the circumstances in which the Horowhenua judgment was given against Ngati Raukawa smacked of the judges having given in to pressure brought to bear on them outside the courtroom. Writers have stated that this pressure was both on the spot from the militaristic Keepa Te Rangihwinui and from the Government

³²⁷ 2 Otaki MB, 53-54. A printed abridgement of that judgment, presumably clipped from a contemporary newspaper, is in National Archives, but it is not dated nor is the source identified. MA 75/11. Original designation ND 74/1045.

which desperately wanted to put an end to the tension and even violence that had plagued the district for a number of years and threatened the rule of law and order there.

While the Court hearing was being conducted, Keepa applied not only legal and customary pressure, but psychological pressure as well. To remind the Court of his personal importance and his valiant and extensive service as a leader of Maori warriors on behalf of the Pakeha Government, he himself wore his military uniform and paraded his men and marched them up and down outside the courtroom. When the judges wished to know the exact location of the block's boundaries, it was Keepa who took them down to the beach and showed them. The final area of the Horowhenua Block, 52,460 acres, was greater than Muaupoko had originally claimed, and the expectation was that Keepa would be kaitiaki of the whole block on Muaupoko's behalf.³²⁸

Keepa confessed later to having given false evidence to the 1873 Court hearing out of friendship for Hunia and because those who were conducting the case for them said that they should all tell the same story in their evidence. The false evidence had related especially to the degree of unanimity amongst Muaupoko and between himself and Hunia and to Hunia's involvement in Muaupoko life and affairs.³²⁹

In *Te Hekenga*, Rod McDonald discusses the 1873 Land Court hearing.³³⁰ As noted, he states that after the Ngati Raukawa counsel, Sir Patrick Buckley, had demolished the Muaupoko case, Keepa openly threatened the judges that if they decided against him he would simply lead his 400 Wanganui warriors down to obliterate Raukawa in the traditional manner, as the land dispute had started. The judges then adjourned the Court in Foxton for three days and came to Horowhenua to look over the land themselves. Keepa showed them around and drove in his own marker poles at the Waiwiri Creek and Te Karangi, making a straight line from those points at the sea to the top of the mountains. The Court judgment gave Muaupoko two-and-a-half times the 20,000 acres they had previously had. McDonald argues that this was a highly unfair, even improper, result:³³¹

By no stretch of reasoning can the verdict be said to have been just, according to the ruling [sic] on which Maori ownership is to be based – namely, that those shall be adjudged the owners who were actually in possession at the time British rule was proclaimed over New Zealand in 1840. It has been held, and reasonably, that the Maoris, prior to that date, were, as a sovereign people, entitled to make what wars of conquest they could, and to hold what they might win. Any other decision would, in a country where wars were so frequent and resulting changes of ownership in

³²⁸ Galbreath, *Buller*, 194.

³²⁹ AJHR, 1896, G-2, 180.

³³⁰ O'Donnell, *Te Hekenga*, 142-146.

³³¹ O'Donnell, *Te Hekenga*, 144.

land so common, have involved titles in a maze of uncertainty which would have precluded any certainty of tenure whatever.

It was argued in this case that as Te Whatanui had permitted the Muaupokos to dwell side by side with him on lands which he allotted specifically to them, therefore they were not conquered, but had concluded a treaty with him. But the weight of evidence of the old missionaries and traders, with men like my father, who knew the subordinate position held by



Te Mahia Wi Parata and female relatives, Whakarongotai marae, Waikanae.[ca 1908].

Photograph taken by Harold Stevens Hislop.

Te Mahia Wi Parata (centre, with feathers in her hair) and female relatives, including Mrs. Eve Parata (with scarf), sitting on the porch of Whakarongotai meeting house. These women are of Ngati Toa, Te Ati Awa ki Waikanae and Ngati Raukawa ki te Tonga Descent.

Alexander Turnbull Library, Wellington.

the tribe in pre-*pakeha* days, was against this. It is only fair to say, however, that this evidence was not called at the Court of '73.

As have other authors in relation to the Himatangi judgments, as discussed above, McDonald implies strongly that this was a politically determined decision, intended to reward Keepa for his Government service. He stated:³³²

The current belief amongst both Europeans and Maoris was that the decision was prompted by a desire to compensate Kemp for his services to the Crown. How far his threat of war against the Raukawa – a war which must inevitably have drawn in the Ngati-Toa, Taranaki, Poverty Bay and Waikato tribes on the one side, and the Rangitikei, Wanganui, and Wairarapa tribes on the other – may have influence Judge Rogan's [sic] decision it is impossible to say. On the face of it the probable explanation would seem to have been a combination of both circumstances.

Rod McDonald also quoted the evidence given by Judge John Wilson before the 1896 Commission to the effect that (a) after the 1873 judgment Donald McLean thanked Judge Rogan for acting outside the law to settle the difficulty and that (b) Judge Smith had told Wilson himself, 'They will legalise what we have done.' McDonald makes no secret that he thinks Raukawa were hard done by, here and elsewhere:³³³

Their generosity, which seems to have been consistent throughout, allowed the Muaupoko in this district, and the Ngatiapa and Rangitane in the Rangitikei, to continue to occupy part of the conquered lands, a generosity which in both instances was abused.

³³² O'Donnell, *Te Hekenga*, 145.

³³³ O'Donnell, *Te Hekenga*, 160.

3.9. Ngarara³³⁴

In 1873 a further block made its way through the Native Land Court. This was Ngararaa, or Ngarara-Waikanae, a block of some 45,000 acres.³³⁵ The principal claimants were Ngati Awa, led by Wi Parata. According to Anderson and Pickens:³³⁶

The block was first called, at Foxton, under the name Te Ngarara. The hearing, under the name of Ngarara, was adjourned from Foxton to Waikanae, then to Wellington. Although Ngati Toa disputed Te Ati Awa's claim, the issue of most concern during the hearing was the question of where the boundary of the Government land to the south, Wainui, should be located. Eventually this issue was settled by agreement between the Government's agent, Wardell, and Wiremu Te Kakakura Parata, who was managing Ati Awa's case. Judge Rogan then awarded the land to Ati Awa, Parata producing a list of names 'of the Ngatiawa tribe' to be registered.

As was noted in Report 1, the Wainui Block transaction (1859) was a very important transaction for Ngati Toa, negotiated with Ngati Toa on behalf of the government by William Searancke. The land alienated was quite a substantial area running along the coast from a point south of Paekakariki to Whareroa and then running inland to the Tararua divide. The purchase was completed on 6 July 1859.³³⁷ The northern boundary of the block sold was described as commencing at "the mouth of Whareroa" then running inland to a point known as Paparauponga to meet the western boundary of a Wairarapa block sold to the Crown by Ngati Kahungunu in 1858 ("thence inland along the boundary of the land ceded to the Queen on the 26th November 1858, this is the boundary of the land ceded by Ngatikahungunu to the Queen formerly").³³⁸ It was this boundary line which was the subject of contention in the Native Land Court. The deed had been signed by Te Waka Toa, Reweti Te Horomamaku, Hemi Waretī, and 95 other people, presumably all of them Ngati Toa, including Matene Te Whiwhi, Tamihana Te Rauparaha and Wiremu Te Kanae.

³³⁴ This block was not covered in Dr Gilling's draft but it is discussed very fully in Anderson and Pickens, *Wellington District*, ch 11, pp283-299. This section is basically a summary of the relevant section of Anderson and Pickens [RPB].

³³⁵ The principal Native Land Court MB references are (1872) 1 Otaki MB 23, (1873) 2 Otaki MB 56; 163-65; 197-98; 203-211.

³³⁶ Anderson and Pickens, *Wellington District*, 283.

³³⁷ Searancke to McLean, 6 July 1859, 1861 AJHR C1, 285-6.

³³⁸ The original Maori text referring to the boundaries, as reprinted in Turton (*ibid*, 129) is as follows:

Nga rohe i te whenua ka timata ki te Ngutu awa o Whareroa ka rere ki uta i runga i te rohe o te whenua kua oti te tuku atu ki a te Kuini i te 26 o Nowema a Paparauponga ra ano ko te rihe tenei o te whenua i tuku atu Ngatikahungunu ki a te Kuini imua ka rere whaka e Tonga i runga i te maunga tae noa mai Pawakataka ka ahu mai I konei waka te kapekape o Pouawa ka whiti i te Rore nui o te Kuini ki Tunupo rere tonu ki te Takutai i te Ana a hau ka ahu waka raro i te Takutai a Paekakariki a Wainui a te ngutuawa o Whareroa ka tutaki.

Following the award to Ngati Awa in the Native Land Court much of the land was sold to the Crown. These sales have not been researched for this report, but it is clear that Ngati Toa did contest Ngati Awa's claim to this area. In fact Ngati Toa brought a claim to an area within the block in the Native Land Court in 1874. Anderson and Pickens have analysed this case (in which Ngati Toa were unsuccessful):

In 1874, a Ngati Toa claim to an area of some 840 acres within the Ngarara block was heard. This land lay on the south side of the northern boundary of the block, on the coast; it was land already awarded to Ati Awa. The Ngati Toa challengers were Tamihana Te Rauparaha, Matene Te Whiwhi, Hemare Te Tewe and others. The block was gazetted for hearing as 'Kukutauaki, near Otaki', and identified in the Native Land Court minute book first as Ngarara then as Kukutauaki no 1. In his decision the presiding judge accepted that Ngati Toa had conquered and occupied this land, but found that they had gone elsewhere to live before 1840. Wi Parata and his co-counter claimants, on the other hand, had proved occupation since 1840, and on that basis judgment was made, in March 1874, in their favour.

One point that can be made is that the Waikanae Crown purchase block, which lies to the north of Ngarara, was alienated jointly by Ngati Toa and Ngati Awa.

3.10. Conclusion

The four Native Land Court judgments discussed in this chapter determined the fate of the lands within the northern portion of Ngati Toa's area of interest that had not already been alienated through the Crown purchases discussed by Associate-Professor Boast in Report One. Although, by the time they were delivered from 1868 to 1873, they focused on the interests of Ngati Raukawa, the underlying interest of the northern iwi had been that of Ngati Toa, as leaders of the heke to the south, apparent conquerors of the region from Whangaehu to Te Tau Ihu, and core of Te Rauparaha's seaborne empire. Raukawa's title derived from Ngati Toa's title.

It may be helpful if the effects of the four decisions are set out here by way of a brief chronology in order to help recapitulate:

Step 1: April 1868: The Native Land Court gave judgment in the **Himatangi** case.³³⁹ Ngati Apa are found to have equal rights with Raukawa in this block, meaning that half of the block passes to the Crown. The Court also finds that Raukawa as an iwi had no rights in the block at all – only certain Raukawa hapu. This is a catastrophic defeat for Raukawa.

³³⁹ (1868) 1e Otaki MB 719-20; also reprinted in the *Evening Post*, 29 April 1868.

Step 2: August-September 1868: Rehearing of the Himatangi (Rangitikei-Manawatu) Case. Judges Fenton and Maning gave judgment on 25 September.³⁴⁰

The argument was almost entirely focused on Te Rauparaha's intentions with respect to Ngati Raukawa and Ngati Apa. The Court again finds that Ngati Raukawa as an iwi had no rights in the block, which went to Ngati Apa, although three Ngati Raukawa hapu (Ngati Parewahawaha, Ngati Kahoro and Ngati Kauwhata had rights in the area by occupation).

Step 3: 4 March 1873: The Native Land Court (Judges Rogan and Smith) gave judgment in the **Kukutauaki** case.³⁴¹ The Court finds that sections of Ngati Raukawa have title in the block "together with Ngatitua and Ngatiawa, whose joint interest is admitted by the claimants".³⁴² Two areas were excluded, however. These were:

(a) *Horowhenua* ("a portion of the block, the boundaries whereof are not yet defined, situate at Horowhenua, claimed by the Muaupoko tribe, of which they appear to have retained possession from the time of their ancestors, and which they continue to occupy"³⁴³); and

(b) *Tuwhakatupua* ("a portion of the block at Tuwhakatupua, on the Manawatu river (boundary not defined), claimed by a section of the Rangitane tribe, whose interest therein is admitted by the claimants"³⁴⁴).

Step 4: 5 April 1873: The Native Land Court gives judgment in the **Horowhenua** case. During the hearing Major Kemp (Keepa Te Rangihwinui) takes various measures to intimidate the Court. The Court finds for Muaupoko and rejects the Raukawa claim to this block.

Unfortunately for Ngati Toa (and Ngati Raukawa), these hearings were conducted and the judgments delivered within a highly charged political context. There were residual concerns about relationships between Crown and Maori as the final stages of the New Zealand Wars were fought out with Titokowaru and Te Kooti. The Crown and Wellington Province both wanted land for settlement for the Pakeha who continued to arrive on virtually

³⁴⁰ See Fenton (ed), *Important Judgements*, 101-108.

³⁴¹ The judgment is reprinted in Fenton (ed), *Important Judgements*, 134-35.

³⁴² *Ibid.*, 134.

³⁴³ *Ibid.*, 135.

³⁴⁴ *Ibid.*

every ship seeking to better themselves in New Zealand. Wellington Provincial Superintendent Isaac Featherston had committed himself, and then the Crown, to the purchase of the Rangitikei-Manawatu region and the operations of the Native Land Court had been fitted around that through tinkering with the Native Land Acts. And there were bitter and personal battles being waged in the assemblies of both Wellington Province and the national Parliament where confirmation or repudiation of the purchases and the ownership of the associated lands would be influential in deciding political power.

The available evidence that there was much pressure on the court's judges to come to decisions that would favour the Crown by shoring up the purchases. The very fact that in the first and second Himatangi (or Rangitikei-Manawatu) judgments Ngati Raukawa were opposed by very senior Crown counsel instead of simply the other affected iwi and their case conductors tells a very pointed story of how important this all was to the Crown, the Crown's desired outcome, and the lengths it would go to in order to achieve it. The very conduct of the cases shows that the Crown was not simply a disinterested party seeking the ultimate truth about the region's history, but that it would actively seek to discredit those, both Maori and Pakeha, who stood against it.

In all of these judgments, the case for Ngati Raukawa, generally supported by leading members of Ngati Toa, was that Ngati Toa had initially conquered the region, beaten and often enslaved the original inhabitants, and then wielded practical control such that Te Rauparaha could without challenge allot districts to various tribal groups. Despite consistent evidence from many that that is exactly what happened, the court repeatedly found that he had not done so, and that Ngati Raukawa occupied by the grace and favour of the very tribes that the northerners insisted they had themselves enslaved and permitted to remain and use resources from their own generosity.

The court consistently ignored the possibility of overarching control being exercised by the supreme military and political leader in the region even when Te Rauparaha's immediate people did not themselves occupy. This was despite the court itself using the language of conquest in relation to what he had done, and even calling him the 'paramount chief'. Unlike many other places where the same judges stated definitively that 'might is right' was the principle by which Maori held rights to land, in this region actual and unbroken occupation was held to be the defining characteristic. In that context the original peoples were repeatedly held not to have been displaced from their ancestral lands and therefore to have retained at least a half-share in them, if not virtually complete ownership. When political and military control was counted as nothing, the northerners were simply swept aside and the court could even find that they had occupied only by the generosity of the original tribes.

These processes of argument and the application of principles were not consistent within the court's own judgments, as we have seen. The judgments impacted most directly on Ngati Raukawa as the iwi which claimed the immediate ownership rights and often occupation of much or all of the region. For Ngati Toa the impact was less direct since that iwi physically occupied lands further to the south in the Kapiti region. Still, by these decisions, much of the fruit of their invasion from the north was lost to them and their Raukawa kin. Their interests gained through conquest were set aside and even ignored in most cases, rather than directly addressed. They thereby must also have lost mana as their control was judicially discounted and set aside. Tamihana Te Rauparaha explicitly told the court that just as his father had exercised mana over the entire region, so he himself still claimed that mana; neither of them had relinquished it in the way the court's version of events said, or merely implied or assumed, that they had.

In this way, therefore, these four judgments diminished Ngati Toa's mana and took from them most of their remaining interests in the northern part of their rohe. To the extent that any of the northerners retained lands in these districts, they were reduced to reserves of a few thousand acres, swept aside into small, tidy reserve parcels so that the provincial government could get on with the business of laying out the land for Pakeha farmer-settlers.

CHAPTER 4

Southern (Porirua) Blocks

4.1. Introduction

The blocks around Porirua were those closest to the core of Ngati Toa's land interests at Takapuwahia. By the early twentieth century, however, very little of this land remained in Ngati Toa hands. The basic narrative is traversed below, but it has to be freely admitted that despite having taken a great deal of care to locate all relevant documentation much of the story remains obscure. Only so much can be learned from an examination of the Native Land Court files (now mostly held in Whanganui). These records tell us the bare bones of the history: when the block went through the Court, to whom it was allocated, the various partitions, and when it was alienated, but not much more. Essentially the story narrated in this chapter is one of Court investigation, partition and sale to private-sector buyers. (The Crown did not play a large role as purchaser in this area, no doubt because vast areas of Ngati Toa's rohe had already passed into Crown hands in earlier decades as a consequence of the Wairau, Porirua and Te Waipounamu Crown purchase deeds). We do not really know why Ngati Toa grantees such as Ngahuka Tungia, Raiha Puaha, Ropata Hurumutu, Nopera Te Ngiha and others sold their interests. Sales to the private sector do not generate official documentation in the same way that Crown purchases typically do. It seems reasonable to assume that the sales were an outcome of the general poverty and marginalization which characterized Ngati Toa's circumstances in these years.

Takapuwahia itself will be the subject of its own chapter, as it has a separate, enduring, complex and extensive history.

The blocks discussed in the present chapter are:

- Aotea
- Kahutea
- Kenepuru
- Koangaaumu
- Komangarau Tawhiri
- Korohiwa
- Onepoto
- Wairere

The title or ownership history of each of these small blocks is discrete and will be covered in individual detail. There is no consistent pattern to their history as some were alienated very

early on and portions of others have been retained virtually to the present day. Generally, their customary ownership was investigated in the Native Land Court and titles issued by the 1880s and so the general themes and issues relating to the court's operations as discussed above will apply here as context. However, once a block had passed through that process its legal status changed at that time from Maori customary land to Maori freehold land, and it was therefore subject to the direct operation of the law. The blocks were also partitioned in the Native Land Court and the original owners' interests were dealt with and passed on to their heirs in succession orders. The details discussed here are, as noted, derived from information contained in the Maori Land Court files. It will readily be seen that the documentary record is very incomplete and in many cases renders it impossible to know for sure what happened, or, if the result is known, how that outcome was reached.

The eventual disposal of only 1 of these blocks will fall partly into the chapter below on Crown purchasing as the purchase agents nibbled at Kenepuru for various government purposes. However, as will be seen, the very large majority of these blocks were sold to private purchasers and so fell outside the Crown purchase system and its official record-keeping. Some survived in Ngati Toa hands until the expansion of Porirua in the early-mid twentieth century.

It needs to be explained that this chapter, as well as the following chapter on Takapuwahia (and the chapter on Whitireia), follow on from Chapter 8 of Report One, which deals with the Wairau and Porirua deeds of 1847. The Porirua deed of 1 April alienated a very large area stretching from Ohariu (Makara) in the south to Wainui (behind Paekakariki) in the north, but left some substantial reserve areas in Ngati Toa hands. The English text of the deed begins with a description of the external boundaries of the block, which ran from Ohariu to Wainui (Paekakariki):³⁴⁵

These are the lands that are given up by us to the Governor beginning at the boundary formerly laid down to us by Mr Spain, at the Kenepuru, running to Porirua, Pauatahanui Horokiri, extending as far as Wainui, then the boundary takes a straight course inland to Pouawa, running quite as far as Pawakataka.

Next, the reserve areas are identified (which are not easy to follow from the text, although they seem to be identified with reasonable clarity in an attached sketch plan:

There are Three places kept in reserve for us, of the land that is given up to us by the Governor
– One of them beginning at Te Arataura, running in a straight line inland to, then it crosses,

³⁴⁵ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 22, pp 127-8. The original deed no as entered on the card index is No 144.

and comes out at the house belonging to Mr Jackson, running along the Water edge. – The other boundary comes as far as Waitawa, and runs straight along the water side until it reaches Te Arataura. – We have likewise this again in reserve, the boundary of which runs from Jackson’s house until it reaches the Creek on the side of the cultivated ground of Te Hiko, then it runs straight along that River running straight along at the back of the ridge, then breaking out again to the water side at Papakohai a little outside of the settlement of Oahu. We have this again in Reserve the Boundary of which begins at Tawitikuri, running along the ridge until it reaches opposite the reeds. It then crosses inland according to the plan laid down in the map reaching the Mountains above the Parapari, then it runs along the ridge to Wainui, and it there descends into the Wainui River. It then runs straight along that river to Pouawa running to Pawakataka, the part outside of this boundary we still retain as ours.

The reserves are shown much more clearly on the sketch plan. Three areas are reserved, these being:

- a very substantial coastal block essentially running from Plimmerton to Wainui, the landward boundary seeming to run along the high ridge lines on the seaward side of the Horokiwi Valley. The area reserved includes Taupo Pa, Pukerua, and Paekakariki;
- a much smaller area on the southeastern side of Porirua harbour, running from the Porirua stream outlet about half-way up the harbour and then inland (this area later became known as the Aotea block); and
- another quite substantial area taking in the whole of the Whitireia peninsula and Titahi Bay and following the coast down to Ohariu and the Port Nicholson Block boundary and then from there back to the Porirua stream outlet.

The reserve areas, then, are quite substantial, as is also the case with the Wairau purchase. Had all the lands reserved to Ngati Toa in both blocks still been in Ngati Toa hands today the iwi would be the owners of a great deal of valuable land, although (of course) such was not to be the case. Thus the areas dealt with in this chapter are for the most part former reserve areas within the Porirua deed boundaries. As will be seen these areas were subsequently investigated by the Native Land Court. We have not been successful in finding any information about what happened to these lands in the period between their setting aside in the Porirua transaction and their subsequent investigation by the Native Land Court. The Aotea Block, for example, was not investigated until 1880.

4.2. Aotea Block

Hohepa Horomona and Raiha Puaha applied in March 1880 for the Native Land Court to investigate the title of the Aotea Block.³⁴⁶ The block has a complex history.

The Aotea Block was partitioned by the Native Land Court in a hearing in June-July 1881, presumably at the same time that the title was investigated, although the files do not reveal this. On 2 July 1881, Judges F.M.P. Brookfield and E.W. Puckey and Assessor Wiremu Hikairo made orders relating to the different subdivisions. These were as follows:

Aotea No 1 (69ac 2r 24p) was awarded to Rawiri Puaha and was made inalienable, except with the consent of the Governor, by sale, mortgage, or lease longer than 21 years.³⁴⁷ However, as will be noted below, at some time prior to January 1891, those restrictions had been lifted and Aotea No 1 had been sold to a Pakeha, Mungavin.

Aotea No 2 (72ac 2r 30p) was awarded to Pene Koti and was made inalienable, except with the consent of the Governor, by sale, mortgage, or lease longer than 21 years.³⁴⁸ A lease was made from Pene Koti to Mungavin of Aotea No 2 in 1898. There were no fees or liens on the block.³⁴⁹ Patara Pene and Hira Pene were recognised as equal successors after Pene Koti's death on 19 April 1901.³⁵⁰ After these two had applied to have the alienation restrictions on No 2 lifted so as to permit its sale, Chief Judge Jackson Palmer heard the matter and recommended the removal of the restrictions in November 1905.³⁵¹ The alienation restrictions on Aotea No 2 were removed by proclamation in April 1907.³⁵²

Aotea No 3 (16ac 1r 8p) was awarded to Wiremu Neera and was made inalienable, except with the consent of the Governor, by sale, mortgage, or lease longer than 21 years.³⁵³ However, this order was subsequently cancelled by Judge Brookfield and another order of the same date awarded it to Rawiri Puaha.³⁵⁴ Unfortunately no additional information is on the Court file.

Aotea No 4 (20ac 2r 37p) was awarded to Hohepa Horomona and was made inalienable, except with the consent of the Governor, by sale, mortgage, or lease longer than 21 years.³⁵⁵ Hohepa was not confirmed officially in his ownership very rapidly and in August 1882 he wrote to the court seeking the urgent issue of his certificate of title.³⁵⁶ No additional information is on this Court file either.

³⁴⁶ Application, 4 March 1880. WN 25 Aotea Applications 1880-1944.
³⁴⁷ Orders, 2 July 1881. WN 25 Aotea Block Order File (General Land).
³⁴⁸ Orders, 2 July 1881. WN 25 Aotea Block Order File (General Land).
³⁴⁹ Stafford et al to Registrar, NLC, 23 May 1898. WN 25 Aotea Correspondence 1889-1898.
³⁵⁰ Succession order, 10 March 1902. WN 25 Aotea Block Order File (General Land).
³⁵¹ Report and recommendation, 21 November 1905. WN 25 Aotea Block Order File (General Land).
³⁵² NZ Gazette, 4 April 1907.
³⁵³ Orders, 2 July 1881. WN 25 Aotea Block Order File (General Land).
³⁵⁴ Orders, 2 July 1881. WN 25 Aotea Block Order File (General Land).
³⁵⁵ Orders, 2 July 1881. WN 25 Aotea Block Order File (General Land).
³⁵⁶ Hohepa Horomona to Fenton, 21 August 1882. WN 25 Aotea Correspondence 1889-1898.

Aotea No 5 (65ac) was awarded to Hohaia Pokaitara and Hira Te Aratangata, and was made inalienable, except with the consent of the Governor, by sale, mortgage, or lease longer than 21 years.³⁵⁷ Hohaia Pokaitara and Hira Te Aratangata applied in August 1889 to have Aotea No 5 partitioned, but this application was eventually dismissed in December 1891.³⁵⁸

On 17 October 1890, the Native Minister forwarded to the Native Land Court, for inquiry and report, applications for the removal of restrictions on the alienation of Aotea No 5.³⁵⁹ When the application to remove the alienation restrictions on Aotea No 5 came before Judge Alexander Mackay wearing his Native Land Court judge's hat on 15 November 1890 in Greytown, he and assessor Tamati Tautuhi approved a positive report recommending removal being made to the Governor, provided satisfactory evidence be produced that Hohaia had sufficient other land for his maintenance.

In January 1891, W.H. Field of the Wellington law firm Buckley, Stafford and Treadwell, informed Judge Alexander Mackay, now acting as Trust Commissioner, that his firm could facilitate the sale by Hohaia Pokaitara of Aotea No 5.³⁶⁰ Mackay had stipulated that Hohaia needed to be given 10 acres before he would approve the sale and Field had arranged that his client, Mungavin, would make over 10 acres from Aotea No 1, which he (Mungavin) had already purchased from Raiha Puaha for £10 per acre.³⁶¹ This was all necessary to place Hohaia in the position required by statute (Native Land Court Act 1886 Amendment Act 1888 s 6), that he should still own sufficient other land for his maintenance and occupation.³⁶² The arrangement was apparently at Mackay's suggestion, which indicates that he was not intent upon hindering such transactions so much as making sure that the Maori concerned were properly provided for in the course of them. Indeed, his reply to Field was that when this arrangement was completed, he could forward his certificate to the Governor, 'this being the only action that devolves on me to perform by which I can be instrumental in forwarding the progress of the matter'.³⁶³ A week later, Field obliged with the transfer of land from Aotea No 1.

Something further went wrong, though, and Mackay still refused to lift the transactions. He and Buckley et al disagreed over the interpretation of section 5 [sic, 6] of the Native Land Court Act 1886 Amendment Act 1888 about removal of alienation restrictions, he restricting

³⁵⁷ Orders, 2 July 1881. WN 25 Aotea Block Order File (General Land).

³⁵⁸ Application, 20 August 1889. WN 25 Aotea Applications 1880-1944.

³⁵⁹ Morpeth to Chief Judge, 17 October 1890. WN 25 Aotea Correspondence 1889-1898. Only the Minister's cover sheet remains in the file; the application(s) themselves do not.

³⁶⁰ Over the next few years this firm's name changed to Stafford, Treadwell and Field.

³⁶¹ Field to Mackay, 15 January 1891. WN 25 Aotea Correspondence 1889-1898.

³⁶² In 1888, the Native Land Court Act 1886 Amendment Act 1888 s 6 provided that no restriction on alienation should be annulled or varied unless the Native Land Court was satisfied that the sellers had other land, or shares in other land, which had had title already awarded by the Native Land Court, that was 'sufficient for their maintenance and occupation'. Also, all those who had a beneficial interest in the block being sold had to concur in the removal of the restrictions.

³⁶³ Mackay to Buckley et al, 19 January 1891. WN 25 Aotea Correspondence 1889-1898.

it to memorials of ownership, they wanting to expand it to all lands, including those held under a certificate of title.³⁶⁴ Judge Mackay referred the matter to Chief Judge Hugh Seth-Smith, on whose opinion he had previously relied, and Seth-Smith pointed out that although Stout CJ had in *Poaka v Ward* supported Buckley et al's view, more recently Edwards J had agreed with Seth-Smith's view in *Robertson v Wilson*, but both statements were obiter dicta. He recommended that the simplest way out of the difficulty was to state the case to the Supreme Court for an authoritative ruling on the direct point. There is no indication that this was done.

For whatever reason, within five months the interpretive point was resolved and the Native Land Court felt able to proceed. Mackay, once more acting as judge, concluded on 6 June 1891 that satisfactory evidence of Hohaia's landholdings had been produced and so a positive report was sent to the Governor, recommending the removal of restrictions.³⁶⁵ Mackay as Trust Commissioner also then agreed to the subsequent sale transaction itself in July 1891, less than a month later. The transfer of 10 acres from Aotea No 1 to Hohaia was deemed satisfactory and the other owner of No 5, Hira Te Aratangata, had 'plenty of other land'.³⁶⁶ So the sale could proceed without official hindrance.

Finally, **Aotea No 6** (13ac 3r 24p) was made inalienable, except with the consent of the Governor, by sale, mortgage, or lease longer than 21 years. Hani Kamu was entered in the register as the owner according to Native custom.³⁶⁷ No additional information is on file.

4.3. Conclusions on Aotea Block

The Maori Land Court's record of the history of the Aotea Block is therefore extremely incomplete. We know of the almost immediate alienation of Aotea No 1 by 1891, but none of the details or reasons why it was disposed of. Aotea No2 was probably disposed of, at least in part, shortly after the removal of the restrictions on alienation, but again the manner or reasons for the sale remain unrecorded. The alienation of Aotea No 5 is the only subdivision dealt with in detail and it is not complete. Even if all the various subdivisions remained in Maori hands—which seems highly unlikely—there should have been succession files recording the court's dealings with those interests of the original owners over the subsequent century. Their absence again suggests the blocks' alienation at that time. Finally, it is to be

³⁶⁴ The point of the dispute is not clear from the correspondence on file. Presumably the problem arose when s 6 read that the remaining land held by the seller had to have had its title determined by the court and belonged to the seller 'in their own right'. Judge Mackay was perhaps distinguishing from individual ownership under a certificate of title and undifferentiated shares held under a memorial of ownership.

³⁶⁵ Order, 6 June 1891. WN 25 Aotea Applications 1880-1944.

³⁶⁶ Mackay, memorandum, 13 July 1891. WN 25 Aotea Correspondence 1889-1898.

³⁶⁷ Orders, 2 July 1881. WN 25 Aotea Block Order File (General Land).

noted that the segments of Aotea about which the files do contain information appear to have been alienated to private purchasers, not to the Crown.

4.4. Kahotea Block

A. Background

Kahotea Block is located on the peninsula past Takapuwhia, but adjoining the Whitireia reserve, occupying the area between Joseph Thom's grant at Titahi Bay and the Onepoto Block on the harbour shore. It includes some shoreline around Te Kahotea, but essentially fills in space between the other blocks. It is also called **Kahutea** in some sources. The short southern boundary adjoined an early grant to W. Cooper, which had been a 'special purchase from Natives'; when surveyed in 1869 Cooper's Grant and Kahotea were separated by a fenced boundary.

An original application for the Native Land Court to investigate customary ownership and issue a certificate of title was made in 1889.

Kahotea was not put through the Native Land Court in one block, but was done so piecemeal, in three segments. It seems to have been originally owned in the early period after the heke by the three brothers Te Peehi, Rangihiroa and Nohorua, and the dispute was played out before the court between their descendants. When the parts of the block came to have their titles investigated piecemeal by the Native Land Court, Kahotea No 1 was awarded to the descendants of Rangihiroa in 1895, and Kahotea No 3 was awarded to the descendants of Nohorua in 1889. Kahotea No 2 was further contested and the Native Appellate Court awarded it largely to Te Peehi's descendants in 1907, but with 15 acres going to Nohorua's descendants to satisfy any rights they might still have. It is not clear how this happened, when the normal process would have been for the entire block to have the customary ownership determined, and then for it to be apportioned between those owners; instead this appears to have more like three separate customary investigations. The disputes over Kahotea can fairly be seen as a typical example of the factionalism and division that was so often inherent in the Native Land Court process.

An application was lodged in July 1896 by a law firm on behalf of William Jillett to alienate Kahotea 1 and 2 as security on wool on sheep depastured on those blocks, a deed already having been signed on 12 May 1896 between Jillett and the firm of Murray, Robert and Co. No objection was lodged, but the court officials noted that Jillett was not a named owner in No 1 and No 2 had not yet had its title investigated.³⁶⁸ It was advertised in the *Gazette* and *Kahiti*. Judge Mackay observed that the condition of the title was immaterial as

³⁶⁸ Application, 16 July 1896. TC 94 Kahotea Alienation File.

the grantor only gave security over the wool of specified flocks, while the instrument made no claim as to Jillett's rights over the land concerned. Chief Judge Davy duly signed the certificate.³⁶⁹

This proceeding leading up to the two blocks being used as security on the commodity produced on the blocks indicates that Jillett was farming the blocks and presumably doing so under a leasing arrangement with the owners, whom the court had determined in the previous year for No 1, but only presumed under custom for No 2, which was still over a decade away from having its title determined.

B. Kahotea No 1

The Native Land Court's interlocutory decision on **Kahotea No 1** (95ac 3r 10.9p) was given on 20 September 1895 by Judge Mackay.³⁷⁰ It was made inalienable except by lease for less than 21 years, but the title was not completed until the 1907 judgment of the Native Appellate Court, and finally signed by Deputy Chief Judge Jones in 1911. Kahotea No 1 included all of the foreshore area of Kahotea around the Porirua Harbour. It was awarded to 11 owners, descendants of Rangihiroa, the two receiving the largest share being Wi Parata and Hemi Matenga and most of the others being of the Ngapaki whanau.

Raiha Puaha and another appealed against the original 1895 decision of Judge Mackay, but not until more than a decade later. The grounds for appeal were that they were entitled to the block by both ancestry and occupation, that they had believed their immediate relatives who were present at the 1895 hearing would have preserved their interests, that their claims were therefore hidden from the court, and that the decision was interlocutory only.³⁷¹ This appeal was possible because the Native Appellate Court hearing Kahotea No 2—discussed immediately below—had agreed that this 1895 interlocutory decision could still be appealed. However, when the Native Appellate Court, comprising Chief Judge Seth-Smith and Judge C.E. MacCormick, heard the appeal on 13 June 1907, they dismissed it and thereby confirmed Judge Mackay's original awards.³⁷²

There is no information on file relating to the alienation of Kahotea No 1. There would be no Trust Commissioners' files as that function had been done away with by the second decade of the twentieth century, but neither is there any documentation relating to the Maori Land Board that would have had jurisdiction after 1905 and through which any sale of Maori land had to pass. Even more would it have had to do so since the block had restrictions placed

³⁶⁹ TC 94 Kahotea Alienation File.

³⁷⁰ Order, 20 September 1895. WN 48 Kahotea Block Order File (General Land).

³⁷¹ Fraser to Registrar, 7 July 1906. WN 48 Kahotea Applications 1868-1927.

³⁷² Order on Appeal, 4 July 1907. WN 48 Kahotea Block Order File (General Land).

upon any alienation that would have a Maori Land Board recommendation to the Governor to rescind.

Upon Wi Parata's death on 29 September 1906, 12 people, mostly with the Parata surname, were named as successors to his interest in Kahotea No 1, all receiving one-tenth equally, except for 3 who together shared one-tenth, getting one-thirtieth each.³⁷³

The Native Land Court ordered partitions of Kahotea No 1, first, on 28 January 1909:

- Kahotea No 1A (10ac) to Mere Te Hiko;
- Kahotea No 1B (16ac 0r 11p) to Te Rangi, Tiaho and Kohe Ngapaki;³⁷⁴ and
- the balance of 68ac 3r 29p being Kahotea No 1C and awarded to 18 owners.

The Native Land Court ordered another partition on 20 July 1909, also called Kahotea No 1A (6ac 2r 7.4p) but awarded this time to Hanikamu Te Hiko,³⁷⁵ which was the portion separated from the rest of the block by the foreshore road and then the road that turned west and ran to Titahi Bay. The restrictions against alienation on the first, 10-acre Kahotea 1A were removed in September 1909, following a recommendation by the Aotea Board on 31 July.³⁷⁶

Also, on 20 July 1909 Kahotea No 1B was partitioned with 7ac 1r 3p being called 1B1 and awarded to Te Rangi Ngapaki, and 8ac 2r 12p being called 1B2 and awarded to 4 other members of the Ngapaki whanau, both continuing 1B's alienation restrictions.³⁷⁷ However by the end of that year these partitions had not been given effect to or surveyed and they were therefore thought useless, so Judge Rawson annulled them with the consent of all parties.³⁷⁸ It is not clear from the files just why this 'uselessness' was apparently so bad as to require further court intervention. A lack of action in completing technical details over a period of a bare half-year would not usually have occasioned such a response. The general consent given to the annulment and re-partition suggests that either the original one had been somehow wrongly done or it had been done without widespread agreement amongst the owners. However, the files contain no appeal or application for a rehearing.

Kahotea 1 was re-partitioned by Judge Rawson and Assessor Hemi Erueti on 17 January 1910 into Kahotea 1A to 1F. In this partition, not all owners received an equal area resulting from their relative interests as already determined. This was because the court took

³⁷³ 49 Otaki MB 143. Note re trustee order, 19 November 1911. WN 48 Kahotea Correspondence 1901-1918.

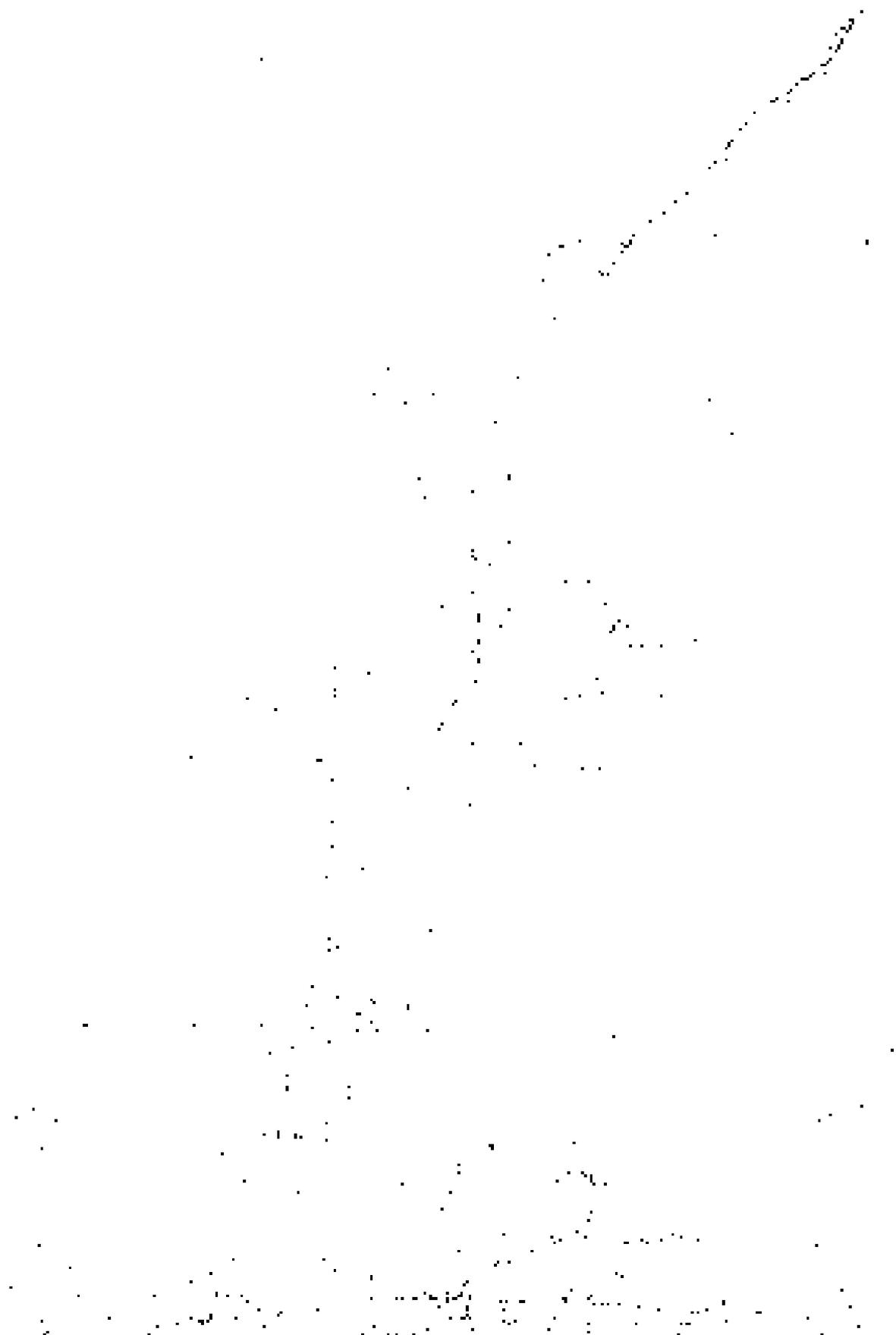
³⁷⁴ Order + NZ Gazette 23 September 1909. WN 48 Kahotea Block Order File (General Land).

³⁷⁵ Order, 20 July 1909. WN 48 Kahotea Block Order File (General Land).

³⁷⁶ NZ Gazette, 23 September 1909.

³⁷⁷ Order, 20 July 1909. WN 48 Kahotea Block Order File (General Land).

³⁷⁸ Order, 17 January 1910. WN 48 Kahotea Block Order File (General Land).



Map of Paekakariki Survey District, 1968.

note that the land varied considerably in value. Those owners in 1E, for example, were at the back of the block on inferior land and so received more acreage than did those in coastal portions.³⁷⁹

An order for **Kahotea 1A** reiterating that of 20 July 1909 for 6¼ acres in favour of Hanikamu Te Hiko once again placed no restriction on the alienation of Block 1A. M.J. Jillett leased the block. The block was sold to Herbert Jillett—probably, the lessee ‘M.J. Jillett’ was actually ‘H.J. Jillett’—on 5 April 1910 for £13 per acre, or more if the government valuation was higher. Although the application form itself stated that the G.V. was £13 6s 0d, the Board confirmed the sale on 24 June 1910 without requiring any further information, even a receipt.³⁸⁰

On 17 January 1910, Judge Rawson re-created **Kahotea No 1B**, but this time it was 7ac 2r 20.5p in area and was awarded to Mere Te Hiko solely. There were no restrictions on alienation and Herbert Jillett was leasing the land.³⁸¹ Jillett purchased the block on 18 May 1910 for £123 15s 0d, about £16 10s per acre when the government valuation was £13 6s per acre. The Board approved the transaction on 24 June 1910.³⁸²

The new **Kahotea No 1C** was 6ac 0r 16p and awarded to Te Rangi Ngapaki solely, being inalienable except by lease of less than 21 years and subject to a right of way to give access to 1E.³⁸³ The restrictions were soon removed, Herbert Jillett leased the block and purchased it on 4 April 1910 for £15 per acre, when the government valuation was £13 6s 0d. The Board approved the alienation on 24 June 1910, subject to a receipt.³⁸⁴

Kahotea No 1D was 15ac 1r 0p and awarded to 12 owners.³⁸⁵ Hira Parata and another applied for the partition of Kahotea No 1D in May 1911.³⁸⁶ On 5 July 1911, Judge Gilfedder awarded 1D1 (6ac 2r 36p) to 4 owners and 1D2 (8ac 2r 4p) to the other eight owners.³⁸⁷ Ngapera Wi Parata applied for the partition of Kahotea No 1D1 in February 1912 and was awarded 1ac 2r 29p as 1D1A, while the 3 others were awarded 5ac 0r 7p as 1D1B.³⁸⁸

Yet a **Kahotea 1D1** was also sold to Herbert John Jillett on 16 October 1911 for £134 10s 0d (£20 per acre). Mrs. J. Prosser was noted as the occupier. Subsequent to the partition,

³⁷⁹ Registrar to District Land Registrar, 28 April 1913. WN 48 Kahotea Correspondence 1901-1918.

³⁸⁰ File 1910/126. A1907/73 to 1917/299 Kahotea.

³⁸¹ Partition order, 17 January 1910. WN 48 Kahotea Block Order File (General Land).

³⁸² File 1910/127. A1907/73 to 1917/299 Kahotea.

³⁸³ Partition order, 17 January 1910. WN 48 Kahotea Block Order File (General Land).

³⁸⁴ File 1910/128. A1907/73 to 1917/299 Kahotea.

³⁸⁵ Partition order, 17 January 1910. WN 48 Kahotea Block Order File (General Land).

³⁸⁶ Application, 31 May 1911. WN 48 Kahotea Applications 1868-1927.

³⁸⁷ Partition order, 5 July 1911. WN 48 Kahotea Block Order File (General Land).

³⁸⁸ Application, 13 February 1912. WN 48 Kahotea Applications 1868-1927. Partition orders, 28 February 1912. WN 48 Kahotea Block Order File (General Land).

since the valuation was £133, the Board confirmed the alienation on 29 November 1911.³⁸⁹ It is confusing that, given this apparent alienation, the 1D1 block could still have come before the Native Land Court in February 1912 for partition. The confirmation was given subject to the receipt for the purchase money being filed, which was not done until November 1912, but there is no notation that the transfer was for anything other than the full 1D1 block. Yet another alienation of the shares of two of the four owners only (Mahia Wi Parata and Metapere Ropata) was made to Jillett on 19 December 1911 at the same £20 per acre rate. The Board confirmed this on 7 February 1912 subject to a declaration of qualification and receipt, which were filed on 14 February (the day after the partition order) and 12 November respectively.³⁹⁰ Ngapera Parata's alienation of her ¼ share to Jillett was dated 8 May 1912, and at the £20 rate, which was confirmed by the Board on 22 July, subject to the receipt, which was also filed on 12 November.³⁹¹ Presumably, therefore, the partition hearing and order were ignored in practice; the sale went ahead on the basis of the four originally determined owners and their interests in 1D1 were alienated, as opposed to separate sales of the smaller blocks.

Kahotea 1D2 was sold to Herbert John Jillett in July-August 1911. He also paid for this at a rate of £20 per acre. The Board confirmed the transfer except for the two one-sixth interests of Hiria Parata and Ngahurumoana Te Whiti.³⁹² Their interests were acquired by Jillett on 24 July and 3 August 1912, at the same rate, and this was confirmed by the Board on 9 October 1912.³⁹³

Kahotea No 1E was 34ac 2r 11.4p and was awarded to only 4 owners, with a right of way through 1C to give access.³⁹⁴ Te Iringa Ngapaki applied for the partition of Kahotea No 1E in April 1912 and equally with Te Riri Ngapaki received 1E1 of 17ac 1r 5.5p.³⁹⁵ Huirua and Ngataru Ngapaki received 1E2 also of 17ac 1r 5.5p.³⁹⁶ What appeared to be the full 1E block was sold to Herbert John Jillett in June 1911 at the government valuation of £409. There was some further deliberation about the ownership, presumably including the partition, but the transaction was confirmed by the Board in October 1912.³⁹⁷ However, this was actually only for the two interests that were recognised in 1E1, as Jillett bought the other two

³⁸⁹ File 1911/621. A1907/73 to 1917/299 Kahotea.

³⁹⁰ File 1912/15. A1907/73 to 1917/299 Kahotea.

³⁹¹ File 1912/195. A1907/73 to 1917/299 Kahotea.

³⁹² File 1911/512. A1907/73 to 1917/299 Kahotea.

³⁹³ File 1912/352. A1907/73 to 1917/299 Kahotea.

³⁹⁴ Partition order, 17 January 1910. WN 48 Kahotea Block Order File (General Land).

³⁹⁵ Application, 30 April 1912. WN 48 Kahotea Applications 1868-1927. Partition order, 7 June 1912. WN 48 Kahotea Block Order File (General Land).

³⁹⁶ Partition order, 7 June 1912. WN 48 Kahotea Block Order File (General Land).

³⁹⁷ File 1911/511. A1907/73 to 1917/299 Kahotea.

¼ shares corresponding to 1E2 on 14 January 1913, the transfer being confirmed by the Board on 5 February 1913.³⁹⁸

Kahotea No 1F (25ac 12r 35.6p) included most of the parent block's foreshore frontage (behind the road) running around to the Onepoto Block. It was awarded to Hemi Matenga alone.³⁹⁹ This block was sold to Herbert Jillett on 19 October 1917 for £380 by Hira Parata, Hemi Matenga's successor in title.⁴⁰⁰ In this case, the file indicates that Jillett had agreed to pay £300 (which had presumably been accepted by the vendor), but that the Board confirmed the sale only after the price was raised to the government valuation of £380.

C. **Kahotea No 2**

The Native Land Court gave its decision on the ownership of **Kahotea No 2** (76 acres) on 23 December 1903.

On 21 March 1904, Ruihi Horomona of Porirua, wife of Hohepa Wi Neera, lodged an appeal.⁴⁰¹ Her lawyer subsequently provided detailed grounds, showing that the entirety of No 2 was sought by Ruihi and not just a share. These grounds included:⁴⁰²

- The court had awarded Hohepa Kahotea No 3 although he had not abandoned his claim to No 2. It was alleged that this award was inconsistent with the court's finding that No 2 was under the 'mana and take' of Te Peehi and Te Hiko o te Rangi, as was the award of No 1 to the descendants of Te Rangihiroa
- Evidence admitted by the court had been given that Nohorua alone had set the boundary between Thom's Grant and Kahotea No 2
- The 'mana and take' of No 2 belonged to Nohorua solely and his son Horomona collected the rents from it until his own death
- Wi Parata's evidence, accepted by the court, that Kahotea had been presented by Te Peehi to Waipunahau was contrary to fact and contradicted by evidence given by Hira Parata
- That the judgment was contrary to both the weight of evidence and law, especially with regard to the gift and ohaki that Wi Parata had relied on which was invalid legally and made by a donor without rights.

In 1905, the Department of Lands and Survey wished to finalise laying off a road around high water mark on the western side of Porirua Harbour, but could not do so until all

³⁹⁸ File 1913/47. A1907/73 to 1917/299 Kahotea.

³⁹⁹ Partition order, 17 January 1910. WN 48 Kahotea Block Order File (General Land).

⁴⁰⁰ File 1917/299. A1907/73 to 1917/299 Kahotea. The completion of the confirmation process in January 1918 is recorded in Administrative Officer to Registrar, 20 February 1918. WN 48 Kahotea Block Order File (General Land).

⁴⁰¹ Notice of Appeal, 21 March 1904. WN 48 Kahotea Applications 1868-1927.

⁴⁰² Grounds of Appeal, 11 April 1904. WN 48 Kahotea Applications 1868-1927.

the titles had been finalised.⁴⁰³ In the case of Kahotea No 2, this was prevented by the pending appeal, which took months, or longer, to be heard as there was no sitting of the Native Appellate Court in Wellington for a lengthy period. The Appellate Court finally heard and then gave decision in the case on 5 July 1907, which varied the original decision.

The Native Appellate Court hearing the appeal regarding Kahotea No 2 comprised Chief Judge Seth-Smith, Judge C.E. MacCormick and Assessor Raureti Mokonuiarangi. Both sides were represented by senior counsel, Nohorua's descendants by Dr Findlay and Te Peehi's by A.L.D. Fraser. The Appellate Court held that:

- (a) Nohorua's claim was not satisfied by the award of No 3,
- (b) Rangihiroa's descendants had done well with No 1, receiving all they were entitled to and perhaps more, and
- (c) Te Peehi's descendants were entitled to No 2, subject to 15 acres being awarded to Nohorua's people.

In fact, the awards were expressed as relative interests; of the 77¼ shares in the 76 acre block, 11¼ shares were awarded to Ruihi and Ringi Horomona, 42 shares/42 acres went to Raiha Puaha and 20¼ shares/20ac 1r went to Matenga Te Hiko, but all the other 10 owners representing the rest of Nohorua's descendants received only fractions of shares.⁴⁰⁴

After the Appellate Court's July 1907 decision awarding the majority of Kahotea No 2 to Matenga Te Hiko and Raiha Puaha, Matenga went to their lawyer, Fraser, and asked him to inform the Chief Judge that he believed his share should be less than Raiha's as she had in both this and other cases (presumably on other blocks) solely undertaken the management and expense and proposed a suitable division.⁴⁰⁵ This was reflected in the awards of relative interests.

This decision did not satisfy at least some of Nohorua's descendants, though, and later in 1907, Ruihi Horomona and another petitioned Parliament seeking the whole of Kahotea No 2 for their party, in addition to Kahotea No 3. Chief Judge Jackson Palmer advised the Select Committee that he believed they had already had full justice and that this claim was now an unjust one.⁴⁰⁶

In 1909, James Wi Neera, husband of Ruihi Horomona, sought to have all of the 15 acres in Kahotea No 2 awarded to the Horomona family located at the southern end of the block on the ground that it would then adjoin the rest of the family's land. This was protested vigorously by Raiha Puaha who said that in fact the other land that had formerly been theirs had long been sold to Jillett. Raiha also alleged that Wi Neera was merely seeking to have

⁴⁰³ Chief Surveyor to Registrar, 13 February 1905. WN 48 Kahotea Correspondence 1901-1918.

⁴⁰⁴ Order, 5 July 1907. WN 48 Kahotea Block Order File (General Land).

⁴⁰⁵ Fraser to Chief Judge, 16 July 1907. WN 48 Kahotea Applications 1868-1927.

⁴⁰⁶ Jackson Palmer to Under-Secretary Native Department, 3 October 1907. WN 48 Kahotea Correspondence 1901-1918.

gained the more valuable land fronting the road to Titahi so as to get a better price upon selling.⁴⁰⁷ Raiha also wrote to Native Minister James Carroll seeking the intervention of the Native Department.

The Nohorua/Horomona interest of 12 owners was given effect to in the subsequent 1910 partition of Kahotea No 2 with their combined interest of 14ac 3r 27.6p forming **Kahotea 2A**.⁴⁰⁸ Within that, Ruihi Horomona immediately had her 5ac 3r 35p partitioned out as **Kahotea 2A1**, the southernmost tip of the wedge-shaped No 2 block. Ringi Horomona had 5ac 0r 35.6p partitioned out as **Kahotea 2A2**, and the balance of 3ac 2r 37p went to the other 12 owners as **Kahotea 2A3**.⁴⁰⁹ Block 2A3 was sold to another Jillett and A.A.S. Menteach, the lawyer for many of the claimants in these cases, in March 1916 for £74 12s 6d (i.e. £20 per acre).⁴¹⁰ There is no indication as to why this sale was made, but perhaps at least in part it was to pay for legal bills owed to Menteach.

Ruihi Horomona immediately sold her 6-acre Kahotea 2A1 to Herbert John Jillett for £96. Since the government valuation was £78, the Ikaroa Board confirmed the transfer in October 1910.⁴¹¹ Ringi Horomona sold the 5¼-acre 2A2 to Herbert Jillett at the same time for £120 12s 6d and since the valuation for that was £68 the Board approved that too.⁴¹²

Kahotea 2B (62ac 1r 0p) was awarded to Raiha Puaha (42ac) and Matenga Te Hiko (20ac 1r).⁴¹³ Matenga Te Hiko sold his portion to Joshua Henry Prosser on 11 April 1910 for £263 5s 0d, when the government valuation was £200, and this was approved by the Board on 23 June 1910.⁴¹⁴ However it was created landlocked behind 2A and 1. In 1913 the new owner, Prosser, applied for the court to lay out a road to give him access to it.⁴¹⁵

Kahotea No 3 (15ac 3r 0p) was actually the first of the three main Kahotea subdivisions to be awarded. It came before Judge Alexander Mackay and Assessor Tamati Tautuhi in Lower Hutt in August 1889 and was awarded to Hohepa Horomona solely.⁴¹⁶ Hohepa sold the block to William Jillett (a half-caste) on 12 January 1893 for £65, declaring that he still had 12 acres at Kapiti Rangatira and a share in 38,000 acres at Rangitoto.⁴¹⁷ It came before the Trust Commissioner's Court on 22 February 1893 and was approved. Jillett being a half-caste, the block remained under the Maori land system, and was included in a parcel of 301 acres—Kahotea No 3, Koangaumu Nos. 1-5, and part of Section 110 Porirua—in relation to

⁴⁰⁷ Raiha Puaha to Judge Palmer, 28 July 1909. WN 48 Kahotea Applications 1868-1927.

⁴⁰⁸ Partition Order, 21 January 1910. WN 48 Kahotea Block Order File (General Land).

⁴⁰⁹ Partition Orders, 18 May 1910. WN 48 Kahotea Block Order File (General Land).

⁴¹⁰ Administrative Officer to Registrar, 5 July 1916. WN 48 Kahotea Block Order File (General Land).

⁴¹¹ File 1910/226. A1907/73 to 1917/299 Kahotea.

⁴¹² File 1910/227. A1907/73 to 1917/299 Kahotea.

⁴¹³ Partition Order, 21 January 1910. WN 48 Kahotea Block Order File (General Land).

⁴¹⁴ File 1910/132. A1907/73 to 1917/299 Kahotea.

⁴¹⁵ Prosser, application, 14 April 1913. WN 48 Kahotea Block Order File (General Land).

⁴¹⁶ Order, 21 August 1889. WN 48 Kahotea Block Order File (General Land).

⁴¹⁷ Application and Declaration, 18 January 1895. TC 94 Kahotea Alienation File.

which Jillett applied to have the Native Land Court confirm a £5220 mortgage from the Bank of New South Wales in 1900, over.⁴¹⁸

4.5. Conclusions on Kahotea

Of the three original partitions of Kahotea, only No 1 had a complicated title history. Ultimately, though, all the various portions of Kahotea No 1 were sold to Herbert Jillett over a period of years. It appears that he was leasing the block and farming it, and so was both motivated to acquire it and in a position to convince the owners to sell to him.

The three subdivisions of Kahotea No 2 were sold shortly after the litigation over their partition was ended, the last being alienated in 1916. Again Herbert Jillett purchased them.

Kahotea No 3 was sold by its sole owner, Hohepa Horomona, in 1893, some three years after it was awarded to him.

In all cases, the Kahotea blocks were alienated in private sales. They mostly went to members of the Jillett family (Herbert Jillett in No 1 and William Jillett in No 3), apart from Joshua Prosser who acquired No 2B.

4.6. Kenepuru

The Kenepuru Block of 124 acres lies right at the heart of the present Porirua central business district, being the area immediately to the west of the mouth of the Porirua Stream as it empties into Parumoana, and just below the block on which Porirua Hospital was located. The designation and disposal of the various portions of Kenepuru is even more confusing than that of most other blocks as the history of some segments simply does not appear in the Maori Land Court's files—indicating that entire files have gone missing—while there is more than one block with the same name and different events in the title award and alienation sequence are out of order or contradict themselves with no explanation in the files of the apparent discrepancy. Given the overall area of the parent block at 124 acres, adding the various subdivisions 1A-5A together, along with the 2A Block created in 1878, still comes up some 15 acres short of that total.

The customary ownership of the block known as **Te Kenepuru** (124 acres) was investigated by Judge T.H. Smith and Assessor Ihaia Whakamairu in the Native Land Court in Wellington in 1873. After that initial investigation of title on 17 November, the original certificate of title was issued under the Native Lands Acts 1865 and 1867, and dated 22 November 1873. The five owners placed on the certificate were Ngahuka Tungia, Raiha

⁴¹⁸ Application, 12 September 1900. 1900-217 Kahotea No 3 Alienation File.

Puaha, Ropata Hurumutu, Nopera Te Ngiha and Rene Te Tahua.⁴¹⁹ On the same date, the court made a separate order declaring that the land was a Native reserve within the meaning of the Native Lands Act 1867 s 12 and was therefore subject to the provisions of that Act.⁴²⁰ This was intended to provide protection for the block against alienation.

A Crown Grant to the whole 124 acres of Te Kenepuru was issued in favour of those five owners on 20 August 1874. In conformity with the block's reserve status, the grant contained the restrictions that Te Kenepuru was to be inalienable by sale or lease longer than 21 years, except with the Governor's consent.⁴²¹ The Maori Land Court's files contain no documentation of any such consent to the removal of the reserve status having been given. However, as will be seen, within less than a decade of Judge Smith's order and the Crown Grant's issue, the Native Land Court felt itself able to deal with the block as if there were no such restriction in existence, so the restrictions must have been lifted in the interim.

The original Crown Grant also included provision for a public roadway one chain wide through the block. The public road provided for in this original Crown grant was not finally addressed by the Maori Land Court until 1962, when a recommendation was made to the Minister of Works that the area **Part Kenepuru** be proclaimed as a road. This segment became the south-eastern end of the Porirua-Titahi Bay Road.⁴²²

In 1876, Charles Heaphy, Commissioner for Native Reserves, chased up some rent said to be owed on a £10 lease to King of **Kenepuru No 2**. In a dispute before Heaphy, Hohaia Pokaitara claimed that the land was his and Ngahuka and Waari had no right to deal in it, including making this lease. He based his claim on having cultivated on it in 1848 and 1862, to which Ngahuka retorted that there were no cultivations, and it was still all bush. There was confusion about who had given up their claims, and on what terms, when Judge Smith in the Native Land Court had originally investigated the titles. At the time of Smith's hearing, one Taylor was a tenant on part of the Takapuwahia Reserve contiguous to No 2, and there appears to have been an exchange of rights in the two portions.⁴²³ What is confusing about this series of events is that, according to the Native Land Court files, there was no Kenepuru No 2 at that time, as it had not yet been created.

The parent Kenepuru block was apparently subdivided on 2 August 1883 by Chief Judge MacDonald and Assessor Retireti Tapihana (i.e. Retreat Tapsell of Te Arawa) and a fresh Crown Grant ordered, but this time without restrictions, apparently under the provisions of the Native Land Division Act 1882 s 4(1). Years later, in 1901, Native Land Court Registrar R.C. Sim wondered whether the Native Land Court had actually had the power in

⁴¹⁹ Order, 22 November 1873. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴²⁰ Order, 22 November 1873. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴²¹ Crown grant, 20 August 1874. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴²² Recommendation, 12 October 1962. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴²³ The file refers to an 'adjudication' mentioned in Kahiti 1873 p 54.

1883 to partition Kenepuru under the Native Land Division Act 1882, given that section 2 of that Act stated that ‘This Act ... shall not apply to any Native Reserve’—which Te Kenepuru already was.⁴²⁴

Kenepuru 1A was in two separate pieces, together totalling 24ac 1r 36p and in the name of Raiha Puaha alone. The Wellington-Manawatu Railway crossed the tail of one portion by the Kenepuru Creek.⁴²⁵

Kenepuru 2A was a single parcel 23ac 3r 36p and awarded to Ngahuka Tungia alone. This parcel’s name appears to have been amended to be called 2AB on 9 September 1911 and the two portions into which it was divided in 1910 called 2AB 1 and 2.⁴²⁶ There was then the division order of 2 August 1883, which seemed to create **another Kenepuru 2A** of 24ac 3r 8p. In July 1907, Matenga Te Hiko sought to alienate a 6-acre portion from this block by way of gift. He wanted to give it to Hoani Rawiri Puaha of Porirua ‘as a mark of appreciation for favours received from his parents’.⁴²⁷ The court issued its recommendation that the restrictions on alienation be lifted on 28 August 1907. The memorandum of transfer stated that the gift was ‘in consideration of the natural love and affection which I have and bear to my cousin Hohua’⁴²⁸ Again, it is unclear what happened here. The relationship between the first Block 2A and the second is not apparent. Nor is it clear why the alienation restrictions required lifting in 1907 if none had been placed on 2A in 1883.

Kenepuru 3A was 23ac 3r 36p and awarded to Tere Maihi alone.⁴²⁹

Kenepuru 4A was the same size as 2A and 3A (23ac 3r 36p) and awarded to Atanatui Te Kairangi and Kerehona Te Kairangi equally.⁴³⁰

Kenepuru 5A (2ac 1r 20p) was awarded to Rene Te Oenuku alone.⁴³¹ Blocks 2A to 5A were all strips of varying sizes running southwest-northeast across the block.

Kenepuru No 2 (9ac 1r 17p) was created by Judge Theophilus Heale on 7 November 1878 and a memorial of ownership ordered in favour of Raiha Puaha, Te Matenga Waipunahau, Wi Parata and Matenga Te Hiko.⁴³² It was included in the Land Transfer Register as PR vol. 2 folio 39, although the Land Transfer Office receipt, not made until 4 November 1897, gave the area of the block as 8ac 1r 29p, almost one acre smaller.⁴³³

⁴²⁴ R.C. Sim, memo, 28 February 1901. WN 42A Kenepuru No 2 Correspondence 1876-1922.

⁴²⁵ Order, 2 August 1883. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴²⁶ Order, 2 August 1883. WN 42 Kenepuru (Vol 1) Block Order File (General Land). The amending notes are written onto the original order and initialled by Chief Judge Jackson Palmer.

⁴²⁷ Application, 5 July 1907. 1907/150 to 1918/204 Kenepuru.

⁴²⁸ Memorandum of transfer, nd. 1907/150 to 1918/204 Kenepuru.

⁴²⁹ Order, 2 August 1883. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴³⁰ Order, 2 August 1883. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴³¹ Order, 2 August 1883. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴³² Order, 7 November 1878. WN 42 Kenepuru (Vol 2) Block Order File (General Land).

⁴³³ District Land Registrar, Receipt, 4 November 1897. WN 42 Kenepuru (Vol 2) Block Order File (General Land).

Raiha Puaha applied in October 1885 for Kenepuru No 2 to be subdivided.⁴³⁴ On 14 May 1887, Chief Judge Davy subdivided Kenepuru No 2, which largely fitted into the area between the road and the curve of the Porirua Stream, with the railway cutting across 2A and clipping 2B. **Kenepuru No 2A** (1ac 1r 23p) was bifurcated by the railway and awarded to Raiha Puaha. **Kenepuru No 2B** (1ac 3r 20p) was awarded to Matenga Te Hiko. Kenepuru No 2C (4ac 1r 0p) was awarded to Wi Parata and Te Matenga Waipunahau.⁴³⁵

Reene Te Ouenuku then applied in July 1888 for Kenepuru No 2 to be subdivided.⁴³⁶ This application is confusing as the block had been subdivided a year previously, as just described.

Judge Rawson re-subdivided the large 1883 **Kenepuru 2A** on the application of Raiha Puaha, Matenga Te Hiko and Amiria Horomona.⁴³⁷ The block was to be divided in half with 2A1 (12ac 1r 24p) to go to Raiha Puaha and Matenga Te Hiko, and the other half (2A2) to go to the other 10 owners (all apart from Amiria having the Wi Katene surname). There were no objections and Amiria was acting as trustee for the others.

Ngahuka Tungia leased Blocks 2A and 3A, together amounting to 49ac 2r 16p, to Thomas Eastwood on 8 November 1901 for a rent of £24 16s 0d. Judge Mackay confirmed the lease in April 1902.⁴³⁸ In 1907, the combined area of the two, still being leased by Eastwood, was valued at £1200, which was all the unimproved value of the land, with no improvements acknowledged.⁴³⁹

Joshua Prosser purchased **Block 2A2** (or 2AB2) on 11 April 1910 for £360 from all ten owners. The government valuation apportioned the block's value as £271 owner's interest and £133 lessee's interest. The Aotea Board approved the purchase on 30 June 1910.⁴⁴⁰ Thus, Kenepuru 2A2 was alienated in 1910 to a private purchaser, Joshua Prosser, for a sum that was either £90 more than the value of the owners' interest, or some £40 less than the total value of the block.

Kenepuru 2AB1 (11ac 3r 38p) was created by order of Judge Rawson on 18 January 1910.⁴⁴¹ There were 9 owners admitted, but half of the block was given to Raiha Puaha and Matenga Te Hiko (Matenga's ownership was to be subject to a life interest in favour of Erenora Tungia).

⁴³⁴ Application, 2 October 1885. WN 42A Kenepuru No 2 Applications 1888-1896.

⁴³⁵ Orders, 14 May 1887. WN 42 Kenepuru (Vol 2) Block Order File (General Land).

⁴³⁶ Application, 31 July 1888. WN 42A Kenepuru No 2 Applications 1888-1896.

⁴³⁷ 51 Wellington MB 57.

⁴³⁸ File 1901/155. TC 137 Kenepuru Alienation File.

⁴³⁹ Valuation, 15 July 1907. 1907/150 to 1918/204 Kenepuru.

⁴⁴⁰ 1907/150 to 1918/204 Kenepuru. This 2A2 block sold has also been identified with 2AB2, but 2A2 seems preferable given the fate of 2AB2 in being sold to the Crown later.

⁴⁴¹ Order, 18 January 1910. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

In 1917, the Crown moved to purchase 2AB1, the interest of Kerehi Manupiri (1/8th) who was now deceased, ‘for Porirua Mental Hospital purposes’.⁴⁴²

There must have been an ongoing, but slow process for the Crown to acquire the Kenepuru blocks (and probably those around). In July 1922, Judge Gilfedder in the Native Land Court assessed that the Minister of Public Works should pay £55 compensation to one Thomas Eastwood, who was the then lessee of 2AB1.⁴⁴³ The court also ordered that £129 compensation should be paid to Sarah Eastwood and Frances O’Connor in relation to Kenepuru 4A.⁴⁴⁴

Thus Kenepuru 2AB1 was alienated to the Crown in the early 1920s.

Kenepuru 2AB2 (11ac 3r 38p) was created at the same time as 2AB1 and awarded to 10 owners, 8 of whom had the Wi Katene surname and who were each awarded a 1/64th share. The other two, Te Wharekereoma and Amiria Horomona, between them held 3/8ths of the half share that all interests totalled.

Kenepuru 2B (1ac 3r 20p) was leased by Matenga Te Hiko to Frank Baker and John Wilkes (butchers of Porirua) on 26 October 1896 for £10 rent per annum. The lease was confirmed by Judge Butler in July 1897.⁴⁴⁵ In 1901 its government valuation was £224, of which £22 was for the land itself, with a £150 house, £50 other buildings and £2 of pasture.⁴⁴⁶ On 10 May 1901, Baker and Wilkes bought the block for £175 (although they claimed that the house was worth £300 and shop and stables were worth £150—improvements they had made). A charging order was made by the Supreme Court on 30 May 1901 against Matenga Te Hiko for £107 16s, which was held over the proceeds from this purchase.⁴⁴⁷ This suggests that Matenga may have sold the block to Baker and Wilkes in order to cover his personal debts which were serious enough and sufficiently long outstanding that a third party had been able to bring a successful Supreme Court action against him.

A government valuation of **Kenepuru 2C** (4ac 1r 0p) in March 1902, noted that the owner was Wi Parata of Waikanae, that the occupier was one William Dormer and that the capital value of the land was £230. Of that sum, £200 was the worth of a house and £2 was

⁴⁴² Acheson to Gilfedder, 12 December 1917. WN 42A Kenepuru No 2 Correspondence 1876-1922.

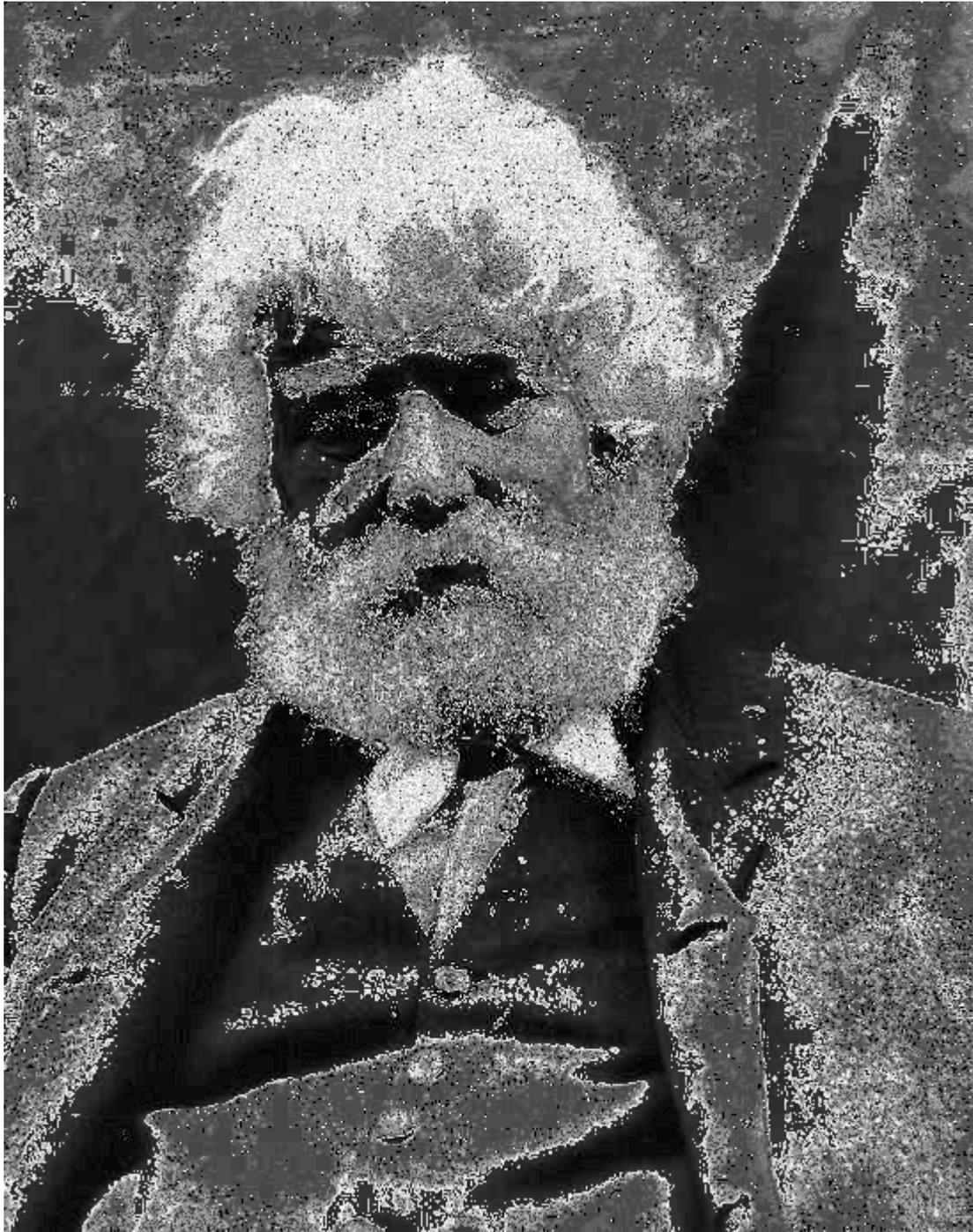
⁴⁴³ Order, 21 July 1921. WN 42 Kenepuru (Vol 1) Block Order File (General Land). Also 23 Wellington MB 236.

⁴⁴⁴ Order, 21 July 1922. WN 42 Kenepuru (Vol 1) Block Order File (General Land). Also 23 Wellington MB 236.

⁴⁴⁵ TC 137 Kenepuru Alienation File.

⁴⁴⁶ Valuation, 11 June 1901. TC 137 Kenepuru Alienation File.

⁴⁴⁷ Order, 30 May 1901. TC 137 Kenepuru Alienation File.



Alexander McKay, [ca. 1910]
Alexander Turnbull Library, Wellington.

the value of the improvement of the grass that had been laid down.⁴⁴⁸ The files do not show how or when Block 2C was alienated.

Joshua Prosser bought **Kenepuru No 3A** (11ac 3r 16.5p) on 11 April 1910, the same day as he bought the adjoining 2AB2. He paid £274 8s 0d but there was no information supplied about the government valuation. The Aotea Board confirmed the sale in July 1910, which suggests that he was paying what it was valued at, or perhaps a little higher.

Ngiha Wi Katene was one of the owners of **Kenepuru 3A2**. When it was sold the purchase money had been paid, as was required, to the Public Trustee for subsequent distribution to the owners. However, Ngiha had only turned 21 on 4 December 1910 and so had not been paid out. When he did seek his money in January 1911, the Public Trustee refused to pay out without a court order which the Native Land Court had to make.⁴⁴⁹ The details of the sale and price paid are not recorded in the files.

Kerehoma Te Kairangi and Atanatiu Te Kairangi leased **Kenepuru 4A** to John Whitehouse on 9 August 1892. The rent for the 24 acres 3r 8p was £10 per annum and the term was 14 years. It took until 20 February 1893 for an application to be made to have the lease approved by the Trust Commissioner. Judge Mackay acting in that capacity confirmed the lease in August 1895.⁴⁵⁰ This means that the lease had been operative for three years prior to receiving an official check that it was all in order, and for two and a half of those years it had been within the Trust Commissioner's system, awaiting a sitting of his court which was not held until May 1895. Perhaps the delay was due to the collection of a sufficient number of cases to make a sitting worthwhile.⁴⁵¹ When finally heard, it was the longest outstanding alienation to be dealt with, but there were another 7 that had been waiting for more than a year before the panui was promulgated. The current Maori Land Court files contain no record of a sale of Kenepuru 4A, but as noted below it was probably acquired by the Crown after World War I.

The local school board selected a one-acre school site on **Kenepuru 5A** in 1884. Matters could not proceed further until the title was secure but fortunately at that time 5A was apparently the only portion of Kenepuru that had been properly surveyed.⁴⁵²

On 26 October 1899, Te Ouenuku Rene and 'others' entered into a lease for the balance of **Kenepuru 5A** with Ernest L. Whitehouse (elsewhere Frances Whitehouse) for £10 rent.

⁴⁴⁸ Valuation, 6 March 1902. WN 42 Kenepuru.

⁴⁴⁹ Ngiha Wi Katene, application, 17 January 1911. WN 42A Kenepuru No 2 Correspondence 1876-1922.

⁴⁵⁰ TC 137 Kenepuru Alienation File.

⁴⁵¹ Panuitanga, 12 February 1895. TC 137 Kenepuru Alienation File.

⁴⁵² Registrar to Chief Judge, memo, 18 June 1884. WN 42A Kenepuru No 2 Correspondence 1876-1922.

Rene declared that she had a share in 4000 acres at Rangitoto and 300 acres at Whangarai near Nelson. The declaration was witnessed by William Jillett as a JP—it will be remembered that he and other Jillett family members appear as people who farmed and then bought other pieces of Ngati Toa land in the Porirua/Titahi area.⁴⁵³ Ruta Maaka made a similar declaration, stating she had a share in 1000 acres at Rangitoto, a share in 300 acres at Whangarai, and 28 acres at Takapuwahia.⁴⁵⁴ Judge Butler agreed to confirm the lease, on the condition that there was an additional clause providing for a readjustment of rent at 7 and 14 years through the term. The transaction was completed by 13 September 1901.⁴⁵⁵

Judge Rawson partitioned Kenepuru 5A on 14 May 1910 into 5A1 and 5A2.

On 10 September 1910, **Kenepuru 5A1** was sold by Ruta Maaka to Rachel Whitehouse, wife of Ernest Whitehouse. Whitehouse was offering to pay £300 for the single acre. The Ikaroa Maori Land Board confirmed the alienation at this price although the government valuation was apparently for £455.⁴⁵⁶

Kenepuru 5A2 (22 acres) was awarded to Ruta Maaka/Rene, Tahua Makarini, Te Ouenuku Rene and Te Ruru Rene, but not in equal shares (the four portions totalling 2 7/8 shares and the last 2 being minors).⁴⁵⁷

In 1911, Ruta Maaka/Ruta Rene applied several times to have Kenepuru No 5A2 partitioned.⁴⁵⁸ Judge Gilfedder awarded ownership in March 1911 in Block **5A2B** (21 acres) to the same four owners as in 5A.⁴⁵⁹ Several months later, on 16 June 1911, under another partition 20 acres had become **5A2B2**, again in the same four names.⁴⁶⁰ The other two individual one-acre segments of 5A2 had been partitioned off singly and named **5A2A** and **5A2B1**, both adjoining the school reserve. Blocks 5A2A and 5A2B1 were awarded to Ruta Maaka alone.⁴⁶¹

Ruta Maaka sold **Kenepuru 5A2A** (1 acre) to Thomas Eastwood on 4 February 1911. Its capital value was the same as the unimproved land value of £75—indicating that there had been no improvements at all made to the land, even grassing or fencing, which seems inherently unlikely for this block at this time—and the occupier was Alfred William Whitehouse. One wonders what he was occupying and presumably grazing stock on it for if it really was totally unimproved. There was already an unregistered lease to Mrs. Rachel Whitehouse, which had about 9 years to run for the whole of 5A, including this portion.

⁴⁵³ Declaration, 26 October 1899. TC 137 Kenepuru Alienation File.

⁴⁵⁴ Declaration, 26 October 1899. TC 137 Kenepuru Alienation File.

⁴⁵⁵ TC 137 Kenepuru Alienation File.

⁴⁵⁶ File 1910/228. 1907/150 to 1918/204 Kenepuru.

⁴⁵⁷ Order, 14 May 1910. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴⁵⁸ Applications 4 February, 25 May 1911. WN 42 Kenepuru Applications 1871-1912.

⁴⁵⁹ Order, 10 March 1911. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴⁶⁰ Order, 16 June 1911. WN 42 Kenepuru (Vol 1) Block Order File (General Land).

⁴⁶¹ Orders, 10 March 1911 and 16 June 1911. WN 42 Kenepuru (Vol 2) Block Order File (General Land).

Eastwood signed the transfer at £50 for the one-acre block, but the Ikaroa Maori Land Board would only approve it at the £75 government valuation of the unimproved land value, an amount that was paid and receipted by 19 April 1911.⁴⁶²

Kenepuru 5A2B1 (1 acre) was sold by Ruta Maaka also to Thomas Eastwood, as part of the deal including 5A2A, all for the increased £75, on 18 September 1911. However the total government valuation for the two blocks was £83, of which £3 was improvements, probably grass, but the Ikaroa Board seem to have confirmed the double alienation at the lower price, equating to the two blocks' unimproved land value, on 5 October 1911.⁴⁶³ The much greater land value of these two one-acre blocks than that of others discussed in this chapter was because the town of Porirua was developing around them and the relatively late date of sale. By 1911 they were urban acres rather than rural and could be used initially for grazing for stock that would be used by neighbouring consumers but then they could be subdivided for suburban housing or perhaps business development.

Raiha Puaha and Matenga Te Hiko brought an action in 1885 in the Compensation Court against the Wellington-Manawatu Railway Company for compensation in relation to Kenepuru Nos. 1 and 2. W.H. Bridson, registrar of the Wellington Native Land Court, had to appear to give evidence, bringing all the court's papers relating to the blocks.⁴⁶⁴ The two claimants had high-powered representation in the person of F.H.D. Bell of Izard and Bell. The files contain no further detail about this. Presumably it was an action for compensation due in relation to the taking of land from the blocks under the Public Works Act for the North Island Main Trunk Railway, or for some other harm caused to the blocks or inconvenience to their owners. If it were for the taking of land the Maori Land Court files should reflect that loss from the parent block.

As with the other Porirua blocks, the various segments of Kenepuru were mostly alienated to private purchasers. The names are familiar—Jillett, Prosser, Whitehouse—and the transactions seem to have been closely associated with prior leasing arrangements, where recorded. It has been noted that for several of these segments the Ikaroa Maori Land Board agreed to the alienation although the price offered was significantly less than the government valuation. However, as with Block 5A2A the Board could insist on the full valuation amount when a purchaser was trying to get away with less.

Kenepuru is different from the other Porirua blocks, though, in that the Crown became interested in, and purchased, several of the largest segments, totalling some 100 of the 124 acres originally comprising Te Kenepuru. It did this late in the piece, after the First World

⁴⁶² File 1911/206. 1907/150 to 1918/204 Kenepuru.

⁴⁶³ File 1911/517. 1907/150 to 1918/204 Kenepuru.

⁴⁶⁴ Subpoena, 10 March 1885. WN 42 Kenepuru Applications 1871-1912.

War. The technique used by the Crown was one by which it privileged itself over the interests of both other potential purchasers and also the Ngati Toa landowners.

On 5 April 1917, a proclamation was gazetted prohibiting any alienation of 6 of the Porirua blocks except to the Crown. Those blocks were Kenepuru 2AB1 (11ac 3r 38p), 2AB2 (11ac 3r 38p), 3A (23ac 3r 36p), 4A (23ac 3r 36p) and 5A2B2 (21ac) and Takapuwahia H4 (214ac 2r).⁴⁶⁵ A series of identical proclamations through to March 1921 further extended the prohibition over the same blocks until that year at least.⁴⁶⁶

The need for this in the case of Block 3A is unclear, as that block had been sold in 1910 (see above). However, for the others—although yet again the files do not actually contain the information about the passage out of Ngati Toa hands—it indicates that the Crown purchased these blocks for its own purposes and that it did so by resorting to an imposition of its monopolistic power. Since at least the 1870s, the Crown had been able to force Maori landowners to sell to it alone by placing such statutory bars on any other dealings, thereby denying Maori owners the ability to sell freely on the open market at a time, in a manner and for a price that best suited them.

4.8 Koangaumu

The Koangaumu Block of 305 acres was located on the southern side of Titahi Bay, bounded to the north by the Bay and the Thoms Grant, to the west by Kahotea, and to the south by Takapuwahia.

The initial application to have the Native Land Court investigate the title of Koangaumu appears to have been made by Paranihira Karepa in July 1874.⁴⁶⁷

In February 1876 another application was made by Ellen Birchley, William Shearer and Mrs. Mary Grainey to bring Koangaumu before the Native Land Court for investigation,⁴⁶⁸ but the block had been misnamed in the application and so this was not corrected until June 1876. Hohepa Horomona, Erenora Tungia and others applied in May 1876.⁴⁶⁹ Once the hearing did take place, it was adjourned sine die until Walter Buller wrote in August 1878 on behalf of the half-caste Shera [sic, Shearer] family, complaining that there had been several more applications for investigation (which are not on file), but nothing had been done.⁴⁷⁰ A hearing took place in mid-December on this and other nearby blocks, but was again adjourned. On 18 December 1878, Hira Te Aratangata and 2 others—‘rather from all Ngatitōa tribe’—wrote again asking that it not be put off. Instead, they asked, ‘Do you let our own

⁴⁶⁵ NZ Gazette, 12 September 1918.

⁴⁶⁶ NZ Gazette, 31 March 1921.

⁴⁶⁷ Application, 3 July 1874. WN 44 Koangaumu Applications 1874-1926.

⁴⁶⁸ Application, 19 February 1876. WN 44 Koangaumu Applications 1874-1926.

⁴⁶⁹ Application, 29 May 1876. WN 44 Koangaumu Applications 1874-1926.

⁴⁷⁰ Buller to Chief Judge, 5 August 1878. WN 44 Koangaumu Correspondence 1876-1922.

Judge Mr. Halse complete his work, as Ngatitōa much desire that these disputes may be soon ended'.⁴⁷¹ This last group re-applied formally on 28 September 1879.⁴⁷² All of the applicants over the years gave their tribal affiliation as Ngati Toa.

The investigation of customary ownership was finally heard in a crowded court at Porirua in March 1880 before Judge Charles Heaphy and Assessor Hori Ngatai.

Hohaia Pokaitara testified that he was a chief of Ngati Toa, living at Porirua, and husband of Hira Te Aratangata, daughter of Te Aratangata 'who conquered this land' and who lived in a pa at Titahi for 40 years. His evidence was that Nohorua, Aratangata and Maturanga left Whatatiri of Ngati Haumia and Ngati Paretonu in charge of this area when they went to the South Island. Whatatiri gave Koangaumu back to Waitere. The land was leased to a Pakeha in 1844, and no Maori had lived there for some time; they lived at Taupo for a period at least. It may have been Cooper who leased the land, and Shearer worked for him. Shearer also married Mere Pikerewa, Terehu's daughter, who bore children while living on the block. Hohaia also testified that for a period there were cultivations there, particularly potatoes.

Hira Te Aratangata herself gave evidence, adding that she lived at Takapuwahia, and that both Nohorua and Whatatiri had lived on Koangaumu.⁴⁷³

Judge Heaphy issued an order for Koangaumu on 25 March 1880, for a quantity of 298 acres 2 roods. Subsequent subdivisional orders included a larger area as discussed below. Being dealt with under the Native Lands Act 1873, rather than a certificate of title, a memorial of ownership was issued with 9 shares divided as follows: Parekaahu (1), Paranihia Paruparu (1), Erenora Pirihana/Tungia (1), Hohepa Horomona (2), Hira Te Aratangata (2), Raiha Puaha (1), and 1 divided between the 6 'half-caste' Shearer children. No restrictions were placed on alienation.⁴⁷⁴

Hira Te Aratangata was awarded two shares in the block, but was dissatisfied with this and immediately applied for a rehearing, on the ground that she as owner had not had opportunity to 'declare my title to the Court' and that (unnamed) persons who had no right had been admitted.⁴⁷⁵ Since there was as yet no higher court created to which dissenters against Native Land Court judgments could appeal, in order to gain the rehearing she wrote to Chief Judge Fenton personally, claiming that the court had not allowed her to speak and that 'the judgment cannot be accepted on account of the dissatisfaction of the chiefs of Ngatitōa'.⁴⁷⁶ Judge Heaphy opposed a rehearing, the minutes showing that she had had ample

⁴⁷¹ Hira Te Aratangata to Fenton, 18 December 1878. WN 44 Koangaumu Correspondence 1876-1922.

⁴⁷² Application, 28 September 1879. WN 44 Koangaumu Applications 1874-1926.

⁴⁷³ Extract, 24 March 1880. WN 44 Koangaumu Correspondence 1876-1922.

⁴⁷⁴ Order, 25 March 1880. WN 44 Koangaumu Block Order File (General Land).

⁴⁷⁵ Application, 28 March 1880. WN 44 Koangaumu Correspondence 1876-1922.

⁴⁷⁶ Hira Te Aratangata to Fenton, 2 April 1880. WN 44 Koangaumu Correspondence 1876-1922.

opportunity to put her claim and support it with other evidence, and that she had done so.⁴⁷⁷ Chief Judge Fenton and Minister of Justice William Rolleston agreed in 1883 that there was no basis for a rehearing to be granted.⁴⁷⁸ Hira, though, continued writing for some months—unsuccessfully.

Erenora Tungia applied in May 1881 to have Koangaumu subdivided, as did Raiha Puaha separately on the same day and Hohepa Horomona the following day.⁴⁷⁹ On 1 August 1883, the court confirmed Erenora Tungia as sole successor to Paranihia Paruparu, and so she would have been entitled to 2 of the 9 shares in Koangaumu.⁴⁸⁰

On 2 August 1883, Chief Judge MacDonald, Judge Puckey and Assessor Retireti Tapihana (i.e. Retreat Tapsell of Te Arawa) subdivided Koangaumu. It is not clear why two judges were thought necessary to hear this case, but it may indicate a perception by the court that the matter might be contentious.

The awards reflected the 9 shares originally held to exist in the whole block. **Block No 1** (43 acres 2r 11p) was awarded to the six ‘half-caste’ Shearer children as owners according to Native custom. No restriction was placed on alienation.⁴⁸¹ The area was subsequently reduced to 33ac 3r 22¼p. **Blocks No 2 and 3** (87ac 0r 22p) were together awarded to Hira Te Aratangata alone. No restriction was placed on alienation.⁴⁸² The area was subsequently reduced to 67ac 3r 4½p. **Blocks No 4 and 5** (87ac 0r 22p) were together awarded to Hohepa Horomona alone with no restriction as to alienation.⁴⁸³ The area was subsequently reduced to 67ac 3r 4½p. **Block No 6** (43ac 2r 11p) was awarded to Raiha Puaha alone with no restriction as to alienation.⁴⁸⁴ The area was subsequently reduced to 33ac 3r 22¼p. **Block No 7** (43ac 3r 11p) was awarded to Parekaahu alone with no restriction as to alienation.⁴⁸⁵ The area was subsequently reduced to 33ac 3r 22¼p. **Blocks No 8 and 9** (87ac 3r 20p) were also awarded to Raiha Puaha alone without restriction as to alienation.⁴⁸⁶ The area was subsequently reduced to 67ac 3r 4½p.

Clearly problems continued after the rehearing issue was decided. In 1883, Hohaia Pokaitara wrote to Registrar Bridson instructing him not to listen to ‘the devil’ (i.e. Shearer), but rather to ask Cooper, Carter or Edwards, or Ngati Toa ‘tomorrow or any day’ and they

⁴⁷⁷ Heaphy, memorandum, 30 April 1880. WN 44 Koangaumu Correspondence 1876-1922.

⁴⁷⁸ Rolleston to Chief Judge, 3 June 1880. WN 44 Koangaumu Correspondence 1876-1922.

⁴⁷⁹ Applications, 3 May 1881. WN 44 Koangaumu Applications 1874-1926.

⁴⁸⁰ Order, 1 August 1883. WN 44 Koangaumu Block Order File (General Land).

⁴⁸¹ Order, 2 August 1883. WN 44 Koangaumu Block Order File (General Land).

⁴⁸² Order, 2 August 1883. WN 44 Koangaumu Block Order File (General Land).

⁴⁸³ Order, 2 August 1883. WN 44 Koangaumu Block Order File (General Land).

⁴⁸⁴ Order, 2 August 1883. WN 44 Koangaumu Block Order File (General Land).

⁴⁸⁵ Order, 2 August 1883. WN 44 Koangaumu Block Order File (General Land).

⁴⁸⁶ Order, 2 August 1883. WN 44 Koangaumu Block Order File (General Land).

would all tell him that Te Ruiera had no land in Koangaumu.⁴⁸⁷ It is not clear what this was all about.

In April 1884, a new problem emerged. Hohepa Horomona complained that the boundary of the Koangaumu Block had encroached upon the neighbouring Popoteruru Block. He claimed not to have been aware of this encroachment when Koangaumu was before the court and alleged that it was the work of the (unnamed) Pakeha who had bought the land. Judge Mackay was now dealing with this matter as Judge Heaphy had since died, and the judge thought the problem had arisen because the area included in the subdivisional orders was larger than that in the original 1880 order. If the land were still in Maori ownership he believed the matter could have been easily resolved, but now it was unclear how the situation had come about.⁴⁸⁸ The problem appears to have been along the boundary with the Thoms grant land to the north-east and in part due to the inclusion of different amounts of a changing beach area and to the following of old fences and changeable streams on which the Thoms Crown Grant had been based years before. The controversy resulted in a re-survey in 1885 with a consequent reduction in Koangaumu's area and of the subdivisions that had been made in the interim, as noted above.⁴⁸⁹ The revised partition orders indicate that the reductions in size were not all made at the same time as they were signed on behalf of Chief Judge MacDonald, who was described variously as retired or deceased by his next three successors in office, Chief Judges Davy, Palmer and Jones.

In August 1883—immediately after the partition—the 'half-caste' farmer, William Jillett, began buying up interests in Koangaumu. Mary Graine sold her one-sixth of a share in No 1 to him on 27 August 1883 for £8 10s. In her declaration to the Trust Commissioner, she stated that she had never received any benefit or use from the land, 'which is too far out of the way and too small to derive any benefit from'.⁴⁹⁰ Malcolm Shearer sold his one-sixth share to Jillett on 16 January 1884 for £6 and David Shearer his on 29 December 1884 for £8.⁴⁹¹ Ellen Birchley and William Shearer sold Jillett their one-sixth shares for £10 each—more than their siblings had been paid—on 24 January 1885.⁴⁹² The final sibling, Catherine Willison of Urenui in Taranaki, did not sell until 7 April 1893, for £11 6s, more again and perhaps reflecting either the increased value of the land or the higher price needed to induce her to part with the land.⁴⁹³ This completed Jillett's acquisition of **Block 1**.

⁴⁸⁷ Hohaia Pokaitara to Bridson, 22 March 1883. WN 44 Koangaumu Correspondence 1876-1922.

⁴⁸⁸ Mackay to Bridson, 9 April 1884. WN 44 Koangaumu Correspondence 1876-1922.

⁴⁸⁹ WN 44 Koangaumu Correspondence 1876-1922.

⁴⁹⁰ Declaration, 27 August 1883. File 1883/94. TC 143 Koangaumu Alienation File.

⁴⁹¹ Files 1885/41 and 1885/40. TC 143 Koangaumu Alienation File.

⁴⁹² File 1885/39. TC 143 Koangaumu Alienation File.

⁴⁹³ File 1893/162. TC 143 Koangaumu Alienation File.

Hira Te Aratangata sold **Koangaumu 2 and 3** to William Jillett on 24 September 1883 for £170. Hira declared she still had 65 acres at Kenepuru and a claim at Takapuwahia.⁴⁹⁴

In 1919, Mihaka Karepa wrote seeking the rectification of a partition order for 2A, the rectification sought being the removal of the other two owners included as he contended it had been intended the block should be his alone.⁴⁹⁵ Half a year later, his brother Epiha Karepa wrote to ask that all of their father, Karepa Kapukai's interests be equally divided between himself and Mihaka, since Mihaka was trying to get them all to himself.⁴⁹⁶ A cryptic file note suggests that the affair was dismissed for want of 'prosecution'. The entire application is rather difficult to follow, given that Block 2 was never apparently subdivided and that Hira had alienated the whole of Block 2 three and a half decades previously.

Hohepa Horomona sold **Koangaumu 4 and 5** to Jillett and Whitehouse for £102 on 9 August 1883—within a week of the subdivision being created. Hohepa declared that he still had 3 acres at Taupo, 1/5 of 50 acres on Kapiti, a share in Wairere, and claims in Takapuwahia, Popoteruru and Kahotea.⁴⁹⁷

Almost all of these Jillett transactions were conducted by physically handing over cash money in the offices of his solicitor or agent, or at Government Buildings at the time of signing. Also, they were all submitted together and approved by Judge Mackay as Trust Commissioner on 27 November 1885.

There is no file information on the fate of **Koangaumu No 6**, which was owned by Raiha Puaha solely and without restrictions on alienation. It is likely that it too was alienated to one of the Jillett family.

Koangaumu No 7 was sold by Parekaahu's 5 successors to Herbert Jillett on 6 and 14 July 1911—a month before the Native Land Court confirmed them as his successors. They were paid £22 10s per acre. They all declared that they retained interests in several blocks, although apart from Wainui these other lands were mostly in the Nelson and Auckland districts. The government valuation made in September 1911 gave the capital value as £369, including £65 of improvements—which was only £11 per acre (but it listed William Dormer as the occupier and Joshua Prosser as the owner).⁴⁹⁸ When the transaction went to the Ikaroa Board for approval, one owner had decided not to participate. The Board approved the sale, but only on condition that £120 of each vendor's share be paid to it to be utilised in the purchase of other lands. It paid out the balance in small amounts over later years.⁴⁹⁹ Hera Paneta, the fifth owner who seems to have lived near Te Awamutu and may simply have been

⁴⁹⁴ File 1883/108. TC 143 Koangaumu Alienation File.

⁴⁹⁵ Mihaka Karepa to Registrar, 20 November 1919. WN 44 Koangaumu Applications 1874-1926.

⁴⁹⁶ Epiha Karepa to Chief Judge, 26 April 1920. WN 44 Koangaumu Applications 1874-1926.

⁴⁹⁷ File 1883/107. TC 143 Koangaumu Alienation File.

⁴⁹⁸ Valuation, 27 September 1911. 1911/510 to 1912/14 Koangaumu.

⁴⁹⁹ File 1911/510. 1911/510 to 1912/14 Koangaumu.

more difficult to reach, soon sold to Jillett on 29 December 1911, at the same price per acre. Her share was worth £152 8s 3d, as theirs must have been.⁵⁰⁰

Erenora Tungia leased **Blocks 8 and 9** to William Dormer for 21 years on 23 July 1894. The annual rent was £5 for the first 14 years and £10 for the last seven years. She declared that she still had 100 acres at Pukerua and 400 acres at Kapiti.⁵⁰¹

When the Chief Surveyor returned the plans for Koangaumu 8 and 9 a decade later, Chief Judge Palmer noticed that there was a shortage in area; whereas the court order had been for some 87 acres, the area was now said to be only some 22 acres.⁵⁰² No explanation for the missing 65 acres was noted in the files.

Neither is there any record in the files of what became of Koangaumu 8 and 9 after that lease. The court and Chief Surveyor's office dealing with survey plans of them in 1906 may well indicate a sale at that time.

William Jillett and his wife Mary used their interests in the Koangaumu and Kahotea Nos. 1 and 2 blocks as security over stock grazing on the land in April 1897, the 'alienation' being to Murray, Roberts and Co. The consideration was £74 15s, plus a present current account of £2883 5s 5d.⁵⁰³ At the same time they used the same blocks as security over wool to the same company.

4.9. Conclusions on Koangaumu

Koangaumu was therefore awarded in its entirety to members of Ngati Toa in 1880. When it was partitioned in 1883, each of the nine subdivisions was given to someone who had been recognised as an original owner. Apparently the block had not been occupied by Ngati Toa since 1844, but had instead been used as a source of income through leasing it out—illegally until 1864—to Pakeha farmers. Once the land was available in its various subdivisions in individual hands, deals were rapidly struck to alienate the land, usually by sale, but by long-term lease in the case of Blocks 8 and 9, presumably followed around the turn of the century by sale also.

Koangaumu was therefore mostly out of Ngati Toa hands by the end of the 1880s and entirely by the time of the First World War. The files contain no indication as to why the

⁵⁰⁰ File 1912/14. 1911/510 to 1912/14 Koangaumu.

⁵⁰¹ File 1894/321. TC 143 Koangaumu Alienation File.

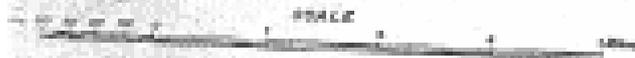
⁵⁰² Memorandum, 22 August 1906. WN 44 Koangaumu Correspondence 1876-1922.

⁵⁰³ File 1897/104. TC 143 Koangaumu Alienation File.

COUNTRY DISTRICTS,

COMPILED FROM OFFICIAL SURVEYS.

J.W.A. Macpherson, Chief Surveyor Wellington District.



REFERENCE

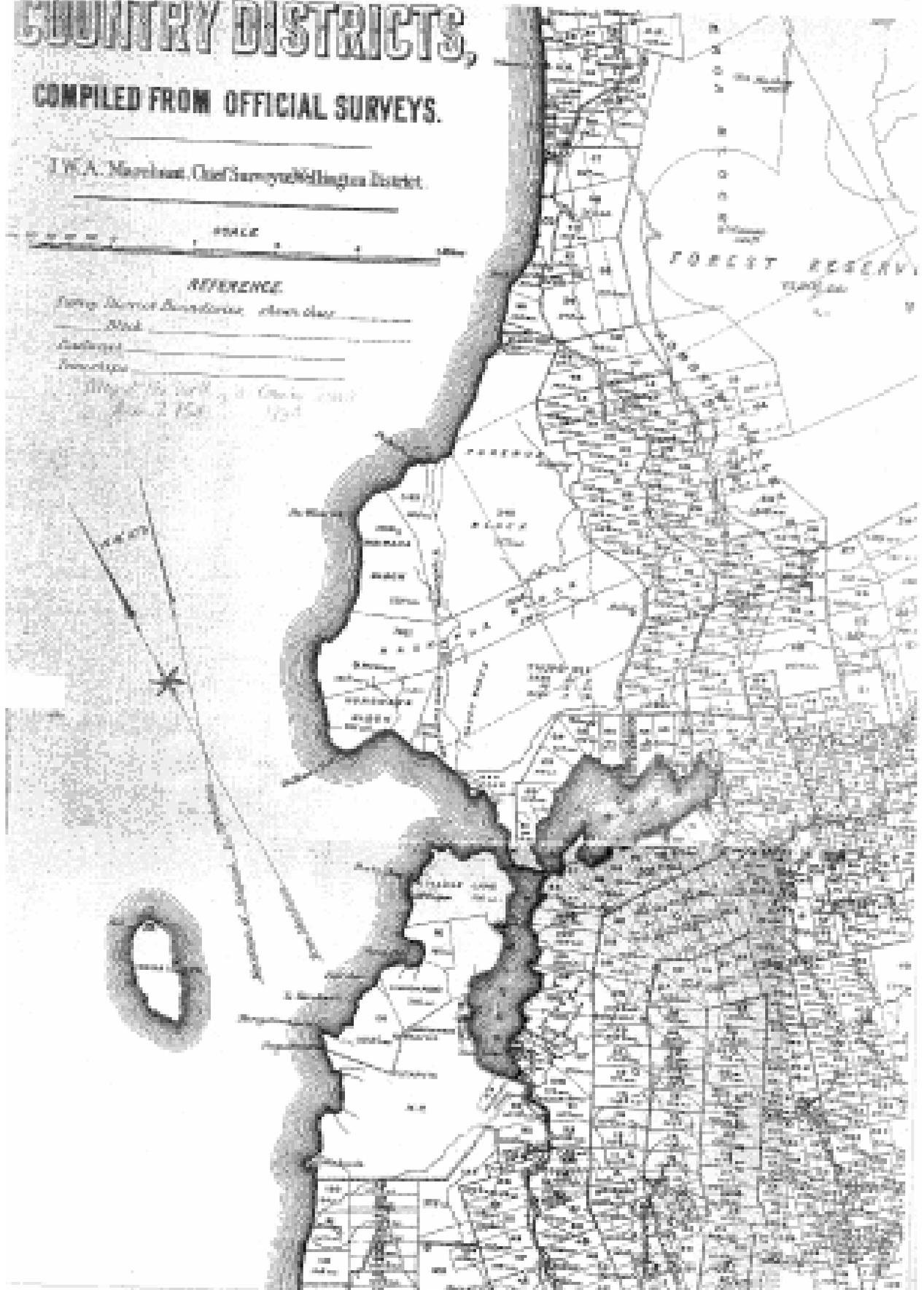
Survey District Boundaries *dash dash*

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Coastline

Boundaries

Map of the North Island of New Zealand
Scale 1:250,000



Map of Porirua. 1884.
Department of Lands and Survey.

owners sold, whether they felt a lack of connection to it, or for some reason it was less useful or important to them than their other lands, or whether their personal financial circumstances obliged them to part with it either to pay debts or to finance the development of other lands they owned.

Those other lands were divided between Takapuwahia/Taupo/Kapiti and locations in Te Tau Ihu. Once more, the block was alienated to private individuals, rather than to the Crown, and the individuals concerned were members of the same families—Jillett, Whitehouse and Prosser—who were buying other lands in and around Porirua.

4.10. Korohiwa

One of the owners of Korohiwa, Harriett Ellison, left succession difficulties. In 1885 Daniel Ellison, claiming to be her son, obtained a succession order to her interests on the grounds that all her children were dead. In August 1891, Caroline and Mary McGrath, claiming to be her children, gained a succession order from Judge Mackay declaring that they were her proper successors. Their lawyer successfully sought certificates from the Native Land Court's Chief Judge to that effect, so that he could register them in the Deeds Office to prevent Ellison from dealing with the land.⁵⁰⁴

No other information is available on file about Korohiwa. There appears to be only one file extant relating to the block and that is all the material it contains. All that can be deduced from that item is that:

1. Korohiwa passed through the Native Land Court some time prior to 1885
2. Given that one of the owners was deceased by 1885, the original investigation was probably a number of years prior to that
3. There was more than one owner for Korohiwa, but one of them was Harriett Ellison
4. There is a strong possibility at least some of Korohiwa was alienated by the early 1890s, given Daniel Ellison's apparent activities which the McGraths were resisting.

4.11. Komangarautawhiri

Komangarautawhiri is a block of 260 acres running from the northern half of the eastern boundary of Takapuwahia and then mostly as a broad strip north-westerly to Cook Strait,

⁵⁰⁴ C.B. Morison to Chief Judge, 24 August 1891. WN 49 Korohiwa (Porirua) Correspondence 1885-1904.

forming an italicised capital L in shape. It was sometimes also referred to as **Komangarautawhiri A, Mangarautawhiri and Komanga Porirua Native Reserve**.

The Native Land Court's investigation of the customary title of the Komangarautawhiri Block resulted from an Order in Council made under section 11 of the Native Land Act 1867, dated 2 November 1867, and gazetted on 11 November 1867.⁵⁰⁵ The Order in Council directed the court not only to investigate, but also to order certificates of title to be issued as provided in section 17 of that Act. There was a hearing in February 1869, but the investigation was only partially completed as there was no proper survey plan as required by the Native Land Act before a certificate of title could be awarded.

An echo of the New Zealand Company's activities in the region and the Old Land Claims—probably Joseph Thoms's grant at Titahi Bay—resounded in relation to this block and its neighbours in September 1871. At that time, there was a Supreme Court hearing with the Crown as plaintiff on behalf of Wiremu Take Ngataki, Hemi Parai, Mohi Ngaponga and Te Ropita Moturoa. Prominent businessmen William Fitzherbert, William Waring Taylor and James Cutts Crawford were the defendants. Two questions were considered: (1) whether the persons who signed as grantors a deed of 29 September 1839 were entitled to the whole of the lands purportedly conveyed in that deed, or any particular part of them, and (2) did the lands to which those 'grantors' were entitled include all or part of the lands comprised in another grant of 5 September 1851? The Supreme Court ordered that the matters be tried at the next Wellington sitting of the Native Land Court.⁵⁰⁶ However, the Native Land Court's files are silent as to what the precise content or import of those deeds and grants was, or what the Native Land Court decided. A deed signed in 1839 would have given rise to an Old Land Claim after 1840 and 1851 was when Thom's grant was finally confirmed. It seems likely that there was a challenge to all or part of that grant on the basis that those who signed the deed on which it was based were not entitled to do so, or at least not in relation to all the area the Old Land Claim and/or resulting Crown grant encompassed.

Judge T.H. Smith and Assessors Ihaia Wakamairu and Hoani Taipua in the Native Land Court at Wellington completed the investigation into the title to Komangarautawhiri in 1873 following an application—probably a renewal of the original application—from Wiremu Katene and others of Wakapuaka, submitted to the then Commissioner of Native Reserves Alexander Mackay and forwarded by him to Chief Judge Fenton of the Native Land Court.⁵⁰⁷

Following the main hearing, ending on 20 November 1873, Judge Smith's order recited the direction by the Order in Council of 2 November 1867 and its description of the land

⁵⁰⁵ NZ Gazette, 11 November 1867, 425.

⁵⁰⁶ Order, Supreme Court, 26 September 1871. WN 45 Komangarautawhiri Applications 1863-1948.

⁵⁰⁷ Mackay to Chief Judge, 21 July 1873. WN 45 Komangarautawhiri Correspondence 1873-1921.

comprising this Native reserve, but only described the court's task as determining the customary ownership and ordering the block's subdivision.⁵⁰⁸ His order determined the owners in the two portions of the block, and ordered that it be subdivided, along the line specified in the order, into Komangarautawhiri A—or just Komangarautawhiri—and Komangarautawhiri B or **Wairere**.

But for some reason, which appears in none of the records sighted, Judge Smith omitted to order the issue of those certificates of title, clearly none of his staff or colleagues raised the matter with him, and they were therefore not issued.⁵⁰⁹ The owners, having heard what transpired in court, being still able to use or lease the land as desired, and not yet wishing to sell, can have seen no particular reason to insist on being given a couple of pieces of Pakeha paper. There were 22 owners in Block A and 15 in Block B/Wairere.

Those admitted into **Komangarautawhiri A** were:

- Wi Katene te Puoho
- Meihana Taipu
- Rawiri te Whatawhatarangi
- Atanatiri te Kairangi
- Tipene Paramata
- Poriana Takarangi
- Pitama Iwikau
- Wirape Maihi
- Mokena Hahueora
- Rei te Whanau
- Rei Kauhoe
- Wi Katene Paremata
- Hemi Makoare
- Himione te Tata
- Wi Raupiwahio
- Pouhuru te Rangitakaore
- Arihia Kauhoe
- Hemi Tarawaka
- Wikitoria Katene

⁵⁰⁸ Order, 20 November 1873. WN 45 Komangarautawhiri Applications 1863-1948. The file copy appears to be in Judge Mackay's handwriting and so is doubly illegible.

⁵⁰⁹ An additional note was made of 'Information supplied by the Natives': 'Te Hiko allowed Ellison (European) the use of a small bay beyond Te Korohiwa, in return for a cask of powder, 3 gallons rum, ½ [?] tobacco & 1 fowling piece. Tamihana and Matene te Whiwhi admitted to Wi Katene te Puoho that they had been bribed by Thos Ellison (the surviving son) to give evidence in his favor at the investigation.'

- Riria Hana
- Taraipiri
- Paratene Haehaehora

There was also appended to the judgment a ‘List of Chiefs who conquered the Natives of Blind Bay’. These were:

- Ngatitōa: Rauparaha, Rangihaeata, Puaha, Kanae, Tamiwhengia
- Ngatiawa: Toheroa, Rere Tairangwanga, Te Wakapakeke, Kapouawariki, Tutokoka, Matangi, Tuterangiwakataka, Te Matenga
- Ngatitama: Puoho, Pohepohe, Ngaparu, Paremata

The block then appears to have been leased out to a farmer, if it was not already, and at least some of the owners received rents from it through the 1870s and 1880s.

In 1890, a firm of Wellington lawyers approached Alexander Mackay, by now the local Native Land Court judge, mistakenly believing that he had all the records relating to Komangarautawhiri and wanting to know exactly who its owners were and whether they were free to deal with the land.⁵¹⁰ They suggested Meihana Taipu was ‘the real owner’. It seems they were acting for him because 11 months later they sought an early hearing of the court to individualise his interests, which he was ‘anxious’ for since he was ‘getting old and wants to get his affairs settled’.⁵¹¹

Two years later again, Horina Te Urumawe wrote from Takaka to assert an interest derived from Paraone in the block and to demand that Judge Mackay refrain from payment of monies due on the lease by (or to) Meihana Taipu.⁵¹² Reply was made pointing out that the court did not receive rent monies and that in order to get the lessee to pay rent to him, Horina needed to apply to succeed Paraone.

The problem regarding Judge Smith’s failure to order the issue of certificates of title was raised by the owners of Wairere in 1894 as discussed below. Chief Judge Davy then ordered a hearing into the application. Several owners of Komangarautawhiri A then also made a similar application with regard to their block, which Chief Judge Davy also referred to the Native Land Court in September 1897.⁵¹³

Applications were received by Judge Mackay in February 1895 to have removed the restrictions on dealing with Komangarautawhiri. Native Land Court Registrar Bridson’s

⁵¹⁰ Brown, Skerrett and Dean to Mackay, 19 February 1890. WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵¹¹ Brown, Skerrett and Dean to Registrar, 20 January 1891. WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵¹² Horina Te Urumawe to Mackay, 9 February 1893. WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵¹³ Karoraima Henare and others to Chief Judge, nd. WN 45 Komangarautawhiri Applications 1863-1948.

observation was that in Judge Smith's 1873 original order there were no restrictions mentioned. He wondered if there had been some sort of restrictions pre-existing Judge Smith's order, in which case they would have to be removed by the Governor by application through the Justice Department in the usual way.⁵¹⁴ One might have thought that if anyone had ready access to that sort of information, it would be by the Native Land Court Registrar. The fact that Bridson did not, and was left speculating, indicates that the patchy state of official records relating to these Porirua lands existed over a century ago.

Judge Mackay heard the application regarding the certificate of title in Wellington on 3 November 1897. Until this time, there had been no determination of the owners' relative interests nor any arrangement to sell or dispose of the land, so the omission of the certificate to complete the title was the only issue to consider. As he had found in Wairere (discussed below), so he found again now, that there had indeed been an omission in the court's failure to issue a certificate in conformity with the 1867 Order in Council. He found that the persons whose names should be placed in the body of the certificate were Rawiri Te Whatawharangi of Pelorus, and Mokena Haehaeora of Wakapuaka.⁵¹⁵

The Public Trustee was collecting and paying out the rent from Komangarautawhiri, as he was required by law to do. However, in August 1896, Mere Te Hiko, through another firm of Wellington lawyers, complained that she had never received rent from Komangarautawhiri. The Native Land Court staff found she was a successor to an original owner in Wairere No 2, but that she had no rights to any part of Komangarautawhiri.⁵¹⁶

Succession to the interests of Rawiri Te Whatawharangi was thoroughly investigated by Judge Mackay at a 'closely contested' hearing beginning on 26 March 1902. However, Judge Mackay's health was failing and he prepared only a skeleton judgment before going to Rotorua to recuperate, and then took the particulars with him upon his retirement to Feilding. The matter was raised by the applicants in October 1905 and Chief Judge Seth-Smith decided that the matter had to be heard afresh.

Judge J.M. Batham and Assessor Te Heuheu Tukino partitioned **Komangarautawhiri A** into four subdivisions on 8 January 1904. All four subdivisions were designated inalienable except with the consent of the Governor.⁵¹⁷ So it seems that although no restrictions had been put in place in 1873, because the block was still all in Ngati Toa hands three decades later they could still be imposed at this time.

⁵¹⁴ WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵¹⁵ Mackay to Chief Judge, 5 November 1897. WN 45 Komangarautawhiri Applications 1863-1948.

⁵¹⁶ WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵¹⁷ Orders, 8 January 1894. WN 45 Komangarautawhiri Block Order File (General Land).

- **Komangarautawhiri No A1** was a small area, situated at the toe of the capital L, adjoining Takapuwhahia and Koangaaaumu.
- **Komangarautawhiri No A2** (20ac 1r 35p) was awarded to Huria Matenga of Wakapuaka solely. This block was not sold immediately, but 18ac 3r 2p were leased in 1921 to Wi Katene Tipu for £8 per annum.⁵¹⁸ Not until 1954 was A2 sold, to Audrey Stevenson for £500.⁵¹⁹ At 5 July 1954 there were 29 owners holding varying portions of Huria Matenga's original single share.
- **Komangarautawhiri No A3** (161ac 3r 0p) was awarded to 5 owners in unequal shares: Whata Matenga, Annie Martin, Louisa Martin, Pane Huirau, and Atutahi Porokoru. The restrictions against alienation of A3 were removed by a recommendation by the Aotea Maori Land Board of 28 March 1907 to the Governor, who gave his consent on 26 July 1907.⁵²⁰
- **Komangarautawhiri No A4** (161ac 3r 0p) was awarded to 7 owners. Some two-thirds went to Rawiri te Whatawhatarangi, and the balance was divided equally amongst Ateraia Nopera, Ngaraina Nopera, Ripina Paremata, Wi Katene Tipu and Wi Katene Paremata, except for Ateraia Nopera who received an additional 13 acres.

Komangarautawhiri A4 was partitioned into four subdivisions A to D in by Judge Rawson in Wellington on 28 October 1908.⁵²¹

- **Block A4A** (82ac 2r 20p), the large seaward portion comprising half of A4, was awarded to Waka Rawiri solely, and designated inalienable except with the Governor's consent. The restrictions against alienation of A4A were removed shortly afterwards by a recommendation by the Aotea Maori Land Board of 2 April 1909 to the Governor, who gave his consent on 16 July 1909.⁵²²
- **Block A4B** (21ac 1r 2.2p) was awarded equally to Turama Mohi Nopera, Te Kaha Mohi Nopera, Wikitoria (Atiraira) Mohi Nopera, and Karewa Mohi Nopera, and also designated inalienable except with the Governor's consent. The restrictions against alienation of A4B were also removed at the same time as for A4 by a recommendation by the Aotea Maori Land Board of 3 April 1909 to the Governor, who gave his consent on 16 July 1909.⁵²³

⁵¹⁸ Administrative Officer to Valuer-General, 13 July 1921. WN 45 Komangarautawhiri Block Order File (General Land).

⁵¹⁹ Confirmation of resolution passed by assembled owners, 27 May 1954. 39 Wellington MB 154. WN 45 Komangarautawhiri Block Order File (General Land). This contained a proviso that the purchaser shall not call upon the owners of A1 to fence the boundary between the two blocks.

⁵²⁰ NZ Gazette, 1 August 1907.

⁵²¹ Orders, 28 October 1908. WN 45 Komangarautawhiri Block Order File (General Land).

⁵²² NZ Gazette, 22 July 1909.

⁵²³ NZ Gazette, 22 July 1909.

Block A4C (33ac 0r 8.8p) was awarded equally to Ngawaina Hanikamu, Ripine Paremata, Wi Katene Tipo and Wi Katene Paremata, and also designated inalienable except with the Governor's consent. The restrictions against alienation of A4C were removed by a recommendation by the Aotea Maori Land Board of 1 October 1909 to the Governor, who gave his consent on 5 November 1909, less than half a year after A4A and A4B.⁵²⁴ The Board was directed that the Governor had done so in order that it would be sold at a price no less than the government valuation.⁵²⁵

- **Block A4D** (24ac 3r 8p), which abutted Takapuwahia, was awarded to Hira Parata and also designated inalienable except with the Governor's consent. The restrictions against alienation of A4D were removed by a recommendation by the Aotea Maori Land Board of 29 May 1909 to the Governor, who gave his consent on 16 July 1909, at the same time as for A4A and A4B.⁵²⁶

These subdivisions were quickly sold. Blocks A4B and A4C were both sold by their owners to Herbert John Jillett. The adult owners all approved, trustee Mohi Nopera consented for the two minors, and the Aotea Board removed the restrictions on the blocks, consented to the sale and certified that the sellers all had 'sufficient lands left for their support and maintenance',⁵²⁷ and the deal was presented to the Native Land Court for final approval on 27 September 1910.⁵²⁸ The restrictions on Block A4D had been removed on the understanding that it was also to be sold immediately to H.J. Jillett for £7 per acre.⁵²⁹ The files contain no additional information regarding A4A, but given the timing, it seems likely that it too was sold to Jillett in 1909. Perhaps from the proceeds of some of these alienations, Waka Rawiri owed Wi Neera Te Kanae's family and Mohi Nopera £105 15s 9d. A hearing before Judge Rawson arrived at a settlement whereby Wi Neera's family received £56 and Mohi Nopera received £49 15s 9d.⁵³⁰

⁵²⁴ NZ Gazette, 18 November 1909.

⁵²⁵ Under-Secretary Native Affairs to President Aotea Maori Land Board, 22 November 1909. A1907/108 to A1909/100 Komangarautawhiri.

⁵²⁶ NZ Gazette, 22 July 1909.

⁵²⁷ President Aotea District Maori Land Board to District Land Registrar, 12 September 1910. A1907/108 to A1909/100 Komangarautawhiri.

⁵²⁸ Menteth & Ward to Registrar, 27 September 1910. WN 45 Komangarautawhiri

Correspondence 1873-1921.

⁵²⁹ Under-Secretary Native Affairs to President Aotea District Maori Land Board, 23 July 1909. A1907/108 to A1909/100 Komangarautawhiri.

⁵³⁰ Rawson to Chief Judge, report, 11 December 1909. WN 45 Komangarautawhiri Applications 1863-1948.



Wineera Te Kanae, before 1905.

The carved outer frame is said to have been carved by Piwiki Horahau, of Ngati Toa and Ngati Raukawa, at the same time he carved the Toa Rangatira meeting house. Toa Rangatira was opened in 1900.

Alexander Turnbull Library, Wellington.

4.12. Conclusions on Komangarautawhiri

The files therefore contain no information regarding the disposal of Komangarautawhiri A1 or A3, despite the fact that there would have been both court and Maori Land Board documentation, at least. It seems likely that A3 was sold in 1907. The parts of A4 appear all to have been sold in 1909/10 so that the entire Komangarautawhiri A block, apart from A2, had passed out of Ngati Toa hands within 6 years of its subdivision in the first decade of the twentieth century. Again the lands were sold to private purchasers, not to the Crown, and once again the Jillett family were prominent in that acquisition process.

An obvious question that arises from the story of these blocks is why the alienation restrictions were placed on the A blocks in 1904 when—apart from A2—the owners were prepared to alienate them so soon afterwards. Had the owners' financial circumstances changed drastically so quickly? Was the imposition of the restrictions the court's idea in opposition to the wishes of the owners? Were the purchasers suddenly prepared to offer more and pay an acceptable price, perhaps due to the expansion of the township or newly available roading?

The story of Komangarautawhiri B, renamed Wairere, is surveyed separately below, since after the original 1873 partition it was treated by the court as a separate block.

4.13. Onepoto Block

Onepoto was a small block of about 60 acres (the measurements given vary somewhat) in the shape of a wedge bounded on the north by the eastern end of the Whitireia Block's boundary, on the west by Kahutara No 1, and on the east by the shoreline of Parumoana.⁵³¹ Its name seems to be derived from the small inlet that bounds it on the north-east.

Title to Onepoto was first investigated by the Native Land Court on 20 September 1895—much later than the first investigations of the other southern blocks—when Judge Mackay and Assessor Rawiri Rota Te Tahiwī decided that the block, then believed to be 65 acres, should be awarded to Tere Maihi, Peehi Te Kakakura and Te Waaka.⁵³² The land transfer title then issued was PR 4/76.

A small portion of Onepoto, 2ac 1r 31p, was taken by the Crown by proclamation of 22 August 1908 for a road, a narrow strip that fronted onto the Porirua harbour across the whole of the block. Following the requirements of the Public Works Act 1908 s 91, Judge Rawson

⁵³¹ It seems also to have been known as Onepoto Block VIII, through an error in an early order, which imported the Block VIII of the Paekakariki Survey District – which was itself incorrect as it was actually in Block XI. WN 162 Onepoto Native Reserve Correspondence 1911-1929.

⁵³² Order, 20 September 1895. WN 162 Onepoto Block Order File (General Land).

held a Native Land Court hearing in July 1909 to determine the compensation payable by the Crown to the Maori landowners. The court found that £12 compensation was payable and that this sum had to be shared between 20 owners according to their relative interests. Tere Maihi received £6 12s, but no-one else received anywhere near as much and three owners received only one shilling each.⁵³³

Shortly afterwards, Judge Rawson partitioned the Onepoto Block further into Onepoto Block VIII subdivisions 1, 2 and 3 under the Native Land Court Act 1894. On 12 November 1908, he awarded **Onepoto No 1** (22ac 2r 30p) to William Jillett as purchaser from sole owner Te Peehi Kakakura. **Onepoto No 2** (21ac 2r 38p) went to Tere Maihi alone. **Onepoto No 3** (17ac 3r 24p) was awarded to 19 owners, not including either of the two who had received the other two subdivisions.⁵³⁴

The Maori Land Court file contains no information about **Onepoto No 2**, but from the file's Date of Order Summary it appears it too was alienated on the same day as No 1.⁵³⁵ Perhaps Tere Maihi sold immediately to Jillett also.

Judge Gilfedder partitioned **Onepoto No 3** (17ac 3r 4p) into four further subdivisions on 19 June 1911:⁵³⁶

- **Subdivision 3A** (4ac 1r 36p) went to Maaka Pukehi.
- **Subdivision 3B** (3ac 2r 12p) went to a list of 10 owners, all members of the Parata whanau, apart from Metapere Ropata.
- **Subdivision 3C** (4ac 1r 36p) went to Rangi Horomona.
- **Subdivision 3D** (5ac 1r 20p) went to the seven remaining owners.⁵³⁷

The Maori Land Court file contains no information on **Onepoto 3A**, except for the file summary, which indicates that an order was made on 19 June 1936 alienating it. Perhaps it went to the Titahi Golf Club Company which was acquiring most of the rest of Block 3 in the 1930s.

The Ikaoroa District Maori Land Board confirmed on 10 December 1920 the sale to Herbert John Jillett of Titahi Bay 1ac 3r 30.6p of **Onepoto 3B** for a price of £31 2s.

The Ikaoroa Land Board confirmed 4 July 1930 the sale of 1ac 0r 10p of No 3B, the interests of Pekahou Parata, Metapere Ropata and Mahia Parata, to the Titahi Golf Company

⁵³³ Order, 23 July 1909. WN 162 Onepoto Block Order File (General Land).

⁵³⁴ Orders, 12 November 1908. WN 162 Onepoto Block Order File (General Land).

⁵³⁵ This suggests that the information had been in the file when it was compiled, but that it has since been lost or removed without notification.

⁵³⁶ 17 Wellington MB 381. Also Orders, 19 June 1911. WN 162 Onepoto Native Reserve Correspondence 1911-1929.

⁵³⁷ Tamati Te Waiti, Maata Te Kotua, Wakarau Te Kotua, Makere Inia, Tangi Inia, Te Makanga Inia, and Ngahurumoana Te Whaiti.

Ltd by £25 4s 2d.⁵³⁸ The Golf Club Company went on at this time to purchase all interests in both 3B and 3D2 apart from those of Utauta Parata.

Three acres 2 roods and 12 perches of **Onepoto 3C** was sold for £56 to the Titahi Golf Club Company in July 1930, the transaction being confirmed by the Ikaroa Maori Land Board. This area represented the interests in the block of Hou Ngariri Horomona, Marore Horomona, Matehuria Horomona, and the successors to Paranihia Horomona, leaving just under one acre unpurchased.⁵³⁹ Another 3r 23p, the interest of Ria Parata, was sold to the Golf Company for £14 and confirmed by the Board on 18 December 1931.⁵⁴⁰

In July 1921, the interests in **Onepoto 3D** of Tamati Te Whaiti, Maata Te Kotua, Makere Inia and Tangi Inia, totalling 2ac 3r 39p, were sold to Joshua Prosser for £36 5s 11d and confirmed by the Board.⁵⁴¹ In the following year, the Board confirmed the transfer to Prosser of Makanga Inia's interest of 1r 20p for £4 10s 9d.⁵⁴²

Onepoto 3D was subdivided by Judge Gilfedder on 28 May 1924 into sections 1 and 2. **Onepoto 3D1** comprised the 3ac 1r 19p that had by now been acquired by Prosser.⁵⁴³ Those who had not sold the balance of 2ac 0r 1p (now named **Onepoto 3D2**) were Wakarau Te Kotua and Ngahurumoana Te Whaiti (who were both dead).⁵⁴⁴ Their successors then alienated it to the Titahi Golf Club Company several years later. In mid-1930, 2ac 0r and 1p were sold to the company by 9 owners for £33.⁵⁴⁵ In 1931 the combined interests of four members of the Parata whanau, totalling just 1 rood, were sold for £4 2s 6d to the Golf Club Company in April 1931.⁵⁴⁶ Presumably the extra rood was derived from readjustment upon resurveying for partition.

Judge Gilfedder found in 1931 that since only the Golf Club Company and Utauta Parata now held interests in 3B and 3D2, it was expedient for consolidation and partition purposes that those two blocks be treated under section 14 of the Native Lands Amendment

⁵³⁸ Registrar to Valuer-General, 5 July 1930. WN 162 Onepoto Block Order File (General Land).

⁵³⁹ Registrar to Valuer-General, 14 July 1930. WN 162 Onepoto Block Order File (General Land).

⁵⁴⁰ Registrar to Valuer-General, 18 December 1931. WN 162 Onepoto Block Order File (General Land).

⁵⁴¹ Administrative Officer to Valuer-General, 8 July 1921. WN 162 Onepoto Block Order File (General Land).

⁵⁴² Registrar to Valuer-General, 26 September 1922. WN 162 Onepoto Block Order File (General Land).

⁵⁴³ Partition order, 28 May 1924 (24 Wellington MB 124). WN 162 Onepoto Block Order File (General Land).

⁵⁴⁴ Partition order, 28 May 1924 (24 Wellington MB 124). WN 162 Onepoto Block Order File (General Land).

⁵⁴⁵ Registrar to Valuer-General, 29 July 1930. WN 162 Onepoto Block Order File (General Land).

⁵⁴⁶ Registrar to Valuer-General, 16 April 1931. WN 162 Onepoto Block Order File (General Land).

Act 1929 as a single area held in common. He therefore ordered that the Golf Club Company be declared owner of 4ac 3r 21p of the combined area from the two blocks, which was named **Onepoto Native Reserve 3B and 3D2A**.⁵⁴⁷ That left Utauta Parata/Webber the owner of the balance of the two which was 1r 32p in 3B and 1r in 3D2, making a total of 0ac 2r 32p. This area was consolidated and taken as a single block out of 3D2, cut off at the bottom of 3D2 as a triangular segment bounded on the west by Kahutea 1F and on the east by the roadway strip, and being renamed **Onepoto 3D2B**. This was done with Utauta's consent given through Mr. Upham, her lawyer.⁵⁴⁸

By the early 1930s, Onepoto was being called Onepoto Native Reserve in the court orders. This was presumably following Judge Gilfedder's activities in 1931 and may have referred solely to the tiny areas remaining in Ngati Toa hands after all the previous alienations.

Utauta Parata/Webber's block Onepoto 3D2B, of 2r 32p, remained unsold for another two and a half decades, until in 1957, after Utauta's death, it was sold to John Francis Barr Stevenson for £250.⁵⁴⁹

This eventual sale of 3D2B completed the transition of Onepoto from Maori customary land into general freehold land. The alienation sequence was therefore:

Original investigation of title order (65 acres) 20 September 1895

1	22ac 2r 30p	12 Nov 1908	293/41	Jillett
2	21ac 2r 38p	12 Nov 1908	293/41	Jillett?
3C	4ac 1r 35p	19 June 1911	420/148	Golf Co
3B & 3D2A	4ac 3r 21p	18 Aug 1931	460/177	Golf Co
3A	4ac 1r 36p	19 June 1936	293/41	Golf Co?
3D1	3ac 1r 19p	28 May 1924	405/276	Golf Co
3D2B	0ac 2r 32p	10 Sept 1957		Stevenson

Once again, all of the Onepoto alienations were made to private individuals, not to the Crown.

4.14. Wairere Block

The Wairere Block was created at the Native Land Court's investigation of the customary title of the Komangarautawhiri Block. As outlined above, this hearing resulted from an Order in

⁵⁴⁷ Order, 18 August 1931. WN 162 Onepoto Block Order File (General Land).

⁵⁴⁸ 27 Wellington MB 129.

⁵⁴⁹ Registrar to Valuer-General, 10 September 1957. WN 162 Onepoto Block Order File (General Land).

Council made under section 11 of the Native Land Act 1867, dated 2 November 1867, and gazetted on 11 November 1867.⁵⁵⁰ The Order in Council directed the court not only to investigate the customary ownership, but to order certificates of title to be issued as provided in section 17 of that Act. There was a hearing in February 1869, but the investigation was only partially completed since there was no proper survey plan. Four more years elapsed until the main hearing, on 20 November 1873, when Judge T.H. Smith subdivided the block into Komangarautawhiri (or A) and Komangarautawhiri B or Wairere. But for unknown reasons Judge Smith omitted to order the issue of those certificates of title and they were therefore not issued at that time.

In March 1895, lawyers acting for the owners of Wairere sought the rectification of the defect in Judge Smith's original 1873 order, in that he had not ordered the issuance of a certificate of title. This certificate they now sought under the Native Land Court Act 1894 s 39, since the problem was 'hanging matters up'.⁵⁵¹ Chief Judge George B. Davy agreed and drafted an order that the certificate of title be duly issued in favour of the names in, and with effect from the date of, Judge Smith's original order.⁵⁵² However, he also considered that making such an order would have the effect of validating the partition and any subsequent dealings, and so thought it better that the application should be more thoroughly inquired into by Judge Mackay in court.⁵⁵³ Judge Mackay responded that there had been no objection to the original order, nor to the subdivision of the land in January 1894, nor to the subsequent disposal by some of the owners to their own interests in the block to Mr. John Whitehouse, so he thought that the order as Chief Judge Davy had drafted it would be fine.⁵⁵⁴ As the paragraph below indicates, there had been partition proceedings, and perhaps some sort of order made by, the Native Land Court. How this happened when the underlying title issue had not been resolved to permit the subdivision of the legal title is somewhat confusing. Presumably, the absence of an original certificate was discovered during the course of those proceedings.

In fact, Judge Mackay did hold a hearing into the application for rectification on 27 June 1895 at Porirua. The majority of persons concerned were either present or represented. He explained the application to them and asked if there were any objections. He reported:

⁵⁵⁰ NZ Gazette, 11 November 1867, 425.

⁵⁵¹ Brown & Dean to Chief Judge, 28 March 1895. WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵⁵² WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵⁵³ Davy to Mackay, memo, 25 June 1895. WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵⁵⁴ Mackay to Davy, memo, 21 August 1895. WN 45 Komangarautawhiri Correspondence 1873-1921.

All the parties present testified that they desired that the application be given effect to and that they were satisfied with the partition made by the Court in January 1894. The only persons who were not present when the partition was made were present on this occasion and signified their acquiescence.

He also explained that although when Judge Smith heard the case the 1867 Act had been repealed by the Native Land Act 1873, the 1873 Act did provide for proceedings commenced under old legislation to be continued and perfected under the new Act, but this provision was repealed in 1874 such that existing matters were to be completed according to the legislation in force when they were commenced. Since proceedings relating to this block had been begun in 1869, and the Order in Council made under the 1867 Act had not specified an end date, he recommended that the 1867-style certificate be duly issued, presumably as opposed to an 1873-style memorial of ownership.⁵⁵⁵

Chief Judge Davy signed his order for the issue of the certificate of title to Wairere on 12 September 1895.⁵⁵⁶ Subsequently it was realised that since the certificate had been made for a Native reserve under the 1867 Act, it also required a recital including the provisions of sections 11, 12 and 13 of that Act.

Judge Mackay and Assessor Hanatiu Te Kairangi partitioned Wairere into two subdivisions in November 1897.

Wairere No 1 (522ac 1r 13p), the coastal portion of the block, was awarded to 14 owners in unequal shares. It retained the restrictions on alienation carrying over from the original award.⁵⁵⁷ The restrictions on alienation were promptly removed—following the owners' application—by proclamation on 20 January 1899.

Wairere No 2 (324ac 2r 27p), the inland portion which abutted Takapuwahia, was awarded to 17 owners in unequal shares. As with No 1, it retained the restrictions on alienation from the original award in 1873.⁵⁵⁸

In October 1898, Rewi Maaka and others applied to have the alienation restrictions on Wairere lifted (since, as noted above, it was still a Native reserve under the Native Lands Act 1867).⁵⁵⁹ Law firm Menteath and Beere followed this up shortly afterwards with a claim that this was a matter of urgency and a request that it be put on the court's schedule at the first possible hearing anywhere in the district. They would even 'gladly pay for a special gazette',

⁵⁵⁵ Mackay to Chief Judge, report, 21 August 1895. WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵⁵⁶ Order, 12 September 1895. WN 45 Komangarautawhiri Correspondence 1873-1921.

⁵⁵⁷ Order, 1 November 1897. WN 129 Wairere Block Order File (General Land).

⁵⁵⁸ Order, 1 November 1897. WN 129 Wairere Block Order File (General Land).

⁵⁵⁹ Under-Secretary Justice to Chief Judge, 11 October 1898. WN 129 Wairere Correspondence 1898-1920.

if necessary.⁵⁶⁰ The Registrar replied that there was presently no court scheduled, but agreed to put it in the first court in the district.

The partition orders took some time to be issued as there had not been a proper survey. A year after the partition hearing, in November 1898, Menteach and Beere were still chasing them up as their clients were ‘very anxious’ to have them without delay.⁵⁶¹

Menteach and Beere continued to urge along the process, the Chief Surveyor asking the court months later for the subdivision orders for Wairere 1 and 2, as the lawyers were ‘pushing for issue of titles’ for their clients, which could not be done without the orders.⁵⁶² Next months they were again asking the Registrar for the orders to go to the Land Transfer Office, to be finally informed that Judge Mackay had signed the orders which would be forwarded to the Land Transfer Office once the court fees were paid.⁵⁶³ The process appears to have been completed at the end of July 1899.⁵⁶⁴

Wairere No. 1 (522 acres) was alienated to John Whitehouse over a period beginning in 1893 and ending in March 1899, as different owners agreed to participate.⁵⁶⁵ Judge Mackay, acting as Trust Commissioner, calculated the entitlement of each owner at a rate of £2 per acre. This was the rate agreed to in the main alienation by Wi Neera Te Kanae, Waitaora Raniera, Raiha Waitohi (Puaha) and Matenga Te Hiko, completed with a final payment to them on 1 November 1897.⁵⁶⁶ Receipts from other owners were also filed with the Trust Commissioner as the money was paid to the Public Trustee on their account.

Wairere No 2 (324ac 2r 27p) was leased to Frances Whitehouse, spinster of Porirua (an obvious close link here to John Whitehouse, perhaps sister), on 7 August 1900 by Pirimona Kahupuku and Hohapata Kahupuku, at £12 10s rent.⁵⁶⁷ Pirimona and Hohapata at this time each stated that they had another 14 acres at Porirua, 150 acres at D’Urville Island, and about 200 acres at Croixelle. It appears that Pirimona and Hohapata were keen to gain as much cash from the lease as possible, as quickly as possible, as on the following day they signed a receipt for a second year’s rent and on 20 September 1900, yet another for a third year’s rent.⁵⁶⁸ This suggests that the reason for the temporary alienation by lease was economic, that they were doing this because they needed money.

⁵⁶⁰ Menteach and Beere to Registrar, 20 October 1898. WN 129 Wairere Correspondence 1898-1920.

⁵⁶¹ Menteach and Beere to Registrar, 19 November 1898. WN 129 Wairere Correspondence 1898-1920.

⁵⁶² Chief Surveyor to Registrar, 22 June 1899. WN 129 Wairere Correspondence 1898-1920.

⁵⁶³ Menteach and Beere to Registrar, 12 July 1899. WN 129 Wairere Correspondence 1898-1920.

⁵⁶⁴ Memorandum, 25 July 1899. WN 129 Wairere Correspondence 1898-1920.

⁵⁶⁵ TC 147 Komangarautawhiri Alienation File. The No 1 block was designated here as being 847 acres, but that was of course the total area for the whole of Wairere, not just Block 1.

⁵⁶⁶ Receipt, 1 November 1897. TC 147 Komangarautawhiri Alienation File.

⁵⁶⁷ 1900-222 Wairere No 2 Alienation File.

⁵⁶⁸ 1900-222 Wairere No 2 Alienation File.

Approval was sought from the Native Land Court for the lease in September 1900, in the application for which Frances Whitehouse declared that she was not acquiring the land for the benefit of anyone not named in the lease agreement. The valuation for Wairere No 2 in November 1899 was £1020, of which £48 was fencing and all was the owner's interest. The owners were listed as Wi Nera Te Kanae and others per the Public Trustee.⁵⁶⁹ Judge Mackay confirmed the lease in September 1901. It is unclear why only the names of Pirimona and Hohapata were mentioned in the record of who had signed the lease when there were 17 owners in the block.

Wairere No 2 was partitioned by Judge Gilbert Mair and Assessor Hone Heke MHR in June 1904.

The valuation for the whole 324 acres of Wairere No 2 in March 1906 had now risen to £2268—doubling in only 6 years—of which the entire increase was in the land value alone, the £48 of fencing remaining. This amounted to £7 per acre. The occupiers were two Whitehouse brothers.⁵⁷⁰

In 1907, two farmers were competing to buy Wairere No 2, Thomas Maher and Herbert Jillett, and they were in a bidding war offering now £1 per acre more than the government valuation. Karaitiana Rawiri Pereta, of Porirua, therefore applied to the Aotea Maori Land Board to have the restrictions on alienation lifted from the block.⁵⁷¹ Karaitiana urged that he had the agreement of by far the largest shareholders in the block and that he could not see why small shareholders with only a few acres each should hold this up. He did, though, have his maths wrong as well as the entitlements based on the 1904 division. The file does not record that he received approval at that time, as there was no definite purchase, no definite consideration, and the hearing in July 1908 was adjourned.⁵⁷²

Wairere 2 was partitioned for a second time into 2A-E2 by Judge Rawson in 1910, seemingly at the same time as the subdivision of Komangarautawhiri A 4.⁵⁷³ The partition orders for Wairere 2A and 2B were sent for registration at the end of September 1910 and for Wairere 2C a year and a half later.⁵⁷⁴ As noted below with regard to 2E, it does not appear from these written records why there was a need for a second partition, and what the effect was on transactions that had taken place between the two partitions.

Wairere No 2A (56ac 1r 9p) was awarded to Pirimona Kahupuku solely, encumbered with the restrictions on alienation.⁵⁷⁵ These restrictions on alienation were removed by

⁵⁶⁹ Valuation, 21 January 1901. 1900-222 Wairere No 2 Alienation File.

⁵⁷⁰ Valuation, March 1906. A1907/153 to 1916/106 Wairere.

⁵⁷¹ Karaitiana Rawiri Pereta to Aotea Maori Land Board, nd. A1907/153 to 1916/106 Wairere.

⁵⁷² File 1907/153. A1907/153 to 1916/106 Wairere.

⁵⁷³ Minutes in 13 Wellington MB 110 and 16 Wellington MB 70.

⁵⁷⁴ Registrar to District Land Registrar, 29 September 1910 and 29 February 1912. WN 129 Wairere Correspondence 1898-1920.

⁵⁷⁵ Order, 27 June 1904. WN 129 Wairere Block Order File (General Land).

proclamation on 21 March 1910.⁵⁷⁶ Three days later, on the recommendation of the Aotea Maori Land Board the Governor approved 2A's sale to Mrs. Rachael Jane Whitehouse.⁵⁷⁷

Wairere No 2B (56ac 1r 8p) was awarded to Hohopata Kahupuku solely, with restrictions on alienation.⁵⁷⁸ As with 2A, the Governor removed the restrictions on alienation on 21 March 1910 and on 24 March 1910 approved the Aotea Board's recommendation allowing the sale of 2B.⁵⁷⁹ The restrictions were removed on the understanding that it was to be sold, together with 2A, to Mrs. Rachael Jane Whitehouse for £510 on 1 August 1910.⁵⁸⁰

Hohopata Kahupuku was listed as the seller of both 2A and B, a total area of 112 ac 2r 17p, for £1020 (i.e. a little over £9 per acre), which was the government valuation for these two blocks in January 1910. The Aotea Maori Land Board approved the sale provided £500 of the price was paid to the Public Trustee on Hohopata's account with the interest to be remitted to him quarterly at Moeraki Post Office (which suggests that he was living, perhaps fishing, in North Otago). It was decided in 1915 that other owners who were minors, perhaps successors to Pirimona (or even Hohopata by now), were also to be paid proportions of the total, to be held for them by the Public Trustee.⁵⁸¹ What is not shown in the files is how 2A came to be dealt with by Horomona when it had been awarded to Pirimona only six years previously.

Wairere No 2C (90ac 2r 13p) was awarded to 7 owners, two receiving 11ac 1r 12p each and the other five receiving 13ac 2r 15p, all also subject to the original restrictions on alienation.⁵⁸² In March 1911, Mrs. Rachael Jane Whitehouse also reached agreement with the three owners of 2C—Karaitiana Rawiri (67ac), Rawiri Mihaka (11ac), and Hiram Wi Neera (11ac)—to purchase the block for £678, which was the current government valuation. The file contains no indication of how it came to be that Karaitiana held the interests of 5 owners, despite the Board's note that the list of vendors had to be completed satisfactorily and for receipts to be filed (which are also not now present on the file). The Ikaroa Maori Land Board confirmed this transfer in February 1912.⁵⁸³

Wairere 2D (78ac 3r 10p) was awarded to three owners unequally, with Mere Te Hiko receiving half the block and the other two unequal shares of the other half. The restrictions on alienation were included.⁵⁸⁴ These three owners agreed separately on 19 June, 26 June and 11 September 1911 to sell the block to Adeline Whitehouse, wife of Alfred William Whitehouse,

⁵⁷⁶ NZ Gazette, 31 March 1910. WN 129 Wairere Block Order File (General Land).

⁵⁷⁷ NZ Gazette, 31 March 1910. WN 129 Wairere Block Order File (General Land).

⁵⁷⁸ Order, 27 June 1904. WN 129 Wairere Block Order File (General Land).

⁵⁷⁹ NZ Gazette, 31 March 1910. WN 129 Wairere Block Order File (General Land).

⁵⁸⁰ Under Secretary to President Aotea Maori Land Board, 4 April 1910. A1907/153 to 1916/106 Wairere.

⁵⁸¹ File 1910/167. A1907/153 to 1916/106 Wairere.

⁵⁸² Order, 27 June 1904. WN 129 Wairere Block Order File (General Land).

⁵⁸³ File 1911/149. A1907/153 to 1916/106 Wairere.

⁵⁸⁴ Order, 27 June 1910. WN 129 Wairere Block Order File (General Land).

for £553, the current government valuation. This was confirmed by the Ikaroa Board on 5 October 1911.⁵⁸⁵

Wairere 2E (42ac 0r 35p) was awarded to five owners unequally, with Maata Te Kotua and Wakarau Heparin receiving one-third each and the other 3 dividing the balance between themselves. The restrictions on alienation were maintained.⁵⁸⁶ However, there had already been dealings in relation to this block. It is unclear how the orders of 1910 could have come about when the ownership had already been determined in 1904 and one-third of the block alienated in 1908.

Maata Te Kotua, of Mania, Taranaki, applied in October 1907 to have removed the alienation restrictions over a portion of 14ac 0r 19p for which Ernest Whitehouse was offering £98 10s 0d.⁵⁸⁷ This was dealt with along with Karaitiana application and there is no notation of approval on file. Apparently Mata's application did not receive approval, as the land described in the next two paragraphs equates to the total acreage of Wairere 2E.

On 10 April 1908, Judge H.D. Johnson and Assessor Eureka Nektonic awarded Wakarau Heparin 14ac 0 12p, but there was no mention in the order of retaining the alienation restrictions.⁵⁸⁸ These restrictions were removed by proclamation on 6 November 1908 and approval given to the Aotea Board's recommendation for approval of alienation by order in council on 17 December 1908.⁵⁸⁹ The alienation approved was to Herbert Jillett for £98 16s 7d.⁵⁹⁰ Wakarau Heparin's interest must have been designated **Wairere 2E1**.

Wairere 2E2 (28ac 0 23p), the balance of the existing interests, was awarded to the other four owners.⁵⁹¹ Block 2E2 was not sold until 1950 when it was purchased by Audrey Stevenson, wife of Wellington solicitor J.F.B. Stevenson, for £250.⁵⁹² It has already been noted above that J.F.B. Stevenson also bought Onepoto 3D2B in 1957; it is highly likely that the solicitor's wife's purchase was part of one property investment portfolio.

4.15. Conclusions on Wairere

Wairere was created in 1873 as a partition of the Komangarautawhiri Block. It is not known why it was then dealt with as a separate block, as opposed to simply Komangarautawhiri B.

⁵⁸⁵ File 1911/518. A1907/153 to 1916/106 Wairere.

⁵⁸⁶ Order, 27 June 1910. WN 129 Wairere Block Order File (General Land).

⁵⁸⁷ File 1907/228. A1907/153 to 1916/106 Wairere.

⁵⁸⁸ Order, 10 April 1908. WN 129 Wairere Block Order File (General Land).

⁵⁸⁹ NZ Gazette, 12 November and 23 December 1908. WN 129 Wairere Block Order File (General Land).

⁵⁹⁰ Under Secretary to President, Aotea Maori Land Board, 23 December 1908. A1907/153 to 1916/106 Wairere.

⁵⁹¹ Order, 10 April 1908. WN 129 Wairere Block Order File (General Land).

⁵⁹² Registrar to Valuer-General, 27 September 1950. WN 129 Wairere Block Order File (General Land).

The problem of the non-issuance of certificates of title by Judge Smith at that time arose in this block also and similarly required rectification.

Wairere was partitioned itself into Blocks 1 and 2 in November 1897. It seems that Block 1 was then alienated to the Pakeha farmer Whitehouse, within two years.

The story of Wairere No 2 is a little more confused. There was an initial and, for some reason, apparently abortive partition in 1904. The partition was redone in 1910 by Judge Rawson, and was then immediately acted on. Blocks 2A-2D were then alienated to members of the Whitehouse family within the next couple of years, being all gone from Ngati Toa ownership by the end of 1911.

Wairere 2E1 was sold to the other family of 'usual' purchasers of these lands, the Jillets, in 1908.

The final portion of Wairere to be alienated from Ngati Toa ownership was 2E2, which was not sold until 1950.

4.16. The Parumoana Hearing, 1883

For the sake of completeness – although this is also covered in Report 3, one other southern Porirua case, Parumoana, needs to be traversed here. Unlike the other cases discussed in this chapter, in Parumoana the Native Land Court recognized Ngati Toa interests in an area below high water mark. Not much evidence has come to light as to the background to and the precise circumstances of Ngati Toa's application to the Native Land Court in 1883. Many years later, in 1960, Mata Rei stated that she could remember the decision being made in the Court, although she was not present herself, and that one of the applicants, Hohaia Pokaitara, was her uncle.⁵⁹³ This shows that the case was certainly known and talked about at the time. This aside, all there is to go on is what is recorded in the Native Land Court's minutes, which is disappointingly slight. A brief statement of evidence was given by Wi Parata, there were no objectors to the application, and the Court's judgment itself is only tantalisingly brief.⁵⁹⁴

After a number of delays the case was heard on 1 August 1883 and judgment was given on Tuesday 7 August. The case was heard by two judges, J W Macdonald, who was Chief Judge, and Judge Puckey. This might indicate that the case was seen by the Court itself as both important and out of the ordinary: but it is difficult to be certain) The Assessor was Retiritu Tapihana (i.e. Retreat Tapsell, of Ngati Whakauae) and J C Baker was present as Court interpreter. Wi Parata began by producing a survey plan, which was a standard requirement in the Native Land Court. The surveyor, a Mr. Wyles, "explained that he had surveyed the land

⁵⁹³ Statement of Evidence of Mata Kota Wharahuia Rei, 1960, copy on ABJ2 869 W4644 43/1/6, Archives NZ Wellington.

⁵⁹⁴ *Parumoana*, (1883) 1 Wellington MB 127, 147, 148, 149, 157 and 158.

between high [and] low water marks by direction of the late Judge Heaphy”.⁵⁹⁵ The survey had cost £45, which Wi Parata had paid for himself. From this it is clear that the *Parumoana* matter had been on-going for some time. Possibly when the application had been first made Judge Heaphy directed that the application could not proceed without a survey plan, and had directed that one be made. Wi Parata named those associated with him in the application as Wi Neera, Ngahuka Tungia, Raiha Puaha, Hemi Matenga, Hohaia Pokaitura and Hohepa Horomona – names familiar to the reader by now – presumably chosen as representative of the chiefly leadership of Ngati Toa at that time. Wi Parata said that he lived at Porirua and at Waikanae, and that he claimed an interest in the matter before the Court. The land, he said, “is land at low water, only a portion is covered by high water”. The *take* on which the claim was based was conquest: “I claim it by conquest of [i.e., by] Ngatitōa”. Wi Parata admitted the rights of all the other co-claimants, and said, perhaps curiously, that “we have occupied this land as a race course” (this may in fact have been response to a question from the judges – there being no indication that counsel were present). He then added that “we have not lived on it – but all around it – we have not planted on it”, but that “pipis and pupus grow there”. He added that the shellfish were protected by the rules of customary law: they “are protected by us in their season”.

No one else gave evidence, and Wi Parata then said that he would hand in a list of names subsequently, which seems to have been done later that day. Wi Parata asked also for an order protecting the money he had spent on having the area surveyed (“I ask the Court for an order to enable me to recover from the other persons benefited”). He was told to get “a proper receipt”, and the Court said it would consider the matter and give its judgment at Wellington the following week. Presumably the Court wanted some time to think about what was a somewhat unusual case. On 7 August 1883 the Court reconvened, and at this point there is a particularly tantalising brief reference: “Mr. Mackay asked leave to produce deeds of conveyance to N.Z. Company etc.” but the “Court objected to reopen the case”. It is hard to be certain what this points to, but in my opinion this indicates an attempt by the Crown to intervene in the case and to rely on the New Zealand Company deeds and so forth to prove that Maori title to the harbour had already been extinguished. “Mr. Mackay” is presumably Alexander Mackay, later a Judge of the Court, who was around this time Commissioner of Native Reserves.

The Court’s brief judgment begins by noting that in this case the Court has been asked to decide “that the title of applicants to certain land situate between high and low water marks has been proved according to native custom or usage”.⁵⁹⁶ There were “no counter claimants nor was there any objection raised on the part of the Crown” – although, as noted,

⁵⁹⁵ (1883) 1 Wellington MB 147.

⁵⁹⁶ (1883) 1 Wellington MB 158.

there was some kind of unsuccessful attempt to intervene in the case by Mackay. The Court was satisfied that “the applicants had from time immemorial and certainly before the making of the treaty of Waitangi and down to the present time been accustomed to collect pipis on the land”. Although Ngati Toa had taken shellfish from the harbour the Court found, however, that the iwi “had never exercised any other rights over it”, which is difficult to accept. There is abundant evidence that other types of fish and shellfish were taken from the harbour, which a fuller and more expansive case would have revealed. Also the Court’s decision is defective in failing to analyse the legal nature of the right and its scope, and in particular whether the right was exclusive. However, given that the Court goes on to apply the *Kauaeranga* decision, which certainly did recognise an exclusive right, it is not implausible that the Court in 1883 would also have assumed that Ngati Toa’s rights could only be exclusive.

The Court was not prepared to issue a full freehold title to the area. As noted, the 1883 Court applies *Kauaeranga*, stating that “if the judgment of the Court in the matter of the Shortland foreshore be correct and has not been impeached it is clear that the present applicants are entitled not to the land but to a right of fishery”.⁵⁹⁷ The Court held that the applicants “are entitled to an incorporeal hereditament” (i.e. a property right in the nature of a right to take or use something, but not a full freehold). It was observed that “it yet remains to be shown that the Court has any jurisdiction to deal with the Title thereto”. What this means, in my opinion, is that the Court had no doubt of its power to make a fisheries order, but was uncertain as to whether it had jurisdiction to grant a freehold title to areas below high-water mark. That question has been a much-debated in one New Zealand legal history. However, it is clear that the Court was certainly prepared to award to Ngati Toa a valuable and significant property right, one which the iwi certainly assumed was legal and which they were entitled to rely on in the years to come.

4.17. General Conclusions on the southern Porirua Blocks

The distinctive feature of the stories of all of these southern blocks - apart from portions of the Kenepuru Block and the Crown’s somewhat half-hearted attempt to intervene in *Parumoana* - is that there was no Crown involvement in their alienation from Maori, in that none were purchased or even, apparently, sought by the Crown. They all went into a small number of private Pakeha hands – local families in the area. The lands were all bought by the Jillets, the Whitehouses, by Prosser and finally by Stevenson. Whether these families had any connection with Ngati Toa beyond the financial and neighbourly, is not known. William Jillet is referred to in several sources as being a ‘half-caste’, i.e. of part-Maori extraction, but they contain no indication that his tribal connection was to Ngati Toa. All but perhaps Stevenson were lessees

⁵⁹⁷ Ibid.

of the lands they bought prior to purchasing them, and perhaps the relationship thus built up assisted them to complete transactions apparently quite swiftly once the blocks became available. On a number of occasions it was within only days or weeks of the lands being partitioned by the court or having alienation restrictions lifted by the Governor.

As was foreshadowed in the introduction to the chapter, this fact of rapid private sale in itself has deprived those seeking to follow the blocks' story of the government archival files that might otherwise have been generated and amassed by various groups of officials, whether in the Native/Maori Affairs Department, the Native Land Purchase Department, the Native/Maori Land Court, or elsewhere. Private purchasing does not generate the same archival 'footprint' that is characteristic of Crown purchasing. As has been seen, it often occurred that the documents record only that the block came before the Native Land Court a few times, perhaps before the Trust Commissioner or the Maori Land Board, and then passed out of Ngati Toa hands.

This suggests that Crown responsibility relating to the alienation of these blocks may be linked directly to the creation and operation of the Native Land Court, the creation and effectiveness of the Trust Commissioner system, and the creation and operation of the Maori Land Board checks and controls on alienation. As discussed in the general chapter on the Native/Maori Land Court system, there were formal provisions for the protection of Maori land from at least the creation of the Trust Commissioners in 1870. The next question is how effective they were in preventing undue Maori land loss, and particularly loss through fraudulent or coercive dealings. Here a balance must be struck between allowing Maori landowners—here those of Ngati Toa—to deal with and use their lands as they saw fit, exercising their tino rangatiratanga, and overriding that freedom on occasions in order to preserve the tribal patrimony when alienations were ill-advised or being conducted improperly, or providing options whereby land could be used and benefited from without requiring a full sale and permanent alienation.

The protective institutions were directed by statute (e.g. the discussion above of Aotea No 5), prior to the removal of alienation restrictions or the approval of a sale, to ensure that the owner(s) selling had sufficient land remaining for their occupation and maintenance. When the documents record such an investigation, the vendors reported other interests, sometimes in Takapuwahia—which seems to have been regarded as more of an inalienable core—but especially across Cook Strait in places such as D'Urville Island and Wakapuaka. There is no record of any probing beyond acceptance of such statements.

Alienation restrictions were recommended by the Maori Land Board for removal upon the application of the owners.

The Board seems then to have checked on:

- (a) the valuation of the land compared with the offered purchase price, and

(b) the mode of payment, which may have included the payment of all or some of the amount to itself or the Public Trustee.

Boards in other districts did administer such funds on behalf of vendors in a very paternalistic way. These files do not disclose such activity, but then most of the southern block sales took place earlier than the heyday of the Maori land boards in the interwar period. Boards also scrutinised and administered leases of Maori-owned land, but again most of the leases of these blocks took place prior to the creation of the boards after 1905 and the transactions were nearly all sales. Still, the files do not tell us about the administration of the leases that did operate in the twentieth century: what the rents were, what the terms were, who the lessees were, how payment was made, or to whom it was made, and so on. It does appear that the same families who purchased did so from a position of being the incumbent lessees, and therefore known to the owners, and not outsiders or speculators.

The Native Land Court actions as set out in these files indicate that the court operated largely as a mechanism for (a) transforming the customary title into a legal one, (b) dividing up those customary interests into subdivisions, and (c) In some of the blocks discussed here, but not all, upon transfer into legal title the court also did place restrictions on alienation of the land and then in the nineteenth century was the venue for applicants to seek the removal of those restrictions subsequently. Apart from a few occasions such as the three-way tussle over Kahotea, the blocks' ownership or divisions were apparently not strongly contested, and they were often placed in the hands of single individuals, allowing relatively easy alienation in contrast to large blocks in other regions where owners numbered in the hundreds, or even more. So technically the Native Land Court system did facilitate the alienation of the Ngati Toa lands in these blocks, but given the patchiness of the file coverage it is difficult to see to what extent, if any, this was against the wishes of the Ngati Toa owners. There does seem to have been a certain amount of community division and factionalism over land titles which probably was exaggerated by the Native Land Court process, but the actual lines of division and contestation are actually quite difficult to fathom. It also needs to be borne in mind that in the years around 1895-1910, when there were a number of investigations to small blocks around Porirua and various appeals to the Native Appellate Court was also the time when title to the Whitireia block was being fought out in the ordinary Courts. What this all points too probably is a how little land remained in Ngati Toa hands by this time.

In a number of these southern blocks, an additional Crown involvement that emerges is the role of the Public Trustee in having the proceeds from sale paid to it instead of directly to the owners. As noted in an earlier chapter, this was a paternalistic requirement from statute, which made scant allowance for the Maori owners to have the financial sense to handle the money they received from the sales. These files contain no information about how well the requirement for the payment and management of the funds actually worked.

Generally, the owners whose money was held by the Trustee then had to apply for the payment of portions. They had to justify every withdrawal and frequently requests were declined if officials did not consider the purpose worthy enough. Thus investment in development of other lands might be approved, but payment of current debts or purchase of food and clothing might not.

In summary, then, the southern Porirua lands were almost entirely alienated from Ngati Toa ownership by the 1920s, and indeed for most blocks by the turn of the century. They were sold by a small number of Ngati Toa owners, often individuals, to an even smaller group of private Pakeha individuals who were apparently occupying most of the greater Porirua area between them as farmers. These purchasers must have been quite well known to Ngati Toa as they seem generally to have leased the lands prior to the purchases. The owners were often absentees, at least in part, having most of their other land interests in Te Tau Ihu (and perhaps Takapuwahia), so their sales here may well have been made in order to finance development of those other lands. The pattern reinforces the impression of these various lands enduring as the remnants of the 'Ngati Toa seaborne empire' created under Te Rauparaha's leadership, but continuing as a practical reality well into the twentieth century.

CHAPTER 5

Takapuwahia

5.1. Introduction

Takapuwahia is the core site within the rohe of Ngati Toarangatira. It was one of the blocks set aside as special reserves in the 1840s when the Crown was intent on acquiring as much Ngati Toa land as possible, on both sides of Cook Strait. The story of these reserves has been addressed in Associate-Professor Boast's report on the period prior to the Native Land Court era.

As with all of the other Ngati Toa areas, the court files are incomplete and there are gaps in the story of these lands, often in relation to the story's conclusion. Since, however, the Maori Land Court's files were copied in their entirety for this project, there appears to be little more that can be done readily in order to plug those gaps. Contemporary evidence might indicate the current state of individual portions and sections, but while the overall picture obtainable with regard to the Takapuwahia lands seems relatively clear from the evidence that has been available for this project. This is so particularly given that the project runs to the mid-twentieth century rather than the twenty-first, and also that the story of particular small portions or shares is complemented by the existing information about the development of the Takapuwahia community presented previously in the Ngati Toa social history report.

5.2. Early Native Land Court Activity

Probably the first indication of Ngati Toa interest in having the Native Land Court operate in the Porirua area came within little over half a year after the revised version of the court had been created under the Native Land Act 1865. On 12 May 1866, Hohepa Tamaihengia and Horomona Nohorua wrote from Takapuwahia to Native Under-Secretary William Rolleston setting out (a) the boundaries of 'our' land at Porirua, and (b) how they expected that matters would be handled.⁵⁹⁸ First, they wrote:

Will you pay attention to the boundaries—they commence at the line of De Castro a European living at Porirua, thence to the line of the Half-castes at Titaha [sic], thence in the stream to the sea, thence along the sea (beach) to Te Koangaumu, thence to the line of (Major) Edwards at

⁵⁹⁸ Hohepa Tamaihengia and Horomona Nohorua to Mr Rolleston, 12 May 1866. WN 110 Takapuwahia Secs Applications 1866-1913. This is an official translation; the original is not on file.

Rukuia[?], thence along that line inland to Nga Pekerere thence to the line at Popoteruru at Kauaeroa thence to the line of the European De Castro.

This indicates an area that seems to take in all of Porirua south of the Thoms [i.e. the ‘Half-castes’] Grant at Titahi Bay and across the whole peninsula to the sea coast, and south to Koangaumu and Rukuia[?]. The application form was annotated as being for ‘part of the Takapuwahia reserve’. They then explained:

Friend, this land is for us for ever that is for our children, lest when your children grow up they quarrel. Will you make this piece of ground sacred by a Crown Grant. The name of the land is Koangaumu [sic]. When this has been settled by the land Court, send quickly the Crown Grant. Enough.

Apart from the precise area concerned, it appears that the aim of having the Native Land Court come first was to facilitate not alienation but preservation, to have the land ‘made sacred’—presumably ‘tapu’ in the original—such that it would remain in the ownership of their descendants. Thus preserving the Ngati Toa ownership of the land would prevent future conflict with Pakeha—implying that they recognised full well that undue land loss would generate such conflict. This letter was written, of course, in the middle of the period of the New Zealand Wars. Their leaders Matene Te Whiwhi and Tamihana Te Rauparaha had also been prominent in the creation of the Kingitanga, which had preservation of Maori land as one of its central foci, so at all levels Ngati Toa would have been fully attuned to the importance of land retention. But also, since their preferred method of doing so was to obtain a Crown grant they must also have been alive to the legal protections this would provide, together with the possibilities for economic use that a legal title would have facilitated.

Their application form was annotated by Chief Judge Fenton on 13 July: ‘Treat in usual way’. He added a further instruction.⁵⁹⁹

Write a circular to the Judges calling attention to Cl[ause] [blank] of the Act, & suggest to them the propriety of enquiry & taking evidence in such cases as to whether the land under investigation ought to have [ill.] so as to prevent the owners from harming themselves.

Mihaka Tumuakirangi and Ihakara Hoha applied on 29 January 1867 to have Pokaiwhenua investigated. A rough sketch map accompanying it appears to indicate that it

⁵⁹⁹ Annotation, 13 July 1866. WN 110 Takapuwahia Secs Applications 1866-1913. A list of the other 5 judges of the Native Land Court was dated July 17 and initialled, presumably by the Registrar or clerk.

was square-ish and located between Takapuwahia and Titahi but gives no other details including landmarks or size.⁶⁰⁰

A panui was issued on 2 April 1867 for a Native Land Court hearing of blocks around Wellington to begin on 19 June 1867. Takapuwahia was on the list of blocks to be investigated, the applicant being given as ‘Hohepa Tamaihengia me etahi atu’—as it was also for a Waiare Block. Pokaiwhenua was also listed with Mihaka as the applicant.⁶⁰¹ There is no further indication that the court proceeded with this hearing, and presumably it could not have done so, given Takapuwahia’s reserve status.

Erenora Tungia applied on 10 June 1881 to succeed to the Takapuwahia interests of Paramihia Paruparu who had died in May 1881.⁶⁰² What these interests might have been is unclear, given that there had apparently been no awards of title by this time.

In January 1884, Tatana Te Whataupoho wrote from Poroutawhao applying for a rehearing in relation to Porirua lands, but it was unclear as to exactly which lands he was concerned about, and he was told that if they had been dealt with at the last Wellington sitting then ‘it is too late’.⁶⁰³ Tatana wrote again to Bridson, the court Registrar, in May 1884 saying that he had heard Commissioner Mackay had adjudicated on it in October 1883.⁶⁰⁴ He continued:

The document showing the land which was held formerly for us all for the tribe of Ngatitōa was produced at the hearing.

However he asserted that ‘none of us’ had received any interest in any portions of that land. The response ordered by Bridson was that ‘the Takapuwahia claim was heard by Mr. Commissioner Mackay and cannot be reheard’.⁶⁰⁵

What appears to have been happening during this period is that the Commissioner of Native Reserves, by then Alexander Mackay, had conducted some sort of hearing into who were the individuals entitled to benefit from the Takapuwahia Reserve. Mackay apparently determined a list of

On 23 July 1885, Chief Judge J.E. Macdonald, Judge Richard Gill and Assessor John Alfred Jury found Tamati Waiti, Hohaia Te Kotua, Ngahina Paearo, Ringi Te Kotua and Mate Paearo to be the successors to Heni Paearo’s share in the land at Porirua known as

⁶⁰⁰ Application, 29 January 1867. WN 110 Takapuwahia Secs Applications 1866-1913.

⁶⁰¹ Panui, 2 April 1867. WN 110 Takapuwahia Secs Applications 1866-1913.

⁶⁰² Application, 10 June 1881. WN 110 Takapuwahia Secs Applications 1866-1913.

⁶⁰³ W. Bridson, filenote, 29 January 1884. WN 110 Takapuwahia Secs Applications 1866-1913.

⁶⁰⁴ Tatana Te Whataupoho to Bridson, 1 May 1884. WN 110 Takapuwahia Secs Applications 1866-1913.

⁶⁰⁵ W. Bridson, filenote, 13 May 1884. WN 110 Takapuwahia Secs Applications 1866-1913.

Takapuwahia.⁶⁰⁶ Then, under the Maori Real Estate Management Act 1867, they appointed Maaka Pukehi and Hohaia Te Pokaitara trustees on behalf of two minors, Ringi Te Kotua (m 12) and Mate Pararo (f 9) in respect of such land at Takapuwahia as they had succeeded to from Heni Pararo.⁶⁰⁷ On the following day, the same court found Hohaia Te Kotua, Ngahua Te Kotua, Ringi Te Kotua, Mata Te Kotua and Whakarau Hipirini to be the successors to Hipirini Te Kotua.⁶⁰⁸ They then appointed Maaka Pukehi and Pene Koti trustees for the same two minors, plus Whakarau Hipirini (m 7) in respect of such land at Takapuwahia as they had succeeded to from Hipirini Te Kotua.⁶⁰⁹

In May 1887, the names of the owners of Takapuwahia Reserve, now administered by the Public Trustee, were:⁶¹⁰

Rene Te Ouenuku	Hohaia Pokaitara
Pirihana Tungia	Hiria Te Aratangata
Tamati Waiti (1/10)	Whakarau Hipirini (1/10)
Hohaia Te Kotua (1/5)	Ringi Te Kotua (1/5)
Mata Te Kotua (1/5)	Ngahua Te Kotua (1/5)
Hohepa Horomona	Raiha Puaha
Wi Neera Te Kauae	Matenga Te Hiko
Hanikamu Te Hiko	Charles Cervantes
Ruihi Horomona	Ihaia Te Paki

Through the mid-1880s there were a series of applications by Raiha Puaha, and sometimes together with Ringi Te Kotua, Wi Neera and Manikanu Te Hiko to have Takapuwahia subdivided, but these were all dismissed or withdrawn. So, too, were a series of succession applications through the 1890s. The files give no indication of the reasons why they were so universally unsuccessful.

By the early 1890s, however, the Native Land Court moved ahead with the process of awarding a legal title to individual owners. Some of the impetus at least was coming from the Crown, to develop part of the area for its own purposes using the Public Works legislation. When the Native Land Court was initially going to conduct its investigation of the title of Takapuwahia in mid-1892, there was no suitable survey plan of the block. Therefore the Governor, the Earl of Glasgow, applied to the court to accept instead as sufficient a sketch

⁶⁰⁶ Succession order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).

⁶⁰⁷ Trustee order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).

⁶⁰⁸ Succession order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).

⁶⁰⁹ Trustee order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).

⁶¹⁰ W. Bridson, filenote, 7 May 1887. WN 110 Takapuwahia Secs Applications 1866-1913. Apart from those otherwise designated, all owned a 7/99 share.

map he provided.⁶¹¹ This sketch map had apparently been prepared by a Mr. Mason for Dr MacGregor who had intended in the previous year to take at least some of Takapuwahia under the Public Works Act for the Asylum. The map was sent by Judge Mackay to the government to see if it would be adequate to replace a certified map. The Governor's application (called an authority by the officials) was sent with the sketch map to Judge Mackay on 25 August 1892.⁶¹²

The crucial hearing of the Takapuwahia Block was conducted by Judge Alexander Mackay and Assessor Rawiri Rota Te Tahiwiri in September 1895. At that time, the parent block was divided first into two—the rural portion and the township—and the rural portion was partitioned into block A to K and the township into 126 residential sections. The rural blocks A to K appear to have been awarded with restrictions on alienation forbidding permanent alienation and all temporary alienation except by lease of no more than 21 years.

Some of the smaller sections around the district have given rise to the more extensive litigation, together with insights into, and determination made, upon the history of Ngati Toa as seen by the courts on the basis of the evidence presented to it by various witnesses.

For example, the Native Land Court on 4 July 1906 appointed Raiha Puaha, Kereihi Manipiri and others as successors to Pirihana/Ngahuka Tungia. This decision was appealed in relation to Pukerua 3C1, Kenepuru 2A and now Takapuwahia sec 126, by Amiria Te Kairangi/Horomona. The Native Appellate Court on 19 June 1907 affirmed the decision in each of the cases. The Appellate Court's observation was:⁶¹³

The land is part of an area of land conquered by Ngati Toa, and was on investigation of title awarded to those descendants of Pikauterangi who took part in the conquest.

Pikauterangi himself took no part in the conquest and was not an owner of the land, but in order to determine who among his descendants now living are the nearest of kin to the deceased the Court held that relationship through Pikauterangi as the common ancestor had to be traced.

The rights to the district had come through the conquest not by Pikau Te Rangi himself, but by his sons, Te Manuhiri, Pehi and Rangihiroa, who thereby gained the rights along with their sister Wikitoria, who with Ngahuka was included in the title originally. When Ngahuka died without issue, the Native Land Court appointed as successors representatives of the four, but the more contentious matter was the relative interests. That had been appealed to the Native Appellate Court but on 3 July 1906 it had referred the matter back to the Native Land Court to determine those relative interests.

⁶¹¹ Governor to presiding judge, Porirua, 23 August 1892. WN 110 and 111 Takapuwahia Correspondence 1894-1943.

⁶¹² Correspondence, 25 August 1892. WN 110 and 111 Takapuwahia Correspondence 1894-1943.

⁶¹³ Native Appellate Court judgment (vol 1, p 129), copy. WN 110 and 111 Takapuwahia Correspondence 1894-1943.

The Appellate Court now agreed with the appellants that they were more closely related to Ngahuka Tungia through Rangiwahaia than connections through Pikau Te Rangi provided, but it had already been found that Rangiwahaia herself had no transmissible interest in the lands. The appellants therefore had less interest in the lands through Ngahuka's connection to her than did others who traced through Ngahuka's connection with her husband, Paru.

There must then have been a petition from Amiria as the Appellate Court's minutes of the case were urgently required by the Native Affairs Committee.

5.3. Takapuwahia Block A

The title to Takapuwahia A (122ac 2r 23.9p) was originally awarded by the court in September 1895 to Hohepa Horomona and Raiha Puaha equally. At the same time, the court decided that the 61 acres for Hohepa was to include the other members of the Nohorua family and the part allotted to Raiha was to include the relatives of Hohepa Tamaihengia. This was, though, noted to have been an interlocutory order which remained in effect until superseded by a final order.⁶¹⁴ Block A, which was nearly rectangular, ran along the inland side of Takapuwahia blocks B and C1 and C2. It was bounded to the north by Koangaamu, to the west by Komangarautawhiri A1 and A2, and to the south by Takapuwahia D1B.

A freehold order made by Judge Gilfedder did supersede this one on 22 March 1911. Now, though, there were 20 names on the order in 2 shares and although Raiha Puaha and Ruihi Horomona received a ½ share each, the others divided the other share, the interests of 7 owners being as small as 1/84th.⁶¹⁵

Six months later, on 2 September 1911 Block A was subdivided by Judge Gilfedder. The northern half was subdivided into Block A North 1 and 2. Block A North 1 (30ac 2r 29p) was awarded to Ruihi Horomona solely, while Block A North 2 (30ac 2r 23.9p) was divided equally amongst 5 owners.⁶¹⁶ Within days, Willie Field's law firm had filed two applications seeking confirmation by the Ikaroa District Maori Land Board of a pre-existing transfer dated 6 May 1911 of the whole A North block to Herbert Jillett for £61 10s (i.e. £1 per acre).⁶¹⁷ These applications were refused in respect of A North 2 on the grounds that the vendors' land list was unsatisfactory and they were advised to arrange an exchange or purchase of each others' interests before they sold any more land. For A North 1, the Board initially refused the transaction for the same reason, but also because Ruihi's husband made 'doubtful use of money', so the Board decided not to allow the transaction for A North 1 unless the full purchase was paid to the Board for investment or application in a manner to be approved by

⁶¹⁴ Title order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).

⁶¹⁵ Freehold order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).

⁶¹⁶ Partition order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).

⁶¹⁷ Application, 14 September 1911. A1905/129 to 1918/204 Takapuwahia.

the Board. This apparently happened as the certificate of transfer was endorsed on 18 April 1912 and thereafter throughout the rest of 1912 a series of payments were made on behalf of Ruihi Horomona, mostly to Stewarts Timber Co, suggesting that the proceeds from this sale were being used to finance the development of another, perhaps with the building of a house. There is no purchase price mentioned in the documents on file, but the outgoing payments total some £90, which would probably be all or most of the purchase price for the 30 acres of A North 1.⁶¹⁸

The A North 2 owners continued to try to utilise their land. In October 1911, four owners (Matiu and Watokorau Teieti, Potete Nopera and Ringi Horomona) applied to have the Board confirm a lease of the 30ac 3r block to Ringi Horomona for rent of 7s 6d per acre. The approval was eventually not given due to the non-appearance of the parties when the Board considered the application.⁶¹⁹ One of the A North 2 owners, Hoani Horomona or Ratapu or John Elkington, then had his 6 acres 2 roods partitioned out in January 1912 as Block A North 2A.⁶²⁰ In March 1912 he sold the block to Herbert Jillet for £65 and a month later he applied to the Ikaroa Board to confirm the transfer. The Board confirmed the transfer a month later, subject to production of the purchase receipt, which took another six months.⁶²¹

Takapuwahia A North 2B (24ac 2r 0p) was alienated in several stages. In December 1920, the Ikaroa Board confirmed the sale of 18ac 1r 20p to Hohua Rawiri Puaha Prosser of Porirua for £221 5s. On 5 August 1957, the Maori Land Court approved the sale of the 1/20th interest of Hou Horomona to Mrs. Audrie Stevenson of Porirua for £50, presumably to augment her earlier acquisition of A South 1.⁶²²

The southern half was originally left intact in September 1911 as Takapuwahia A South (61ac 1r 11p), but in October 1912 Raiha Puaha had her ½ share partitioned out as Block A South 1 (30ac 2r 25p), while the other half share was awarded to 13 owners as Block A South 2, 6 of them having one-seventh each, while 7 of them shared the final one-seventh.⁶²³

In October 1954, Block A South 1 was sold to Mrs. Audrie Stevenson of Porirua for £450.⁶²⁴ Block A South 2, all that remained of Block A, went out of Ngati Toa ownership in 1960 when the Crown included it in a taking under the Public Works Act for state housing, as discussed below.

5.4. Takapuwahia Block B

⁶¹⁸ Application, 14 September 1911. A1905/129 to 1918/204 Takapuwahia.
⁶¹⁹ Application, 30 October 1911. A1905/129 to 1918/204 Takapuwahia.
⁶²⁰ Partition order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).
⁶²¹ Application, 2 April 1912. A1905/129 to 1918/204 Takapuwahia.
⁶²² WN 110A Takapuwahia Block Order File.
⁶²³ Partition order. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).
⁶²⁴ Filenote. WN 110 Takapuwahia (Vol 1) Block Order File (General Land).

Takapuwahia B (42ac 2r 30p) was awarded in 1895 to 20 owners and made inalienable except by lease for a period of not more than 21 years.⁶²⁵ Block B was partitioned by Judge Gilfedder in April 1914. Block B1 (10ac 3r 13p) was nearly rectangular, bounded by the Hukarito



Native Town, Takapuwahia, Porirua, date unknown.

⁶²⁵ Title order. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

Stream to the north, Block A North 2B to the west and C2 to the south. It was awarded to 11 owners. It was actually 11ac 2r 37p in size, but a roadway laid off through it subtracted 3r 24p.⁶²⁶ Block B2 (15ac 3r 14p), between B1 and B3, was awarded to 4 owners, but Waitaoro Raniera was awarded over 10 acres of it, Rawiri Iraia some 2½ acres, and two others over 1 acre each. One acre and 11 perches had been excluded for the roadway.⁶²⁷ Block B3 (12ac 2r 15p), a triangular block with the Hukarito Stream along the north, the township to the south and B2 to the west, was awarded to 20 owners. It was actually 14ac in size, but the roadway laid off through it subtracted 1ac 1r 25p.⁶²⁸

In July 1916, the Ikaroa District Maori Land Board confirmed a lease of all of Block B2 (15ac 3r 14p) and part of C2A (14ac 3r 39p), totalling 29ac 1r 32p, to Richard Weller, studgroom of Porirua, on a 14-year term from July 1915, at a rental of £25 15s per annum.⁶²⁹ The lessors were Waitaoro Raniera, Rawiri Ihaia and Wakapiri Kapo. The initial application was made in May 1916 for confirmation of a lease agreed to in September 1915. But the fourth owner, Rangirere Kapo, had not signed. Further, the Board considered that the 14 years since there had been a valuation was too long to assess the adequacy of the rent. However, the matter was held over and in July the Board was able to confirm the lease, the valuations having indicated that the rent should be not less than £22 15 a year. The rentals indicated for each owner added up to £26 19s—Waitaoro Raniera £22 3s, Rawiri Iraia £2 8s, Wekipiri and Rangirere Kapo £1 4s each, based on their relative shares of the ownership, Waitaoro being the sole owner of C2A and owning 10 of the 15 acres of B2—so the original rent must have been prior to the addition of Rangirere as the fourth owner.⁶³⁰

In April 1942, the Registrar of the Native Land Court was informed by the District Engineer that the Public Works Department intended to enter upon Popoteruru, and Takapuwahia B2 and C1C for unspecified Defence purposes. Any claims for rent or compensation as a consequence were to be directed to the Public Works Department.⁶³¹

In April 1956, nearly all of Takapuwahia B was taken by the Crown under the Public Works Act for state housing purposes.⁶³² All of Block B2 (15ac 3r 14p) was taken and another 23ac 1r 30p being the ‘balance certificate of title’ were also taken. This adds up to a little over 39 acres, so it is presumably what had been left in Ngati Toa owners’ hands from the original 42½ acres after the road area had been deducted earlier.

⁶²⁶ Partition order. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶²⁷ Partition order. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶²⁸ Partition order. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶²⁹ Confirmation note. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶³⁰ Application, 14 March 1916. A1905/129 to 1918/204 Takapuwahia.

⁶³¹ District Engineer to Registrar, 29 May 1942. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶³² NZ Gazette, 12 April 1956, 499.

5.5. Takapuwahia Block C

Takapuwahia Block C had also been created and subdivided by Judge Mackay at the time of the original investigation of title in September 1895. It ran across and around the north-west corner of the Takapuwahia Township by sections 66-68 at the top of No 4 and No 7 streets.

Takapuwahia C1 (17ac 3r 0p) was originally awarded to Matenga Te Hiko solely and made inalienable except by lease of no more than 21 years.⁶³³ It was subject to a right of way half a chain wide giving Block South A access to No 4 Street. Piripi Matenga Te Hiko of Porirua applied on 3 September 1931 for Block C1 to be partitioned and this was done on 14 January 1932, into C1A, C1B and C1C.⁶³⁴

Block C1A (1ac) was awarded to Riki, Werawera, Hanikamu and Wiremu Wi Neera equally.⁶³⁵ In October 1933, 1 rood was transferred to Hokimate Pohio of Porirua from natural love and affection, being the interest of Riki Wi Neera.⁶³⁶ Takapuwahia C1A was partitioned on 30 May 1947 into 3 portions. Block C1A1 (1r 18.6p) was awarded to Wiremu Wi Neera solely.⁶³⁷ Block C1A2 (1r 21p) was awarded to Hanikamu Wi Neera solely. Block C1A3 (1r 1p) was awarded to 5 owners unequally.⁶³⁸ In November 1963, the Maori Land Court cancelled the partition orders for C1A2 and C1A3 so that the interest of Hanikamu Wi Neera could be vested in Waina Roiri so as to provide an additional area for a house site.⁶³⁹ Actually the new partition order vested C1A3 (now designated as 1r 22.8p) in Waina and Rotomatangi Roiri jointly.⁶⁴⁰ On 23 September 1971, the status of C1A3 was declared by the Deputy Registrar of the Ikaroa Maori Land Court to have ceased to be Maori land and changed to European land under s 6 of the Maori Affairs Amendment Act 1967. The two owners remained unchanged.⁶⁴¹

Block C1B was against Section 66. Judge Gilfedder ordered on 14 January 1932 that Pumipi Matenga Te Hiko, as part successor to Matenga Te Hiko, was owner of Takapuwahia C1B of 1r 37.4p.⁶⁴² Block C1B was then sold to William Irlam, tiler and slater of Porirua, for £35 on 1 March 1932.

The much larger (16ac 1r acre) C1C was bounded on the south by the Takapuwahia Stream and ran across to South A2, surrounding C1A on the west, south and east. Block C1C

⁶³³ Title order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶³⁴ Application, 21 September 1931. WN 110 Takapuwahia Sec Applications 1869-1948.
⁶³⁵ Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶³⁶ Filenote. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶³⁷ Partition order. WN 110A Takapuwahia Block Order File.
⁶³⁸ Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶³⁹ Cancellation order. WN 110A Takapuwahia Block Order File.
⁶⁴⁰ Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁴¹ Status declaration. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁴² Partition order. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

was awarded to Pumipi Matenga Te Hiko as part successor to Matenga Te Hiko.⁶⁴³ It was later subdivided with Blocks C1C1 (1ac), C1C2 (1r), C1C3 (2r) and C1C4 (1r) being taken from it. Then in 1971, another 1ac 0r 12p was partitioned out and awarded as C1C6 to James Wipou Reweti and Makere Kohe Love Reweti as joint tenants equally.⁶⁴⁴ Block C1C1, owned by Mere Love, had its status changed by registrarial declaration from Maori to European land on 4 June 1970.⁶⁴⁵ The same status change happened to Block C1C2 (1r), owned by Tiori Raymond, Block C1C3 (2r), owned by Rutene and Heni Waaka, Block C1C4 (1r), owned by Ria Pirihiira and Marangai Elkington, Block C1C5 (0.8p), owned by Riki Wineera, on the same day.⁶⁴⁶

Parts of both C1B and C1C were taken by the Crown under the Public Works Act in 1960 for state housing as discussed below.

Takapuwahia C2 (45ac 2r 12p) was originally awarded in 1895 to Raiha Puaha solely, and made inalienable except by lease not exceeding 21 years.⁶⁴⁷ It was partitioned in September 1914. Block C2A (14ac 3r 39p) was awarded to Waitaoro Rangiera solely.⁶⁴⁸ It was then itself partitioned in October 1920, Block C2A1 (4ac 3r 39p) being awarded to Wi Katene Tipo and C2A2 (4ac 3r 39.5p) being awarded to 4 owners from the Nopera whanau equally.⁶⁴⁹ Wiremu Katene's lease of 4ac 4r 39p out of C2A for 21 years at £6 per annum was confirmed from the beginning of 1922. This amounted to the interests of Turama, Te Raha and Wikitoria Nopera.⁶⁵⁰

In January 1952, Block C2A1 (1ac) was partitioned and Block C2A1A was awarded to Taku and Purere Katene equally.⁶⁵¹ Purere's interest was partitioned out in August 1956 as Block C2A1A1 (1r 20.4p) and this small block was sold in June 1957 to Percy Warren of Porirua for £250.⁶⁵² Block C2A1A2 (2r 14.7p) was awarded to Taku Katene solely in 1956, but in May 1959 it was gifted to Taku and Florence Katene.⁶⁵³ On 9 June 1970, C2A1A2 was declared to have had its status changed from Maori land to European land under the Maori Affairs Amendment Act 1967, its owners still being Taku and Florence Katene.⁶⁵⁴ Block C2A1B1 (2r) was created in August 1952 and awarded to Pikau Te Rangi Arthur solely.⁶⁵⁵ It was itself partitioned three years later, with Block C2A1B1A (1r) being awarded to Pikau

⁶⁴³ Partition order. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶⁴⁴ Partition order. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶⁴⁵ Status declaration. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁴⁶ Status declaration. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁴⁷ Title order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁴⁸ Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁴⁹ Partition orders. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁵⁰ Filenote. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁵¹ Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁵² Partition order; filenote. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁵³ Partition order; filenote. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁵⁴ Status declaration. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁵⁵ Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

Arthur and C2A1B1B (1r) being awarded to Kenneth Arthur.⁶⁵⁶ In June 1970, both C2A1B1A, belonging to Pikau and Rangitotoia Arthur, and C2A1B1B, belonging to Kenneth and Polive Arthur, were declared to have had their status changed from Maori to European land under the 1967 Act.⁶⁵⁷ Block C2A1B2 (3ac 1r 39.5p) was also partitioned out in August 1952 and awarded to 7 owners.⁶⁵⁸ Part of it was taken by the Crown for state housing in 1960.

In November 1954, Judge Jeune partitioned Block C2A1B2 and created:

- Block C2C (2r 35p), awarded to 2 owners,
- Block C2D (2r 8.5p) awarded to Te Ngiha Katene solely,
- Block C2E (2r 8.6p) awarded to Rangiira Katene (deceased) solely,
- Block C2F (2264 square metres) awarded to Ruia Katene solely,
- Block C2G (22654 square metres), awarded to Teoti/George Katene solely.⁶⁵⁹

Block C2A2 (4ac 3r 39.5p) was created under a partition order of 21 October 1920. In April 1944, there was an application to divide it between its two current owners, Turama Mohi Nopera (who then died) and Wikitoria Mohi Nopera.⁶⁶⁰ Nothing else seems to have happened to it until in July 1951 3r 39.5p were leased to David Prosser for 7 years at £25 for the whole term.⁶⁶¹

Block C2A3 (4ac 3r 39.5p) was also created in 1920 and awarded to Ngawaina Hanikamu solely.⁶⁶² In August 1937, it was transferred to Porikawau Parai on the grounds of natural love and affection.⁶⁶³

Block C2B (30ac 2r 13p) was created in October 1914 and put in the name of Raiha Puaha (deceased) solely.⁶⁶⁴

Blocks C2A2, C2A3 and C2B were taken by proclamation under the Public Works Act 1928 by the Crown for state housing purposes on 13 September 1960.

In August 1970, Block C2F, belonging to Rangiira Katene, was declared to have had its status changed from Maori to European land under the 1967 Act. In March 1971, the same fate befell Block C2D, belonging to Diana Naylor.⁶⁶⁵

Takapuwahia C2H (2r 10p) was awarded to Kathleen Katene solely.⁶⁶⁶

⁶⁵⁶ Partition orders. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁵⁷ Status declarations. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁵⁸ Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁵⁹ Partition orders. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁶⁰ Application, 27 April 1944. WN 110 Takapuwahia Sec Applications 1869-1948.
⁶⁶¹ Filenote. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁶² Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁶³ Filenote. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁶⁴ Partition order. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁶⁵ Status declaration. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).
⁶⁶⁶ Certificate. WN 110A Takapuwahia Block Order File.

Takapuwahia C3 was partitioned on 19 August 1955. The file contains no information in relation to Block C3A. Block C3B (3r 3.8p) was awarded to 15 owners.⁶⁶⁷

5.6. Takapuwahia Block D

Takapuwahia D was also partitioned at the time of the original investigation of title in September 1895.

Block D1 (101ac 2r 0p) was awarded to 6 owners unequally, Matenga Te Hiko receiving 45ac, the other adults receiving 14ac each and the 2 minors 7ac each held in trust.⁶⁶⁸ In November 1910, Ruta Rene and the 2 minors leased their 28 acres for £14 per annum to Herbert Jillett, one of the Jillett family who were using and acquiring so much of the Titahi Bay and related blocks.

Another partition took place in January 1912. Ruta Maaka was the sole owner of D1A1A (7ac) and in February 1912 sold the block to Herbert Jillett for £105, more than twice the valuation of £50 made in April 1912.⁶⁶⁹ The Ikaroa Board's confirmation took until only July 1912 to complete, probably because a premium price appears to have been paid. Jillett must have onsold the block to Rawiri/David Prosser. In 1918, one of 3 owners of D1A1B was Ruta Rene who sold 5 acres of that block to Hohua Rawiri Puaha Prosser/Joshua Henry Prosser in August 1918 for £56 5s (based on a government valuation of that month of £235 for 21 acres, being the whole of D1A1B). Prosser had already leased the land on a 21-year term from November 1910 at a rental of £14 per annum for 27ac 8r 32.2p.⁶⁷⁰ The Board confirmed the sale in February 1919.

As discussed below, Blocks D1A1A and B, owned by Rawiri/David Prosser, were taken by the Crown in 1948 under the Public Works Act for state housing. Part of D1A1B4 was taken in 1960.

On 4 October 1946, Ramari Paraone, the sole owner of Block D1A2A (16ac 2r 22.5p), a long thin block, applied under the Native Purposes Act 1941 s 7 and the Housing Act 1935 to have 2 acres of the block vested in her daughter, Ria Elkington, for a dwelling site, but the application was dismissed by the Native Land Court.⁶⁷¹ The block had been created on 21 August 1929. Block D1A2A was taken by the Crown under the Public Works Act in 1960 for state housing, along with D1B2 and part of D1B.

⁶⁶⁷ Partition order. WN 110A Takapuwahia Block Order File.

⁶⁶⁸ Title record, 2 December 1910. A1905/129 to 1918/204 Takapuwahia.

⁶⁶⁹ Application, 2 April 1912. A1905/129 to 1918/204 Takapuwahia.

⁶⁷⁰ Application, 24 August 1918. A1905/129 to 1918/204 Takapuwahia. The other 2 owners were Te Ouenuku and Te Ruru Rene.

⁶⁷¹ Application, 4 October 1946. WN 110 Takapuwahia Sec Applications 1869-1948.

Riki Rihiaata Wineera was the sole owner of Block D1B. In January 1961, he applied successfully to the court to have 32p from that block vested in Riki Paraone Wineera and his wife Aneta Wineera jointly as a dwelling site.⁶⁷²

On 3 August 1960, Judge Jeune partitioned Block D2 into 11 subdivisions designated A to K. Matehuirua Horomona or Potete (deceased) was declared to be the owner of Block D2A (1r 22p) and D2B (2r 2p). Block D2C (32p) was awarded to 4 members of the Parata whanau and D2D (35p) was awarded to 4 more. Block D2E (1r) and Block D2G (1r) together went to Ephraim Tamihana alone, Block D2F (1r) went to Hou Ngariri Horomona alone, Block D2H (1r) and Block D2I (1r) went to Kimihia/Paranihia Anaru alone, while Block D2J (1r) went to Hou Ngariri Horomona alone. Block D2K (25p) went to 12 owners including many of the Parata whanau in D2C.⁶⁷³ The plan accompanying the orders recorded that neither No. 6 or No 7 roads were legal or formed, even at this time, 65 years after the court had laid them off.

However, in August 1966, Judge M.C. Smith heard applications from the Porirua Borough Council in respect of unpaid rates on these blocks and concluded that the subdivisions should be cancelled which was done forthwith.⁶⁷⁴

The files contain no information about the title history of Takapuwahia Blocks E or F. However, Blocks E1 (60ac 3r 16p) and E2 (3ac) were taken by the Crown under the Public Works Act in 1948 for state housing as discussed below, the then owner being Rawiri/David Prosser.

5.7. Takapuwahia Block G

Takapuwahia G (52ac) had its restrictions on alienation removed by the Aotea District Maori Land Board on 30 March 1906. Following a sitting in Wellington, the Board recommended to the Governor that:

- (a) they be lifted by removing it from the operation of s 117 of the Native Land Court Act 1894 and
- (b) the restrictions in the certificate of title be varied so as to permit a proposed alienation to Rawiri Puaha.⁶⁷⁵

It was not a complete alienation by the four owners, but two of them, Heni Te Rei (3 acres) and Takura Horomona (24½ and 10 acres) wished to sell their shares at no less than £5 per acre.⁶⁷⁶

⁶⁷² Vesting order. WN 110A Takapuwahia Block Order File.
⁶⁷³ Partition order. WN 110A Takapuwahia Block Order File.
⁶⁷⁴ Cancellation order. WN 110A Takapuwahia Block Order File.
⁶⁷⁵ Recommendation. A1905/129 to 1918/204 Takapuwahia.
⁶⁷⁶ Application, 22 September 1905. A1905/129 to 1918/204 Takapuwahia.

Block G was partitioned in July 1911 into G1 (4ac 2r) and G2 (47ac 1r 24p). Herbert Jillett immediately moved to purchase Block G1 and in November 1911 applied for confirmation by the Ikaroa Board of a purchase he had made in September 1911 from the sole owner, Rewi Maaka. Once again Willie Field's firm of Menteth and Ward was acting. The price paid was £48 10s, which accorded with the government valuation of £10 15s per acre, made as recently as November 1910. The Board confirmed the sale by the end of the month, although due to paperwork in relation to the production of the receipt the matter was not finally concluded until June 1912.⁶⁷⁷

Blocks G1 and G2 were both taken by the Crown under the Public Works Act for state housing in 1948, as discussed below. The sole owner at that time was Rawiri/David Prosser. It is unclear how this taking of G1 could have occurred in 1948 when the sale of G1 had already occurred in 1911.

5.8. Takapuwahia Block H

Matenga Te Hiko appealed the decision in Takapuwahia H given by Judge Mackay at Porirua on 20 September 1895.⁶⁷⁸ His ground for appeal was 'personal hardship caused by the decision of the Court'. Since the Native Land Act 1894 s 84 allowed on 14 days within which to lodge an appeal against a Native Land Court decision, he wrote on 5 October 1895 seeking leave to prepare his appeal properly.⁶⁷⁹

Matenga asked for a week's grace, but actually submitted his detailed grounds only the next day.⁶⁸⁰ These were:

- The claimant's agent had failed to examine fully the counter-claimant's witnesses, 'being afraid of the claimant's claim on account of Te Hiko's name';
- That agent had himself another claim in the main block which he was conducting conjointly with the counter-claimant.

Matenga had given evidence to the court that Te Hiko had a personal right or "mana" to the land', but it had preferred the evidence of others that Matenga had claimed through a conveyance or gift under which Te Hiko had received in the first place.

As an insight into how cases were, or could be, conducted before the court, Matenga was represented by Kerehi Roera as conductor, and opposed by Raiha Puaha, represented by Mehaka Karepa.⁶⁸¹ It was not always a case of the individual owners or claimants

⁶⁷⁷ Application, 11 November 1911. A1905/129 to 1918/204 Takapuwahia.

⁶⁷⁸ Application, 4 November 1895. WN 110 Takapuwahia Secs Applications 1866-1913.

⁶⁷⁹ Matenga Te Hiko to Chief Judge, 5 October 1895. WN 110 Takapuwahia Secs Applications 1866-1913.

⁶⁸⁰

⁶⁸¹ 28A Otaki MB 304-316. The minutes are also reproduced in MLC MB 28A (Repro 448).

representing themselves and arguing their own cases. As has been mentioned elsewhere, the case could be ‘conducted’ by a lawyer increasingly, or often, until the mid-twentieth century anyway, by a conductor.

Kerehi Roera stated that the principal objection was that Judge Mackay had reached his decision on the understanding that this block had been included in the gift to Ngati Haumia of the Kenepuru Block, whereas it was now contended that the mana of Te Hiko was over the land and that this descended to Rawiri Tungia and Ria Waitohi, who had expressly withheld this block from that gift. This was the case until in October 1895 Ngati Haumia first asserted that there was any of the gift land outside Kenepuru.

Matenga Te Hiko, however, contradicted much of what his conductor had just said, stating that the mana of Te Hiko descended to himself, his son, and that therefore, as had already been recognised in other blocks, in this block too his pre-eminent position should be recognised. After Te Hiko’s death, Rawiri had mana over the people, but no-one had mana over the land. Matenga said that Te Hiko had gifted to Mohi Te Hua all the land between the Takapuwahia and Urukahika streams and Mohi cultivated across that area, whereas the gift to Ngati Haumia had been entirely enclosed within Kenepuru. Matenga claimed Block H on the basis of rights derived from both Mohi and (principally) Te Hiko.

Raiha Puaha directly contradicted Matenga, stating that Block H was part of Te Hiko’s gift to Ngati Haumia of the land lying between the Kenepuru and Mahinawa streams. It was made because he was enraged at his wife having run away and he did not give it to Matenga because she was pregnant when she left and Te Hiko was dead before Matenga’s birth. He claimed that Ropata as leader of Ngati Haumia had allowed part of the total gifted area to remain in the possession of Ria, Te Hiko’s sister and Raiha Puaha’s mother.⁶⁸²

The Chief Judge gave the court’s judgment on 5 March 1896, which covered Takapuwahia H, I and J. It was accepted that Takapuwahia H had indeed been part of Te Hiko’s gift to Ngati Haumia, which destroyed any claim of Matenga’s through Te Hiko. Matenga could therefore only come in as the representative of Mohi Te Hua who had been allowed some use of the land under the mana of Rawiri and Rua of Ngati Haumia. Matenga was therefore awarded 40 acres from the area, Teo Reene was allowed 25 acres, Waitaoro Ramora 15 acres and the balance of 215 acres to Raiha Puaha.⁶⁸³

Takapuwahia H was partitioned in July 1896. Block H1 (25 acres) was awarded to Ruta Hira/Pene and Ngahua Rene as trustees for Te Owenuku Rene. In November 1910 they leased half of H1 (12 ac 2r) to Hohua Rawiri Puaha Prosser/Joshua Henry Prosser for 14 years for £21 17s 6d per annum. In November 1917 he applied to the Ikaroa Board for confirmation of a transfer of the undivided half-share, offering £162 or the owners’ interest in the

⁶⁸² 28A Otaki MB 310-313.

⁶⁸³ 28A Otaki MB 314-316.

government valuation, whichever was the greater. A government valuation of February 1918 indicated a value of £320 for the whole block, however the Board appears to have fixed the consideration at £242 instead.⁶⁸⁴

Block H2 (39ac 3r 27p) was awarded to Matenga Te Hiko solely. In September 1916, Matenga leased it to Hohua Rawiri Puaha Prosser for 21 years for a rental of £22 per annum for the first 7 years and the 5% of government valuation for the second 7 years and 5% of the new government valuation for the third 7 years. The government valuation was £360. In November 1916, Prosser applied for confirmation from the Ikaroa Board, but Judge Gilfedder annotated the application: ‘Why exclude the £20 in improvements! No covenants as to rabbits weeds etc....’ and held the application over. At the end of March 1917, he agreed to confirm it subject to the addition of the ‘usual covenants’ relating to weeds, rabbits etc and to a default clause. The implication from the judge’s comments and reluctance to confirm the lease is that there was a standard set of conditions in such leases that obliged the lessee to keep the land up to a reasonable standard, at least in respect of noxious animals and plants, and that there was some legal protection for the Maori lessor should the lessee default. It also indicates that the Board was simply a rubber stamp for any alienation, even a lease rather than a sale.

As discussed below, Blocks H2, H3 and H4 left Ngati Toa hands when taken by the Crown under the Public Works Act for state housing in 1948, and H1 in a separate arrangement at much the same time. The owners at that time were still Rawiri/David Prosser, Te Oenuku Rene and Te Ruru Rene.

The files contain no information about Blocks I or J.

5.9. Takapuwahia Block K

Takapuwahia K (2ac) was created by freehold order in November 1912, although it had already been designated as a separate cemetery block by Judge Mackay in 1895 and awarded to 9 owners with restrictions on its alienability.⁶⁸⁵ On 14 September 1972 it was gazetted as a Maori reservation under s 439 of the Maori Affairs Act 1953.⁶⁸⁶ See also below with the cemetery sections in the township as it was designated as the Wesleyan cemetery.

5.10. Public Works Alienations of Takapuwahia Lands

⁶⁸⁴ Application, 30 January 1918. A1905/129 to 1918/204 Takapuwahia.

⁶⁸⁵ Title order. WN 110A Takapuwahia Block Order File.

⁶⁸⁶ NZ Gazette, 14 September 1972, 1957.

The Native Land Court ordered on 10 June 1914 that land along the western foreshore of the Porirua Harbour be laid off as a road line under the Native Land Amendment Act 1913 s 49. Once the compensation had been assessed for the roadway being laid off along the harbour front through Takapuwhia A2B, B 1, B2 and B3, the Crown paid the compensation to the Ikaroa District Maori Land Board for distribution to the various owners. The final installment of £52 16s 6d was paid on 10 June 1915.⁶⁸⁷

The interest in taking land for a public roadway along the western side of Porirua Harbour was revived in 1915 when the Department of Lands and Survey realised that although the road had long been formed and had been in use ‘for many years’ it had not been proclaimed as a public highway, and began taking steps to rectify this.⁶⁸⁸

The proclamation was made in February 1917.⁶⁸⁹ The areas taken were portions of:

Takapuwhia North A2B	1ac 1r 20p
Takapuwhia B1	0ac 3r 24p
Takapuwhia B2	1ac 0r 17p
Takapuwhia B3	1ac 1r 25p

A generation later, as part of the expansion of the Crown’s interest in pushing forward the new Porirua urban development immediately after World War 2, an agreement was reached with the owners of a number of blocks in and near Takapuwhia for the Crown to take these blocks. The process was that the Crown, presumably having identified the lands it was interested in, published a Notice of Intention to acquire the blocks in the *Gazette* of 21 March 1946. It then reached an agreement with David Prosser in relation to the blocks, most of which he held as executor of the estate of Raiha Puaha, and only a few in his own right. The blocks were then taken by proclamation and the compensation for portions still held as Maori land was to be determined by the Maori Land Court under section 104 of the Public Works Act. The blocks being alienated by Prosser were from in and around Takapuwhia. From Takapuwhia there were:⁶⁹⁰

Name	ac r p
Takapuwhia D1A1A	6 3 32.2

⁶⁸⁷ Filenote. A1905/129 to 1918/204 Takapuwhia.

⁶⁸⁸ Under-Secretary Lands and Survey to Registrar, 10 November 1915. WN 110 and 111 Takapuwhia Correspondence 1894-1943.

⁶⁸⁹ NZ Gazette, 15 February 1917.

⁶⁹⁰ F. Langbein to Registrar, Ikaroa MLC, 12 July 1948. WN 110 Takapuwhia Sec Applications 1869-1948.

Takapuwahia D1A1B	21 0 0
Takapuwahia E1	60 3 16
Takapuwahia E2	3 0 0
Takapuwahia G1	4 1 39.1
Takapuwahia G2	47 1 24
Takapuwahia H2	39 3 27
Takapuwahia H3	14 3 38
Takapuwahia H4	214 2 0
And from other blocks:	
Part Kenepuru 1A	17 3 28
Mahinawa 1A	22 2 17.1
Mahinawa 1B	7 2 7.6
Mahinawa 1C1	1 0 0
Urukaika	25 1 17.1

So over 412 acres of the original total area of Takapuwahia went out of Ngati Toa hands at this time. Nearly all of this land was in the hands of Raiha Puaha solely until her death and Prosser had become the executor of her estate. Another 75 acres of neighbouring land went in the same transaction. Prosser was identified by the official as a ‘Europeanised Maori’—altogether almost 500 acres left the Ngati Toa Takapuwahia estate in this one transaction.

At the same time, to add to this cumulative loss, at this time in mid-1948 the Crown was also in the final stages of negotiating to acquire from Te Ouenuku Rene and Te Ruru Rene the 25-acre Takapuwahia H1, and for a 25-link wide right of way along the north-west boundary of the Urukaika Block to its junction with Titahi Bay Road. The Commissioner of Works on the direction of the Minister of Works requested the Registrar of the Ikaroa District of the Maori Land Court to move the court at its next sitting to assess what compensation was due and to whom in relation to Block H1, applying section 104 of the Public Works Act 1928. This application was made in anticipation of an impending proclamation taking all of the Prosser and Rene lands mentioned ‘for better utilization’. Prosser and the Messrs Rene required early payment.⁶⁹¹

Compensation for the April 1956 taking of nearly all of Takapuwahia B, discussed above, was assessed on 23 January 1958 by Judge Jeune in the Maori Land Court under s 104 of the Public Works Act 1928. The file does not reveal why it took nearly two years from the

⁶⁹¹ F. Langbein to Registrar, Ikaroa MLC, 12 July 1948. WN 110 Takapuwahia Sec Applications 1869-1948.

gazetting of the taking to have the compensation assessed, but the case was heard on the application of the Ministry of Works. The sum assessed for Block B1 was £599 17s, which was to be paid to the Maori Trustee on behalf of the 53 owners, plus £26 5s legal costs to be paid to their solicitors.⁶⁹² The sum assessed for Block B2 was £1055 5s 10d for the 49 owners, plus £41 11s for their legal costs.⁶⁹³ Compensation for Block B3 seems to have been rather more complicated. Judge Jeune originally assessed this as £750, but the owners must have appealed to the Maori Appellate Court. The Appellate Court decided that the correct sum was actually £5468 plus 4½% interest from the date of taking. Directed to use these sums, Judge Jeune now calculated this as £6074 0s 11d plus £73 9s 3d legal costs, which was to be paid to the Maori Trustee on behalf of the 21 owners.⁶⁹⁴

On 15 September 1960, a number of Takapuwahia pieces of land around the township were taken for state housing, totalling some 155 acres. They included:⁶⁹⁵

Block	Approx. Area
Rangituhi	9
A South 2	30.5
C2A2	5
C2A3	5
C2B	30.5
Part D1A1B4	18.5
Part D1A2A	15
D1B2	1
Part C1C	12.5
Part C2A1B2	0.5
Part C1B	4
Part C1C	0.5
Part D1B	22

When Blocks C2A2, C2A3 and C2B were taken by proclamation under the Public Works Act 1928 for state housing purposes on 13 September 1960, as discussed above, the Minister of Works accordingly applied to the Maori Land Court for a determination of the

⁶⁹² Order assessing compensation. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶⁹³ Order assessing compensation. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶⁹⁴ Order assessing compensation. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

⁶⁹⁵ NZ Gazette, 15 September 1960, 1433. WN 110 Takapuwahia (Vol 2) Block Order File (General Land).

compensation payable to the blocks' owners. On 8 May 1963—over two and a half years later, for some reason—Judge Kenneth Gillanders Scott awarded compensation as follows.⁶⁹⁶

Block	Compn.	Interest	Rates payable by Crown	Gross Compn.	Less Rates Due	Net Compn.
C2A2	£4900	£645	£11 15s	£5556	£37 5s	£5519 11s 5d
C2A3	£4000	£526	£11 15s	£4538	£54 8s	£4483 19s 4d
C2B 1 ⁶⁹⁷	Pt £2920	£384	£2 9s	£3306	£12	£3294 17s 1d
C2B 2 ⁶⁹⁸	Pt £1290	£169	£3 12s	1463	£15 12s	£1447 15s 10d
C2B 3 ⁶⁹⁹	Pt £890	£117	£2 9s	£1009	£12	£997 12s 5d
	£14,000	£1483	£32 2s 6d	£15,875 2s 9d	£131 6s 8d	£15,743 16s 1d

The interest will have covered the time lapse between when the land was taken and the court sitting when the compensation due was determined, i.e. from September 1960 to May 1963, probably at 5% pa. The Crown was also ordered to pay £131 6s 8d to the Makara County Council for rates due. This was different from the rates payable by the Crown, presumably for the period since it had taken the lands, and was probably a measure adopted to clear the pre-existing rates debt owing to the Council in respect of those blocks, rather than the Council pursuing those owners for the rates. The compensation, together with the valuation fees of £213 5s 0d, was to be paid to the Maori Trustee on behalf of the owners. It was to be held until the court directed how the money was to be disbursed, apart from the payment for the third part of C2B, which the Maori was ordered to pay immediately to the owners' lawyers. The owners' legal fees, totalling some 216 guineas, were also ordered to be paid by the Crown.

⁶⁹⁶ Order assessing compensation. WN 110 Takapuwahia (Vol 3) Block Order File (General Land).

⁶⁹⁷ 8ac 3r 33p.

⁶⁹⁸ 12ac 3r 21p.

⁶⁹⁹ 8ac 2r 39p.

5.11. Takapuwahia Township Sections

Takapuwahia Township was the part of the Takapuwahia Block running along the inland beachfront that was often also known as Porirua Pa, being the area where many Ngati Toa people had lived for decades since their arrival from the north. The township was bounded at the north end by Block B3 across the Hukaritea Stream. Along its western side were Blocks C1 and C2. Its southern boundary was mostly No 6 Street, although sec 125 across No 6 Street was designated for the Wesleyan (i.e. Methodist) Church.⁷⁰⁰

Following the original award of 21 September 1895 the Takapuwahia Township sections have a long and involved history of small partitions. Whether the details are of any importance for Ngati Toa's historic claims is not clear to the authors. It has been decided to omit the details of all these partitions from the main body of this report. A full account of the Takapuwahia Township sections and their various partitions and successions is set out in Appendix 1.

5.12. The State of Takapuwahia in the Mid-Twentieth Century

In September 1958, District Officer I.W. Apperley of the Department of Maori Affairs reported to the Board of Maori Affairs on the current position at 'Porirua Pa', i.e. Takapuwahia.⁷⁰¹

He noted that its location made it 'a very desirable place in which to live', and this desirability was enhanced by the expansion of Porirua and Titahi Bay residential areas due to the new state housing, while Mana College was only 100 yards away from the Pa and its playing fields were adjacent.

Of the 124 subdivided sections in the township proper, 'many' had already been built on and another 48 were suitable for building—implying that some unidentified township sections were unfit for building for some reason. The area behind the township lands was not being used and was 'extensively covered by gorse'. Housing was the only use to which the land could be put, but the owners would not be able to finance any subdivisional scheme themselves. Therefore, 'we'—presumably the local officers of Maori Affairs—considered that 'no obstacle should be put in the way of the Ministry of Works acquiring the land behind the Pa proper under the Public Works Act for housing'.

⁷⁰⁰ Plan of Part of Takapuwahia Block – Porirua Pa. WN 110 Takapuwahia Block Order File.

⁷⁰¹ I.W. Apperley, 'A Brief Survey of the Position at Porirua Pa', 26 September 1958. WN 170 Takapuwahia Block Order File Secs 1-126 & Sec K.

The ‘many’ sections on which houses had been built were apparently some 55 to 60 of the 124, which was actually less than half of the township sections. Most of those houses had been built with the assistance of Maori Affairs since 1946. He commented that:

In the great majority of cases these houses are being well maintained and looked after and most have good vegetable gardens with their fronts well laid out in paths, lawns and shrubs.

This indicates that when given the opportunity, Ngati Toa at Takapuwahia were prepared to use state resources and assistance to ‘better’ themselves and improve their situation. However, the same could not be said of other amenities provided by national or local government. Apperley stated that:

The present roads are partly formed and are the greatest detraction to the area at the present time. Some of the roads are merely paper ones and do not exist as passable thoroughfares except for foot traffic.

Even the houses that were Maori Affairs ‘securities’ had only gravel roads providing ‘reasonable access’ for vehicular traffic. It can be noted that these roads had been laid off by the Native Land Court in 1895—60 years earlier—to service an existing residential area, albeit not necessarily of European houses at that time. The provision of this infrastructure had not been undertaken by any governmental agency over the next half-century. Even in the couple of decades during which the Porirua-Titahi Bay development had been forging ahead around the township, Takapuwahia itself had not been provided with the same basic infrastructure.

The same point is evident in the next matter that Apperley reported on, the fresh water supply. He stated: ‘The present water supply is the Pa one and is very poor.’ The Ministry of Works supply actually passed through Takapuwahia, but only two or three houses were connected to it because, Apperley said:

The Ministry of Works are not prepared to permit existing owners to connect to their supply but have so been prepared to permit the connection of newly erected houses.

As was shown in the ‘Ngati Toa Social Impact Report’, that Ministry of Works supply was one created during the Second World War to supply first the American forces located at Titahi Bay, and then the new state housing suburb created there. A decade and a half later, despite this supply being piped through the township, there had still been no proper water supply created for the community which was being serviced by a small pipe being run down from the hill behind. Apperley did not comment further or explain why, in the mid-twentieth

century, one government department could erect houses for more than a decade while another refused to provide them with a basic amenity such as running water.

He did report that septic tank sewerage was 'allowed' in the area. Allowed by whom, and why it might not have been, were not explained. Since there was again no piped facility provided by either national or local government agencies, presumably the alternatives—and this for housing being newly developed after World War Two—were either night soil collection or long drops.

Authorities were aware of the need for these various facilities. Apperley reported that the relevant local authority, the Makara County Council, was 'anxious' to see Takapuwahia included in the general development scheme for roading, water and sewerage services. They were worried that otherwise Takapuwahia would turn into an 'eye-sore', as the Orakei and Waiwhetu pa had apparently been prior to inclusion in their local developments. No mention is made of, or concern shown for, the living conditions of the Ngati Toa residents there, merely the impression created for passers-by, given the site's visual potential, set against the backdrop of the hills behind, to be a 'show place'.

Despite the other view of Maori and their place in the region implied in such comments, the immediate issue was financial. Apperley identified the cost of putting in the services and the payment of local body rates as the two main difficulties in providing them. Two funding schemes were in contemplation. First, to incorporate Takapuwahia into the general Titahi-Porirua scheme would necessitate extra rating of 3.8d in the £. However, to set Takapuwahia up as a separate rating area would cost 11d in the £ and necessitate a special loan of £50,000. This was unattractive to the Council as at present most ratepayers of the Pa were not paying their rates and were well in arrears. The Council had attempted to tidy up the situation in 1957 by offering an amnesty whereby it would regard all arrears as satisfied if only the current rates and one year's arrears were paid. However, only £166 had been received, amounting to only 13% of the total rates. Apperley stated that whatever scheme was adopted it would be necessary to enforce the collection of all rates.

Maori Affairs had recently conferred with the Council, with Mr. Tutu Wineera (the Maori member of the Makara County Council) and Mr. George Katene from Takapuwahia, and there had been general agreement that the best option was to incorporate Takapuwahia into the general scheme. A meeting was then held at Takapuwahia on Sunday 24 July 1958 to consult with the people, but lapsed due to lack of attendance. It was proposed to try again at the meetinghouse at Takapuwahia on Tuesday 30 September 1958. Perhaps the original poor attendance had been due to resistance to holding a business meeting on a Sunday.

This report was written between the two big public works takings of Takapuwahia lands in the mid-1950s and 1960. It suggests strongly that the possibility of Ngati Toa acquiescence in the takings as being a result of the near poverty of many of the residents. It also suggests

some of the pressure upon Takapuwahia residents to gain some financial ‘leg-up’ to enable them to meet the requirements imposed by both local and central government before either branch of government would supply them with what by the mid-twentieth centuries were basic amenities.

To the extent that Ngati Toa parted apparently willingly with any Takapuwahia land, it may well be that the forces noted elsewhere in the country applied here. Particularly, there is the issue of Maori needing to sell some land in order to be able to fund development of other blocks. This was so especially in the absence, for most of the period under consideration, of state development funds being made available for Maori in the way they readily were for European settlers. This would likely have been compounded in the case of Takapuwahia by the need to fund development of the township sections, too. A possible exception to that need would have been the degree to which by the mid-twentieth century there was a limited amount of Maori Affairs funding made available for house construction.

This report is also a window into the prejudice being suffered by Maori communities, structures along different lines from the new Pakeha communities surrounding them that were provided with all the amenities upon creation. The local body resisted providing basic services to Ngati Toa prior to regular receipt of rates—although certainly they were supplied to European communities before cheques from residents poured in—while many Maori could see little justification in paying rates when they had no services, although clearly some were indeed paying what they were assessed.⁷⁰²

However there is even less justification for a government department that would not provide a community with a supply of running, potable water when its pipeline ran through the community, occupying its land, and had done so since early in the 1940s.

These issues are canvassed in greater detail in the associated Ngati Toa ‘Social Impact’ report.

5.13. Conclusion

The story of the Takapuwahia lands is, then, very distinctly one of two very different parts, the rural area and the Township (or Pa).

Some initial dealings seem to have been conducted by the Commissioner of Native Reserves, which Takapuwahia was. His initial investigation and identification of owners did not lead to any alienation. In fact, the scant records available suggest that one of the two motivations of the Ngati Toa owners in having a court investigation was to safeguard their ownership of the Takapuwahia lands. They understood that a secure legal title derived from a

⁷⁰² The rating issue has been surveyed in several Waitangi Tribunal inquiries. See also Tom Bennion’s overview ‘Rating’ report in the Waitangi Tribunal’s Rangahaua Whanui series.



A tangi at Takapuwahia marae. [ca 1920s].

A tangi at Takapuwahia, Porirua, showing Elsdon Best, second man from left; Sir Maui Pomare, third from left; and George Katene eight from right.

Alexander Turnbull Library, Wellington.

Crown grant would protect their ownership, that the land was ‘for us for ever’, and that the Crown grant would make it ‘sacred’ for them. Although that application was only in relation to one part of the Takapuwahia Reserve, it is only reasonable to think that the pa site would have been even more ‘sacred’, and that they would have wanted even less to alienate it.

Three decades later, in September 1895, the Native Land Court investigated the title again, awarded certificates of title and made the first level of partitions for the rural blocks in Blocks A to K, and created all 126 township sections. There appears to have been no Crown purchasing in the Takapuwahia blocks. Nor was there apparently much alienation into private hands, as had been the case for nearly all of the neighbouring southern blocks.

It is apparent from the foregoing information that even with the rural blocks, Ngati Toa owners did not readily alienate Takapuwahia land. Some portions such as A North and perhaps G1 were sold, but the large bulk of these blocks was retained in Ngati Toa ownership until the mid-twentieth century. Some of the land they did manage to put to some economic use, whether by farming themselves or by leasing, but mostly it seems to have been retained and not used intensively. That all changed, however, when the State took an interest after World War II. The Takapuwahia rural lands largely left Ngati Toa ownership in several public works takings over a decade and a half after the War as the Crown wanted land for state housing as Porirua was expanded and linked with Titahi Bay.

Block A North, owned by only two people, was alienated from Ngati Toa ownership by 1912, within a year of subdivision by the court. Block A South was given to a larger number of owners with much smaller shares, and remained in Ngati Toa ownership for much longer. Half was sold privately in 1954 and the other half was taken by the Crown in 1960.

Block B was initially awarded to twenty owners and was used by them to gain ongoing income as they leased it out. It remained in Ngati Toa hands until the Crown took all of it in 1956 for state housing.

Block C was partitioned into many segments. A few segments, such as C1B, were sold to private purchasers. A few were transferred to other Maori without payment ‘from natural love and affection’. Others, such as C1A3, C1C1 and C2A1A2, were subject to a declaration of change of status from Maori to European land, made by the Registrar of the Ikaroa District Maori Land Board, subject to Section 6 of the Maori Affairs Amendment Act 1967. The files give no indication of the degree—if any—of consultation with or consent of the Maori owners for this to occur. Finally, much of Block C—quite likely all that remained in Ngati Toa hands—was taken by the Crown in 1960 for state housing. The statutory regime that permitted this change of status was a paternalistic attempt by the Crown to impose a solution

to overcome the extreme fragmentation of Maori land highlighted in the earlier Hunn Report, but it was so unpopular with Maori themselves that it was repealed by the mid-1970s.

Block D was partitioned extensively. Parts of it were sold to Rawiri/David Prosser. His segments and others were taken by the Crown in 1948 for state housing. The fate of other segments of the block is not recorded in the Maori Land Court files, including the records of public works takings.

Blocks E and F do not appear in the Maori Land Court files, except that the Crown took the whole of Block E in 1948 for state housing, the then owner being Rawiri/David Prosser.

Block G remained in Ngati Toa hands, used as a source of income through pastoral leasing, until the Crown took the whole of the block for state housing in 1948. The owner at that time was Rawiri/David Prosser.

Block H was originally contested at length in the Native Land Court. It was used as a source of income through pastoral leasing for years to Rawiri/David Prosser. The owners remained Prosser and the Renes until the Crown took the whole block for state housing in 1948.

Blocks I and J do not appear in the Maori Land Court files.

Block K was designated as a cemetery reserve from 1895 for Wesleyans and has remained so ever since.

The township remained untouched by the Crown as the Porirua city expanded around it—largely on the rural blocks discussed above—out the peninsula to include the Titahi Bay lands right to the edge of the Whitireia Reserve.

It is apparent from the above descriptions of each township section that the processes adopted by Ngati Toa were intended to retain the sections within Ngati Toa ownership, or even whanau ownership. A number of techniques were used to achieve this. The most common was succession, which had the negative result of rapidly increasing fragmentation of the titles to the already small residential sections. Minute fractions of the value of or income derived from the sections could have no meaningful economic value, though, and the fragmentation must have hindered anyone who wished to use a section for their own residence as there were so many others whose agreement was needed in order for a workable arrangement for a section's use.

The transfer of land without payment on the basis of 'natural love and affection' was used in relation to a number of these sections. Presumably, this was intended to enable a single person to get around the fragmentation and gain usable piece of land. It will have also been used to pass land to an individual without waiting until the owner died, to do so with minimal cost, and also so as to avoid the further fragmentation upon succession.

Many blocks apparently remained unused for at least the first half-century after the original investigation of title and awards of certificates of title. This may have resulted from a number of causes. The owners may have had several sections, not necessarily contiguous, and chose only one to build on. The owners may not have lived at Takapuwahia; many Ngati Toa resided at Hongoeka and D'Urville Island, for example, although they kept their rights to land back at Takapuwahia. They may not have had the money to build European houses, and funding from Maori Affairs only became available from Ngata's era in the early 1930s. The lack of utilities would have been a disincentive to live there if there was an alternative available. The fragmentation of title may have prevented individuals from selling sections even if they did want to do so, or from developing them if one faction wished to and another did not.

Moves to reverse the fragmentation process are apparent in several of the sections, for example where all of a section was put into the name of just one of the owners. However serious moves to address the problem, especially ones that respected the owners' wishes and abilities to manage their own property unlike the 1967 Act's Europeanisation process, often had to wait until a change of Crown view as expressed in measures such as Te Ture Whenua Maori Act 1993.

Something that is not apparent from all of these records is just how many Ngati Toa members there were, either living at Takapuwahia or with interests in the lands there. Many blocks were put in the name of the same individual, while others were put in the names of several people. And then there are the lists of successors which expand the record of whanau members but give no indication of who lived where, whether at Takapuwahia, elsewhere in Porirua or thereabouts, on D'Urville or in Te Tau Ihu, or further afield.

This chapter has shown from a detailed study of the surviving Maori Land Court files held in the Whanganui Maori Land Court that the Takapuwahia Reserve, set aside for Ngati Toa in perpetuity following their earliest dealings with the Crown, has remained only partially in their hands. The reserve itself appears to have lasted in some form until the 1890s, when the Native Land Court process was applied and the parent block was divided into rural blocks and township sections. Such restrictions on alienation as were imposed at that time were lifted over the next decade or two and segments of the rural blocks were sold. Many were leased to other farmers, such as the Jillests, who probably added a few segments to their other Titahi-oriented holdings. Some must have been farmed by Ngati Toa members themselves, such as members of the Prosser whanau. These files, being concerned with ownership rather than usage, do not indicate Most, though, remained in Ngati Toa hands until the Crown itself wanted the land for its own purposes and was in a position to use the Public Works Act to

take most of the portions remaining in Ngati Toa hands. The context for those takings is discussed in the Social Impact report.

The township sections were a different proposition. The owners did not wish to part with them from their ownership and the Crown did not want to acquire them for its own purposes. Neither was there much state assistance given to those living there in terms of providing the infrastructure that was becoming the normal standard in urban areas in the mid-twentieth century, and certainly in the new state housing suburbs that were developed all around Takapuwahia, including on the rural blocks as they were acquired. These sections within the 'Pa' seem to have remained in Ngati Toa hands until at least the end of the period covered in the present report and the owners used various techniques as discussed above to ensure the sections remained in Maori hands.

CHAPTER 6

Plimmerton and Taupo No 2 Block

6.1. Remnant of Taupo: Plimmerton Native Reserve

This chapter follows on from the preceding one, and also deals with reserve areas located within the Porirua purchase block. These blocks, like the Takapuwahia blocks, were similarly investigated and partitioned by the Native Land Court.

Taupo No 2 Block at Plimmerton was 10ac 2r 24p, bounded on the north-east by Taupo No 1, on the east by Taupo No 3, and on the south and west by the beach. Its certificate of title had been awarded under the Native Land Court Act 1880 and its title registered in vol. 1 fol 2. The court made the order on 4 July 1881, adding the restriction that ‘the land comprised therein shall be absolutely inalienable the same being vested in Wiremu Parata Kakakura as a burial place for the Ngatittoa tribe’. So the whole Taupo No 2 Block of more than 10½ acres was:

- a) Designated as ‘absolutely inalienable’;
- b) Vested in Wi Parata solely;
- c) To be held by Wi Parata not for his own benefit but as a trustee for the Ngati Toa iwi; and
- d) To be used particularly as a tribal burial place.

The block remained in this legal position until 1896. From then on it was to have a surprisingly intricate legal history. Taupo No 2 is an issue of considerable importance to many Ngati Toa people today.

6.2. Public Trustee Management after 1896 and Taupo No 2 Block

The Native Reserves Act Amendment Act 1896, which dealt in part with a number of Maori reserved lands around Wellington, dealt with three matters. The first was the position of various reserves that had mostly been New Zealand Company Tenths. The third was a collection of various issues relating the administration of Maori reserves generally. But sections 5-10 dealt with the Taupo No 2 Block. This deals inter alia with the **Taupo No 2 Block** vested in Wi Parata as a reserve. According to the Preamble:

And whereas the parcel of land described in the Second Schedule hereto is vested in Wi Parata upon trust for a burial ground for the Ngatittoa Tribe, but only part thereof has heretofore been used for that purpose, and the surviving members of that tribe are few in number: And,

whereas, in the interests of all concerned, it is expedient that the said land should be used in manner hereinafter appearing...

The preamble states correctly that the block was vested in Wi Parata Kakakura on trust as a burial ground for the whole of Ngati Toa. But as can be seen then went on to say that only part of the block had ever been used for that purpose, while ‘the surviving members of that tribe are few in number’. Therefore, the statute drafters concluded it was expedient that ‘in the interests of all concerned’, the land should be utilised differently. No definition was given of who ‘all concerned’ might be, or whether the Ngati Toa tribe had been consulted and given their approval for the different utilisation of their urupa reserve. That new and supposedly improved utilisation was then set out in the next six sections of the Act:

- Section 5 transferred Taupo No 2 from Wi Parata and vested it in the Public Trustee ‘for an estate of inheritance in fee-simple as a Native reserve’.⁷⁰³
- One acre was to be set aside as a burial ground.
- The balance could be leased for up to 42 years, on two conditions, that the rent be the best obtainable, and that the leased land should be enclosed by the lessee with a ‘good and substantial fence’ which, together with any other buildings, must be well maintained (s 6).⁷⁰⁴
- Every such lease must be subject to the lessee allowing people authorised by the Public Trustee to enter freely to disinter bodies buried there prior to this Act and remove them for reburial (s 7).
- The net proceeds from the rent should be applied by the Public Trustee, first, to the costs of such disinterring and reburial in the designated burial ground, and second, to the beautification of the burial ground, including a monument

⁷⁰³

Section 5 states:

5. Land in Second Schedule vested in Public Trustee: The parcel of land described in the Second Schedule hereto is hereby transferred from the said Wi Parata Kakakura and vested in the Public Trustee for an estate of inheritance in fee simple as a Native reserve, subject nevertheless to the hereinafter-mentioned provisions of this Act.

⁷⁰⁴

Section 6 states:

6. Portion to be set aside as burial-ground and residue leased: The Public Trustee shall set apart portion of the said land, to wit, one acre thereof, as a burial-ground, and may lease the residue thereof, either together or in lots. For such term as not exceeding forty-two years, and subject to such covenants and conditions, as he shall think fit:

Provided that with respect to every such lease –

- (1.) The rent shall be the best obtainable, and shall be payable half-yearly throughout the term; and also that
- (2.) The lease shall contain covenants by the lessee, -
To enclose with a good and substantial fence the land comprised in the lease, and at all times throughout the said term to well and sufficiently repair and keep in good condition all such fences, and also all other fences, buildings, and erects for the time being on the land comprised in the lease.

displaying the names of all Ngati Toa buried there. Any residue to be distributed amongst the Maori beneficially entitled to the land according to their respective interests as determined by the Native Land Court (s 8).

- The Governor was to prescribe how the burial ground should be administered (s 9).
- The original trusts applying to the land remained intact except to the extent that they were modified by this Act (s 10).

So by this legislation, the burial reserve was reduced to one-tenth of its original size. The trust was transferred from Wi Parata to the Public Trustee and the Governor was to prescribe how the burial ground was to be administered, therefore all practical control of the reserve was taken out of Ngati Toa and even Maori hands and placed in the hands of Pakeha officials. It is unclear what other 'original trusts' there might have been applying to this land that remained unaltered by this Act and therefore to what Section 10 might have been referring.

As to the change in status of 90% of the block from burial ground to farmland, there was an obvious benefit in that the Ngati Toa tribe generally would gain from the additional income from the 'best obtainable' rent. However, that income would have been negligible when spread around the tribal group, even if parliamentarians thought that they were 'few in number'. The beautification of the urupa was presumably another 'good thing', but it was to be done at the cost of Ngati Toa, paid for by the rents received, together with the costs of disinterring all those already buried in the block. This all indicates substantial costs in both money and respect for the tipuna buried there, and again one wonders how enthusiastic members of Ngati Toa were to incur either of these and whether they were doing so of their own volition. There seems to be no information as to why such an apparently coercive step was taken.

The Public Trustee, James Martin, asked Wi Parata to call on him when he was in Wellington to advise him of Ngati Toa's wishes about the land, or they could meet at Plimmerton.⁷⁰⁵ The officials thought the land was likely to be all sandhills and it would be difficult to lease.⁷⁰⁶ The Public Trustee also contacted Wi te Kanae, who lived at Porirua, for his input. He expressed a desire that the site of the house where Te Rauparaha had been kidnapped by Grey's forces should also be preserved.⁷⁰⁷ Hohepa Horomona, a member of Ngati Toa who was a Native Assessor living at Hawera, was also contacted.

⁷⁰⁵ Public Trustee to Wi Parata, 14 December 1896. MA 1/179 6/46.

⁷⁰⁶ Public Trust Office memo, 10 December 1896. MA 1/179 6/46.

⁷⁰⁷ Public Trust Office memo, n.d. MA 1/179 6/46.

While this seeking of consultation was also “a good thing”, of course, in fact it raises the question again of the extent to which this entire scenario was being foisted upon Ngati Toa and of how much consultation had taken place about their wishes for the land prior to its status being altered by the Act. Why was it not already known what the wishes of Ngati Toa were before the existing regime was swept away and the new situation imposed irrevocably?

Martin personally visited the block on 7 January 1897 and met with as many Maori as could be brought together there, including T.K. Macdonald, Hohepa Horomona, Mrs. Prosser and many others—but apparently without Wi Te Kanae, who had other business, and Wi Parata, who arrived late.⁷⁰⁸ He found that there were three distinct burial grounds on the beach, in addition to the one fenced on the hill, while other members of Ngati Toa had been buried on the hillsides facing the inner portion of Porirua Harbour. Taupo No 2 Block could now be accessed only by a route that ran along the beach and up a sandy terrace, because the residents of Plimmerton Township had reserved a small strip between Steyne Ave and the Ngati Toa reserve, blocking access except with their permission, and making it difficult to create a roadway.⁷⁰⁹ Martin hoped that an old track through Taupo No 1 might be usable instead. The site of Te Rauparaha’s kidnapping was just off the reserved land and Ngati Toa were anxious to re-acquire it. Martin promised to have another meeting at Porirua once he had had drawn up a suggested plan to illustrate how the block should be cut up to implement the statute’s requirements.

T.K. Macdonald—apparently the spokesperson for the Ngati Toa with whom the Public Trustee met on 7 January—urged Martin not to lease the land, saying there was an understanding between the Premier, Ngati Toa and some Europeans that the land would remain as a recreation area. But Martin said he could take no notice of the wishes of private individuals as his duty was defined by the statute, however he would consider anything a local authority might say on behalf of the public. He also recommended negotiating with the owners of the site of Te Rauparaha’s house to see if an arrangement could be made.⁷¹⁰

So right at the start of this new regime it was apparent that what the statute prescribed was not, in fact, what ‘Ngati Toa’ understood or wanted. As Macdonald was reported, the change from being totally a burial ground was known and apparently accepted by them, but the change from recreation reserve to leased farmland was not. Also, the Public Trustee now considered himself bound by the new statute; his consultation with Ngati Toa as to their wishes, if not merely empty, was certainly without much meaningful substance. It is worthy of note that Martin expressly stated he would, though, consider anything a local authority might say, as contrasted with his attitude towards Ngati Toa. Further, he considered the local

⁷⁰⁸ Public Trustee, memo, 8 January 1897. MA 1/179 6/46.

⁷⁰⁹ The authors are unaware as to how precisely this had been done, or what the legal mechanisms for it were.

⁷¹⁰ Public Trustee, memo, 8 January 1897. MA 1/179 6/46.

authority to be speaking on behalf of ‘the public’ simply the people of the area, or perhaps others who might merely hold an opinion, who in this portrayal took precedence over the traditional and beneficial owners of the land itself.

The Public Trust’s office solicitor then investigated the lands. He found that on the survey plans a strip marked ‘Esplanade’ at least a chain wide ran along the lowland waterfront of the Plimmerton Township sections to the highland edge of Taupo No 1. However, some of the survey pegs on the ground had been shifted, apparently fraudulently, out to high water mark in the sand. The land adjoining No 2 was Taupo No 3, also called Erenora, the certificate of title being vol. 79, fol. 108, under Land Transfer Act 1885 s 16 and the Native Land Court Act 1894 s 75, it having been issued under Governor’s warrant PR vol. 2 fol 11. It was held by the Railway Company in fee simple, subject to the Crown retaining rights to make roads. The neighbouring Plimmerton Township subdivision was part of the Railway Company’s land taken through Taupo No 1 and proclaimed in 1885. Its certificate of title was dated 22 September 1884 and issued to James Walker, apparently after having been Maori land, while the Railway Company’s certificate of title was dated 29 August 1888 and also subject to the Crown’s right to lay off roads.⁷¹¹

In September 1897, T.K. Macdonald advised the Public Trustee that the local body (perhaps a road board) Martin had arranged with him should be created to lease the land would be created in a month’s time, as the Hutt County Council had now approved the district and membership for the board.⁷¹² Martin had wanted such a body in order to reduce the difficulties regarding access, and also help secure the site of Te Rauparaha’s house.

But the road board did not materialize as promised, for reasons which are not recorded, and by the end of the year Martin was feeling unable to defer much longer implementing the statute by other means.⁷¹³ Negotiations were also under way with the Railway Company concerning making a road that way. The issue of quarrying, which has remained into the twenty-first century in that locality, was already alive as a Mr. Powell, who had a contract to supply metal for Wellington streets, was quarrying stone and carting across the Public Trustee’s land.⁷¹⁴ The Trust Office proposed to trade permission to continue carting for rent and the Railway Company’s giving of a right of way from Steyne Street to the reserve.

In March 1898, Martin proposed to the Wellington and Manawatu Railway Company that if they dedicated the land effectively as a continuation of Steyne Avenue, he would be prepared to lay out a road across the reserve to the beach further west, permitting access to

⁷¹¹ F.R. Wilson to Public Trustee, 20 January 1897. MA 1/179 6/46.

⁷¹² T.K. Macdonald to Public Trustee, 15 September 1897. MA 1/179 6/46.

⁷¹³ Martin, memo, 16 December 1897. MA 1/179 6/46.

⁷¹⁴ He asked permission and to build a tramline for nine months in January 1898. Powell to Public Trustee, 6 January 1898. MA 1/179 6/46.

railway-owned land there—and he would not have to use the Public Works Act to obtain the road access to the Ngati Toa reserve.⁷¹⁵

By May 1898, however, a neighbor named Walker had put up a fence on the Ngati Toa reserve, saying he thought it was his boundary. But it was actually well on the reserve on the best fencing line, the line of the old Pukerua track through the middle of the block. Walker and other neighbors also claimed a right of way along the Pukerua track on the basis that they said they had enjoyed such a right of way for fifty years, beginning from the end of Steyne Ave. In addition, Powell had not just put in a temporary tramway from the quarry, but was constructing a tunnel through the hill. The Public Trustee put the question of Powell in the hands of lawyers, but Powell protested that he was unaware he was trespassing. The settlement finally agreed with him was that Powell would pay all costs associated with the investigation and £25 per quarter rent from the beginning of 1898. He would also guarantee that his line and tunnel, now to be supervised and laid out for him, would do no harm to the Ngati Toa lands.⁷¹⁶

The Plimmerton Road Board, finally operational in December 1898, wished to make a public recreation reserve of the block, and to lease it for a nominal £1 rent.⁷¹⁷ In the short term, this cut across Powell's usage, for which he was actually paying only £16 per annum, in accordance with a deed signed 4 June 1898.⁷¹⁸ The Public Trustee agreed to this proposal, subject to Powell's continuing tenancy and the Road Board paying all rates and outgoings in respect of the reserve. He reminded the Board that if it gained legislation dealing with this reserve, it would still have to make provision for the burial ground and the removal of the other Ngati Toa bodies.⁷¹⁹ The matter was allowed to drift, however, and neither the money was paid nor the legislation introduced.

There is no indication of the extent of any Ngati Toa representation on this road board. T.K. Macdonald appears to have been a member, but the extent of his ties to Ngati Toa, and whether he had any support on the board, is unknown. The recreation reserve proposal, which now came from the road board, had been turned down when asked for by Macdonald on behalf of Ngati Toa. The £1 was not an amount of money that would have provided any meaningful income from the land for Ngati Toa.

Heni Te Whiwhi complained to Native Minister James Carroll that there were excavations on the reserve, disturbing the burials which were supposed to have been protected and relocated. A Public Trust official inspected the reserve in January 1900, finding that there were no excavations other than those associated with the tramline, which did not interfere

⁷¹⁵ Public Trustee to General Manager, Wellington and Manawatu Railway Co, 11 March 1898. MA 1/179 6/46.

⁷¹⁶ Public Trustee, memo, 30 May 1898. MA 1/179 6/46.

⁷¹⁷ Macdonald to Public Trustee, 19 December 1898. MA 1/179 6/46.

⁷¹⁸ Deed, 4 June 1898. MA 1/179 6/46.

⁷¹⁹ Public Trustee to Macdonald, 9 January 1898. MA 1/179 6/46.

with any graves. The fence of the small burial plot was dilapidated, though, while any graves on the flat would be subject to exposure by the sand drifting ‘but this could not be obviated’.⁷²⁰ There was no discussion as to why nothing had been done—or was seemingly even contemplated—to set up the one-acre cemetery and conduct the reburials. Nor was there any explanation attempted as to why Heni Te Whiwhi had made the complaints if nothing harmful was actually happening there.

In February 1900, Powell informed the Public Trustee that he had now left the reserve and in as near to original condition as possible, but he still owed four months’ rent. Inspection showed that although Powell had removed the tramline, he had not restored the site, only partially filling in the entrances to the tunnel and leaving a dangerous twenty-foot drop. The fence around the Maori graves was now useless, nothing had been done about designating the burial ground acre, and Walker was grazing his sheep over the reserve.⁷²¹ Presumably, since it was being done illicitly and without the Public Trustee’s knowledge, Walker was paying no rental for the grazing privilege.

In March 1902, the reserve was valued at £200—although the owners and occupiers were still designated as ‘Natives per Wi Parata’.⁷²² The Government Valuation of Land Department apparently did not appreciate the subtleties of vesting in the Public Trustee, or that such a change had occurred six years previously, or that whatever type of ‘owners’ Ngati Toa might now be, they were not occupiers.

The Public Trustee decided in February 1904 to subdivide the reserve—now called ‘Native Reserve Plimmerton’, rather than ‘Ngatittoa Burial Ground’—and offer a large proportion of it in public competition for residential building allotments. The issue of access from Steyne Ave had never been resolved with the Railway Company, so Martin asked T.K. Macdonald to approach the Company on his behalf to negotiate a purchase of the narrow strip involved, since as it stood it was useless to the Company while leasing the reserve in small building lots would be of material benefit to the Company.⁷²³ Inspection of the site showed that the fence had still not been attended to, however Walker’s stock was no longer grazing on the reserve, and it was used only by occasional picnic parties.⁷²⁴

Finally, on 12 August 1904, the Public Trustee sent out someone to remove the bodies and rebury them ‘within the enclosure’. He asked Mrs. Prosser to point out their locations.⁷²⁵

A few days later, an approach was made to the Public Trustee by the Education Board to lease an acre for a school site, as Plimmerton was due to get a school and this reserve was

⁷²⁰ Public Trust Office memo, 23 January 1900. MA 1/179 6/46.

⁷²¹ Public Trust Office, memo, 23 January 1900. MA 1/179 6/46.

⁷²² MA 1/179 6/46.

⁷²³ Public Trustee to Macdonald, 18 February 1904. MA 1/179 6/46.

⁷²⁴ Public Trust Office memo, 10 February 1900. MA 1/179 6/46.

⁷²⁵ Public Trustee to Mrs Prosser, 12 August 1904. MA 1/179 6/46.

considered the only convenient place.⁷²⁶ The Education Board soon changed the request to purchasing two acres, to which the Public Trustee replied that there was no power under the 1896 Act for such a transfer. Instead, he recommended that the Education Board formally acquire what they wanted under the Public Works Act 1894 s 2(4). He further encouraged, ‘If your Board decide to take a portion of this Reserve, it can be done without much expense, as I should be willing to waive technical formalities in view of the purpose for which part of the Reserve would be required.’⁷²⁷ In this response, as in almost all of the subsequent negotiations, there is not even a hint that Ngati Toa were being consulted in the disposal of their lands, including now their absolute alienation instead of just a change of status from burial ground to leased farmland.

A month later, the Anglican Bishop of Wellington and some Plimmerton residents approached the Public Trustee about leasing a couple of acres for a church under s 6 of the 1896 Act.⁷²⁸ In November 1904, Wellington businessman J.A. Plimmer, enquired about the terms on which he might be able to buy or lease reserve land. However, he was told that the land could not be sold and leasing could only be by public competition, while in any case nothing could be done until the existing negotiations with the Education Department and Anglican authorities were resolved.⁷²⁹ A visit to the site by both the Anglican vicar of Johnsonville and the Education Board chairman, with a Public Trust official, took place on 21 December 1904, but no further action was taken for a couple of years.

George A. Troup of Plimmerton next proposed to put a road through the reserve in mid-1906. The Public Trustee initially agreed to join in the project, with three provisos, that:

1. the road was sited most advantageously for the Trustee’s proposed cutting up of the block;
2. it ran from Steyne Ave at one end to the Pukerua track at the other; and
3. Troup bought the narrow strip at the end of Steyne Ave from the Railway Company.⁷³⁰

Troup immediately made this purchase—resolving in a week what had not been dealt with by the Public Trustee in a decade—and the Public Trustee agreed to set aside a strip 66 feet wide and to survey, form and metal the road to local body standard, for which Troup would pay half.⁷³¹

However, on 5 September 1906 the Plimmerton Road Board informed the Public Trustee that Troup and his partner Moore had failed to submit comply with statutory

⁷²⁶ Public Trust Office memo, 16 August 1904. MA 1/179 6/46.

⁷²⁷ Public Trustee to Secretary, Education Department, 8 September 1904. MA 1/179 6/46.

⁷²⁸ Public Trust Office memo, 23 September 1904. MA 1/179 6/46.

⁷²⁹ Plimmer to Public Trustee, 16 November 1904. MA 1/179 6/46.

⁷³⁰ Public Trustee to Troup, 14 August 1906. MA 1/179 6/46.

⁷³¹ Troup to Public Trustee, 23 August 1906; Public Trustee to Troup, 25 August 1906. MA 1/179 6/46.

requirements concerning the submission of plans to the local authority, and asked him not to continue dealing with them. Further, the Road Board warned that the reserve itself would shortly be the subject of a parliamentary enquiry and debate—without stating why—and pointed out the inadvisability of assisting land speculators ‘in probably materially injuring a very valuable Reserve by injudicious roading’.⁷³² The Public Trustee expressed his ‘astonishment’ at the tone of this ‘extraordinary’ letter. He declared that ‘This Reserve, as all others under the administration of the Office, will be dealt with solely in the interests of the owners without regard to whether others are benefited or injured thereby’, and invited the Road Board’s Clerk to come for a meeting at which he could find out the facts of the case.⁷³³ The Clerk would neither apologise nor immediately arrange such a meeting. Instead, he merely expressed regret that the Trustee had had his astonishment excited and stated that ‘the importance of the question to the people of Plimmerton must excuse any defect in my communication’.⁷³⁴

The Public Trustee then asked Wi Parata to hand in the certificate of title he had received from the Wellington Native Land Court office on 10 September 1884.⁷³⁵ Ten years after the 1896 Act, and only when the first substantial dealing with the land was taking place, the Public Trustee was now finally moving to have a new title issued to himself. However, Wi Parata responded simply that he could not see how the 1896 Act ‘could have any claim on a burying ground’.⁷³⁶ This is a fundamental misunderstanding, indicating that even this experienced leader did not comprehend what had happened with that legislation and calls into question once more both his and Ngati Toa’s understanding of and support for the arrangements made in that statute.

The Education Board now again expressed interest in a site, and was reminded that it had either to acquire the land under the Public Works Act, or compete on the open market for a couple of the proposed new sections when they were made available.⁷³⁷ The Education Board then applied to the Government for funding to purchase a school site.⁷³⁸

The Plimmerton Road Board sent a deputation on 17 September 1906 to the Premier, Sir Joseph Ward, when both they and the Public Trustee—now J.M. Poynton—explained their relative positions.⁷³⁹ Troup’s lawyer wrote seeking permission to attend as well, and explaining in detail how his clients had already acquired the Motuhara Block, stocked and developed it, wished to build on it, and had bought the strips of land from the Railway

⁷³² Clerk, Plimmerton Road Board, to Public Trustee, 5 September 1906. MA 1/179 6/46.

⁷³³ Public Trustee to Clerk, Plimmerton Road Board, 7 September 1906. MA 1/179 6/46.

⁷³⁴ Clerk, Plimmerton Road Board, to Public Trustee, 14 September 1906. MA 1/179 6/46.

⁷³⁵ Public Trustee to Wi Parata, 6 September 1906. MA 1/179 6/46.

⁷³⁶ Wi Parata to Public Trustee, 6 September 1906. MA 1/179 6/46.

⁷³⁷ Education Board to Public Trustee, 5 September 1906; Public Trustee to Education Board, 7 September 1906. MA 1/179 6/46.

⁷³⁸ Education Board to Public Trustee, 22 October 1906. MA 1/179 6/46.

⁷³⁹ *New Zealand Times*, 18 September 1906. MA 1/179 6/46.

Company, and entered into a good faith agreement with the Public Trustee. However, he was not invited and was advised that they could have a separate interview later.⁷⁴⁰ On 19 September, Poynton went with Native Minister James Carroll, Macdonald of the Road Board, Troup, Troup's lawyer, and another to inspect the reserve and the proposed roadline. Carroll promised to let Poynton know as soon as possible when the Government intended to make the place a public reserve.⁷⁴¹

Carroll did immediately confirm that the block would be kept intact as a reserve and that the road already laid off would be altered and taken around the edge of the section, since Troup had been assured he would have road access to his property.⁷⁴² Poynton still wanted to know the Government's intention, as he believed that the amount payable in compensation to the interested Maori would be altogether beyond the means of the Road Board. He sought a rapid resolution as:⁷⁴³

It would be an injury to the beneficiaries if the matter be left over for any length of time. They have already lost a great deal through the reserve not having been dealt with.

Of course if the Government intends to take it over there need be no delay in issuing the proclamation and getting the claim for compensation settled.

Of note here is the Public Trustee's concern that the Ngati Toa beneficiaries had already lost 'a great deal' financially through the various bodies' collective failure to act in respect of the reserve.

Carroll's response drew from Troup's lawyers a demand that the new route be surveyed within a week by the Public Trustee and that the Government meet all of the additional expense the new route would incur. They also threatened taking out a summons to compel the District Land Registrar to register the dedication already executed and lodged by the Public Trustee of the previously agreed route, but said that Troup had declined to proceed with this as he still wished to reach an amicable settlement.⁷⁴⁴ Poynton advised the Colonial Treasurer that if the Government were to proceed with taking the whole as a public reserve, then Carroll's roadline should be adopted, but if not then the Public Trustee's original arrangement with Troup should go ahead as being the best for cutting up the reserve.⁷⁴⁵

⁷⁴⁰ A. Gray to Premier, 17 September 1906. MA 1/179 6/46.

⁷⁴¹ Poynton, memo, 20 September 1906. MA 1/179 6/46.

⁷⁴² Carroll to Public Trustee, 21 September 1906. MA 1/179 6/46.

⁷⁴³ Public Trustee to Minister of Native Affairs, 22 September 1906. MA 1/179 6/46.

⁷⁴⁴ Gray and Jackson to Premier, 28 September 1906. MA 1/179 6/46.

⁷⁴⁵ Poynton to Colonial Treasurer, 6 October 1906. MA 1/179 6/46.

A second arrangement was confirmed with Troup to begin construction of the road common to both the original route and Carroll's proposition.⁷⁴⁶ However, as it became clear that the Government was indeed going to take the whole as a public reserve, the remainder of the road development was postponed yet again.

6.3. Taupo No 2 Block as a Scenic Reserve (1906)

The Crown yet again legislated over the top of whatever arrangements were being worked out on the ground when it took Taupo No 2 Block as a scenic and historic reserve under the Scenery Preservation Act 1903. This was achieved by means of section 32 of the Maori Land Claims Adjustment and Laws Amendment Act 1906, passed on 29 October 1906, which provided as follows:

- The Public Trustee was to use the money accumulated from compensation for the taking, awarded under s 5 of the Scenery Preservation Act, in order to properly repair the fence around the burial ground (s 32(1));
- He was to invest the balance of the compensation monies and apply the income from the investment as provided by s 5(2) of the Scenery Preservation Act (s 32(1));
- Any roading contract already entered into by the Public Trustee would be carried out by the Government, subject to such deviation as the Governor might deem necessary (s 32(2)); and
- Sections 5 to 10 of the 1896 Act were repealed (s 32(3)) i.e. the sections that had created the current situation.

So now all of Taupo No 2 had passed to the Crown. Beyond the immediate reconstruction of a fence around the small original burial ground—not the one acre supposed to have been set aside in 1896—there was no protection for or provision for the reburial of the Ngati Toa tipuna. The burial ground itself, being part of the Taupo No 2 Block, was now Crown land and there was no vesting in trust in either a Ngati Toa person such as Wi Parata or a relatively neutral office such as the Public Trustee. The land was now a public reserve and all that Ngati Toa had to show of their 'absolutely inalienable' reserve block was whatever monetary compensation was adjudged to be appropriate, less what was then spent on maintaining the cemetery and always subject to the scenic reserves legislation.

⁷⁴⁶ Troup to Public Trustee, 11 October 1906; Public Trustee to Troup, 12 October 1906. MA 1/179 6/46.

It was considered by the Under-Secretary for Crown Lands that as the entire block was now a public reserve, there was neither the need nor the power to change the purpose of a portion of the reserve to a site for a cemetery.⁷⁴⁷

The Public Trustee put in a claim for compensation of £7481 11s, being for 10 acres 2 roods 24 perches at £700 per acre (£7455), plus £26 11s surveyor's fee under s 32(2) of the 1906 Act. In September 1907, the Minister of Public Works applied to the Native Land Court to assess the compensation under s 91 of the Public Works Act 1905, but on 21 January 1908 the Minister sought to withdraw that application (but the withdrawal was opposed by the Public Trustee). So the Crown was wanting to withdraw from the standard approach set down in legislation for providing compensation and in this instance the Public Trustee stood up and did what he could for the beneficiaries to whom he owed a fiduciary duty. In this particular circumstance, the Public Trustee was acting in good faith as a trustee and not as an agent of the Crown, as has been alleged in other Treaty claims.

The question of the withdrawal of the compensation claim was heard by Chief Judge Palmer in the Native Land Court on 27 January 1908. The Crown denied the court's jurisdiction as it was not Maori land, but vested in the Public Trustee. The Public Trustee's counsel, Treadwell, contended that the Minister of Public Works holding the matter over indefinitely was 'preposterous' and that since the 1906 Act had repealed the vesting in the Public Trustee, the position of the land as Native land was restored and Wi Parata's certificate of title was restored apart from the section altered by the 1896 Act.⁷⁴⁸ Chief Judge Palmer held that the land was indeed Native land and that the Native Land Court had jurisdiction. He also noted that s 91 of the Public Works Act distinguished between where the Minister 'may' apply to have compensation assessed and the local authority 'shall' do so. Since the Minister was not compelled to apply, the Crown also had the prerogative right to withdraw the application. The judge took it that the lack of compulsion was because the Legislature considered the Crown to be the guardian of Maori rights. Such a guardian would therefore deal fairly with them over compensation—whereas implicitly a local authority might not.⁷⁴⁹

Having gained the initial determination that the land had indeed reverted to its status as Native land, the Public Trustee therefore followed legal advice and applied to the Supreme Court for a writ of mandamus to Chief Judge Palmer to hear and determine the compensation claim.⁷⁵⁰ The case of *Public Trustee v Jackson Palmer and James McGowan* was heard by Chapman J and judgment given on 8 May 1908.⁷⁵¹ Justice Chapman rehearsed the title and legislative history and then commented that together with the repeal of ss 5 to 10 of the 1896

⁷⁴⁷ F.T. O'Neill to Commissioner of Crown Lands, 13 March 1907. MA 1/179 6/46.

⁷⁴⁸ *Dominion*, 29 January 1908. MA 1/179 6/46.

⁷⁴⁹ *Dominion*, 30 January 1908. MA 1/179 6/46.

⁷⁵⁰ Stafford and Treadwell to Public Trustee, 30 January 1908 and annotations. MA 1/179 6/46.

⁷⁵¹ See 10 Gaz LR 453. McGowan as the Minister for Public Works.

Act 'disappear all the provision for leasing and managing the land'. The vesting in the Public Trustee disappeared with the vesting in the Crown anyway, but was also expressly repealed.

Section 5(2) of the Scenery Preservation Act 1903, which the 1906 Act had placed the reserve under, provided that when Native land was taken under the Public Works Act, compensation was to be paid as for other land, but the compensation money was to be paid to the Public Trustee 'who shall invest the same and shall pay the income from such investment as and when it arises to the persons entitled thereto'. This provision, together with the vesting, expressed a new trust concerning the compensation money that was unconnected to the repealed trust under which the Public Trustee had held the land. However, in this new trust the beneficiaries in terms of s 13 of the 1896 Act could only be determined by the Native Land Court, not by the Public Trustee nor by another court administering trusts. This new trust in relation to the compensation monies relieved the income from all future charges in respect of repairs and maintenance, both under the express terms of s 5(2) of the Scenery Preservation Act and because s 6 of that Act contemplated that such charges would be borne by the Consolidated Fund.

As to whether the claim for compensation was to be dealt with under Part III or Part IV of the Public Works Act 1905, the Crown relied on s 50 which provided that all claims should be determined by a Compensation Court, unless expressly provided otherwise. Section 91, however, provided for the ascertainment of compensation to be paid in relation to Maori land or for Maori owners of any land held under title derived from the Crown; this was the process that had been followed thus far for this reserve. Under the Native Land Court Act 1894, Native land was defined as land held by Maori under customary title, and for which title had not yet been determined by a court. However, under the Public Works Act 1905, Native land was any land held by Maori under their customary usages, whether or not the Native Land Court had determined ownership.

Chapman J was sure the land under the original certificate of title was Native land under the Public Works definition, although it did not conform to the definition in the Native Land Court Act 1894. The repeal by the 1906 Act had swept away the 1896 transfer to the Public Trustee and all its consequences. He thought that the compensation must be for the land formerly vested in Wi Parata, now in the Crown, in which either the Ngati Toa tribe or some still unascertained members of it were the only persons interested. This definition was, he said, fully recognised by s 13 of the Native Reserves Act Amendment Act 1896 and accorded with the classes of persons designated under s 91 of the Public Works Act 1905.

The fact that the persons actually interested in the land, or in the rents derivable from it, could only be ascertained according to Maori custom showed that the land itself was still held according to Maori custom as contemplated in the Public Works Act. Any doubt was removed by the fact that the Scenery Preservation Act s 3 contemplated the existence of only three

classes of land: Crown, private or Native. Thus it was not necessary to ascertain whether the Maori owned this land, but was sufficient to ascertain that they were currently interested in it. The claim had therefore been properly before the Native Land Court.

As to the issue of whether the permissive language used of the Minister in the Public Works Act was substantially different from the imperative language used of local authorities—i.e. whether it made any difference that the Minister ‘may’ apply to have the compensation assessed whereas the local authority ‘shall’ do so—any distinction was questionable as it referred to the timing of performance of a duty rather than to the duty per se. When the Minister acted to apply to the Native Land Court to assess the compensation, this application was:⁷⁵²

an act to be performed once for all and when it is performed a right arises which the statute gives no power to set aside. The Minister is *persona designata* for the purpose of initiating the matter merely—it would require a very clear expression of the intention of the Legislature to give him further control over a proceeding in which if he can be said to be interested at all his interest is adverse to that of those interested in the claim.

In other words, the Minister was merely the person designated by the legislation to begin the proceedings and it would be contrary to natural justice if he could exercise any more control than that over the proceedings since he was arguably an interested party and his interest was in opposition to the people who had an interest in the land and whom the compensation was supposed to benefit since the Minister was taking their property.

Judgment was therefore given for the Public Trustee. The Court had held both that the land was Native land and that the Minister, once having made an application to the Native Land Court to determine compensation had no power to withdraw. The newspaper report was headed ‘A Minister’s Action. Crown Defeated’, but the Crown’s counsel indicated that there would probably be an appeal. The judge thought that he had no power to give costs against the Minister of Public Works, but the Public Trustee’s lawyer gained from Crown counsel an undertaking that he would recommend to the Minister that the Crown would pay costs.⁷⁵³ On 2 December, the Paymaster-General did indeed pay to the Public Trustee £200 for all rents and profits that might have been received from Taupo No 2 Block and £116 5s 3d for the Trustee’s legal costs in the compensation litigation.⁷⁵⁴

6.4. Management under the Taupo No 2 Block Act 1908

⁷⁵² He cited *Mitchell v The Land Board of the Otago Land District* Court of Appeal (May 1908).

⁷⁵³ Stafford and Treadwell to Public Trustee, 12 May 1908. MA 1/179 6/46.

⁷⁵⁴ Payment advice, 2 December 1908. MA 1/179 6/46.

Yet another Act dealing with the block was passed on 15 September 1908—completely reversing and doing away with the new 1906 regime and reviving the 1896 regime. The Taupo No 2 Block Act provided for:

- The repeal of s 32 of the Maori Land Claims Adjustment and Laws Amendment Act 1906 which ‘shall for all purposes be deemed never to have been in force’ (s 2);
- The revival of the previous ss 5-10 of the Native Reserves Act Amendment Act 1896 which were ‘deemed to have remained continuously in force’ (s 3);
- The deeming to be withdrawn of all claims and proceedings relating to compensation for the block whether made by the Crown or any other person (s 4);
- The payment by the Minister of Finance to the Public Trustee of (a) £200 in satisfaction of ‘all rents and profits which might have been received by the Public Trustee from the said land had the said section thirty-two not been passed’ and this was to be held by the Trustee as if it were ordinary rent, and (b) the Public Trustee’s legal costs for the compensation proceedings (s 5);
- That nothing in this Act was to be construed as a ground for making unlawful anything done or omitted under s 32 (s 6).

The Education Board was still seeking land for a school site and immediately asked the Public Trustee to facilitate the transfer of the proposed site to the Board, hopefully for free.⁷⁵⁵ The Public Trustee, having ‘obtained access to the Taupo No 2 Native Reserve’ through the new Act, had decided to offer it to public competition in building allotments on 42-year leases and asked the Education Board to decide on the acreage and location it wanted, so that its portion might be excluded from the subdivision.⁷⁵⁶ Internally, the Public Trust officials worried that the Education Board wanted three of the eight acres, the pick of the reserve, and that much of the remainder was sand; furthermore the Native Land Court had to determine the price of the land. However, on being informed that the government valuation ran to some £800 per acre, the Education Board concluded that land on this block was beyond its means.

A review of the file then concluded that none of the schemes on it were practicable for making the land productive. The Public Trustee’s inspector thought one of the subdivision proposals would do very well, but depended on the Land Transfer Office accepting properties fronting the beach, without any road frontage. As he said, the beach itself had been used as a road ‘for all time’, but if this was not acceptable then a new road would have to be laid off along the beach frontage. This would not be too expensive, being perfectly flat and since the

⁷⁵⁵ Secretary, Wellington Education Board, to Public Trustee, 29 September 1908. MA 1/179

6/46.

⁷⁵⁶ Public Trustee to Secretary, Wellington Education Board, 23 October 1908. MA 1/179 6/46.

local body would probably not require it to be metalled or have formed footpaths.⁷⁵⁷ As it turned out, a beach road was indeed required by the Land Transfer Office, so it was proposed to extend the new road from Steyne Ave to the beach, giving 22 sections facing the road; once they were leased this could fund the road construction along the beach.⁷⁵⁸

The Chief Surveyor ruled that the land along the south and west boundaries had been so long used by the public that it had to be treated as a public road, while the Pukerua Track was also undoubtedly a public way by user and could therefore also be proclaimed a public road. The Pukerua Track could be closed where it crossed the private sections, but alternative access must then be provided to the unclosed portions. He further stated that an access should also be provided to the cemetery 'from the Plimmerton Site'. He recommended that.⁷⁵⁹

- the Pukerua Track be closed and in exchange a graded road be laid off from the north-east boundary of the block to the beach;
- cemetery access be provided by a strip 20 links wide added to the reserve from the south-east corner eastward in line with the south boundary;
- the road along the beach be at least 100 links wide.

On 14 August 1909, Public Trustee Poynton applied to the Native Land Court for a determination of who the beneficiaries of Taupo No 2 Block were, together with their shares and interests, in accordance with the reinstated s 8 of the 1896 Act.⁷⁶⁰ The Court did not act on this application until 20 February 1911, when Judge Gilfedder, sitting at Otaki, determined that 48 persons had beneficial interests in the block—the shares being determined as areas within the 9ac 2r 24 remainder block that was being dealt with by the Public Trustee once the one-acre burial ground was removed from the calculation.⁷⁶¹ Seven people had interests in excess of 3 roods: Hoani te Okoro (d), Erenora Tungia (d), Hira te Aratangata (d), Hohaia Pokaitara (d), Raiha Puaha, Hemi Matenga and Heni te Rei. Ruihi Horomona had an interest exceeding 1 rood. The remainder all had their interests assessed as between 4 and 32 perches.

At about the same time, while waiting for the surveyors to complete the plan, the Public Trustee put before his Board a proposal for leasing 44 sections at a total upset rent of £217. The Board resolved to authorise leasing by tender within six weeks, to approve the various upset rents and to set the lease term at 21 years with a right of renewal for a further 21 years.⁷⁶²

The leasing by tender was advertised in late January-early February 1910. Simultaneously, approval for the subdivisional plan had to be obtained from the Hutt County

⁷⁵⁷ Public Trust Office memo, 21 December 1908. MA 1/179 6/46.

⁷⁵⁸ Public Trust Office memo, 4 January 1909. MA 1/179 6/46.

⁷⁵⁹ Chief Surveyor to Seaton and Sladden, surveyors, 26 January 1909. MA 1/179 6/46.

⁷⁶⁰ Application, 14 August 1909. MA 1/179 6/46.

⁷⁶¹ Order Determining Relative Beneficial Interests, 20 January 1911. MA 1/179 6/46 pt 2.

⁷⁶² Board proposal and resolution, n.d. MA 1/179 6/46.

Council which, contrary to expectations did indeed want all the roading metalled. The Public Trust Office replied that this would be pointless for the beach road, where the metal would be promptly covered by moving sand, but agreed to the roading further inland.⁷⁶³

However, only a couple of tenders were received, and these were unsatisfactory. The *New Zealand Times* considered that the upset rentals of £5 per annum for forty-foot frontages were ‘extraordinarily high’, accounting for the poor response to some of ‘the choicest building sites in the township’. It contrasted these rents, and the other costs lessees were expected to bear for sections that were mostly rough sand-hills, backed by a cliff and exposed to the sea, with the availability of freehold sections in the heart of the settlement for £60-80 and of scores of sections on the neighbouring estate—perhaps Troup’s—with 50-60 foot frontages for £40-60 on exceedingly easy terms. The newspaper blamed this error of judgment on the Public Trustee showing ‘an abnormally keen anxiety to be fair to the natives, if nobody else’.⁷⁶⁴ It might be observed that although fairness to the Maori may well have been abnormal, the Public Trustee was bound to attempt to strike the best commercial deal possible for the beneficiaries, regardless of ethnicity, and had no such responsibility to the general public who exercised their right not to accept the offer. And, of course, Ngati Toa seem to have had absolutely no input into this process, the Public Trustee not consulting them and, on this record, they being either entirely unaware of—or entirely quiescent in—the fate of their lands.

The Hutt County Council was unbending in their requirement that all roads, including that along the beachfront, be formed and metalled.⁷⁶⁵ This made the existing subdivision financially impractical, so a new one was requested of the surveyors.⁷⁶⁶ The new scheme was, though, turned down by the Surveyor-General due to the extraordinary shapes now required for the sections, and the original plan preferred.

The Chief Surveyor cut through the fourteen-year old Gordian knot of plans, leases, access and Council requirements by pointing out that the Department of Lands and Survey was not bound by the requirements of local authorities. So he recommended that the beachfront be taken, together with the portions of the reserve necessary to permit widening to 100 links, for a public road under the Public Works Act. His office would supply the necessary tracings and paperwork. This procedure would make the frontage a public road and allow the leases to be registered by the District Land Registrar, ‘irrespective of any reference to the local body’.⁷⁶⁷

⁷⁶³ Deputy Public Trustee to Chairman, Hutt County Council, 17 February 1910. MA 1/179 6/46.

⁷⁶⁴ *New Zealand Times*, 3 February 1910. MA 1/179 6/46.

⁷⁶⁵ Hutt County Council to Deputy Public Trustee, 22 April 1910. MA 1/179 6/46.

⁷⁶⁶ Public Trust Office memo, 5 May 1910. MA 1/179 6/46.

⁷⁶⁷ Chief Surveyor to Public Trustee, 20 October 1910. MA 1/179 6/46.

The Public Trustee gladly accepted this suggestion, with the qualification that the District Land Registrar already accepted that the beach was really part of the reserve by accretion. If the Crown would take a 100-link strip for a public road, the Trustee would waive any claim to compensation since the benefit to the reserve land would more than make up for the land lost.⁷⁶⁸ The Chief Surveyor obliged promptly with duly approved tracings and schedule, including the land to be taken. This allowed the taking by proclamation in order to provide for a continuous public road along the sea front, which would be extended past the reserve by the neighbouring owner dedicating his beachfront land.⁷⁶⁹

The Public Works Department asked the Trustee to agree to the beachfront being taken under s 27 of the Public Works Act 1908, rather than complying with ss 18-19 which required that forty days notice of intention be given. He also asked the Trustee to agree to paying for the public notification of the taking.⁷⁷⁰ Since the land was being taken at the Trustee's request, he agreed to these terms.⁷⁷¹ The taking was gazetted on 2 March 1911, to take effect on 3 April. The taking consisted of four small parcels comprising respectively 2ac 0r 24p, 0ac 1r 29.7p, 0ac 0r 33.6p, and 0ac 2r 11.3p, a little over 3 acres in total.⁷⁷²

The Education Board continued its importunate pleadings to be allowed a preference to lease reserve land cheaply. It could find nowhere else suitable and meanwhile continued to rent an unsatisfactory hall. However, the Public Trust's officers and solicitor could find no way around the statutory requirement that they must publicly offer the leases, so they were unable to give the Board preference. They repeatedly advised the Board that it could take the land under the Public Works Act, but the successive valuations were too high for the Board's purse.⁷⁷³

The new May 1911 valuation of the subdivision took in 44 sections totalling 6ac 1r 32p, i.e. the balance of the block once the road area and the cemetery were deducted. The total capital value was now assessed at £2455 from which a total annual rent of £122 15s could be derived.⁷⁷⁴ The Valuer commented that his figures might appear low, but that there was little or no current demand for this class of property and nor would there be for some years. Nevertheless, he was confident that the sections would all be saleable eventually at his figures.⁷⁷⁵

⁷⁶⁸ Public Trustee to Chief Surveyor, 25 October 1910. MA 1/179 6/46.

⁷⁶⁹ Chief Surveyor to Public Trustee, 5 November 1910. MA 1/179 6/46.

⁷⁷⁰ Asst Under-Secretary, Public Works Department, to Public Trustee, 9 February 1911. MA 1/179 6/46 pt 2.

⁷⁷¹ Public Trustee to Under-Secretary, Public Works Department, 13 February 1911. MA 1/179 6/46 pt 2.

⁷⁷² *NZ Gazette*, 2 March 1911, 804.

⁷⁷³ Public Trust Office memo, 24 February 1911. MA 1/179 6/46 pt 2.

⁷⁷⁴ T.S. Ronaldson, Valuation Schedule Taupo No 2 Reserve, 2 May 1911. MA 1/179 6/46 pt 2.

⁷⁷⁵ Board proposal and resolution, 27 September 1911. MA 1/179 6/46 pt 2.

It still took until September 1911 for the Hutt County Council to approve the subdivisional plan and the Board to approve the new valuations and upset rentals. If a lessee took up a second 21-year term the new rental was to be calculated as 5% of the unimproved value at the commencement of the second term.⁷⁷⁶ In October 1911 the call for tenders was advertised, to close on 10 November.⁷⁷⁷

The Board also directed the Public Trustee to fence in the burial ground when the first funds were available.⁷⁷⁸ This had now been expanded on the subdivision survey plans to the full acre originally prescribed.

Once again in early 1913 tenders for leases were received. By 9 April 13 sections had been successfully leased, but it was believed there was no chance for any more as the government valuation of the remaining 4 acres, 3 of which were the sand dune sea sections, was a very high £1500. The Valuer-General found no basis for reducing the valuations. At an assessment court on 30 May 1913, the Public Trustee was to object to the land valuation placed on Taupo No 2, but on the day accepted another offer by Valuer-General Flanagan to reduce the valuations by 20%.⁷⁷⁹

The Hutt County Council had not accepted the stratagem regarding the beachfront road. In September 1914, A.K. Newman MHR wrote to Minister of Works Herdman complaining on the Council's behalf that the Public Trustee had not constructed the beachfront road but expected the Council to pay the several hundred pounds it would cost. The farmers of Hutt County should not have to pay for the private benefit of a few individuals along a road that was in the wrong place.⁷⁸⁰ The Public Trustee's response was that the road had been taken by proclamation as a public road and as a trustee he would not be justified in spending any money on its formation, while the formed roads leading to the beach had been passed by the Council, as had the subdivision plan.⁷⁸¹ The discussion did not extend to the basis on which the Hutt City Council rejected to legal point about the Department of Lands and Survey not being bound by local authority requirements.

In March 1915, the Public Trustee intervened on behalf of some of the lessees who were objecting to the Marine Department claiming ownership of the beachfront around Taupo No 2 Block. Further, the Department was just about to lease out the area of beach. He pointed out that the beach was considered part of Taupo No 2 by accretion, it was therefore in his ownership, and he demanded to know by what right the Marine Department claimed it.⁷⁸²

⁷⁷⁶ Board proposal and resolution, 27 September 1911. MA 1/179 6/46 pt 2.

⁷⁷⁷ Public Trustee, Call for Tenders, n.d. MA 1/179 6/46 pt 2.

⁷⁷⁸ Board proposal and resolution, 27 September 1911. MA 1/179 6/46 pt 2.

⁷⁷⁹ Deputy Public Trustee to Valuer-General, 30 May 1913. MA 1/179 6/46 pt 2.

⁷⁸⁰ A.K. Newman to Herdman, 3 September 1914. MA 1/179 6/46 pt 2.

⁷⁸¹ Herdman to Newman, 14 September 1914. MA 1/179 6/46 pt 2. Apparently the Council had not only been requiring metalling, but also a concrete seawall protecting the road.

⁷⁸² Deputy Public Trustee to Secretary, Marine Department, 15 March 1915. MA 1/179 6/46.

Apparently, Barber had built a shack on the nominal beachfront roadway and the Marine Department agreed it had no power to grant him a lease to occupy the site.⁷⁸³

In mid-1915, one of the lessees wrote asking for permission to remove a cabbage tree that had blown down. Apparently it had been a 'tribal tree' that Lands and Survey had insisted be provided with its own reservation and right of way access. Now that it had fallen down, permission was given by the Public Trustee for the trunk's removal.⁷⁸⁴

The one-acre cemetery block now received some attention. The Plimmerton Progressive Association agreed to assist the Public Trustee in improving and beautifying the cemetery, suggesting that the road frontage be enclosed by a low concrete wall topped with rustic woodwork, that suitable shade trees be planted around the section and the slope below it, and that the flat portion be levelled and put down in grass.⁷⁸⁵ Some of the boundary was already fenced, as it was a condition of the leases that each property was bounded by a substantial fence. The Association agreed to provide and plant the trees and provide ongoing maintenance, if the Trustee would do the rest. Officials noted that the reburials specified in the 1896 Act had been done (no details were supplied), but that it was also the Trustee's responsibility under that Act to plant and beautify the cemetery and erect a suitable monument with the names of all those interred there. The Public Trustee approved the Association's suggestions and directed that it be arranged to have the work done, the Trust paying the cost.⁷⁸⁶

The Progressive Association complained in February 1919 that neighbouring lessees were fencing in portions of the cemetery reserve for their own use. A Trust Office inspector reported that one had roughly fenced in a small portion of reserve for his fowls 'but to my mind it is not doing harm to anybody'.⁷⁸⁷

6.5. Management by the Native Trustee after 1920

When the Native Trustee's office was created in 1920, it took over responsibility for Maori reserved lands nationally from the Public Trust Office. The new Native Trustee was Judge W.E. Rawson of the Native Land Court.

An approach was made to ask if any portion of the cemetery reserve could be set aside for building a public hall and bathing sheds. The Native Trustee refused as it was not

⁷⁸³ Deputy Public Trustee to Chairman, Plimmerton Ratepayers Association, 30 May 1915. MA 1/179 6/46.

⁷⁸⁴ Public Trust Office memo, 13 August 1915. MA 1/179 6/46.

⁷⁸⁵ Plimmerton Progressive Association to Public Trustee, 20 April 1917. MA 1/179 6/46.

⁷⁸⁶ Public Trust Office memo, 27 June 1917. MA 1/179 6/46.

⁷⁸⁷ Local Deputy Public Trustee to Public Trustee, 4 March 1919. MA 1/179 6/46.

permissible to set aside any part of the acre block for any other purpose, even though the actual burial ground was enclosed in a small portion of it.⁷⁸⁸

On 5 March 1912, Heni te Rei wrote asking for the Public Trustee's consent to partition Taupo No 4 [sic] so that she could erect buildings on her own sections. She said that the Judge of the Native Land Court had told her that the land could not be partitioned without the Trustee's consent.⁷⁸⁹ The Trustee replied with regard to Taupo No 2 that he had power to lease the land only, not to partition it, especially since there were 48 owners for some 6 acres subdivided, but she could apply to lease land on the same terms as the rest of the public.⁷⁹⁰ Presumably she had the block number confused, but that aside this request shows that she did not understand, sixteen years after the 1896 Act, the effect of the 1881 vesting in Wi Parata and then the vesting in the Public Trustee, either as to the changes it made in her interests in the land, or the fact that the court's determination of interests related solely to how much money each beneficiary would receive from the leasing. Also, if in fact Judge Gilfedder had told her this, he should have been aware from the legislation that the Trustee could not partition the reserve.

Two years later, she instructed Otaki solicitors to write stating that she owned one half of the Taupo No 2 Block, but that the land had been leased and the rents collected by the Public Trustee.⁷⁹¹ The reply was that she had been assessed by the Court to have only an interest of 3 roods 8 perches and that with all the survey work required the block's account was still not in credit.⁷⁹²

A deputation representing the 'owners' of the Taupo No 2 reserve saw Maui Pomare in November 1917, asking him to help them be paid rental income from the block. The reply given was that before any distribution of rents could be made the works specified in s8 of the 1896 Act had to be carried out, and these were currently under consideration.⁷⁹³ Nevertheless, on the Trustee's recommendation the Public Trust Board approved the setting aside of £150 towards the proposed beautification and memorial, and the distribution of the remaining £182 in hand, as well as all future accruing rentals annually to the beneficial owners.⁷⁹⁴ Another three months later, the Public Trust Office forwarded a distribution list to Pomare, asking him to contact the leader of the deputation that had visited him the previous November, and ask

⁷⁸⁸ Native Trustee to Reg Wall, 7 April 1921. MA 1/179 6/46.

⁷⁸⁹ Heni te Rei to Public Trustee, 5 March 1912. MA 1/179 6/46 pt 2.

⁷⁹⁰ Public Trustee to Heni te Rei, 8 March 1912. MA 1/179 6/46 pt 2.

⁷⁹¹ Kirk and Rapley to District Manager, Public Trust Office, 24 April 1914. MA 1/179 6/46 pt 2.

⁷⁹² Public Trustee to Kirk and Rapley, 29 April 1914. MA 1/179 6/46 pt 2.

⁷⁹³ Pomare to Public Trustee, 23 November 1917; Asst Public Trustee to Pomare, 8 December 1917. MA 1/179 6/46. Both Pomare and the official referred to the Maori concerned as the 'owners' of the block; presumably they meant beneficial owners.

⁷⁹⁴ Public Trust Office Board Minute No 1075, 22 February 1918. MA 1/179 6/46.

that person to correct and update the addresses.⁷⁹⁵ The distribution was then made to those still alive (at least 9 were dead). By now £193 was distributable, meaning one share was worth 2s 6d.⁷⁹⁶

Pomare wrote again in March 1919, saying that a deputation of the Maori interested objected to the rents being paid annually and wanted them every six months instead. ‘They also stated that a proper fence should be immediately erected, and that there is no need for a tombstone, and also that further road access should be made’. When the Trust had the fence erected, the beneficiaries wished to be present as several graves were outside the present fence.⁷⁹⁷

In October 1921 an Otaki undertaker wrote requesting the Native Trustee pay the funeral expenses of Heni te Rei. It was calculated that she had had a credit of £30 16s, but the Native Trustee replied that there were no moneys held by his Department out of which the account could be paid.⁷⁹⁸ Her son Waari te Rei then wrote to the Trustee pointing out that his mother’s co-beneficiaries had received rent payments six months earlier but she had not, while she was the principal owner of the land, so he could not understand that the Department had no account of her interest.⁷⁹⁹ He was then told that a succession order was required before any of her money was paid out. On 5 December 1921, Waari wrote again, together with Hirihana te Rei, Matene Rei and Pipi Rei who was a trustee on behalf of her mother. They stated that a succession order had been granted to them by the Native Land Court on 20 November and, although there was supposed to be a six-week interval after such an order before they could gain access to any money on trust for their mother. Nevertheless, their ‘very pressing financial necessities’ required that they ask for this favour.⁸⁰⁰ But the Native Trustee said that until the succession order had matured and was in the Office’s possession, he could not act.⁸⁰¹

Five residents of Hongoeka —Miriamā Rangikuihoe, Ani Retimana, Roka Rangihaeata, Te Ua H. Kotua, Matui Teieti—wrote in October 1921 complaining of the state into which the cemetery reserve had been allowed to fall and that picnickers were using the ground. They also asked that a strip of half a chain be taken from the school ground and added to the enclosure.⁸⁰² An official sent to inspect the site reported that the portion used by picnickers was the flat portion adjoining the beach, while the graves occupying only one-tenth of the reserve were situated on a knoll at the back, up an almost perpendicular cliff, very exposed

⁷⁹⁵ Asst Public Trustee to Pomare, 21 May 1918. MA 1/179 6/46.

⁷⁹⁶ Taupo No 2 (Ngatitōa) Account Distribution List. MA 1/179 6/46.

⁷⁹⁷ Pomare to Minister for Public Trust, 31 March 1919. MA 1/179 6/46. The cover sheet of the reply is on file, but not the reply itself.

⁷⁹⁸ Native Trustee to H.H. Olliver, 11 October 1921. MA 1/179 6/46.

⁷⁹⁹ Waari te Rei to Rawson, 18 October 1921. MA 1/179 6/46.

⁸⁰⁰ Hirihana te Rei and others to Native Trustee, 5 December 1921. MA 1/179 6/46.

⁸⁰¹ Native Trustee to Mrs R. Carkeek, 8 December 1921. MA 1/179 6/46.

⁸⁰² Miriamā Rangikuihoe and others to Coates, 29 October 1921. MA 1/179 6/46.

and unsuitable for picnickers who seldom went up there. He was at a loss to know why the Maori confined their burials to the inaccessible portion, where there was no more available space, when the flat land was readily accessed from the beach road: 'It is only natural that picnickers go on the flat portion as there is nothing whatever to indicate that the land is a Cemetery Reserve.' The fence around the graves was 'most dilapidated', the wire broken on three sides with the fourth adjoining a lessee's property. It had reputedly been cut to allow the grazing of some long-gone former Plimmerton resident (and may well have been the original fence complained of years before). One of the fence posts had been pulled up and used by Maori themselves for a headstone; they never went on the site except for an interment while the grass was waist high over the graves. He recommended that the wire fence be repaired for a cost of not more than 30s, and that future burials be permitted on the flat ground only, which should itself be fenced off with post and five wire, a gate and a notice forbidding public entry. He did not support touching the school land as that access would lead only to the graves on the top of the knoll—which was probably precisely why they were asking for it.⁸⁰³

In May 1922, W.H. Field MP—presumably the same man who had been interested in Kapiti a couple of decades previously—sought permission from Native Minister Coates to purchase about $\frac{3}{4}$ of an acre of the burial reserve, down on the flat portion, to erect a shelter shed and lavatories. Since s 94 of the Public Works Act 1908 made the consent of the Governor-in-Council necessary before the local authority could take it under that Act, which was the means Native Trustee Rawson recommended. Rawson proposed to give the Maori owners due notice, and then put Field's proposal to them; if they consented then the Governor-in-Council could approve and the local authority proceed.⁸⁰⁴ The meeting was called for 16 June 1922 at the Otaki courthouse.

At the meeting, Judge W.E. Rawson (Native Trustee), O. Heketa (Native Land Court Official Interpreter) and R.P. Dykes (Native Trust Office) met with Inia Hakaraia, Waari Rei, Pupi Rei (Mrs. Pare Carkeek), Mahia Parata, Riria Wirihana (Mrs. Swainson), Ngaparapara Ropata, Ngapera Wi Parata, Totarewa Kipa, Matene Rei and Mrs. D'Ath (Marion Wallace). Rawson explained the proposal for the Hutt County Council to take the land, the interpreter interpreted, and Dykes pointed out the proposals on the map. The minutes expressly say that the proposal was 'to take part of the subdivision ... for the purpose of a recreation ground and the erection of shelter sheds.' Only Mrs. D'Ath dissented, but did so on behalf of the Wallace family; the discussions and her reasons were not recorded.⁸⁰⁵

A letter was tabled from some Porirua residents, noting that there had been no notification of who wished to purchase. They stated:

⁸⁰³ G. Stevens, memo, 17 November 1921. MA 1/179 6/46.

⁸⁰⁴ Native Trustee to Native Minister, 16 May 1922. MA 1/179 6/46.

⁸⁰⁵ R.P. Dykes, meeting minutes, 17 June 1922. MA 1/179 6/46.

We are unable to attend, but we agree to sell. Those who do not wish to sell, kindly leave in the portion which is out of the purchase.

Clearly, they expected there to be opposition to the sale. The signatories were Hohepa Wineera, Matiu te Rei, Te Rauparaha Wineera, Heraami Wi Neera, ???? Tamihana, Patete Nopera, Te Kanawa Wineera, J.H. Prosser and Rawiri Puaha Prosser, the last-named also acting as witness to the other signatures, certifying that they all understood the proposal before signing, and tabling the letter at the Otaki meeting—thereby obviating the need for a Porirua meeting, as Dykes observed.⁸⁰⁶

The result of this meeting was apparently communicated as a willingness to lease the land only. Field then put up a much more substantial proposal, to take the whole of the flat portion of the burial ground and to put on it a public hall for Plimmerton, as well as a shelter for school children and other visitors, and the remainder as a recreation ground. This upsizing resulted from a public meeting at Plimmerton, ‘a prominent Native, Horomona’, attending with most of the leading residents. Mr. Hugh Akers of Palmerston North, who had a holiday cottage there, offered to donate the money necessary to pay for the freehold of the land, but being ‘a believer in freehold’, he would not be forthcoming if it were leasehold only. The proposal included two of the neighbouring sections on long-term lease to the Native Trustee, but the leaseholders were willing to give them up for this purpose.⁸⁰⁷

Native Trustee Rawson explained that at the Otaki meeting he had explained these proposals—although the minutes and correspondence reveal no mention of a hall or recreation ground—and that the attendees had agreed to ‘the flat portion of the burial ground’ being taken under the Public Works Act. As to Mrs. D’Ath’s objection, another member of the Wallace family had since indicated his consent. Rawson therefore raised no objection to the taking of the flat portion of the burial ground—from which all bodies had been removed to the hill portion—and of the two adjoining sections, provided that a twelve-foot access be left to the hill cemetery. He also explained that the Maori who had agreed did understand it was the freehold with which they were parting and that the Native Land Court would assess the compensation.⁸⁰⁸ Native Minister Coates copied the correspondence to Maui Pomare and asked his opinion as to whether, if the land was taken, the money should be distributed or retained as a fund to fence in and generally improving the graveyard remaining; the two ministers agreed on this.⁸⁰⁹ Coates then advised Field about proceeding with the taking by the

⁸⁰⁶ Hohepa Wineera and others to Native Trustee, 12 June 1922. MA 1/179 6/46.

⁸⁰⁷ W.H. Field to Native Minister, 8 July 1922. MA 1/179 6/46. Apparently school parties, sometimes numbering hundreds, visited the beach there and there was not even a veranda on the local railway station for shelter in bad weather, so many had been caught out.

⁸⁰⁸ Native Trustee to Native Minister, 14 July 1922. MA 1/179 6/46.

⁸⁰⁹ Native Trustee to Native Minister, 14 July 1922 annotations 15 July 1922. MA 1/179 6/46.

Hutt Council, but stated that the hill portion of the burial reserve was not to be taken and a twelve-foot wide access to it was to be provided.⁸¹⁰

The Hutt County Council gave notice on 14 November 1922, gazetted on 16 November and published in the *Dominion* on 17th and 18th, of its intention to take the land under the Public Works Act 1908 and the Counties Act 1908. The size of the portion concerned was 3 roods 20.3 perches, but this related to the portions of the two leased sections only.⁸¹¹

The taking was not completed, however, as the Crown Law Office decided that a public hall did not come within the definition of a public work as defined by s 3 of the Counties Act—apparently it did within the legislation governing borough councils—and so the Public Works Department refused to issue a proclamation. The Government proposed to fix the situation in a forthcoming amendment to the Public Works Act.⁸¹² This was done but then the Council would not accept the valuation done for the Native Trustee of £1071 for the land taken from both subdivisions. The matter would have to go to the Native Land Court for determination.⁸¹³

The Native Land Court hearing was gazetted in the *Kahiti* 20 December 1923 for hearing on 15 January 1924. Judge Gilfedder found that the Native Trustee's private valuer valuing the land at £6 per foot of frontage was contradicted by the government valuer who put it at £3 per foot. The Judge commented that 'it is generally recognised that the Government Valuation of Native lands is somewhat lower than the market price'. While the private valuer's figure might be rather optimistic, he was in closer touch with commercial realities relating to demand and supply in beach resorts. The Council's lawyer, however, stressed the land's current inalienability and how that state resulted in the owners' inability to deal with it, a factor in lowering its present economic value to the owners. Whereas the Judge recognised the former 'sentimental value' of the site to the owners and that it had not been reserved as 'a place of amusement or convenience for the pakeha', he concluded—without giving reasons—that 'at the present time we cannot place much value on the former sentimental estimation in which the land was held by the old Natives'. This attitude made no concessions as to the current owners similarly having a 'sentimental estimation' of the reserve land. He decided on £5 per foot frontage, making a total of £840, less £10 as consideration for the lessees' interest.⁸¹⁴ This sum was credited to the Ngati Toa account with the Public Trustee in early May 1924.

⁸¹⁰ Native Minister to Field, 14 July 1922. MA 1/179 6/46.

⁸¹¹ Hutt County Council, Notice of Intention to Take Land, 14 November 1922. MA 1/179 6/46.

⁸¹² *Times*, 13 June 1923. MA 1/179 6/46.

⁸¹³ The valuation method used was not by area but to measure the frontage and value that £6 per linear foot.

⁸¹⁴ 24 Wellington MB 111-114, 21 March 1924. MA 1/179 6/46. Each party was to pay its own costs and half of the court costs.

Some of the lessees began to ask the Crown to purchase the sections within Taupo No 2 on their behalf, presumably so that they could then purchase from the Crown and own the sections freehold. Native Under-Secretary Chief Judge Jones asked whether there were any trusts or restrictions on doing so.⁸¹⁵ Judge Rawson replied that the only formal restriction was that of absolute inalienability in the original 1881 Native Land Court order to Wi Parata. However, he said, ‘it would appear from the history of the Reserve ... that it has been the policy of the Crown to respect the original restrictions, save in so far as they have been relaxed for the purpose of leasing part of the land’. Further, he ‘respectfully suggested’ that, when the tenants’ requests were being considered, the Native Land Board ‘should consider the sentimental value of this Reserve from the Native point of view when the land was originally set aside’.⁸¹⁶

More directly now, Jones replied that the Native Minister wanted him ‘to enquire definitely whether you [Rawson] are in favour of selling the reserve or otherwise’.⁸¹⁷ Left with no room to merely suggest or recommend, Rawson replied equally directly that ‘as a trustee I am not in favour of selling the above reserve’ and advised against purchasing individual Maori interests in the block. He did, though, point out that there was no objection to the Native Department ascertaining the wishes of the Maori beneficial owners.⁸¹⁸

This the Native Department soon did, prompting a response from the trustees of the late Hemi Matenga. The trustees’ lawyers noted that all the leases were due to expire on 1 October 1932 and confirmed that the trustees would be largely guided by the Native Trustee, asking for his views on the position.⁸¹⁹ The Under Secretary had stated that Hemi Matenga had been entitled to close on one-third of the block, but the share being credited to his estate (which the lawyers asked to be paid out) was much less than that, so the lawyers sought clarification. The Native Trustee’s ‘view’ was that ‘the question of disposing of the interests of the Native owners in this Reserve is entirely a matter for themselves to deal with’, but that if the general desire was to sell then an owners’ meeting under Part XVIII of the Native Land Act could be called to pass a resolution to that effect.⁸²⁰

6.6 Some further developments in the twentieth century

⁸¹⁵ Under-Secretary, Native Department, to Native Trustee, 5 September 1923. MA 1/179 6/46.

⁸¹⁶ Native Trustee to Under-Secretary, Native Department, 21 September 1923. MA 1/179 6/46.

⁸¹⁷ Under-Secretary, Native Department to Native Trustee, 18 October 1923. MA 1/179 6/46.

⁸¹⁸ Native Trustee to Under-Secretary, Native Department, 20 October 1923. MA 1/179 6/46.

⁸¹⁹ Pitt and Moore to Native Trustee, 29 November 1923. MA 1/179 6/46.

⁸²⁰ Native Trustee to Pitt and Moore, 6 December 1923. MA 1/179 6/46. He pointed out that Hemi Matenga’s share was an undivided 3 roods 8 perches of the 9 acres 2 roods 24 perches, which he admitted conflicted with the Native Department’s advice. He could not release any funds except to successors appointed by order of the Native Land Court.

A letter dated 7 April 1932, from the Native Trustee, W. E. Rawson, stated that the Ngati Toa Native Reserve had been proclaimed Crown Land⁸²¹. The letter also stated that the Native Trustee Office had insufficient funds to fence the cemetery and recommended that the burial ground should be vested in trustees in terms of section 117 of the Native Purpose Act 1931. Later, on 14 August 1974, the burial reserve, which had previously been Maori freehold land consisting of part of Lot 45 DP 2555 was set aside as a Maori reservation for the purpose of a burial ground for the common use and benefit of Ngati Toa⁸²².

The current proprietor of the Plimmerton Hall, relevant parcel being Section 41, Block VIII, Paekakariki Survey District, is the Porirua City Council. The land was originally seised in fee simple in 1924 under the Public Reserves and Domains Act 1908 for the purpose of erecting a 'Public Hall, Bathing Sheds and Conveniences'. On 25 June 1880, the title was transferred from the Hutt County Council to the Porirua City Council and under title WN25C/949, issued on June 1984, the purpose is noted as being a Local Purpose (Community Buildings) Reserve, subject to the Reserves Act 1977. The previous title, WN312/17, issued in 1924, noted the same intended use for the land⁸²³.

The Plimmerton Tennis Club presently covers four separate lots: 34, 35, 36 and 37 of DP 2555. The former three were all gazetted in 1974 as being Recreation Reserves. They are contained within the same title: WN38C/527, issued on 23 August 1990, which states the purpose as being for a Local Purpose Reserve (Community Centre) with the proprietor being the Porirua City Council⁸²⁴. The title is held in an estate of fee simple currently for a public purpose. Lot 37, which is not contained within this title, was gazetted in 1994 as being a Local Purpose Reserve (Community Use). This status was amended in 2006 by a notice which changed the purpose to a Recreation Reserve via section 24 of the Reserves Act 1977.

6.6. Conclusion

Unfortunately, the story of the Taupo No 2 Block/Plimmerton Native reserve remains largely incomplete with many large gaps.

There are a number of indications, especially after World War I, that the owners (or some of them) were prepared to sell their portions of the block. It may have been, ultimately, that once the monetary value of the block had risen sufficiently with all the Pakeha housing around it, that they considered they were going to get little other benefit from the block.

⁸²¹ Taupo Block Order File. WN 109.

⁸²² Taupo Block Order File. WN 109.

⁸²³ Taupo Block Order File. WN 109.

⁸²⁴ Taupo Block Order File. WN 109.

The story of the Taupo No 2 Block is a good illustration of the tensions within the compulsory regime of management of Maori reserved land by the Public Trustee. The role had been imposed on the Public Trustee by statute since the early 1880s in response to the perception that Maori were unable to manage their own affairs. By law, control was taken out of the hands of the Maori owners and all reserved lands thereafter were vested in the Public Trustee, ostensibly on behalf of the former owners who now became beneficiaries. The irony of this situation was that the reserved lands were declared by the Native Land Court to be ‘absolutely inalienable’, but then, by law, were immediately alienated from their customary owners, now recognised by the colonial legal system, as title was vested in the Public Trustee.

Having received the lands, the Public Trustee then had the statutory responsibility of managing them on behalf of the beneficiaries, as the owners had now become. As an official based in Wellington, with a small staff whose primary focus was in other fields than Maori land, the Public Trustee was unlikely to be well attuned to the wishes of the beneficial owners and to his credit Public Trustee Martin did apparently make sporadic attempts to contact Ngati Toa over this reserve—at least initially—and over the years there were occasional inspections made. However, those inspections do not seem to have resulted in much action, a prime example being the fence protecting the main urupa, and another being the settler who was grazing his stock across the reserve. This inaction in terms of physical protection and maintenance continued into the 1920s when the official then inspecting was wondering why Ngati Toa themselves did not take better care of it all, when it had been taken out of their hands two and a half decades previously and made the Trustee’s responsibility.

Furthermore, as recorded in these files the consultation with Ngati Toa over the disposal of this reserve seems to have been even more sporadic. The very distinct impression the reader gains is that the Public Trustee often made decisions about this reserve on the basis of officials’ opinions and the needs of government departments and local bodies as they were presented to him. The wishes of Ngati Toa themselves are largely invisible in the written record—we do not even know whether they supported the original disposition of the reserve in the first place in 1896. There are, as noted above, several indications that even their leaders did not fully comprehend what was going on and supposedly done on their behalf. The final segment discussed above, when Chief Judge Jones—wearing his Native Under-Secretary hat—conferred with Judge Rawson—wearing his Native Trustee hat—indicates that they may finally have been consulted in the 1920s when a concerted effort to sell off the bulk of the reserve was developing.

The Public Trustee seems largely to have been making decisions concerning this reserve within a commercial framework. For example, the idea of setting aside the single acre for the cemetery but then subdividing and selling the remainder of the block appears to have originated with the Public Trustee. Later, his objections to various expressions of interest

concerning disposal of the land appear to have been largely financial, as when the Education Board could not pay to set up a school on a selection of the subdivided sections. Also, the question of roading and various related negotiations seem to have been focused on the issue of providing better access for subdividing the block and thereby enhancing the value of the new residential sections that would result. The exception to this commercial focus was Public Trustee Martin's acceptance of the abortive proposal by the Plimmerton Road Board to make the block a public recreation reserve and pay only £1 annual rent, a proposal which cut across the 1896 statutory direction to obtain the best rent obtainable.

There is also the issue of costs. From the start, the Crown intention was for the Public Trustee to charge for the upkeep of this reserve; this is made clear in the 1896 Act, with Ngati Toa beneficiaries to receive only any 'residue' after the various debts were discharged. The files sighted contain no reference to the cost of the Public Trustee's administration or other charges resulting from the various activities undertaken in connection with this block, but there will have been some and they will have been deducted from whatever income was generated from the block, whether by sale or lease. Issues surrounding such costs in other places have been matters such as:

- Were the Public Trustee's charges fair and reasonable for the work done?
- Was the Public Trustee charging for work that the owners actually wanted done?
- Was the Public Trustee charging for work that actually needed to be done?
- Were the charges applied fairly and reasonably against the block and the relative interest of the various beneficiaries?
- Overall, did the Public Trustee's management regime deliver better results in a more economical fashion than the Maori owners could have achieved by themselves without the imposition of the bureaucratic management regime?

In many cases the answers to such questions require detailed financial information not present in the files sighted. The reports discussed above suggest that in fact the Public Trustee did little to expend money on the upkeep of the burial ground, as he was required by statute to do, which would have kept any charges down. But this apparent neglect may have been due to the fact that the block was earning no income against which such charges could have been applied.

The Public Trustee did discharge his fiduciary duty on at least two important occasions. The first was when the attempt was being made to tunnel through the block to improve access to a nearby quarry and various Ngati Toa burials were threatened—although the Trustee's response seems lacking in vigour. The second was when the issue of compensation arose and the Trustee took the issue to the Supreme Court. As costs were paid in favour of the Trustee, the possibility of this action being charged against any income from the reserve was averted.

It would have been usual, though, for the Trustee to charge the costs of administration against the block concerned, which in itself often rendered the block uneconomical when it was not attracting significant earnings, as was the case with this reserve.

The issue of the extent to which the Public Trustee and then the Native Trustee can be held to be agents of the Crown for the purposes of grounding a Treaty claim has been raised in various Waitangi Tribunal inquiries, and the possibility has been steadfastly resisted by the Crown and the Trustees. Nevertheless, some Crown accountability for the quality of the of the Trustees' administration has been widely accepted on at least two bases. The first is that the Crown, instead of leaving inalienable Maori land—the key and most desired of all Maori lands—in Maori hands, required that immediately upon its designation by the Court as an inalienable reserve it be alienated to the ownership of the Public Trustee. The second is that the Crown, having itself the Treaty duty of active protection of its Treaty partner, has been recognised as having a responsibility to ensure that the management by the Public and Native Trustees—even if they were not agents of the Crown—did not prejudicially affect the Maori whose land was placed in their care, and to make good any such prejudicial effect by corrective legislation or subsequent remedial action.

In the case of Taupo No 2 Block, which became known as the Plimmerton Native Reserve or the Ngati Toa Cemetery Reserve, the Public Trustee had the block placed in his administration, not just by the general law relating to Maori reserve land, but by a statutory provision specific to that block. That statutory responsibility was reinforced by two subsequent statutory provisions, again specific to that block. Then, once the block had been placed in his care, there is the issue of how the Public Trustee managed it. The file record sighted indicates only a couple of instances where Ngati Toa were actually consulted over this, right at the start—when Martin was telling them that he would not do what they wanted—and right at the end where Rawson was advising the Native Department to consult them before either the whole block, or the 90% of it that was not designated as a cemetery, was alienated. The financial benefit that might have been derived from the sale of the block was not the only consideration that Ngati Toa brought to bear on this block. It hardly fitted with the inalienability of the reserve placed upon it by the Native Land Court in the first instance, and presumably when the owners had direct input into the Court's ruling. The concern of Ngati Toa for both the several different urupa on the block—not just the larger cemetery—and for including the site of Te Rauparaha's house indicates that they were not solely interested in financial returns from it, as does the request right at the start from T.K. Macdonald, apparently speaking on behalf of Ngati Toa, that the block be turned into a recreation reserve, from which they would have received little or no financial benefit. The evidence is not complete or conclusive, but it appears likely that the Public Trustee was not, in fact, administering Taupo No 2 Block in accordance with the wishes of the Ngati Toa

owners who had been deprived by statute of their actual ownership and ability to exercise either legal control or tino rangatiratanga over the block.

CHAPTER 7

Whitireia

7.1. Introduction

Few issues relating to Ngati Toa lands are as intricate, or have led to as much litigation, as the Whitireia block. The Whitireia peninsula projects north from Porirua and is bounded by the Tasman sea on the one hand and the Porirua arm of the Porirua harbour on the other. It too was part of the reserved lands within the boundaries of the 1847 Porirua deed. This chapter is about the Whitireia *gifted block*, an area of about 500 acres at the northern tip of the peninsula. This land was originally gifted by Ngati Toa to the Church of England for a school, but for a number of reasons no school ever eventuated. The basic point at issue was that with the failure of a school to materialise Ngati Toa regarded the gift as having failed of its purpose, and sought to have the land returned. In this objective the iwi was unsuccessful. The litigation over whether Native title had been extinguished at Whitireia led to some of the most famous cases in New Zealand legal history.⁸²⁵ But as well as the struggle between Ngati Toa and the Crown over Whitireia, there was also to emerge a separate struggle between the government and the Church of England – a different, if related struggle, which also led to much litigation and some equally famous legal precedents in New Zealand’s legal history.

As far as we are aware this report is the first occasion where the full story of the Whitireia block has been traversed.⁸²⁶ The main point we make is that although the Crown

⁸²⁵ The Whitireia case, despite its importance, has never been inquired into by the Waitangi Tribunal. This is a consequence of the way in which Ngati Toa’s rohe has been divided up between three separate inquiry districts, with Ngati Toa’s core area around Porirua and the Kapiti coast still not inquired into.

⁸²⁶ There is a brief earlier report by Janine Ford, *A Report Commissioned by the Waitangi Tribunal on the Ati Awa ki Waikane Claim to the Whitireia Block*, Wai 89 Doc#A1, August 1991. This is a useful preliminary discussion (although we are not aware of any specific Te Ati Awa interest in the lands in question). Ms Ford appended to her report an invaluable 2 volume document bank which has been drawn on extensively for this report. Generally speaking the documentation relating to Whitireia

technically granted the land to the Bishop, this was in fact an accident which arose out of the pre-emption doctrine in force in New Zealand at the time. In reality the gift and the grant came from not from the Crown but from Ngati Toa. Not always has this fundamental point been understood.

The Whitireia peninsula is an area of considerable historic importance. It is comparatively rich in archaeological sites.⁸²⁷ Twenty-three sites have been recorded in Whitireia Park.⁸²⁸

Most [sites] represent Maori occupation dating up to about the 1840s. There is one small pa but terraces and middens are the most numerous features recorded, with terraces present at 58% of sites and midden present at 33%. There are few pits, no more than 14, and some are ill-defined and may not be storage pits. The chronology is unclear. Maori occupation ended largely in the 1840s and many of the sites are likely to be late prehistoric or early 19th century in age. Sampling two or three of the middens for dating purposes and for faunal analysis should be considered.

E J Wakefield refers to a Ngati Toa settlement at Kaitawa Bay in the early 1840s (Kaitawa Bay is immediately to the west of Onehunga Bay).⁸²⁹

7.2. The Original Gift

In the 1840s Maori made a number of grants of to the Bishop of New Zealand to support schools, including Ngati Toa's gift of land at Whitireia. Similar gifts were made by Maori in many places at around the same time, at Orakei, Te Waerenga-a-Hika, Te Aute, Otaki, and at Motueka. Whitireia, in other words, was, as noted, not unique. It seems to have been a clear policy both of the Anglican Church in New Zealand and Sir George Grey to encourage Maori to make such gifts. When Wi Parata of Ngati Toa gave evidence to the Native Affairs Committee in 1876 about Ngati Toa's decision to establish a school at Whitireia he particularly drew attention to Bishop Selwyn's role in the proposal:

When Bishop Selwyn first came down he asked the natives for certain land to be set aside for religious and educational purposes. The Maoris were pleased with that proposition because the

is especially rich. The most important source relating to Ngati Toa's own perspective is the *Report on the Porirua, Otaki, Waikato, Kaikokirikiri, and Motueka School Trusts*, 1905 AJHR G-5. This report contains a substantial volume of evidence and some key documents. This is relatively accessible material, and it is somewhat surprising that it has not been drawn on by other scholars to date. It certainly provides a very rich and full context to events between the *Wi Parata* and *Wallis* decisions.

⁸²⁷ See A Walton, *An archaeological survey of Whitireia Park, Porirua*, DOC Science Internal Series 32, Department of Conservation, Wellington, 2002.

⁸²⁸ Ibid, 16.

⁸²⁹ E J Wakefield, *Adventure in New Zealand*, John Murray, London, 1845, 220.

word came from the Bishop, and they gave up the land to the Bishop in accordance with his word that it was to be used for religious and educational purposes. They did not understand that the Bishop would keep the land for himself, and it was not understood that the Bishop would take a larger piece of land than it was intended he should.

Within Ngati Toa it seems that the driving force behind the gift was initially Tamihana Te Rauparaha, who was living at Otaki at the time. The Ngati Toa community proper, at Porirua, was at first reluctant. In 1905 Heni Te Whiwhi, Matene Te Whiwhi's daughter, testified as to what her father had said to her about it:⁸³⁰

Before, and on the occasion of my marriage to my husband, Te Reii, my father told us at his home how Bishop Selwyn approached him and Tamihana Te Rauparaha, and asked them for a piece of land in Porirua – Whitireia. Tamihana Te Rauparaha agreed to give the land to the Bishop, but I [sic – i.e. he?] did not. Tamihana went to see Ngatitua in Porirua, and told them of the Bishop's request, and said he had agreed to give the land to the Bishop. The Ngatitua people told Tamihana that the land was not his to give and that the land belonged to Te Rangihaeata. Tamihana came back to Otaki. The Bishop persistently asked Matene to let him have the land for a school, so that their children could be taught all the knowledge of the pakeha children, and, after many efforts on the part of the Bishop, Matene Te Whiwhi agreed.

Matene knew, Heni added significantly, “that his uncle, Te Rangihaeata, and Te Rauparaha would not override him in this matter”.⁸³¹

At the same time land was gifted by Ngati Raukawa at Otaki. This gift was later described by Heni Te Whiwhi, Matene Te Whiwhi's daughter, in 1905 based on what she remembered and what her father had told her:⁸³²

Mr Hadfield was sent here, and he set up at Waikanae and Rangiuu (Otaki). A place was built for him alongside of Rangiuu Pa. Ngatiraukawa were then living at Rangiuu Pa and Pakatutu Pa. I think Mr Hadfield arrived here [meaning Otaki] in 1846. Apart from his residence a church was built and also a school building. Mr Hadfield was here two years when Bishop Selwyn arrived. Bishop Selwyn saw Rangiuu was not a good place to live in, and, after looking over the land in the vicinity of the Otaki Township, he suggested to Ngatiraukawa to leave Rangiuu and come and make their home in this locality. The Bishop next asked Ngatiraukawa to give land in this locality to other hapus of the Ngatiraukawa who were living in other parts, so they could be near the church and the school. This Ngatiraukawa agreed to. The outside hapus of Ngatiraukawa then came to live here. The Bishop then asked

⁸³⁰ 1905 AJHR G-5, 8.

⁸³¹ Ibid. Te Rauparaha was a donor in his own right of course.

⁸³² Evidence of Heni Te Whiwhi, Royal Commission on Porirua and other School Trusts, 1905 AJHR G-5, 8.

Ngatiraukawa for the endowment of a school here. This Ngatiraukawa agreed to, and this land was given. I did not hear from my father that the Bishop gave cattle to Ngatiraukawa as a payment for the land. I think Ngatiraukawa left Rangiu Pa for this place in 1845. I think it was in 1851 that a building for the accomodation of boys for a boarding-school on a portion of this reserve was built, and I think the building was completed in 1853. The land was given to the Bishop because he told Ngatiraukawa that it would be the means of educating their children to be taught all the learning that was taught to European children

The formal mechanism for the gift was a deed of cession of 16 August 1848 by which eight individuals of Ngati Toa, including Te Rauparaha, Tamihana Te Rauparaha, and Matene Te Whiwhi granted land to the Crown for the establishment of a school at Porirua. The deed states:⁸³³

E hoa ki te Kawana Karei.-

Tena koe a pono ana ta matou whakaaetanga ki Witireia hei kareti ma te Pihopa ehara i te mea he tuku ana na matou hei kainga mo te Pihopa otira mona mo nga Pihopa a muri ake nei e whakakapia ai tona turanga he whakatupu I nga ritenga o te whakapono ki a te Karaiti kia whaiho ai hei patutu kia ruru ai i nga hau hua noa o te ao, ara i te he. Heeti ano kua tumau rawha taua kainga hei Kareti ma nga Pihopa o te Hahi o Ingarangi. Heeti ano.

Friend Governor Grey. –

Greeting! It is a perfect consenting on our part that Witireia shall be given up to the Bishop for a College.

We give it up not merely as a place for the Bishop for the time being, but in continuation for those Bishops who shall follow and fill up his place, to the end that Religion and faith in Christ may grow, and that it may be, as it were a shelter against uncertain storms that is against the evils of this world. This is the full and final giving up of that place, as a College for the Bishops of the Church of England.

Unlike some of the other gifts in other areas,⁸³⁴ the donors made no stipulation as to the who should attend the ‘college’ – that is, whether they should be children of both races, only Ngati Toa, or whatever. But it seems obvious that the donors would have been acting in the expectation that the principal purpose of the gift would be to benefit Ngati Toa children and provide them with a Christian education.

The donors were Te Rauparaha himself, Tamihana Te Rauparaha, Matene Te Whiwhi, Hoani Te Okoro, Wiremu Kanae, Watarauhi Nohorua, and Rawiri Hikihiki. Wi Parata was later to claim that the persons “who actually gave the land were not real Ngatitao;

⁸³³ The original deed of gift is held at Linz Wellington, Deed No 263, and is reprinted in Turton, *Deeds*, 1877, Vol 1 (Deeds of Gifts, No 1, p 785).

⁸³⁴ As at Te Aute, for example.

they were partly Ngatiraukawa and partly Ngatitōa”.⁸³⁵ He also stressed that the deed of gift was signed not at Porirua but at Otaki, seeking perhaps to give the impression that not all at Porirua knew about the deed of gift or had consented to it. Whether that is actually the case is

⁸³⁵ Evidence of Wi Parata to Native Affairs Committee, 14 July 1876, Le 1/1876/7.



Tamihana Te Rauparaha, George Angus, London, 1852.

Alexander Turnbull Library, Wellington.

Tamihana Te Rauparaha along with Matene Te Whiwhi played a dominant role in the original Whitireia gift and Crown grant (1848). Tamihana, known also as Katu, was Te Rauparaha's son by his fifth wife Te Akau (of Tuhourangi) and was born at Pukearuhe in North Taranaki during Ngati Toa's heke to the Cook Strait region in the early 1820s. He was a committed Anglican who was closely involved with Matene Te Whiwhi in Ngati Toa and Ngati Raukawa affairs. After a visit to England he became a convert to the idea that the Maori people needed their own monarch as a focus for unity and political and economic advancement. He is also famous for his vividly-written biography of his father.

hard to say. It is surely significant that Te Rauparaha himself signed the deed, and that others who signed it included Wiremu Kanae and Watarauhi Nohorua, as well as Matene Te Whiwhi and Tamihana Te Rauparaha. The latter two chiefs certainly did assert their identity as Ngati Raukawa whenever they wished to do so. Nevertheless most of the Toa leadership at the time can be said to have assented – with three obvious exceptions. One is Rawiri Puaha, who was certainly taking on a leadership role in Ngati Toa affairs at the time. Rawiri Puaha was however a Wesleyan – he was one of the Reverend Samuel Ironside’s former parishioners at Port Underwood – so it is possible that he may have opposed the gift on denominational grounds. Te Rangihaeata did not sign the deed either. It would be interesting to know what he would have thought about gifting some of the little that remained of Ngati Toa’s lands to the Church of England as a school. Another non-signatory of the deed was Nopera Te Ngiha – who was, however, a signatory of the Porirua deed of 1847. There appears to be no information as to why Nopera Te Ngiha did not sign the deed of gift. This fact allowed Hohepa Wi Neera to later argue in the Supreme Court that Nopera Te Ngiha’s interest had never been extinguished and that his interest now passed directly to himself (i.e. Hohepa Wi Neera) as the former’s descendant.⁸³⁶ So there are at least some doubts as to whether all of those with interests in Whitireia knew of, or consented to, the gift to the Crown. Certainly the Court of Appeal in *Hohepa Wi Neera*, decided in 1902, did conclude that there had been a valid cession of the land. According to Stout C.J.:⁸³⁷

But, the tribe, including the ancestors of the plaintiff, having given up their occupancy and possession in 1848, it is, in my opinion, too late for the plaintiff, even if he can sue, to be heard to claim possession of the land. The parties who made the cession are dead, and I am certain that in 1848 neither the plaintiffs nor any of his ancestors would have attempted to question the action of Te Rauparaha and the other chiefs when speaking or acting on behalf of the tribe.

While a number of the findings in *Hohepa Wi Neera* would be unlikely to be accepted by a modern Court, on this point at least it seems Stout C.J. is probably right: Te Rauparaha’s involvement in the transaction is obviously significant.

Some of the donors seem to have had very high expectations as to what would be constructed at Porirua – not simply a school, but rather some kind of superior school or even a tertiary institution of some kind perhaps to train Maori for the Anglican ministry. In 1876 the

⁸³⁶ In *Hohepa Wi Neera v Bishop of Wellington*, (1902) 21 NZLR 655. The argument was rejected by the New Zealand Court of Appeal, needless to say.

⁸³⁷ Ibid, 667-8.

Bishop of Wellington gave evidence to the Legislative Council about (inter alia) the Porirua grant. He had this to say about the hopes of the donors:⁸³⁸

The grant of land was for the whole diocese, and for a higher class of education. The intention was to make it like St John's College, near Auckland. Tamihana Te Rauparaha and Matene Te Whiwi had been for some time at St John's College, and they were so pleased at the two races being taught together that they themselves made the first movement towards the cession of the land. It has been a disappointment to some the object has not been carried out, but at the time there were not sufficient funds.

The objectives of the donors have not received nearly enough attention in the literature on Whitireia. To Wi Parata, "the object of giving the land was with the object of teaching the new religion, with a view to cause intertribal wars and the killing of men to cease".⁸³⁹ A mere primary school was not what Tamihana Te Rauparaha and Matene Te Whiwi were hoping to see at all. Inspired by the model of St John's College they were interested in "a higher class of education". Perhaps to these men a developing relationship with the Crown and with the Church, a readiness to make concessions over land claims by other tribal groups, an interest in establishing some kind of Maori monarchy, taking steps to eliminate the divisions caused by the Wairau engagement of 1843, and the establishment of a prestigious Church of England College at Porirua were all part of a single, idealistic, modernising vision. If so, and there are many indications that this was the case, then the tawdry and mean-spirited nature of the response by both the Church and the Crown in later decades must have been a cruel disappointment.

On 8 December 1850 the 500-acre gifted block at the end of the Whitireia peninsula was in turn granted by the Crown to George Augustus Selwyn, Bishop of New Zealand, for the maintenance of a school at Porirua "so long as religious education, industrial training, and instruction in the English language shall be given to the youth educated therein or maintained thereat".⁸⁴⁰ The two parcels were identical. As can be seen, the legal mechanism that was employed at Whitireia – as well as at Waerenga-a-Hika, Te Aute and a number of other places was for the gift not to be made directly to the Bishop by the Maori owners, but rather by means of a gift to the *Crown*, and for the Crown to in turn make a Crown grant to the Bishop of New Zealand on trust. The reason for that is simple: at that time only the Crown had power to extinguish Maori customary title, and so any conveyance from Maori directly to a private person or to a church would be legally void. This remained the legal position until the

⁸³⁸ Evidence of Bishop of Wellington, 1875 AJNZLC Appendix 4 p 39.

⁸³⁹ 1905 AJHR G-5, 20.

⁸⁴⁰ *Report and Proceedings of the Select Committee on the Te Aute College and other Educational Trust Estates*, 1875 AJLC No 4, p 4.

enactment of the Native Lands Acts and the establishment of the Native Land Court in 1862-65. This seems to have been the standard procedure. To support a school at Waerenga-a-Hika, for example, Turanga Maori gifted land to the Crown, which was in its turn Crown-granted to the Bishop of New Zealand at Turanga, in fact, local Maori were most willing to give land for a school, but were very reluctant to give any land to the Crown: no doubt they could not see why they simply could not gift the land directly if they wanted to.⁸⁴¹ (Unlike Whitireia, a school was in fact built there, but as with the rest of the buildings of the CMS mission at Turanga it was burned down by Pai Marire supporters in 1865 and the school was not re-established). In the case of Whitireia itself, Ngati Toa made a gift of 500 acres out of the area reserved to the iwi out of the 1847 Porirua deed, to the Bishop for a school, but strictly speaking the gift went to the Crown, which was followed in its turn by a Crown grant to the school. This legal mechanism was to have very severe consequences when Ngati Toa tried to get the land returned.

In all these cases the involvement of the Crown was for the most part a mere conveyancing formality: the gift was one from Maori to the Church. The question of the nature of the Crown's involvement in the gift and in the Crown grant was later to become a major issue in the Court of Appeal and in the Privy Council in the case of the Whitireia grant (discussed fully below). The question has to be asked, however, what Ngati Toa's understanding of the nature of their gift was. It is very likely that to Ngati Toa the gift was conditional, or perhaps was only for a limited time. The formalities of the gift being perfected by means of a Crown grant were, it seems safe to say, something that the donors would not have understood at the time. Wi Parata later said that the donors "did not understand that the Bishop would keep the land for himself".⁸⁴² In other words, the gift was to support the establishment of a college at Porirua: if the college project was not proceeded with then the land should be returned. Another point that seems important is that the gift and grant was made not to *fund* a college, but rather to *support* a college which was to be separately established by the Church of England. This was seen as significant by the New Zealand Court of Appeal in its decision in *Solicitor-General v. Bishop of Wellington* (1901), where Williams J observed that "[i]t is to be observed that the grant is not made for the purpose of founding a school, but for the purpose of assisting a school which is about to be established apart from the grant, and which would, of course, require funds to be provided for its establishment other than those arising from the rents and profits of the land granted."⁸⁴³ Notwithstanding all the

⁸⁴¹ See evidence of Archdeacon Williams, 1875 AJLC, 29. Williams said that "there was a delay about the cession in consequence of the necessity of its being conveyed first to Her Majesty, and the Natives being very jealous on this ground, it required a great deal of consideration to get them to sign it".

⁸⁴² Report of the Select Committee on Te Aute College and other Educational Trust Estates, AJLC 1875, Appendix 4, p 41.

⁸⁴³ *Solicitor-General v Bishop of Wellington* (1901) 19 NZLR 665 at 678.

criticism that this decision of the Court of Appeal has received – beginning with Lord Macnaghten’s harsh criticisms in the Privy Council on appeal – there is much to be said for the Court of Appeal’s view. The failure of the Church to establish the promised college was the main reason why the Court of Appeal concluded that the Crown had been “deceived in its grant”.

7.3. The Legal Underpinnings of the Trust

For reasons that are not clear the Bishop of New Zealand decided to delegate the management of various trusts to the Anglican Synod, and this delegation was done by means of an Act of Parliament, the first of many legal interventions in the various trusts. On 3rd July 1858 parliament enacted the Bishop of New Zealand’s Trusts Act. The preamble to the Act referred to a General Conference of the Bishops and other representatives of the clergy and laity of the Anglican church held at Auckland on 13 June 1857, which marked the formal establishment of the Anglican Church in New Zealand (technically, a branch of the ‘United Church of England and Ireland’) and at which was set up a General Synod for the management of the affairs of the Church. Section 1 of the Act allowed the Bishop convey any lands Crown-granted to the Bishop for educational and charitable purposes to Trustees appointed by the General Synod. Any such conveyance would be subject to the original trusts in the various grants:⁸⁴⁴

[I]t shall be lawful for the said Bishop of New Zealand to Convey and Assure the said hereditaments and premises, or any of them, to such Trustee or Trustees as the said synod shall appoint in that behalf; *subject, nevertheless, to all the Trusts, and for the intents and purposes for which the same were respectively conveyed to or are held in Trust* by the said George Augustus [Selwyn], Bishop of New Zealand.

In the case of the Whitireia gifted lands a Trust was set up and the land then conferred to the Trustees by deed in 1858. The Whitireia Trustees were the Bishop of Wellington, Octavius Hadfield (at that time Archdeacon of Kapiti), Henry St Hill and Stephen Carkeek.⁸⁴⁵

In the case of Whitireia, then the legal owners of the land after 1858 were the Trustees. They held the land on the same terms as in the original Crown grants. As owners of the land they of course had full power to manage and lease the land provided that this was not inconsistent with the terms of the Trust. It is important to emphasise that as a matter of law

⁸⁴⁴ Bishop of New Zealand Trust’s Act 1858, s 1.

⁸⁴⁵ See registered copy of Porirua Trust Deed 1858, Deeds Index vol 4, Folio 667, p 517, held by Linz Wellington.

the terms of the Trust were not those of the original gift by Maori to the Crown, but rather the terms of the subsequent Crown grant to the Bishop.

7.4. Early Petitions and Inquiries

There were numerous inquiries into the various grants to the Bishop of New Zealand for Maori schools. In 1875 a Select Committee of the Legislative Council reported on Te Aute College and on other educational trust estates, including Whitireia.⁸⁴⁶ This inquiry arose not from any petition but from a motion moved by W H Russell on 21 September 1875. Various recommendations about educational trusts generally were made.⁸⁴⁷ The 1875 report found that no school had yet been built at Whitireia. At that time the Whitireia land was being let at a rental of £75 per annum. Grants had been made out of the endowment fund from time to time to support a school at Otaki and at that time there was a balance in the endowment fund of £2000 “which might be devoted to a school at Porirua”.⁸⁴⁸

Wi Parata made a statement to the Committee in the Maori language, the printed translation of which is as follows:⁸⁴⁹

These are my words with regard to a piece of land at Porirua, named Whitireia.

In the year 1842, Bishop Selwyn came for the purpose of travelling through this end of the island (i.e., in the district of Wellington).

The Bishop commenced at that time to ask for land from the Natives – that they should give to him for school purposes. His words were these: “Friends, give me some land that I may build a college wherein to educate your children to speak English, and also in the religion of the Church of Christ, and the customs of England.”

Our old men said it was good, we will consent; and they accordingly assented to Whitireia, at Porirua, as land for school for the children of Ngatitōa and Ngatiawa tribes.

In the year 1848, a letter was written from Otaki to Governor Grey to confirm their consent, which was made in the first instance to the Bishop as land for school and for the children of these two tribes above named.

In the year 1860, Governor Browne called a large meeting for the chiefs of this Island at Kohimarama, Auckland, and Hohepa Tamaihengia was the man of these tribes who attended that meeting.

⁸⁴⁶ 1875 AJLC No 4. The Committee reported on Te Aute on 14 October 1875. The educational endowment lands considered by the Committee were at Waerenga-a-Hika, Te Aute, Otaki, Porirua (Whitireia), Motueka, Papawai and Ngaumatawa.

⁸⁴⁷ Ibid, p 3.

⁸⁴⁸ Ibid.

⁸⁴⁹ Report of the Select Committee on Te Aute College and other Educational Trust Estates, AJLC 1875, Appendix 4, p 41. This seems to have been a written statement from Wi Parata handed in to the Committee and read into the record.

He spoke words of disapprobation at that meeting on account of the Bishop's taking that land for no purpose, inasmuch as no school-house had been built upon that land, nor yet a house for a teacher.

Wi Parata's petition (1876): In 1876, following on from his statement made in the preceding year, Wi Parata petitioned parliament about Whitireia. Wi Parata's petition complained, essentially, that as no school had ever been built at Whitireia the gift had failed and that the land should return to its true owners. On 14th July 1876 he testified at some length before the Native Affairs Committee; aspects of his evidence have been discussed already. Wi Parata tried to claim that the donors were not "real" Ngati Toa but were partly Ngati Toa and Ngati Raukawa – which was only partly the case. This was a point that the Committee had some trouble with. Wi Parata's principal argument was twofold: that the validity of the original gift was doubtful, and that title to Whitireia needed to be reinvestigated by the Native Land Court and its true owners ascertained.⁸⁵⁰ He was not, in other words, seeking that the land should revert to the original donors, but rather that "as tribal property" (as he put it) the land had to be investigated under the Native Lands Acts.

On one point that came up in the course of discussion Wi Parata was particularly insistent. He was asked by Sir Donald McLean whether, in essence, the gift had really failed at all: "Are you not aware that it is not necessary to erect a school on every piece of land that would be given in support of a school or college?" In other words, even if no actual school was on the land at Whitireia, nevertheless the income from the Trust was presumably being applied to the purposes of Maori education in a general sense, and thus the gift had succeeded in its objectives. To this Wi Parata was insistent: the land was given in the expectation that a school would be built *at Porirua*. Wi Parata said he was certainly aware that sometimes gifts could simply be endowments, but not here: "this was different". Whitireia was "given with the view and in expectation that a school would be erected upon it so that our children might be taught". We would, he said, "not have given the land for an endowment".

In contrast to Porirua a school had in fact been established at Otaki, and (as he testified) Wi Parata had gone to it, as he had lived at Waikanae and not Porirua when he was

⁸⁵⁰ See evidence of Wi Parata, Le 1/1876/7. According to the notes of evidence Wi Parata said: If that land [Whitireia] could be brought before the Native Land Court to have title adjudicated upon the Court would not award it to petitioners. It would decide that no others but the [?original (inserted)] [ill.] natives would have any right to it. The land is tribal property. The title cannot be discovered unless the court heard the case.

However one might wonder that the word 'petitioners' is a mistake in the translation, or perhaps the Committee misunderstood Wi Parata or perhaps he failed to make himself clear. It would make more sense for Wi Parata to oppose land simply going back to the original *grantees* or *donors*: the whole thrust of this campaign seems to have been to insist that those who made the original gift were not true or real Ngati Toa (a very contestable argument) and that their descendants would not be the people that would be awarded title by the Native Land Court (which might well have been the case).

growing up. But he was scathing about the quality of the education he had received there, which he regarded as useless. In 1876 he had this to say about it:⁸⁵¹

I do not consider that I received any benefit from the school at all. If I were to state the things that went on there you would not believe me. I was five years at the school and when I left I did not understand a word of English. I would have been able to speak English well now if I had been taught during those five years. We had to cultivate potatoes instead of learning English.

Wi Parata never forgot his experiences of the Otaki school, and in 1905 he expressed very similar criticisms of it:⁸⁵²

I attended the school at Otaki. At that time the children attending the school were mostly older than eight or nine years – they were well grown boys; they were so selected to be strong and work in the fields. I was attending the school in 1852, and I saw that the masters treated the Maori children differently from the manner in which they treated the European children. We were taught only to read and write – to read Maori books and to write Maori only. At the time Archdeacon Williams, of Te Aute, had charge of the school I was here [sic.] I saw no good in it; others may have seen good in it, but I saw no good in the way in which he looked after the children. Most of their time was occupied in tilling the soil. I do not wish to say anything bad of the clergymen of those days, but I am informing the Commission of what they did. From that time to this, this strange way of managing a mission school has been in force.

By 1876 then the situation had already become complex. No school had been built; but did that really mean the gift had failed provided the income was applied appropriately? What was the legal position: did the Bishop hold the land absolutely, or was it held on Trust from the Crown – and if the Trust had failed, did that not mean that the land ought to revert perhaps to the Crown? Perhaps it was also hoped that the Government's own planned system of Native Schools might deal with the educational needs of the Maori children living at Porirua. The Native Affairs Committee declined to take any action over Whitireia but did draw attention to the general issue of educational grants and trusts. The Native Affairs Committee reported as follows:⁸⁵³

I am now directed to report as follows. That the Educational reserve referred to in the Petition is a block of land situated at Porirua in the Province of Wellington containing 500 acres which in the year 1850 was conveyed by natives of the Ngatitōa and Ngatiraukawa tribes to the

⁸⁵¹ Wi Parata evidence, *ibid.* Very similar complaints were made by Hawke's Bay rangatira about the quality of the education they had got in the early years of the Te Aute school.

⁸⁵² Royal Commission on Porirua and other School Trusts, 1905 AJHR G-5, 20.

⁸⁵³ Le 1/1876/7, No 67 p 20.

Bishop of New Zealand in trust, for religious and educational purposes. There can be no doubt from the terms of the grant that erection and maintenance of a school at Porirua formed the principal conditions of the trust, and it seems especially clear from evidence taken by this Committee that a school has not been erected there.

Moreover it does not appear that there is any intention on the part of the Trustee to fulfil this condition of the Trust. This Committee are not prepared to say that it would be either wise or expedient to erect a school on this particular piece of land for the purposes indicated in the grant, and still less are they disposed to recommend that legislative action should be taken for the conveyance of the land in question to the Petitioners.

But your Committee are of opinion that if many Educational reserves are similarly situated to this one, the present position of the religious, charitable and educational trusts of the Colony requires the most serious and careful consideration of the Houses.

This is revealing as it shows that not only had no school been built at Whitireia, but in fact that the Trustees had no intention of building one, and this had become well-known in the New Zealand political community at large. Presumably this was because the dwindling population of Ngati Toa at Porirua meant that the Trustees no longer any saw any reason to build a school there. In his testimony to the Committee Wi Parata, while insisting that there was still no school for the Ngati Toa children, had said that there were only about seven or eight such children living at Porirua.⁸⁵⁴ Given that, it seems that the Trust was no longer capable of being carried out, and a fair solution would indeed have been to return the land to the donors – exactly as Wi Parata claimed. However technically the land was not held by the Bishop as a trust from Ngati Toa, but rather the land had been Crown-granted to the Bishop who had in turn delegated its management to Trustees. That did not impede the land being regranted back to Ngati Toa necessarily, but to do that, short of compulsory reacquisition, would require both the agreement of both the Bishop and the Government.

But the Committee's report shows something as well, which is that the specific issue of the Porirua grant had become merged with a much larger issue, that of "the religious, charitable and educational trusts of the colony". This was a highly politicised question at the time, with many coming to feel that the earlier grants and private trusts were no longer appropriate in a new world of state-provided primary education for both Maori and non-Maori children. Many were opposed to such grants on principle and believed they should be resumed

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This emerges in the questions put to Wi Parata by Macandrew, *ibid*:

Q: How many of the natives who gifted the deed of cession are still alive?

A: Three.

Q: Where is the nearest school?

A: At Otaki.

Q: How many miles distant is that?

A: About forty miles.

Q: How many children are at Porirua now?

A: Seven or eight.

by the State. There were well-founded doubts about the quality of the education provided at the endowed Church schools even where they had been actually established –doubts that Wi Parata’s scathing remarks about Otaki, or the comments by some Hawke’s Bay rangatira about Te Aute would have abundantly reinforced.



Wi Parata Te Kakakura, ca 1876.
Alexander Turnbull Library, Wellington.

The photograph is taken around the time of Wi Parata’s petition and his application to the Supreme Court which led to Chief Justice Prendergast’s famous (or notorious) *Wi Parata* decision. Wi Parata continued to be active in the *Whitireia* issue for the rest of his life. While some of Ngati Toa were

willing to have the Whitireia and Otaki Trusts combined, Wi Parata consistently held to the position that as the Whitireia school had not been built the land should be returned and the title reinvestigated by the Native Land Court.

The Inquiries of 1877: In 1877 there were no less than three separate parliamentary inquiries into educational grants, mostly focused on Te Aute, which need not be considered here in any detail – save to note that the legal process by which the Te Aute estate was established was more or less the same as used at Whitireia. On 18 October 1877 the Public Petitions Committee of the Legislative Council reported on a petition of Te Hapuku and 203 others.⁸⁵⁵ On 8 November 1877 the Native Affairs Committee reported on a different petition by Te Hapuku and others relating to the Te Aute reserved lands.⁸⁵⁶ Finally on 5 December of the same year the Public Petitions Committee of the House of Representatives reported on various petitions brought by non-Maori about the Te Aute Estate.⁸⁵⁷

The whole question of educational endowments generally had become a matter of public debate by this time. As noted, there were some who were hostile to them on principle, and who believed that they should be resumed by the Crown. In fact in 1877 the Reverend Samuel Williams, who managed the Te Aute estate was asked by one Member of Parliament (Swanson) whether “these educational endowments would be much more efficiently managed, and turned to much better account, if the State were to resume possession of them”: (“I very much doubt it”, Williams said).⁸⁵⁸ A less radical variation was that educational Trusts arising from donations by Maori or from Crown grants to religious dominations should be subjected to closer Crown oversight. Many politicians certainly thought so. Partly this may have arisen from a commitment to secular state controlled education. In 1867 the Native Schools Act of that year began the establishment of the state system of secular government Maori schools, although it did not become compulsory for Maori children to attend school until 1894 (it became compulsory for Pakeha children in 1877).⁸⁵⁹ The old educational trusts and land grants seemed to many to have served their purpose.

⁸⁵⁵ 1877 AJLC No 6.

⁸⁵⁶ Native Affairs Committee, Report on Petition of Te Hapuku and 108 others, 1877 AJHR I-3A.

⁸⁵⁷ *Public Petitions Committee: Report on Four Petitions of Residents of Hawke’s Bay, relative to the Te Aute Estate, Together with Minutes of Evidence*, 1877 AJHR I-2C.

⁸⁵⁸ *Report on Four Petitions of Residents of Hawke’s Bay, Relative to the Te Aute Estate, Together with Minutes of Evidence*, 1877 AJHR I-2C, p 9.

⁸⁵⁹ See generally Judith Simon (ed), *Ngā Kura Māori: The Native Schools system 1867-1969*. Auckland University Press, Auckland, 1998, pp 11-19. (This book is a useful study with some fascinating photographs but is marred by some breathtakingly simplistic judgments, unfortunately – e.g. the claim made at p. 7 that “state aid to the mission schools was closely linked with efforts to establish British law and, through that, to secure social control and easier access for Europeans to Maori land”). While writing this chapter, however, an outstanding new book was published, John

Another concern was the failure of some of the grants by Maori to actually successfully result in the successful creation of a school - as happened with the Whitireia gift, or at Te Aute from the closure of the school in 1859 to its reopening in 1873.

Although the Native Affairs Committee that inquired into Wi Parata's petition in 1876 was not prepared to recommend the return of the Whitireia block to its donors, it was nevertheless "of [the] opinion that if many Educational reserves are similarly situated to this one, the present position of the religious, charitable and educational trusts of the Colony requires the most serious and careful consideration of the Houses".⁸⁶⁰ This underscores the point made earlier: that Whitireia was not unique and that there were many other grants of a similar character.

The 1875 Legislative Council select committee report on Te Aute and other trusts had also made a number of recommendations along these lines, suggesting that "all educational trusts arising from donations by the Maoris or from the Crown to any denomination should be connected with some one of the departments of Government".⁸⁶¹ Furthermore, the Trustees of all such grants should send to the government each year their accounts together with 'a report on the condition of the school under the trusts'; the accounts should be audited by the government auditors, and the accounts and the reports should be laid before parliament and 'published annually in the *Waka Maori* for the information of the Native race'.⁸⁶² The government was of course engaged in the process of setting up its own system of Native schools in the 1870s. By 1875 there were already 1,010 boys and 423 girls enrolled at these schools⁸⁶³, and there may have been a feeling that separate schools supported by Crown grants to Trustees had become anomalous and unnecessary.

Connected with that question was the issue of exactly what kind of trusts these were: were they public trusts, amenable to supervision by the government and parliament, or were they private trusts for which the Trustees were answerable only – as all trustees are, of course, and charitable trusts especially – to the Supreme Court. In 1875, Stokes, one of the Te Aute trustees, explained to a Select Committee of the Legislative Council that Bishop of New Zealand did not exercise the Trust personally. He delegated the administration of the Trust to the Church of England in New Zealand, and it was the General Synod of the Anglican Church who appointed the Trustees, and it was to the Synod that the trustees reported. Stokes did not believe that parliament had any right of its own motion to review the Trust's affairs or inspect

Barrington, *Separate but Equal? Māori Schools and the Crown 1867-1969*, Victoria University Press, Wellington, 2008. This book plugs a major historiographical gap.

⁸⁶⁰ Report on the Petition of Wi Parata and 18 others, 19 July 1876, Le 1/1876/7, No 67.

⁸⁶¹ See *Report and Proceedings of the Select Committee on the Te Aute College and other Educational Trust Estates*, 1875 AJLC p 3.

⁸⁶² Ibid.

⁸⁶³ *Further Report Relating to Native Schools*, 1875 AJHR G-B, 1, 3.

its accounts: rather, the Trust was answerable to the Supreme Court.⁸⁶⁴ Nevertheless unending controversy over Whitireia, Te Aute and other such grants was in part founded on the assumption of some politicians that the government and the public at large had a significant interest in them.

7.5. The decision in *Wi Parata*

In 1876, as seen, *Wi Parata* and 18 others petitioned parliament that the land at Whitireia be returned to Ngati Toa. Following the Native Affairs Committee's conclusion that it felt unable to make any recommendation that legislation be enacted to re-convey the land at Porirua to Ngati Toa⁸⁶⁵ *Wi Parata* brought declaratory proceedings in the Supreme Court seeking, inter alia,⁸⁶⁶ to have the Crown grant to the Bishop set aside and that the land be "declared to be to be part of the native lands lawfully reserved for the use and benefit of the Ngatittoa tribe". *Wi Parata* also sought to have the Bishop of Wellington be declared to be a trustee for Ngati Toa and to have the Crown grant declared void "as a fraud upon the donors, and *ultra vires*". A demurrer was filed in reply by the Crown (i.e. a type of pleading by which it was argued that the plaintiff's claim, even if proved, disclosed no cause of action known to the law).⁸⁶⁷ As this report has emphasized, the Whitireia trust was but one of many, and so if *Wi Parata* had been

⁸⁶⁴ See *Report and Proceedings of the Select Committee on the Te Aute College and other Educational Trust Estates*, 1875 AJLC p 9. Asked about the accounts, Stokes said that he was not prepared to say anything, and, in fact, "[t]he fact is, I am not prepared to enter into these matters":

I am not aware this Committee have the power to enter into these matters. I have always been under the impression that any inquiry could only be through the Supreme Court....My impression is that no Committee of either House have power to inquire into these matters when a grant is issued and a trust established. The grant was issued to the Bishop of New Zealand who handed it over to the Episcopal Church of England in New Zealand. The General Synod of the Church of England appointed the trustees, and they report to the General Synod. I am not aware that any legal power except the Supreme Court has the right to inquire into these matters. The Religious, Educational, and Charitable Trusts Bill, brought forward by Mr Sewell, was thrown out by a large majority of the Council, on the ground that such a power should not be exercised.

⁸⁶⁵ See Le 1/1876/7, No 67.

⁸⁶⁶ The plaintiffs sought declarations to the following effect (see (1877) 3 NZJ (SC) 72):

1. That the lands may be declared to be part of the native lands lawfully reserved for the use and benefit of the Ngatittoa tribe. 2. That the defendant, the Bishop of Wellington, may be declared to be a trustee for for the members of the tribe. 3. That the Crown grant may be declared void as a fraud upon the donors, and *ultra vires*. That the defendant, the Bishop of Wellington, may be decreed to account for the rents, issues, and profits. 5. That a receiver may be appointed. 6. That the defendant, the Bishop of Wellington, may be restrained from collecting and receiving the rents, issues, and profits.

⁸⁶⁷ Ibid:

Demurrer, by the Attorney-General, on the ground that a grant from the Crown cannot be declared void for a matter not appearing on the face of the grant, except after the issue of a writ of *scire facias*.

Scire facias ("that you cause him to know") is a special procedure used to warn a party to civil proceedings that they were required to show cause in Court why the person bringing the application should not have the benefit of a judgment made in his favour.

successful then many other similarly situated trusts would likewise fail Maori would be able to seek a return of the land. As Fredericka Hackshaw has pointed out, “a favourable decision for the plaintiff would open the floodgates to native demands for the return of every similarly situated trust property”.⁸⁶⁸

Some years later Wi Parata explained why he had brought the case, and his surprise at the fact that he never had an opportunity to give evidence:⁸⁶⁹

Fifteen years after 1860 I took proceedings at law against the Bishop, for the reason that the purpose for which the land had been given had not been carried out. But I did not appear in presence before the Supreme Court, the matter was conducted in another room, and there it was decided that this was Crown land, and apparently the original gift by the Maoris of the land was put on one side and not considered at all.

Questioned further by the Committee on that occasion Wi Parata (by this time an old man) explained:⁸⁷⁰

12. Whom did you represent – yourself only, or any others? – I took proceedings on behalf of myself and a lady sitting over there for the people of Porirua.

13. The Ngatiraukawas were not mixed up with it? – No.

14. Did the people of Porirua ask you to take those proceedings? – No, I did it myself because of what I had heard said at Kohimarama, and also because the land had been so long lying idle without a school.

15. Nobody else moved in the matter but you? – Myself only. The reason why I took action myself was that I knew the people at Porirua did not know how to go about getting the land back; they had no idea they could do so.

The outcome was, of course, Prendergast CJ’s famous – or notorious – judgment in *Wi Parata v. The Bishop of Wellington and The Attorney-General* (1877).⁸⁷¹ Prendergast is of course also known for upholding the legality of a death warrant for Titikowaru, prosecuting

⁸⁶⁸ Fredericka Hackshaw, “Nineteenth Century Notions of Aboriginal Title”, in Kawharu, H (ed), *Waitangi – Maori and Pakeha Perspectives of the Treaty of Waitangi*, Oxford University Press, Auckland, 1989, 110.

⁸⁶⁹ 1905 AJHR G-5, 20.

⁸⁷⁰ Ibid.

⁸⁷¹ *Wi Parata v Bishop of Wellington and the Attorney-General* (1877) 3 NZ Jur (NS) (SC) 72. The decision is reprinted in full in Chen and Palmer, *Public Law in New Zealand*, 309-315. Useful discussions on *Wi Parata* and the subsequent cases on *Whitireia* include Fredericka Hackshaw, *op.cit.*, esp at 109-117, Paul McHugh, *Maori Magna Carta*, 117-122, and Grant Morris, “James Prendergast and the Treaty of Waitangi: Judicial Attitudes to the Treaty during the latter half of the Nineteenth Century”, (2004) 35 *Victoria University of Wellington Law Review* 117.

Hamiora Pere – an unlucky follower of Te Kooti’s, who was executed⁸⁷² – and for authorizing the invasion of Parihaka when he was acting-Governor in 1881.⁸⁷³ Wi Parata’s counsel was George E Barton, an Irish barrister and apparently something of a colourful personality.⁸⁷⁴ Putting to one side all of Prendergast’s controversial remarks about the Treaty of Waitangi and the non-existence of Maori customary law, the practical outcome of the case was that the Supreme Court held that the grant itself amounted to a clear declaration on its face that the native title had been extinguished, something which could not be questioned in any Court.⁸⁷⁵ The Court also stated that “in law the Crown is to be regarded as the donor and not the Ngatitōa tribe”⁸⁷⁶, which is, of course, true enough strictly speaking, but which does not in fact reflect the reality of the arrangement. For many reasons Prendergast’s decision would of course in many respects be unlikely to withstand scrutiny today – in fact there is recent authority to the effect that an inconsistent Crown grant is not a mode of extinguishment of Native title recognised by New Zealand law.

With regard to the Trust itself, Prendergast made a number of other points which have a much better claim to be regarded as good law today. Prendergast held as a kind of supplementary point that even if it could be shown that the terms of the grant to the Bishop could not now be met, that would not mean that the Trust (or the grant) failed, but rather that the income from the Trust ought to be applied to some other equivalent charitable purpose under the *cy près* doctrine. (This is an aspect of the general law relating to charitable trusts, as originally developed in the Court of Chancery. If a charitable trust cannot be performed for any reason then the trust is to be applied “*cy près*” - “as near as possible” or “as near as may be” - in order to give best effect to the intention of the donors: usually the Trustees will

⁸⁷² On Hamiora Pere see especially Waitangi Tribunal, *Turanga Tangata, Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, Wai 814, 2004, pp 609-625.

⁸⁷³ On Prendergast see Morris op.cit., 118-19; Morris, *Chief Justice Prendergast and the Administration of new Zealand Colonial Justice, 1862-1899*, PhD Thesis, University of Waikato, 2001; Judith Bassett and J G H Hannan, “James Prendergast”, *DNZB I*, 335. As it happens, as noted in ch 1, Wi Parata was himself at Parihaka with his Ngati Awa relatives in 1881.

⁸⁷⁴ On Barton see Morris op.cit., 122.

⁸⁷⁵ See per Prendergast C.J., 78:

On the cession of territory by one civilised power to another, the rights of private property are invariably respected, and the old law of the country is administered, to such an extent as may be necessary, by the Courts of the new sovereign. In this way British tribunals administer the old French law in Lower Canada, the Code Civil in the island of Mauritius, and Roman-Dutch law in Ceylon, in Guinea, and at the Cape. But in the case of primitive barbarians, the supreme executive Government must acquit itself, as best it may, of its obligation to respect native proprietary rights, and of necessity must be the sole arbiter of its own justice. Its acts in this particular cannot be examined or called in question by any tribunal, because there exist no known principles whereon a regular adjudication can be based. Here, then, is one sufficient reason why this Court must disclaim the jurisdiction which the plaintiff is seeking to assume. In this country the issue of a Crown grant undoubtedly implies a declaration by the Crown that the native title over which it comprises has been extinguished. For the reason that we have given, this implied fact is one not to be questioned in any Court of Justice, unless indeed the Crown should itself desire to question it, and should call upon the Court to lend its aid in correcting some admitted mistake.

⁸⁷⁶ *Ibid*, 83.

submit a “scheme” (plan) to the High Court, which supervises all trusts, for its approval.)
According to Prendergast:

Suppose then, that the trusts of the grant had been confined, as on behalf of the defendant it is contended they ought to have been confined, to the establishment and maintenance of a school at Witiereia for the children of the Ngatitooa, we are still of opinion that that the plaintiff could not succeed in his present claim. If it were made out that this supposed object of the grant had become impracticable, there is abundant authority for the application of the rents and profits of



George Augustus Selwyn. Engraved by W. Hale, 1878-1879 from a photograph by Messrs Mason & Co. [London, 1889].
Alexander Turnbull Library, Wellington.

Bishop Selwyn played an important role in the establishment of the original Whitiareia and Otaki gifts, grants, and trusts during the 1840s while Bishop of New Zealand. Similar gifts were made in other parts of the country at the same time. Wi Parata stated in 1876 that Bishop Selwyn “asked the natives for certain land to be set aside for religious and educational purposes”. Many CMS missionaries, who belonged to the Evangelical wing of the Church of England, were uncertain about Selwyn’s High Church principles.

the land to some purpose as nearly as possible similar to the object of the original trust, according to the doctrine of *cy pres*.

But since the Crown grant could not in any case be circumvented, and because in point of law it was the Crown and not Ngati Toa who were the donors, it was not necessary to pursue this further. As will be seen, in later cases over Whitireia the Crown decided to *oppose* the application of the *cy-pres* doctrine, arguing instead that the trusts attached to the grant had failed and therefore the land and accumulated income reverted to the Crown.

There is no need here to pursue at any length the legal and historiographical controversy over the *Wi Parata* decision.⁸⁷⁷ Prendergast's dismissal of the Treaty of Waitangi as a "simple nullity" and his rejection of the proposition that Maori had a system of customary law⁸⁷⁸ have not endeared him to many modern commentators. It could perhaps be argued that Prendergast was doing nothing more than repeating the legal platitudes of his day, but this a proposition which Paul McHugh has disputed.⁸⁷⁹ Probably the most important aspect of the decision was that it treated Maori proprietary claims against the Crown – unless brought in the Native Land Court – as essentially non-justiciable. As Morris notes, to characterise this as 'unorthodox' is problematic.⁸⁸⁰ in the framework of New Zealand law and policy it actually was 'orthodox', and reflected the legal position in other British colonies as well.

In 1884 the government enacted the Religious, Charitable, and Educational Trusts Boards Incorporation Act. This Act consolidated various educational and religious trusts, including the Otaki and Porirua Trusts. Essentially the terms of the original trusts were restated in the legislation.

⁸⁷⁷ For a thorough discussion see Morris, *Prendergast and the Administration of New Zealand Colonial Justice*, 199-234. There are still those who argue that Prendergast was, and indeed is, right, including Guy Chapman ("The Treaty of Waitangi – fertile ground for judicial (and academic) myth-making", *New Zealand Law Journal*, July 1991, 228-36) and David Round of Canterbury University (see generally his *Truth or Treaty: Commonsense questions about the Treaty of Waitangi*, Canterbury University Press, Christchurch, 1998).

⁸⁷⁸ I stand by my own criticism that Prendergast's denial of this is to go much too far even by the standards of the day – and which is inconsistent with statutory directions in e.g. the Native Lands Acts. See Boast, "The Law and the Maori", in Spiller, Finn and Boast, *A New Zealand Legal History*, Brookers, Wellington, 1997.

⁸⁷⁹ See McHugh, *Maori Magna Carta*, 113-4; but see also McHugh, *Aboriginal Societies and the Common Law*, 171-3.

⁸⁸⁰ Morris, *Prendergast and the Administration of New Zealand Colonial Justice*, 229.

7.6. “Only a question of conveyancing”: Developments Relating to Whitireia 1896-1905

A. Introduction

The period from 1894 to 1907 forms an extremely convoluted story, complicated by the fact that essentially there were two separate, if interlocking, struggles over Whitireia going on at once. The first was the continued struggle by Ngati Toa to get Whitireia back, which involved numerous petitions to parliament⁸⁸¹ and also litigation as well (in particular Hohepa Wineera’s argument that native title to Whitireia had never been extinguished⁸⁸²). The second struggle did not involve Ngati Toa except indirectly: it was a struggle between the Anglican Church and the New Zealand government over control of the Whitireia block (as well as over various other educational gifted lands). Out of this second struggle arose one of the more celebrated incidents in New Zealand legal history, this being the famous protest of the New Zealand bench and bar following the scathing comments made by Lord Macnaghten in the Privy Council decision in *Wallis v. Solicitor-General* (1903)⁸⁸³ regarding the behaviour of both the Solicitor-General and the New Zealand Court of Appeal.

Crown grants to the Church of England to endow various educational and religious purposes continued to be a controversial issue in New Zealand politics.⁸⁸⁴ Many Liberal politicians were opposed to such grants in principle, sometimes arising out of hostility towards government support for private and religious schools on principle. It was felt that these assets should be removed from Church control and used by the state to help support a system of State-funded education. One prominent exponent of this point of view was the Liberal politician A W Hogg. Hogg was a radical Liberal on the left wing of his party, a champion of the rights of the small settler who held strong views about education; he had supported the establishment of Victoria University College and had been a member of its first council. He was a committed supporter of local Education Boards against the Department of Education, and in 1901 had chaired a royal commission on primary schools.⁸⁸⁵ One target of the radical educational reformers within the Liberal Party was Te Aute School. The school

⁸⁸¹ The principal petitions were:

- A petition in 1896 by Heni Matene Te Whiwhi and 13 others seeking a return of the Whitireia Block (see 1896 AJHR I3);
- A petition in 1901 by Te Manuauete Tuhaia and two others seeking a return of the Whitireia Block (see 1901 AJHR I3).
- A further petition by Heni Te Whiwhi and 5 others (see 1904 AJHR I3).

⁸⁸² *Hohepa Wi Neera v The Bishop of Wellington and others* (1902) 21 NZLR 655 (CA)

⁸⁸³ (1903) NZPCC 23; [1903] AC 173. See also *The Bishop of Wellington and others v The Solicitor-General* (1899-1900) 19 NZLR 214; *The Solicitor-General v The Bishop of Wellington and others* (1901) 19 NZLR 666; *Hohepa Wi Neera v The Bishop of Wellington and others* (1902) 21 NZLR 655 (CA);

⁸⁸⁴ See generally Barrington, *Separate but Equal?*, 141-71,

⁸⁸⁵ On Hogg see Rollo Arnold, ‘Hogg, Alexander Wilson’, *DNZB* vol 3, pp 223-4.

had to put up with considerable criticism from politicians that it was too elitist, and in 1906 the Prime Minister, Seddon, launched an extraordinary attack on the school in a speech he gave at Waimarama in February 1906, shortly after the Trustees had turned down a request from the government to sell part of the Estate to the Crown under the Lands for Settlement Act.⁸⁸⁶ The Government itself, it must be said, did nothing whatever about establishing Maori secondary schools, but it did fund scholarships to the endowed or Church schools such as Te Aute, and as a result felt it had the right to intervene in what was taught at these nominally ‘private’ schools. On the whole officials were opposed to an academic education for Maori children, favouring manual or technical education as more suitable. All of these issues surfaced in the Royal Commission on Te Aute and Wanganui School Trusts in 1906, which had been preceded in 1905 by a Royal Commission into the Porirua (i.e. Whitireia) and other school trusts (see below). The issue was, as can be seen, of some political importance at the time.

In this part of our Report the various developments will be examined chronologically, and will then be analysed and summarised at the end of this section.

B. Heni Matene Te Whiwhi’s petition (1896):

The years 1896-7 were difficult ones for Ngati Toa. On 16 October 1896 the Government enacted the Native Reserves Amendment Act 1896, which dealt with the Taupo No 2 Block (see above). Section 5 of the Act transferred the land from Wi Parata to the Public Trustee.⁸⁸⁷ Section 6 of the Act empowered the Public Trustee to set aside one acre of the land as a burial reserve and to lease the balance on long term leases (42 years).⁸⁸⁸ Then in December 1897 the Government enacted the Kapiti Island Public Reserve Act, which established a statutory

⁸⁸⁶ *HB Herald*, 28 February 1906, p 2:

⁸⁸⁷ Section 5 states:

5. Land in Second Schedule vested in Public Trustee: The parcel of land described in the Second Schedule hereto is hereby transferred from the said Wi Parata Kakakura and vested in the Public Trustee for an estate of inheritance in fee simple as a Native reserve, subject nevertheless to the hereinafter-mentioned provisions of this Act.

⁸⁸⁸ Section 6 states:

6. Portion to be set aside as burial-ground and residue leased: The Public Trustee shall set apart portion of the said land, to wit, one acre thereof, as a burial-ground, and may lease the residue thereof, either together or in lots. For such term as not exceeding forty-two years, and subject to such covenants and conditions, as he shall think fit:

Provided that with respect to every such lease –

(1.) The rent shall be the best obtainable, and shall be payable half-yearly throughout the term; and also that

(2.) The lease shall contain covenants by the lessee, -

To enclose with a good and substantial fence the land comprised in the lease, and at all times throughout the said term to well and sufficiently repair and keep in good condition all such fences, and also all other fences, buildings, and erects for the time being on the land comprised in the lease.

mechanism for pre-emptive purchase of Ngati Toa's remaining interests on Kapiti.⁸⁸⁹ Perhaps it was these attacks on what remained of Ngati Toa's traditional lands that re-energised the determination of various individuals of Ngati Toa to regain control over Whitireia. There was still no school there. The land was leased by the Church to a private farmer. It is possible that there was also a factional struggle within the Ngati Toa community over Whitireia, although this is uncertain. Wi Parata was insistent that the land should not simply be returned to the donors but should be brought before the Native Land Court and title reinvestigated. Thus there may have been a difference of opinion between those who represented the original donors, and those who claimed to speak for the Ngati Toa community at Porirua. Even if this were the case, however, it does not detract from the overall nature of the Ngati Toa claim, which was consistent: as the Trust could no longer be performed – and the essence of the Trust was that a college be established at Porirua – then the land ought to be returned.

Heni Te Whiwhi was Matene Te Whiwhi's daughter. In 1896, when she would have been about 61 years of age, Heni and 13 others petitioned parliament seeking the return of Whitireia. At the same time Hamuera Karaitiana and 123 others filed a similar petition relating to the Ngaumutawa block near Masterton, the site of a similar gift and grant to the Bishop of New Zealand. The Native Affairs Committee was sympathetic and recommended that both grants be cancelled, the land be given the status of Maori customary land and returned to the donors or their successors.⁸⁹⁰

I am directed to report that, in the opinion of this Committee, the petitioners have a just grievance, for it appears that the conditions under which the land was given to the Church of England by the Natives have never been carried into effect. The Committee therefore recommends that the Government introduce legislation for the purpose of setting aside the Crown grants issued in favour of the Lord Bishop of New Zealand, and of declaring the land "papatupu" or Native land, and restoring the same to the Native donors, or their successors, along with all the rents accrued thereon.

This Committee was presided over by Sir Robert Stout, who later – sitting as a Supreme Court judge – approved the scheme put forward by the Trustees to vary the Trust *cy-près*.

C. Application of the *cy-près* rule and rejection of the Trustees' proposals: Prendergast C.J.'s decision in *Bishop of Wellington v Solicitor-General* (May 1899)

⁸⁸⁹ See generally C. and J. Maclean, *Waikanae: past and present*, Whitcombe Press, 1988, 214-5.
⁸⁹⁰ 1896 AJHR I3, 7.

In April and May of 1899 the vexed matter of the Whitireia Block was once more before Prendergast C.J, who had of course given the first Whitireia decision 22 years earlier. This time he was asked to determine whether the income from the Trust could be reapplied under the *cy-près* doctrine now that the Trust could not be carried out, and, if so, whether the Court was prepared to approve a scheme put forward by the Trustees to use the money to fund scholarships to Church of England schools elsewhere. The case took the form of an action by the Bishop against the Solicitor-General. The Crown argued that as the Trust could no longer be performed the property reverted to the Crown, but in the alternative proposed a scheme of its own.⁸⁹¹ The Crown proposed that the money should be used to establish an industrial and technical training school at Otaki, with some of the money being used to send pupils to attend science classes at Victoria University College, preference being given to members of Ngati Toa. This was not a bad plan at all, although as noted it was Ngati Toa's own view that the essence of the gift from their viewpoint was that a college be established at Porirua. The emphasis on technical education for Maori fitted with the views of Hogg, Seddon and some other Liberal politicians that Maori needed manual and technical training and that the education provided at Te Aute with its emphasis on the university matriculation exams was too academic and elitist. Thornton, the headmaster at Te Aute, was for instance often criticised for teaching Latin to Maori boys at the school, which was seen by some as a waste of time (but why should Maori not learn Latin, after all?): Thornton pointed out in reply that Latin was a compulsory subject for university matriculation. Thornton was in fact very wary of attempts to turn Te Aute into a technical school which he thought would downgrade the quality of the education there. Of course the government could have established and funded a technical secondary school for Maori any time it wanted to – but never did. Government

⁸⁹¹ Ibid, 218:

The Solicitor-General filed a defence, in which he stated that it had long since been and was at the date of the action impossible to carry out the original trusts prescribed by the Crown grant, and that the conditions with respect to education in the colony existing at the time of the grant had entirely altered; that the Executive Government of the colony was desirous that a scheme should be adopted which would enable the land and the accumulated fund to be administered for educational purposes, but was advised that the Court might decide that by reason of the failure of the trusts of the grant the land and money had reverted to the Crown free from any trust, and the Solicitor-General therefore submitted that the matter was one for Parliament to deal with, and that the Court had no jurisdiction. If the Court had jurisdiction, then he objected to the scheme propounded by the plaintiffs [i.e the Bishop/Trustees], and submitted for the consideration of the Court a scheme, the main features of which were the establishment, by trustees to be appointed by the General Synod, of a school at Otaki for the instruction and training of members of the Maori race, and the establishment of scholarships for the purpose of enabling Maori students from the school to attend classes in science at the Victoria College or such other institution providing higher industrial training as the General Synod, with the approval of the Governor in Council, should appoint: no religious test to be imposed in respect of either the teachers or pupils or of the persons obtaining scholarships, and in every case a preference, as far as practicable, to be given to members of the Ngatittoa Tribe and to Maoris resident in the Provincial District of Wellington.

As schemes go, in fact, the Crown scheme was not a bad one. But Prendergast C.J. rejected it in any case, along with that of the Bishop.

energies tended to be more focused on trying to control what was taught at Te Aute or on getting control of the Porirua Trust funds.

Ngati Toa themselves knew nothing about the proposed scheme to vary the Trust.⁸⁹² The Church made no effort, it seems, to consult with Ngati Toa or Ngati Raukawa about the proposed scheme. It is quite wrong to imagine that the scheme as finally approved by the Privy Council was one the descendants of the donors accepted or even – initially – even knew about. As soon as they found out the details they opposed it strenuously.

Prendergast gave his judgment on 19 May 1899.⁸⁹³ He found that as far as was known, no school had ever been established at Porirua. Years ago a schoolmaster had been temporarily placed there, but this was shortlived: “the reason being that the attendance of the Maori children was irregular and the number small”.⁸⁹⁴ By this time, he noted, the accumulated funds now totalled £6,480 – a substantial amount. Prendergast did not believe that the gift had failed. This was because of the particular view he took of the nature of the gift (which was not the same as Ngati Toa’s):

I do not think...that the true construction of the grant is that, if the particular charity – a school at Porirua – was not established, but a school was established somewhere else in the same district, and in all other respects carrying out the objects of the charity, the gift would fail and the land revert. I think that it may be inferred that the general object was charitable – a school for the religious education and training of youth, especially of youth of the Maori race. If, therefore, it had been made to appear that a school of the description found in the grant could not reasonably, in the altered circumstances of the colony and the Maori people, be established, I should have concluded that a case had been made out for the application of the doctrine of *cy-près*.

However, neither of the two schemes put forward, the Bishop’s (the scholarships proposal) or the government’s (a technical school at Otaki) found favour with the Supreme Court.

D. The Papawai Scheme, Supreme Court Approval and Ngati Toa opposition

In March 1900 the Trustees placed a revised scheme before the Supreme Court for its approval. This time the plan was for the income to be spent on the support of a school at Papawai, in the Wairarapa near Masterton. The Crown appeared before the Supreme Court, and opposed the scheme on the basis that the specific nature of the Trust meant that the *cy-*

⁸⁹² So Heni Te Whiwhi said: see 1905 AJHR G-5, 9. The application to the Supreme Court by the Trustees was made, she said, “unawares to us”.

⁸⁹³ See *The Bishop of Wellington and others v The Solicitor-General*, (1900) 19 NZLR 214.

⁸⁹⁴ *Ibid*, 220.

près rule should not apply.⁸⁹⁵ Crown counsel pointed out that the “locality of the school is vital” and that a school in the Wairarapa would not be suitable. (This was Ngati Toa’s own view, needless to say.) W H Quick, counsel for the Bishop, defended the Wairarapa scheme.

This time judgment was given by Stout C.J. He dismissed the Crown objections and approved, subject to certain modifications, the Church’s scheme. Stout C.J. stated:⁸⁹⁶

The evidence is conclusive that it would be a waste of the trust moneys to erect a school on the reserve, and if such a school were started there it would fail to fulfil the purposes of the trust. The scheme proposed seems to us to go beyond what is necessary in utilising the trust. It practically proposes to absorb the trust moneys for the support of a similar institution in the Wairarapa. The trust may be carried out without allowing this absorption. If the scheme were amended so as to provide – (a) for the maintenance of such a number of scholars in the Wairarapa institution as the rentals and income would permit, a fair sum being charged for maintenance and education; (b) that preference should be given to children belonging to the Ngatitōa Tribe, failing them preference to children of the West Coast Tribes; (c) that the proposed system of education be approved as appears in the original trust; (d) that no youth be refused a scholarship on the ground of religious belief, no religious test whatever being applied to applicants – the Court would be prepared to approve it.

An approved scheme along these lines was formally endorsed by the Supreme Court on 15 October.⁸⁹⁷ The revised scheme referred to the new “training-school” about to be established in the Wairarapa, and stipulated that net rents and income in the hands of the Whitireia Trustees was to be devoted to “the maintenance of scholars in the Wairarapa institution, a fair sum being charge for maintenance and education. This was a Church school, with religious instruction to be taught as approved by the Anglican Church, although it was also stipulated that no child could be debarred from attending the school on the basis of religious affiliation.

⁸⁹⁵ See *The Bishop of Wellington and others v The Solicitor-General*, (1900) 19 NZLR 214, 224-5:

A Bill was prepared and introduced last session, but the matter has not yet received the attention of the Legislature. That is the reason why no new counter-scheme [i.e. by the Crown] is now brought forward. The defendant’s [Crown’s] counter-scheme is still before the Court. It was only dealt with by Prendergast, C.J., upon the point of religious education. The point of *cy-près* not argued in *Wi Parata v. The Bishop of Wellington*, and that case does not go so far as this. The judgment of Prendergast, C.J., in this case does not go so far as to allow taking the school out into the Wairarapa. The purpose is specific – a school at Porirua – and the doctrine of *cy-près* does not apply: *Snell’s Principles of Equity*. The locality of the school is vital. There is no reason why a moderate scheme of an industrial school at Porirua should not be practicable. At all events, any school established should be within easy reach of the West Coast Natives. Otaki is more suitable than the Wairarapa. The school would not necessarily be exclusively a boarding-school. The new scheme should be rejected, and the Crown scheme, modified in accordance with the the judgment of Prendergast, C.J., adopted.

⁸⁹⁶ *Ibid*, 236.

⁸⁹⁷ The revised scheme is reprinted at 1905 AJHR G5, 156.

The Wairarapa scheme was strongly opposed, however, by Ngati Toa. The reason for the opposition was not really because of any existing enmity between Ngati Kahungunu and Ngati Toa. The opposition was more to do with the difficulty of sending children all the way to a boarding school in the Wairarapa but most especially because expending the money on a school in the Wairarapa would frustrate the wishes of the original donors and diminish Ngati Toa prestige. It would make Ngati Toa seem subservient. It was, indeed, a matter of Ngati Toa mana. There were some variations in opinion amongst the Ngati Toa community but generally all agreed that hardly anyone would even consider sending their children to a school in the Wairarapa. Heni Te Whiwhi put it this way:⁸⁹⁸

From that day to this nothing has been done by the Bishop's successors to carry out the words he spoke to Matene Te Whiwhi and Tamihana Te Rauparaha as far as Whitireia is concerned, until the Whitireia trustees applied to the Supreme Court, unawares to us, Ngatiraukawa and Ngatitua, for power to expend the Whitireia money in a district other than the Ngatiraukawa and Ngatitua district. I, Ngatiraukawa, and Ngatitua are against this action of the Whitireia trustees – because it is against the belief which our elders held when the land was given to the Bishop; (b) it is against Native custom; (c) we, the people, and the descendants of the donors, should not be placed in that subservient position – we have the prior right and the absolute right according to Native custom; (d) the belief which our elders entertained in giving the land to the Bishop ought to be fulfilled by joining the proceeds of Whitireia and the Otaki reserves together....

Heni's last comment reflects her support for a combination of the Whitireia and Otaki Trusts, but not all in Ngati Toa were in favour of that. There were also those, a minority within the iwi seemingly, who took the line that as no college had been built the land should simply be returned. That of course was Wi Parata's stance, and he continued to be of that opinion. Raiha Puaha's opinion was the same as Wi Parata's. Raiha's preference was to see a school *at Porirua*, but failing that the land should be returned. She expressed her opinion forcibly to the 1905 Royal Commission:⁸⁹⁹

I am a daughter of Rawiri Puaha, of Ngatitua, one of the donors of Whitireia land in Porirua to Bishop Selwyn.⁹⁰⁰ An uncle of mine, Rawhiri Kanae, was also amongst the donors, and also a cousin of my father's, Nohorua. All the donors are relatives of mine. I object to the action of the Whitireia trustees in spending the Whitireia funds on a school in Wairarapa. I object because it is an act which violates the reasons which caused our elders to give this land to

⁸⁹⁸ 1905 AJHR G-5, p 9.

⁸⁹⁹ 1905 AJHR G-5, 10-11.

⁹⁰⁰ Actually Raiha seems to be mistaken here. Rawiri Puaha was certainly a signatory to both the Porirua and Wairau deeds, but he was not one of the donors of the Whitireia block. The suggestion is made above that this may perhaps be explained by his Wesleyan affiliations.

Bishop Selwyn. The reason was: they believed when the land was asked for by Bishop Selwyn of our people he gave them to understand that a school was to be built in the midst of their people, and for the benefit of the children of their people. I object because it is contrary to Native custom. The land was given to Bishop Selwyn because he asked for it, and Matene Te Whiwhi, Tamihana Te Rauparaha, and Bishop Selwyn came to Porirua from Otaki and asked Ngatitōa to hand it over to the Bishop for a school. My elders agreed, because they wanted their children to be educated in English ways and pursuits. My father waited, and so did Ngatitōa, for the school to be erected, as the Ngatiraukawa had had a school already built in Otaki. And because he could not get one built he sent my brother to the Auckland (St John's) College. My uncle, Hohepa Tamaihengia, had always urged Bishop Hadfield to have a school built, but of no avail. If the wish I now express cannot be given us, then I would ask that the Porirua land be given back to the descendants of the donors.

E. Parliamentary Scrutiny

There were two abortive efforts to deal with the matter in parliament prior to the Privy Council's decision in *Wallis v Solicitor-General*. In 1898 the government introduced the Porirua School Grants Bill, which was simply (as Seddon described it) "a suspensory Bill", but it ran into considerable opposition in the House and the government agreed to its being adjourned. The Bill had provided (cl 2) that "the original trusts as specified in the Crown grant set forth in the Schedule hereto shall remain unaltered until the expiration of ten days after the close of the now next-ending session of Parliament".⁹⁰¹ According to the Preamble "it was expedient that the original trusts should not be altered until Parliament has had an opportunity of considering the matter".⁹⁰² Opposition revolved mostly around the point that it was undesirable as a matter of policy to interfere with the operation of private Trusts. Seddon admitted that the main purpose of the Bill was to prevent any significant variation of the Trust for the time being. Interestingly he also stated that while he could not accept the recommendation of the Native Affairs Committee made in 1896 that the reserves should be re-vested in Maori, it was nevertheless important to discuss the matter with the descendants of the Ngati Toa donors. His comments reveal also how much the Whitireia issue had become entangled with that of educational policy more generally.⁹⁰³

Mr SEDDON said, at the time the trust was made, the education of the Natives was practically under the various churches. There was no undenominational system then. The State had rights in respect to this land. It was the Ngatitōa Tribe who gave the land. He thought the legal

⁹⁰¹ See 1898 105 NZPD (14 October to 5 November 1898).

⁹⁰² Porirua School Grant Bill [not passed] 1898, Preamble.

⁹⁰³ 1898 105 NZPD 95.

representatives of the Ngatitōa Tribe had a direct interest in the matter, and ought to be consulted.

However as noted the Bill was not enacted. Some MPs thought that there was not enough information on the matter before parliament to enable a sound decision to be made on the matter. Debate was adjourned and the Bill lapsed.

In 1900 the government attempted to introduce legislation that would override Prendergast's decision and refer the matter of the Porirua and Otaki Trusts to a Royal Commission. The Bill was strongly supported by Hone Heke Rankin, MP for Northern Maori, and by Mr Field, Member of Parliament for Otaki. Both had been working closely with Ngati Toa and Ngati Raukawa leaders like Heni Te Whiwhi and were well aware of the opposition to the scheme. Field was, as seen, strongly critical of the suggestion that the population of Ngati Toa had dwindled to the point that there was no longer any point in establishing a school for them. In fact it is very clear from Field's remarks that in opposing Prendergast's decision in the Supreme Court he saw himself as vindicating the interests of the Ngati Toa donors.⁹⁰⁴ "It is not only desirable but absolutely urgent, in the interests of the Natives, that this Bill should be passed".⁹⁰⁵ He continued:⁹⁰⁶

[A]s I have shown, the Natives were never represented. The Natives who made this grant for the purposes of a Maori College were never represented at these actions at all. Thirdly, it was not represented at represented at the Court that the Ngatitōa, Ngatiraukawa, and Ngatiawa Tribes, living on the west coast of the North Island, were as numerous as the Ngatikahungunu Tribe living in the Wairarapa.

But again the Bill ran into trouble because of opposition from more politically conservative Members who regarded the legislation as an interference with private Trusts and with the powers of the Supreme Court. According to one MP (Atkinson):⁹⁰⁷

We have not had the faintest indication by the Minister in charge of the Bill nor by the honourable Minister who spoke in favour of it as to any positive objection to the scheme, or any alternative scheme that would be a better one. We had a suggestion that Otaki should be the site. That site was suggested by the Solicitor-General in the scheme he submitted, and on inquiry it was decided to be unsuitable, and the Wairarapa site selected instead. I should say further that, apart from all questions of merit whatever, it would be most disastrous for this Parliament to interfere by legislation to reverse the express decision of the Supreme Court of

⁹⁰⁴ See 1900 NZPD 431-35.

⁹⁰⁵ Ibid, 431.

⁹⁰⁶ Ibid, 434.

⁹⁰⁷ Ibid, 437.

New Zealand....It is a most extraordinary reversal of the practice of the Court and Parliament in the Old Country.

As with the 1898 Bill, the 1900 Bill was adjourned as well. As a direct result of this, it would appear, the government opted for a different approach and appealed Prendergast's decision to the Court of Appeal.

F. The Court of Appeal decision in *Solicitor-General v Bishop of Wellington* (May 1901)

The Court of Appeal decision in *Solicitor-General v The Bishop of Wellington and others* was released on 22 May 1901.⁹⁰⁸ This decision was criticised in the strongest of terms by the Privy Council on appeal, and on the whole commentators have had nothing to say in favour of it, but – ironically – in fact whatever the correctness of the Court of Appeal's reasoning, the suggestion that the Court was colluding with some devious plan by the Crown to seize the land at Porirua to the disadvantage of the original Ngati Toa donors is without foundation. The decision arose out of opposition by Ngati Toa and other groups relating to the scheme submitted for approval to the Supreme Court and approved by it. Ngati Toa, Ngati Raukawa and Ngati Awa were strongly hostile to the income and accumulated rentals from the Trust being expended on a hostel in the Wairarapa. By this time £6,480 had accumulated in the hands of the Trustees.⁹⁰⁹ The Court of Appeal judgment is given by Williams J.

The Court of Appeal found that both the land and the money had become the property of the Crown as the Crown had been “deceived in its grant”. According to Williams J:

In the first place we think the grant has become void on the ground that it sufficiently appears from the evidence that Her Majesty was deceived in her grant. The grant does not state, in so many words, what the consideration for it was, but it sufficiently appears from the grant itself that the grant was made in consideration of the facts set out in the recitals. The recitals state that a school is to be established at Porirua, under the superintendence of the Bishop of New Zealand, “for the education of children of our subjects of all races, and of children of other poor and destitute persons being inhabitants of islands in the Pacific Ocean.” The recitals further state “that it would promote the objects of the said institution to set apart a piece of land in the neighbourhood thereof for the use and towards the maintenance and support of the same,” and that this parcel of land has been ceded by the Natives for the support of the school. The recitals and limitations leave no doubt that the land was granted by the Crown by reason of the representation that a school was about to be established at Porirua for the above-

⁹⁰⁸ (1901) 19 NZLR 665.

⁹⁰⁹ See *ibid.* 676.

mentioned purposes, and in consequence of the intended establishment of such a school. The contemplated establishment of the school was the cause, and the sole cause, of the Crown making the grant. It is to be observed that the grant is not made for the purpose of founding a school, but for the purpose of assisting a school which is about to be established apart from the grant, and which would, of course, require funds to be provided for its establishment other than those arising from the rents and profits of the land granted. More than fifty years have elapsed since the date of the grant, and no school of any kind has been established....This appears to bring the case within the principle that a grant by the Crown is void if the King be deceived in his grant. The Crown is informed that something is going to be done, and that a grant of land will assist what is going to be done. A grant is made in anticipation of this something being done, and because it is going to be done. The Crown is thus deceived in the consideration for the grant.

The problem with this reasoning is that the gift was in reality not from the Crown but from *Ngati Toa*, and if anyone was “deceived” it was the original Ngati Toa donors. What is not known is what the Crown planned to do with the Whitireia land and accumulated income following the decision. It could have simply kept it, or it may have been intending to re-vest the property in the Ngati Toa donors, or at least work towards a solution that Ngati Toa were happy with. All the indications are that this was in fact the Crown’s attention.⁹¹⁰ If it intended to do the latter then the situation is a truly ironic one, to put it mildly, as the decision that has been the subject of hostile criticism (*Solicitor-General v. Bishop of Wellington*) in fact paved the way for justice to be done to the donors, whereas the Privy Council decision, hailed as a far-sighted recognition of Native title, in fact prevented that! But the necessary evidence as to government intention is lacking. The Crown at least sought to argue – and the Court of Appeal accepted this – that it had intervened to in fact *protect* the donors (Ngati Toa) who were strongly *opposed* to the variation of the Trusts *cy pres* as had been approved in the Supreme Court. This appears from the last paragraph of the judgment:

Mr. Bell, who appeared for the Solicitor-General, the representative of the Crown, made a statement at the bar as from the Crown that the terms of the cession by the Native owners were such as to preclude the administration of the gift otherwise than in the direct terms of the grant, and asked that such an allegation should be added to the 5th paragraph of the statement of defence. The Crown therefore asserts that it has duties towards the Natives who ceded the land which could not be performed if the Court administered the trust *cy-près*. This would

⁹¹⁰ The clearest evidence pointing in this direction is the failed 1900 Bill, which sought to override scheme approved by Stout CJ and establish a Royal Commission. In the debates in the House Mr Field, the Member for Otaki – who was closely associated with Ngati Toa and Ngati Raukawa, stated that in the Supreme Court “the Crown urged that trust could not be carried on, and therefore reverted to the Crown, *it being the intention to afterwards perform the trusts as far as possible,,,*” 115 NZPD (16 October 1900) 433.

place the Court in a considerable difficulty. What the original rights of the Native owners were, what the bargain was between the Natives and the Crown when the Natives ceded the land, it would be difficult, if not impossible, for this Court to inquire into, even it were clear that it had jurisdiction to do so. The position appears to be somewhat as follows: The Crown, as *parens patriae*, through the instrumentality of this Court, sees that property devoted to charity shall be applied for the purposes of charity, and that where no purposes are specified the Court, as representing the Crown, is to define the purposes. The Crown, also as *parens patriae*, is under a solemn obligation to protect the rights of the Native owners of the soil. When, therefore, the Crown, as *parens patriae*, asserts that in that capacity it is under an obligation to Natives in respect of a property, can this Court, representing the Crown as *parens patriae*, say to the Crown, You shall not carry out this obligation, but the property you have granted shall be devoted to charitable purposes, to be determined by the Court irrespective of your obligations? We see great difficulty in holding that, in such circumstances, the Court could or ought to interfere.

F. The decision in *Wallis and others v Solicitor-General* (February 10, 1903)⁹¹¹

This case, arising out of the proposed scheme put to the Supreme Court by the Bishop for the rearrangement of the Whitireia Trust, was the appeal to the Privy Council from the Court of Appeal decision in *Solicitor-General v. Bishop of Wellington*. Ngati Toa themselves, it needs to be emphasised, were not involved in the case and played no role in the argument: it was strictly a dispute between the Trustees and the New Zealand government. Counsel for the Trustees defended the proposed scheme *cy-près*. The Crown continued to oppose the application of the *cy pres* doctrine and argued instead that as the Trust had failed the property should now revert in itself, but failed to make it clear to the Judicial Committee that a principal reason why it was making this argument was to protect the interests of the donors.

In *Wallis* the Privy Council was not prepared to tolerate the suggestion that the donor of the Trust was either in fact or in law the Crown. Although in fact the Judicial Committee was under a misapprehension as to the ability of Maori to freely alienate ungranted Maori-owned land at the relevant time, its view that “nothing of value” in terms of the grant ever came from the Crown is, of course, certainly the case:

The Governor, it will be observed, sanctioned the proposed cession, and undertook to give effect to it without attempting to make any stipulation, condition, or reservation of any sort or any kind. As the law then stood under the Treaty of Waitangi the chiefs and tribes of New Zealand and the respective families and individuals thereof were guaranteed in the exclusive

⁹¹¹ *Wallis and others v Solicitor-General*, [1902] AC 173, (1902) NZPCC 23

and undisturbed possession of their lands so long as they desired to possess them, and they were also entitled to dispose of their lands as the pleased subject only to a right of pre-emption in the Crown. It was not until 1852 that it was made unlawful for any person other than Her Majesty to acquire or accept land from the Natives: **New Zealand Constitution Act, 1852, c. 72, s. 72**. The founders of the charity therefore were the Native donors. All that was of value came from them. The transfer to the Bishop was their doing. When the Government had once sanctioned their gift, nothing remained to be done but to demarcate the land and place on record the fact that the Crown had waived its right of pre-emption. That might have been effected in various ways. The course adopted was to issue a Crown grant. That perhaps was the simplest way, though the Crown had no beneficial interest to pass. After all it was only a question of conveyancing as to which the Native owners were very possibly not consulted.

Here the Privy Council, thousands of miles away and at a much further remove from events chronologically than was the Supreme Court in *Wi Parata*, was nevertheless far better able to grasp the essential nature of the gift than Prendergast C.J. had been able to in 1877.

As is well-known about this case, the Privy Council was very critical of the Court of Appeal's finding that the Crown had been "deceived in its grant". "What evidence is there", ask Lord Macnaghten, "that the Crown was deceived?".⁹¹²

Absolutely none. The evidence is entirely the other way. The Governor undertook to complete the arrangement proposed by the Native donors as soon as he received their letter. He did not even wait to communicate with Bishop Selwyn. It is not suggested he communicated on the subject with anybody else. Now it would be absurd to found a charge of misrepresentation on the Native donors. But if the Native donors were innocent, with whom is the blame to rest? The evidence which the Court of Appeal said was sufficient to prove misrepresentation was discovered by them in the introductory recitals of the Crown grant. But the grant is not a deed *inter partes*. The statements in it are statements of the Crown.

And so on. The decision of the New Zealand Court of Appeal was reversed. That meant that the scheme for the Trust land and accumulated funds as approved in the Supreme Court now stood. But of course the scheme was *opposed* by Ngati Toa. Commentators who see the decision of the Judicial Committee as a blow struck for Maori rights by the Privy Council against the hide-bound opposition of the New Zealand courts are in fact deluded. In the 1905 Royal Commission on the Porirua and related trusts counsel for Ngati Raukawa and Ngati Toa explained that the core issue for his clients was their absolute opposition to the scheme approved by the Supreme Court and by the Privy Council: "[t]he scheme that has been suggested by the Supreme Court will only result in the granting of the funds from Porirua for

⁹¹² Ibid, 29,

the benefit of some one other than the donors”.⁹¹³ On the same occasion Heni Te Whiwhi was to make her opposition plain: “I, Ngatiraukawa, and Ngatitōa are against this action of the Whitireia trustees”.⁹¹⁴

To restate the point already made above, it is not known what the government would have done with the Whitireia gifted block had it been successful in the Privy Council. It would have been up to the Crown what it did with it at that point. Maybe it would have been returned to Ngati Toa, but we cannot be certain. Given the way in which argument was put in both the Supreme Court and in the Court of Appeal the Crown seems to have intended only to have been trying to safeguard Ngati Toa’s position, it being well-known that Ngati Toa were strongly opposed to the Wairarapa project. The Crown’s original scheme, rejected by Prendergast C.J., was the scheme for a school at Otaki (which seems to have been what many people of Raukawa and Ngati Toa preferred). While the Crown did not deserve all the criticism it received, I would argue by the same token that the Privy Council let the Church of England off much too lightly. While it had quite a few scathing words for both the New Zealand government and for the New Zealand Court of Appeal, it had none at all for the Church. And yet it was the Church that had received the land and had allowed the income from it to be built up for over 50 years while doing little or nothing to construct a college at Porirua.

G. Court of Appeal decision in *Hohepa Wi Neera v Bishop of Wellington* (1902)⁹¹⁵

Just before the Privy Council decision the New Zealand Court of Appeal had to deal with a somewhat different argument about Whitireia in *Hohepa Wi Neera v Bishop of Wellington and others* (1902).⁹¹⁶ Hohepa Wi Neera argued that the Native Title at Whitireia had simply not been extinguished at all. Hohepa Wi Neera was able to say that he was descended from Nopera Te Ngiha, who had been one of those who had executed the Porirua deed of 1847 but who had *not* been a party to the gift to the Church (that is, by means of the Crown grant, as has already been explained). Hohepa Wi Neera was also, however, a descendant of Matene Te Whiwhi, which gave him, as it were, two strings to his bow. As Stout CJ explained in his judgment:⁹¹⁷

The plaintiff claims, first, as a successor according to Native custom, of Nopera Te Ngiha, alleging that Ngiha, being an owner or having an interest in the land, never consented to the

⁹¹³ 1905 AJHR G-5,7

⁹¹⁴ 1905 Ajhr G-5, 9.

⁹¹⁵ On this case see especially John William Tate, “*Hohepa Wi Neera: Native Title and the Privy Council Challenge*”, (2004) 35 *Victoria University of Wellington Law Review* 73.

⁹¹⁶ (1902) 21 NZLR 655.

⁹¹⁷ *Ibid*, 664.

cession; second, as a successor according to Native custom of Matene, one of the grantors of the cession, on the ground that the land, never having been used as a college, reverts to the descendants of the grantors.

Citing from the headnote to the decision, the Court of Appeal held:

1. That the Crown grant could not be declared void as between the plaintiffs and defendants for matters not appearing on its face.
2. That the issue of the Crown grant was an implied declaration by the Crown, and was conclusive, that the Native title to the land had been extinguished.
3. That, if the Native title had been extinguished, then, even if the grant were set aside, the land would remain Crown land.
4. That the letter of 1848 was a cession of the land by the tribe.
5. That, the land being in the Crown, the plaintiff's remedy, if any, could only be against the Crown.
6. That the plaintiff's claim, in the action against the defendants, to dispute the validity of the cession, was barred by delay and *laches*; but
7. That the Statute of Limitations did not run against the plaintiff's claim as owner according to Native custom of land the title to which had never been investigated, the occupation of such land by a European having been a penal offence, and it having been declared inalienable by many Acts throughout the period in question.

Stout C.J. held, essentially, that *Wi Parata* was rightly decided, and that the Court had to treat the Crown grant as amounting to a valid extinguishment of the customary title.⁹¹⁸ In any event Hohepa Wi Neera's claim was blocked by effluxion of time (although the Limitation Act did not apply the claim was barred by the equitable doctrine of *laches*: "the tribe, including the ancestors of the plaintiff, having given up their occupancy and possession in 1848, it is, in my opinion, too late for the plaintiff, even if he can sue, to be heard to claim possession of the land").⁹¹⁹ The net effect of the decision was that Ngati Toa's legal options were blocked, in that there was no way to get around the Crown grant, which had to be treated as being valid on its face and thus as an extinguishment of Ngati Toa's customary title, irrespective, apparently, as to whoever had actually signed it. The decision in *Wallis*, while supportive of Ngati Toa's understanding of the nature of the original gift and grant – it was a gift from *Ngati Toa*, not the Crown – did not actually help the iwi, as it was concerned not with customary title but rather with the validity of a scheme to rearrange the Trust.

⁹¹⁸ Ibid, per Stout C.J., 667; per Williams J. at 671 ("I think the issue of the Crown grant in 1850 is conclusive evidence that any Native rights then existing in the land had been ceded to the Crown, and that the cession had been accepted by the Crown").

⁹¹⁹ Ibid, 668.

The decision in *Hohepa Wi Neera* has been analysed by J W Tate in an interesting article published in the *Victoria University of Wellington Law Review*.⁹²⁰ Tate sees the decision as demonstrating a clear strategy on the part of the Court of Appeal to preserve the effect of the *Wi Parata* decision and to limit as much as possible the effects of a recent Privy Council on Native title issues in New Zealand, *Nireaha Tamaki v Baker*.⁹²¹ Tate argues that the *Nireaha Tamaki* decision amounted to “nothing less than a fundamental upheaval in the New Zealand legal landscape concerning issues of land settlement”.⁹²² The New Zealand Court of Appeal decision in *Nireaha Tamaki* was another example of the New Zealand courts going out of their way to deny remedies to Maori who sought to bring claims based on customary titles against the Crown,⁹²³ and this had been fairly robustly – and rightly – repudiated by the Privy Council in its decision on appeal in the same case. Given this situation the strategy of the Court of Appeal in *Hohepa Wi Neera* was basically aimed at preserving the status quo in New Zealand while paying lip-service to *Nireaha Tamahaki*, which of course was binding on the New Zealand Courts under the doctrine of *stare decisis*. Much of Stout C.J.’s and Williams J.’s judgments revolved around the effects of the Native Rights Act of 1865 and there is no need to pursue this issue here – save to note that Ngati Toa’s particular interests in Whitireia had now become caught up in a much bigger controversy over Native title in New Zealand, and, perhaps, in something of a power struggle between the New Zealand Court of Appeal and the Privy Council as well.

The solution, obviously, was for Ngati Toa to get the land back. But the Crown did not own the land: rather, the Crown had granted it to the Bishop of New Zealand. To give the land back to Ngati Toa the land would first have to be taken off the Bishop. Perhaps the Bishop could have given the land back to Ngati Toa, but of course the Bishop in turn held the land from the Crown by means of a Crown grant subject to a trust to establish a school. One feels that between the government and the Church of England something could have been

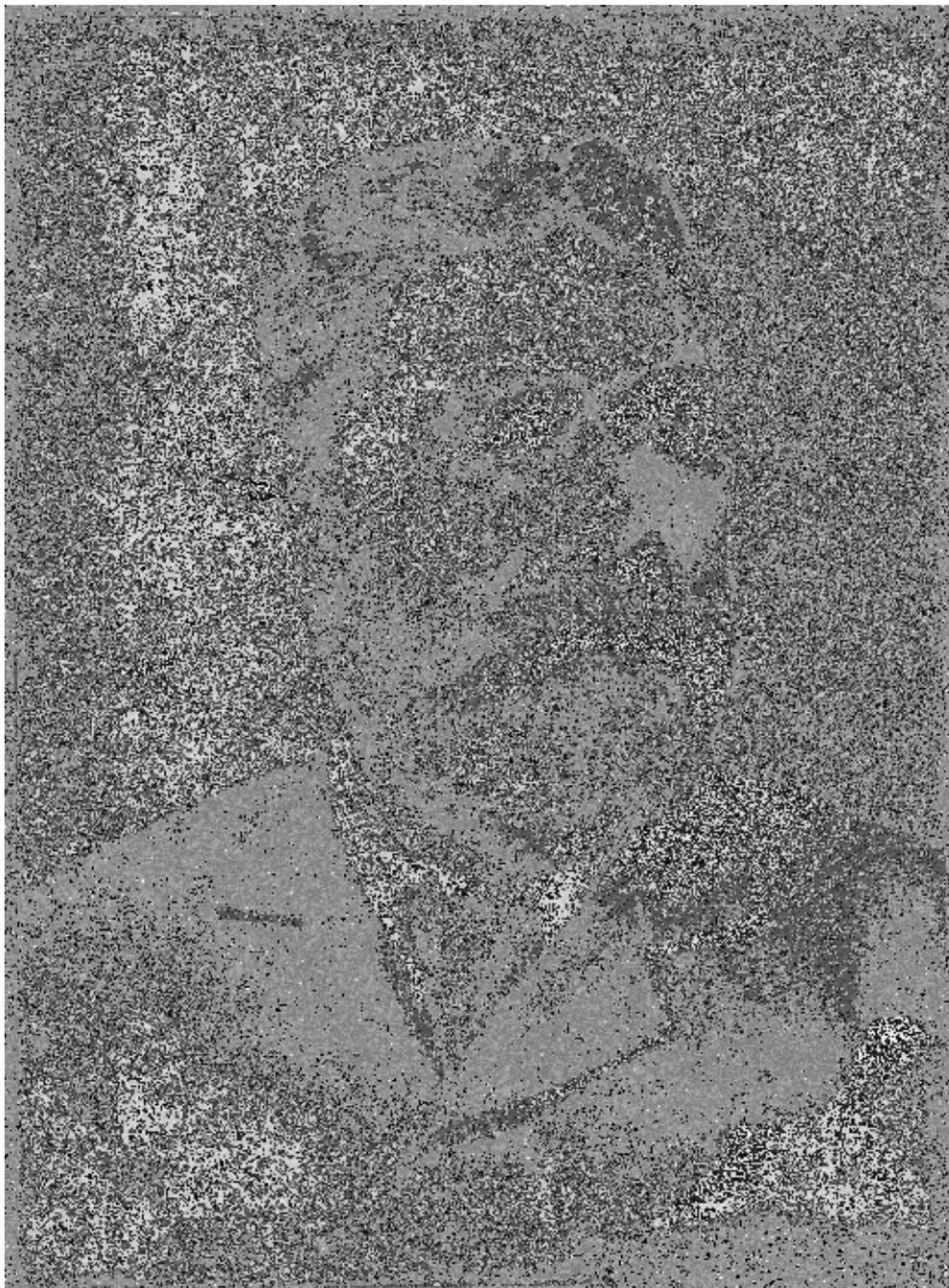
⁹²⁰ See Tate, “*Hohepa Wi Neera*” (supra). A more contextualised study is Peter McBurney, *The Court Cases of Nireaha Tamaki of Ngati Rangitaane*, A Report for the Crown Forestry Rental Trust, March 2001.

⁹²¹ [1901] AC 561 (PC), (1901) NZPCC 371.

⁹²² Tate, “*Hohepa Wi Neera*”, 78.

⁹²³ *Nireaha Tamaki v Baker* (1894) 12 NZLR 483. See per Richmond J at 488: The plaintiff comes here...on a pure Maori title, and the case is within the direct authority of *Wi Parata v Bishop of Wellington*...We see no reason to doubt the soundness of that decision...According to what is laid down in the case cited, the mere assertion of the claim of the Crown is in itself sufficient to oust the jurisdiction of this or any other Court in the colony. There can be no known rule of law by which dealings in the name and under the authority of the Sovereign with the Native tribes of this country for the extinction of their territorial rights can be existed. Such transactions began with the settlement of these Islands; so that Native custom is inapplicable to them. The Crown is under a solemn engagement of strict justice in the matter, but of necessity it must be left to the conscience of the Crown to determine what is justice. The security of all titles in the country depends on the maintenance of this principle.

worked out to the advantage of Ngati Toa, but so far what, if anything, was discussed between Church and state here has not come to light.



Wiremu Parata Te Kakakura. [ca 1890s].
Alexander Turnbull Library, Wellington.

To cut through the sea of difficulties and complexities that had built up over Whitireia the government decided on legislation. It could certainly have passed legislation empowering it to acquire the land from the Bishop of New Zealand for value, winding up the Trust, and regranting the land to Ngati Toa. That was in effect what the Native Affairs Select Committee had recommended in 1896. This, however, was not the solution adopted. Instead it was decided to combine the Otaki and Porirua Trusts into a single trust by statute.

7.7. The 1905 Royal Commission

In 1905 yet another inquiry took place into the various educational trust grants. This was a Royal Commission on the Porirua, Otaki, Waikato, Kaikokirikiri and Motueka School Trusts.⁹²⁴ (There was a separate inquiry into the Te Aute Trust the following year.) The composition of the Royal Commission was interesting – as it was chaired by none other than Sir James Prendergast! His connections with the Porirua Trust issue could certainly be said to be long-standing. Prendergast was now in retirement, having retired as Chief Justice of the colony in 1899.⁹²⁵ The other members of the Commission were H S Wardell, W H Quick and I Hutana. Quick was a prominent Wellington lawyer and had appeared for the Bishop in the Supreme Court and Court of Appeal decisions on Whitireia and was New Zealand solicitor on the record for the Privy Council decision in *Wallis*. The Commissioners were required to report on the following questions:⁹²⁶

- (1.) Of what the trust estate now consists – distinguishing land from money.
- (2.) The mode in which the land has been utilized and administered by the trustees; if leased – at what rental; if sold – at what price; what accumulations have been made and how they are invested.
- (3.) The total receipts and disbursements for each year since the creation of the trust.
- (4.) Whether the original trusts have been carried out, and if not, why not.
- (5.) If they cannot be carried out in their integrity, what modifications should be made in order to give effect to their original intention as far as practicable.
- (6.) In the case of the Porirua grant, whether the scheme approved by the Supreme Court gives effect to the original intention as far as practicable, and, if not, what modifications should be made in that scheme.

⁹²⁴ *Report and Evidence of the Royal Commission on the Porirua, Otaki, Waikato, Kaikokirikiri, and Motueka School Trusts*, AJHR G-5.

⁹²⁵ Morris, *Prendergast and the Administration of New Zealand Colonial Justice*, 259.

⁹²⁶ *Ibid*, iii.

Those who gave evidence to the Commission included Wi Parata himself, Raiha Puaha, Tautana Whataupoko, Heni Te Whiwhi, and Hone Heke Rankin, who was the Member of Parliament for Northern Maori and who had been assisting Heni and others with their petitions and grievances for a number of years. The Commission began its hearings in June and reported on August 23, 1905. At the start of the hearing Counsel for Ngati Raukawa and Ngati Toa, a Mr. Stafford, asked for time to consult with everyone present to discuss the proposal that he planned to bring before the Commission. Wi Parata then said he wanted the government to appoint counsel to represent himself and others of Ngati Toa, while Stafford explained that “I represent some of the Ngatitoas, and I believe I represent the whole, except, perhaps, Wi Parata”.⁹²⁷ Stafford continued:

It might be well to ascertain whether Wi Parata’s objection is to the carrying-out of any educational scheme at all, or whether it is not grounded in the desire that the donors should get back the land: as to whether he is in favour of carrying out a scheme for the future management of the trusts, or whether his objection, if there be one, is not based on the fact that he desires the land to be given back to the donors.

Which might point to a division of opinion within Ngati Toa: that is, some were happy to see the Trusts varied; others wanted the land returned.

Stafford put to the Commission a scheme to combine the Otaki and Porirua trusts and re-establish a school at Porirua. He made it very clear that the project to fund a school in the Wairarapa could not possibly work for his clients:⁹²⁸

Mr. Stafford: In the first place, I submit to the Commissioners what I call, for purposes of convenience, a scheme for the future administration of which my clients think should take place with reference to both the Porirua and Otaki reserves. Both reserves are granted upon identically the same trusts [this was not quite correct, as it happens], and the Natives say that, as the purpose of the Porirua trust has never been performed, and as the land at Otaki is practically now a failure – that is, the mission scheme – inasmuch as there are very few Native scholars who attend the school at all, the two estates should be combined into one. The system they suggest in this statement will show at once what course they suggest should be taken. In substance, the statement is this: that as it is admitted on all sides, apparently, that no school can be established at Porirua, Otaki is the spot on which the school should be established. They altogether deprecate the idea of the utilization of those funds towards the Wairarapa.

The Chairman: What is their particular objection to that?

Mr. Stafford: They say that the Natives on the West Coast will not attend that school. The school is established in the neighbourhood of the tribe which was conquered by the donating

⁹²⁷ 1905 AJHR 6.
⁹²⁸ 1905 AJHR 6-7

tribes, and they say it is against their custom and it is hopeless to expect the West Coast Natives to send their children to that school.

The Chairman: Do you understand it is offensive to their pride?

Mr. Stafford: It is against their custom, and they will not do it. It is in a place where the former hostile tribes are situated – one of the very tribes from which they were driven from this very spot by the donors of this property; and it is against their custom, and not proper, that the property which belonged to their ancestors should be utilised for any purpose in which these conquered races should have any interest at all. They say definitely and positively that it is useless to expect children from this Coast to go to Papawai. Further, there are no children really of the Ngatiraukawa or Ngatitōa who were ever educated at that school. They are not Ngatitōas who are being educated there; they are Ngatikahungunu, so you will see as far as the Natives here are concerned that is a useless scheme.

Stafford's scheme had widespread support, or at least he had prepared a well-organised case to give that impression. A number of Ngati Raukawa and Ngati Toa people gave evidence in favour of it, although two key individuals of Ngati Toa, Wi Parata and Raiha Puaha, were opposed and asked for the land to be returned. In fact Wi Parata said plainly that "You must not understand me to mean that I wish to have a school, the school is too late for us now."⁹²⁹ Opposition to the Wairarapa project was well-nigh universal, although some people were careful to explain that this was not because of a sense of animosity towards Ngati Kahungunu.⁹³⁰

The Report of the Commission traversed briefly the history of the Porirua Trust before moving on to describe the current state of the Trust estate. By 1905 the land was still leased as a farm and was worth from £4,000 to £5,000. By this time, however, sections were beginning to surveyed off and houses built at Titahi Bay, which – in the view of the Commissioners – was certainly going to drive up land values at Whitireia: "[t]he land is bounded on three sides by the sea, and it would lend itself well to subdivision for seaside residences"⁹³¹. The land was let at a rental of £200 per annum (the current lease was due to expire on 30 June 1908), but it was in fact earning considerably more than the rent from investments (£472) – because, of course, the funds had never been expended on a college. So the Trust had become quite a valuable asset.⁹³²

⁹²⁹ Evidence of Wi Parata at 1905 AJHR G-5, 21.

⁹³⁰ See evidence of Tautana Whatupoko at 1905 AJHR G-5, 14:

Q: We have been told that there is a feeling of animosity towards the Ngatikahungunu which prevents the Ngatiraukawa sending their children there? – I have nothing to do with that.

⁹³¹ Ibid, vi.

⁹³² The full details are stated at *ibid*, vi:

The land has been in the occupation of tenants and producing rental from almost the commencement of the trust, and is now under lease which expires on the 30th June, 1908, at a rental of £200 per annum; all income has gone to accumulation except the sum of £991 paid during the years 1866 to 1876 for salaries of teachers employed at the Church Missionary

As to the question whether the original Trust had been carried out, it clearly had not been. This amounted to an acceptance of Ngati Toa's own position: that the essence of the original gift was the establishment of a school at Porirua itself. According to the Report:⁹³³

In reply to the question whether the original Trust has been carried out, your Commissioners find that no school has been established and maintained at Porirua as promised to the Native donors at the time of the cession of the land, and as required by the Crown grant, and are unanimously of opinion that the trust has not been carried out, and its object has not been attained. A small but inefficient school was carried on for a short time before and after the issue of the Crown grant, and an effort was made by Bishop Selwyn to erect a building suitable for a college, which it was his great desire to erect at Porirua; but his effort was unsuccessful, as he failed to obtain the financial assistance from England on which he relied. From that time nothing has been done towards establishing a school at Porirua. The trustees have always apparently had in view the scheme of establishing a boarding-school or college, but have not been, in their opinion, sufficiently in funds, and, while looking forward to the future, have taken no steps towards the establishment of a day-school, which would probably have been within their means for some years past. Such a school is not now required, the want being supplied by a State Board school. The trustees, however, expended nearly £1,000, as above stated, in salaries of school-teachers at Otaki, and thus, although by an unauthorized use of their funds, aided in Native education, and showed that they regarded the Otaki trust as in close affinity with their own.

As seen above, Prendergast had earlier concluded that the trust had *not* failed, or at least that it could still be performed. So he had now obviously changed his mind. Perhaps the reason for this was Ngati Toa's opposition to the Wairarapa project.

The other question was whether the proposed scheme that had been approved by Stout C.J. and by the Privy Council in *Wallis* gave effect to the Trust. And here the Commissioners were also unanimous in agreeing that it did not – and in this were clearly right (which gives something of an interesting twist to much of what has been written about the *Wallis* decision):⁹³⁴

The Trustees in 1898 moved the Supreme Court with a view to obtaining its sanction to a scheme for the application of their funds, to provide exhibitions for children in such Church of England schools as the trustees might select. This scheme was rejected, and subsequently in 1902 one was approved under which the rents and profits of the trust as are authorised to be devoted to the maintenance of scholars, preferably of the Ngatittoa Tribe, at a Church of

Society's school at Otaki, the sum of £1.154 paid as law costs and legal expenses, and the necessary costs of management.

933

Ibid.

934

Ibid.

England school, established at Wairarapa, for the education of Maori boys, and the sum of £42 4s. 9d has been paid for the maintenance and traveling-expenses of one scholar for one year. This was a Ngatitoo from the Croixelles Island.

We are called upon by Your Excellency to report whether the approved scheme just referred to gives effect to the original intention of the trust. Our opinion is that it fails to do so, inasmuch as the original intention was to establish a local school in the neighbourhood of Porirua, and, as we think, chiefly for the benefit of children of the Ngatitoo, Ngatiraukawa, and Ngatiawa Tribes resident in the neighbourhood, and, further, because the devotion of the rents and profits of this estate to the maintenance of a school at Wairarapa, or of scholars in such school, is hostile to the sentiment of the Natives of these tribes, a sentiment operating powerfully at the present time, but even more so at the time of the creation of the trust. As a result of this feeling the Maoris of Porirua and the West Coast absolutely refuse to send their children to that school.

The Commission also considered carefully the situation of the school at Otaki, which had had a chequered history of its own by that time. Although the original grants had been similar in intent, the two trusts had ended up with different legal owners and the Trusts were quite separate. In the case of Whitireia the legal owners, the Trustees, derived their authority from the General Synod of the Church of England in New Zealand. The grantees of the Otaki lands were, however, “trustees of the Church of England Missionary Society, an English society now represented in this colony by the Mission Trust Board”.⁹³⁵ This complicated, although not fatally, the proposal to amalgamate the two Trusts.

The report gives an interesting account of the varying fortunes of the school at Otaki, which had once been quite a large institution when it was supervised by the Reverend Samuel Williams (who, of course, later moved from Otaki to take over the management of the Te Aute estate). Williams was still alive at the time of the Royal Commission and in fact he gave evidence before it. According to the Report:

Prior to the date of the grant a school was established at Otaki by the Rev. Mr. Hadfield in 1839, which flourished from the beginning, and later, under the superintendence of the Rev. S. (now Archdeacon) Williams, grew to a large institution, attended at one time by as many as 130 boys, a large proportion being boarders. A school for girls was also carried on for some time. After the troubles caused by the political disturbances of 1863, the school was closed for a time, and afterwards carried on with diminished numbers and usefulness up to the present time. There are now on the roll of the school thirty-five Maoris and half-castes, with an average attendance of twenty-five. The children now attending school are, with two exceptions, day-scholars, too young for any education other than the elementary requirements of the first four standards. The school originally established for some years received

⁹³⁵

Ibid, vii.

substantial grants of money from the Government towards its support, and at that time the land was partly cultivated by the pupils for the benefit of the school. In 1903 the main building was burned down, causing a large loss to the trust, as the insurance was for £400 only, which was considered reasonable on account of its age, and since then the school has been carried on at great disadvantage in a small and unsuitable building.

The Commissioners concluded that the Porirua and Otaki Trusts should be combined.

7.8. The Otaki and Porirua Empowering Act 1907

This Act, passed on 26 October 1907, was described in its long title as an “Act to amalgamate the Porirua and Otaki Trust Properties, and to enable the same to be heard and dealt with by the Porirua Trustees for the Purposes of the Establishment and Maintenance of a School or Schools at Otaki or in the Otaki District”. It began with a long recital setting out the complicated legal history of the separate Trusts,⁹³⁶ and then provided for the formal merger of the two trusts. Section 2 of the Act provided – as far as it can be fathomed – that the funds from the Otaki Trust were to vest in the Porirua Trustees. From the combined funds the trustees were then empowered to construct and maintain a school or schools at Otaki and also for the maintenance of scholarships “at any one of three colleges to be selected by the General

⁹³⁶

The Preamble stated:

Whereas the lands described in the first part of the First Schedule hereto (hereinafter termed the Otaki property) are vested in the New Zealand Mission Trust Board incorporated under under the Religious, Charitable, and Educational Trust Boards Incorporation Act, 1884, upon the trusts stated in the second part of the said First Schedule: And whereas the lands described in the first part of the Second Schedule hereto (hereinafter termed the Porirua property) are vested in the Porirua College Trust Board (hereinafter termed the trustees) upon the trusts stated in the second part of the said Second Schedule: And whereas by an order of the Supreme Court of New Zealand, Wellington District, made on the 7th day of September, 1900, the trustees were empowered to expend the net income arising from the Porirua property, and the net income from the fund representing accumulated rentals therefrom and interest, in terms of a scheme particulars of which are set forth in the Third Schedule hereto: And whereas it has been agreed between the New Zealand Mission Trust Board and the trustees that upon the trustees being empowered to vary the scheme detailed in the Third Schedule so as to enable them to expend all accumulations of capital and interest from the Porirua property, together with the net income of the Porirua property and the net income of the fund representing accumulated rentals therefrom and interest, in, and towards, the erection and maintenance of a school or schools at Otaki or in the Otaki district, and in and towards the erection and maintenance of a school or schools at Otaki or in the Otaki district, and in and towards the establishment of scholarships at any colleges to be selected by the General Synod (preference being given to the scholars mentioned in paragraph (c) of section four hereof), then the Otaki property and the fund representing accumulated rentals therefrom and interest, and also the Moneys received by the New Zealand Mission Trust Board in respect of the insurance of certain buildings on the Otaki property destroyed by fire in the year 1903, and the accumulations thereof (all of which are hereinafter referred to as the Otaki trust funds), shall be vested in the trustees for the purposes of such school upon the conditions hereinafter detailed.

Synod” (e.g. Te Aute). Preference was to be given to members of Ngati Raukawa, Ngati Awa and Ngati Toa.

The Act at least kept the Porirua estate intact, rather than “revesting” it in the Crown, but it essentially converted it into an ordinary endowment to support a school at Otaki and to fund scholarships to Church boarding schools. It is true that Ngati Toa got neither a college of their own at Porirua nor a return of the land, but it seems clear that the plan to amalgamate the Trusts largely emanated from Ngati Toa themselves, or from the three iwi affected (i.e. Ngati Toa, Ngati Awa and Raukawa). So the Act in fact gave effect to the plans of local Maori, following their endorsement by the 1905 Royal Commission. Section 3 of the Act provided for the two trusts to be combined:

The trustees are hereby empowered to employ the net income from the Porirua and Otaki properties, including as income all accumulations of rent, interest, and profits, and also the aforesaid insurance moneys, in the erection of a school or schools at or near Otaki, in the Provincial District of Wellington, and in the acquisition of a site or sites therefore; and also in the establishment of scholarships at any one of the three colleges to be selected by the General Synod, preference being given to

7.9. After the 1907 Act

The history of the trust, which – in a somewhat attenuated form – is still in existence today, by no means came to any kind of satisfactory end with the 1907 legislation.⁹³⁷

The Otaki school was duly built, with a boarding hostel, located on a 20-acre site at Te Rauparaha street, Otaki. The land was purchased by the Porirua College Trust Board from the New Zealand Mission Trust Board in 1908, 8 acres for the school and 12 acres for the school farm. The hostel catered for 20 boys, with a master’s room and a principal’s apartment, and the school itself was built for 100 students. By 1913 Otaki College was one of ten schools nationwide which offered ‘some form of education for Maori pupils beyond the level of the native primary schools’.⁹³⁸ The combined assets of the Board included Whitireia, the school and farm, and the gifted properties at Otaki, 460 acres on Tasman Road and 32 acres on Anzac Road. In 1924 the Trustees sold some of the land at Whitireia (25 acres) and in 1935 a further 100 acres at Whitireia were sold to the New Zealand Broadcasting Board.

⁹³⁷ This part of the Whitireia chapter is principally based on a long report by K W Cayless, BSA Consulting Services, *Whitireia Park: A Report on Acquisition by the Crown*, December 1990 (on file with Kensington Swan, Barristers and Solicitors, Wellington) together with an analysis of the legislative provisions. See also our *Ngati Toa 1840-2000, A Social History*, 2006, pp 188-196.

⁹³⁸ Barrington, *Separate But Equal?*, 142. Others included Te Aute, St Stephen’s, Hukarere, Queen Victoria College, and Turakina Maori Girls’ School. The Otaki College seems to have been something of a poor relation.

Despite all the high hopes, effort and struggle which went into its establishment the Otaki school was not particularly successful, By 1936 there were only 3 pupils in the primers and junior standards, looked after by a Maori assistant teacher, and 31 in Standard 4 to Form 2, taught by headmaster H Wills, who had been there for some 20 years. The physical environment of the school was regarded as clean, tidy, and attractive, but the dormitories were 'very depressing'. The school was forced to close in 1939. After various petitions in the early 1940s yet another act was passed dealing with the trusts, this being the Otaki and Porirua Trusts Act 1943. The Preamble to the 1943 Act states:

Whereas certain property, including the lands described in the Schedule hereto, is vested in the Porirua College Trust Board (incorporated under the Religious, Charitable, and Educational Trusts Act, 1908) upon the trusts declared in the Otaki and Porirua Empowering Act, 1907: And whereas it has been found that the income available to the Porirua College Trust Board is insufficient for the maintenance of a school in accordance with the said trusts, and the school established by that Board was closed at the end of the year 1939: And whereas, for the purpose of making the best practicable use of the available income in furthering the education contemplated by the trusts, it is expedient to extend and vary the trusts as hereinafter provided and to establish a new Board to administer the amended trusts.

The 1943 Act dissolved the former Porirua College Trust Board and replaced it with a new body, the Otaki and Porirua College Trust Board.⁹³⁹ The new Board was comprised of eight persons appointed by the Governor-General, four on the recommendation of the Diocesan Trusts Board of the Diocese of Wellington, three on the recommendation of the Raukawa Marae Trustees (of whom at least one had to be Ngati Toa) and one on the recommendation of the Minister.

However for reasons we are not aware of, this was altered in 1946 with the Otaki and Porirua Trusts Amendment Act of that year. This changed the Board from eight members to ten, of whom five were now to be nominated by the Diocesan Trusts Board, four by the Raukawa Marae Trustees, and one on the recommendation of the Minister. One of the five members chosen by the Board had to be of Maori descent and a member of Ngati Toa, Ngati Awa or Ngati Raukawa. The requirement that at least one of the Raukawa Marae Trust Board's nominees be of Ngati Toa descent was retained. That was to change the composition of the Board substantially, and certainly created the possibility that there would be just one Ngati Toa representative on the Board (out of ten members). This may have reflected the wishes of all concerned at the time, but given that one of the main assets controlled by the Trust arises out of the old Whitireia block it may well be time for this arrangement to be revisited.

⁹³⁹ Otaki and Porirua Trusts Board Act 1943, s 3.

As the income from even the combined trusts now seemed insufficient to support a school, the Act provided for the Board to expend the money on a range of educational purposes. These were as follows:

- (a) The provision of scholarships for children of British subjects of all races, and for children of other persons being inhabitants of islands in the Pacific Ocean, but so that preference is given to boys and girls of the Ngatiraukawa, Ngatiawa and Ngatitōa Tribes, and then to other Maoris or descendants of Maoris residing on the west coast of the North Island of New Zealand, and, failing such, to Maoris or descendants of Maoris of any part of New Zealand:
- (b) The provision of books, clothing and other equipment for the holders of such scholarships; and the making of grants for any such purpose and generally for the purpose of assisting the parents or guardians of any holders of such scholarships to provide for their education:
- (c) The provision of books, clothing, and other equipment for any other such children; and the making of grants for any such purpose and generally for the purpose of assisting the parents or guardians of any such children to provide for their education:
- (d) The provision, furnishing, maintenance, and management of residential accommodation for any such children in relation to their education:
- (e) The making of grants, with the consent of the Minister, to the governing bodies of any schools at which any such scholarships are tenable or at which any such children are educated.

How the Board has discharged its functions and who has benefited from the funds at its disposal are not matters on which we can comment, not having seen any of its accounts or other records

The Board was empowered to sell the lands vested in the Board – including, of course, Whitireia – at any time, with the consent of the Maori Land Court. However section 8 of the 1946 amending Act removed the requirement for Land Court approval and instead gave the Board power to sell simply with the consent of the *Raukawa Marae Trustees*.⁹⁴⁰ On 14

⁹⁴⁰

Section 14 of the 1943 Act provided that:

14. Power of Board to sell or lease lands.

(1) The Board may from time to time –

(a) With the consent of the Minister, sell the lands vested in the Board or any part thereof, either by public auction or by private contract, and upon such terms and conditions as the Board thinks fit, with power to buy in or rescind or vary any contract of sale:

(b) Lease any lands vested in the Board...

(2) The Minister shall not consent to the sale of any land that was originally acquired from any Maori tribe or hapu unless the Native Land Court has first consented thereto. Before granting any consent the Native Land Court shall ascertain as far as it deems practicable the wishes of the members of the tribe or hapu concerned.

December 1973 the remaining portion of Whitireia (following various public works takings and earlier sales) an area of 283 ac.3r.20.3p was sold to the Crown for the purpose of a public reserve. The deed was subject to a number of covenants relating to the management of Whitireia, these being:

- * That the land shall continue to be known by its historical name of ‘Whitireia’ and shall be administered as Public Reserves;
- * That a separate Board will be set up to control and administer Whitireia and any further lands brought under the control and administration of such Board as public reserves;
- * The separate Board shall include two members of the donor Tribes to be nominated by the Trustees and appointed by the Minister of Lands one of whom shall be a member of the Ngatitōa Tribe.
- * That an appropriate area surrounding Onehunga Bay known as the ‘Anchorage’ shall be set aside and permanently preserved in such a way as will protect the historical associations of this area with the Ngatitōa tribe. The precise area to be so set aside shall be determined by the Elders of the Ngatitōa Tribe now resident at Takapuwahia. The Crown will at its expense provide the services of a Surveyor to confer with such elders in order to enable him to properly define such area and set cut the boundaries of the same in a suitable plan;
- * That the Crown will cause to have suitably marked in a permanent manner four old pa sites on Whitireia as indicated by the two members of the Board appointed pursuant to paragraph 3 hereof.

Whitireia remains in DOC ownership to this day. There is a Whitireia Park Board but we are unsure what its functions are or from where it gets its legal authority. The appearance of the land is generally fairly mediocre, grassed and mostly treeless slopes used to graze stock. Little effort has been made to improve the amenities of the area, establish Native forest on it, or to do anything to explain to the public the historic significance of the place. In 2005 the transfer of the management of Whitireia Park to the Wellington Regional Council was under consideration. Much could be done to improve the appearance and amenities of the area.

7.10 Conclusions

The history of Whitireia has not been a happy one for Ngati Toa, to put it mildly. Representatives of the iwi gifted a fairly substantial portion of Ngati Toa’s dramatically contracted remaining estates in 1848 as a gift to the Church for the establishment of a college, but never saw a college of course. Attempts to have the land returned once it became clear

However s 8 of the 1946 Act amended this by “omitting from subsection two the words “Native Land Court has”, and substituting the words “Marae Trustees have””. We have not discovered why this change was made but it seems on the face of it to remove an important safeguard.

that no college was ever going to be established were unsuccessful. Whitiorea became the centre of a complex, three-cornered dispute between the government, the Church of England and Ngati Toa, resulting in the end in a decision of the Privy Council and then special legislation in 1907. As a second-best option the iwi went along with plans to amalgamate the Whitiorea Trust lands with similarly gifted lands at Otaki in order to support a school at Otaki, but this in the end failed as well and the Otaki school was closed in 1939. The Trust is still in existence, but is now dominated by the Raukawa Marae Trustees at Otaki. Its assets no longer include the land gifted in 1848. Whitiorea itself has been sold to the government, which has managed it very indifferently. This all amounts to a major issue and a significant grievance for Ngati Toa.

CHAPTER 8

Mana Island

8.1. Introduction

This chapter deals with Mana Island. Mana Island was covered in Report No 1, taking the story to circa 1865. To make this chapter comprehensible, the material covered in Report No 1 is summarized here, and is then supplemented by a brief narrative bringing events down to the present day.

Mana Island is mostly bounded by cliffs but there is a sheltered landing in the south-east, where the main stream system reaches the coast. The focus of occupation on the island has always been here, on the flat area behind the beach and landing site. In 1990, excavations in two places on the beach flat revealed a long history of occupation, beginning approximately 600 years ago and ending with the historic occupation of the island by Ngati Toa people in the 19th century. A large assemblage of fish remains were uncovered during the excavations. The excavations revealed a relative abundance of catch, with labrids (spotties and parrotfish) and snapper most common. There were also significant numbers of blue cod, greenbone (butterfish), leatherjacket and moki. Marine surveys around Mana and nearby Kapiti Island show that the early Maori fish catches closely reflect the species still present in the immediate inshore environment at the present day.

8.2. Early alienations on Mana

Mana Island was an important place for Ngati Toa, and was where Te Rangihaeata had his famous house, Kai Tangata. Following an investigation by Land Commissioner Spain the island had apparently been Crown-granted to a Mr. Moreing. Then in 1861 Matene Te Whiwhi and Tamihana Te Rauparaha asked land Claims Commissioner Bell to reinvestigate the island, but since it had already been Crown-granted by that time Bell felt unable to do so.⁹⁴¹ The following year Bell referred the issue to Featherston. In the interim, it seems, Tamihana Te Rauparaha and Matene Te Whiwhi had petitioned the government on the subject on Mana Island:⁹⁴²

⁹⁴¹ Bell to Native Minister, 4 September 1861, MA 24/21 [Correspondence regarding the Mana Island Purchase], Archives New Zealand, Wellington.

⁹⁴² F D Bell to Featherston, [September 8?] 1862, MA 24/21.

Recently a petition was presented to the House of Representatives from Tamihana Te Rauparaha and Matene Whiwhi on the subject of their claims on the Island of Mana. The Petition was investigated by the Private Grievance Committee, and the part of the Island which had been issued to Mr. Henry Moreing, was examined. It appears that the Grant excepted all cultivations etc. on the Island.

I thereupon agreed that the Native cultivations and gardens should be laid off at the earliest possible date. If the land purchase surveyor can be spared by you for the purpose he had better be sent to Mana at once: if not, I shall be glad if you could Detach one of the Provincial Surveyors for the work, or engage (if absolutely necessary) another surveyor to do it.

I annexed the Papers relating to the arrangement made by Mr. McLean (upon a joint recommendation of his and mine) for the payment of £100 to the above Chiefs for the settlement of their claims. But as they have now refused to make the offer made to them of that sum, it is best to carry out exactly the terms of the grant by laying off their cultivations. The survey should be submitted for your approval: and the cost will be defrayed from the usual Native Purposes, but be recouped from Mr. Moreing whenever he comes in to give up his part according to the agreement made on his behalf by the late Mr. Daniel Wakefield.

I recommend to your attention the evidence taken before the Private Grievance Committee.

I have arranged with Thompson [Tamihana] Rauparaha that he and Matene shall have notice of the day when the Surveyor will go out and commence the work; which should be the earliest which you may be able to name.

This document shows that the earlier Crown grant of Mana Island to Moreing was supposed to be subject to an exclusion of the Maori cultivations, but this, it seems had never been done. By this time the Ngati Toa chiefs had petitioned parliament and evidence had been taken by a parliamentary committee (not found, to date), and there had been discussions about settling the matter by paying compensation. At the time of the letter this had not been resolved, the figure of £100 compensation having been rejected by Matene Te Whiwhi and Tamihana Te Rauparaha, and for this reason Bell wanted to have the surveys done. Whether the surveys were ever done is unclear: given the 1865 deed it would seem likely that they were not.

Island of Mana, 1863.
Department of Lands and Survey

8.3. The Mana Island Deed (1865)

Then, on 1 December 1865 Mana Island was sold (it would appear) to the Crown. The Deed states:

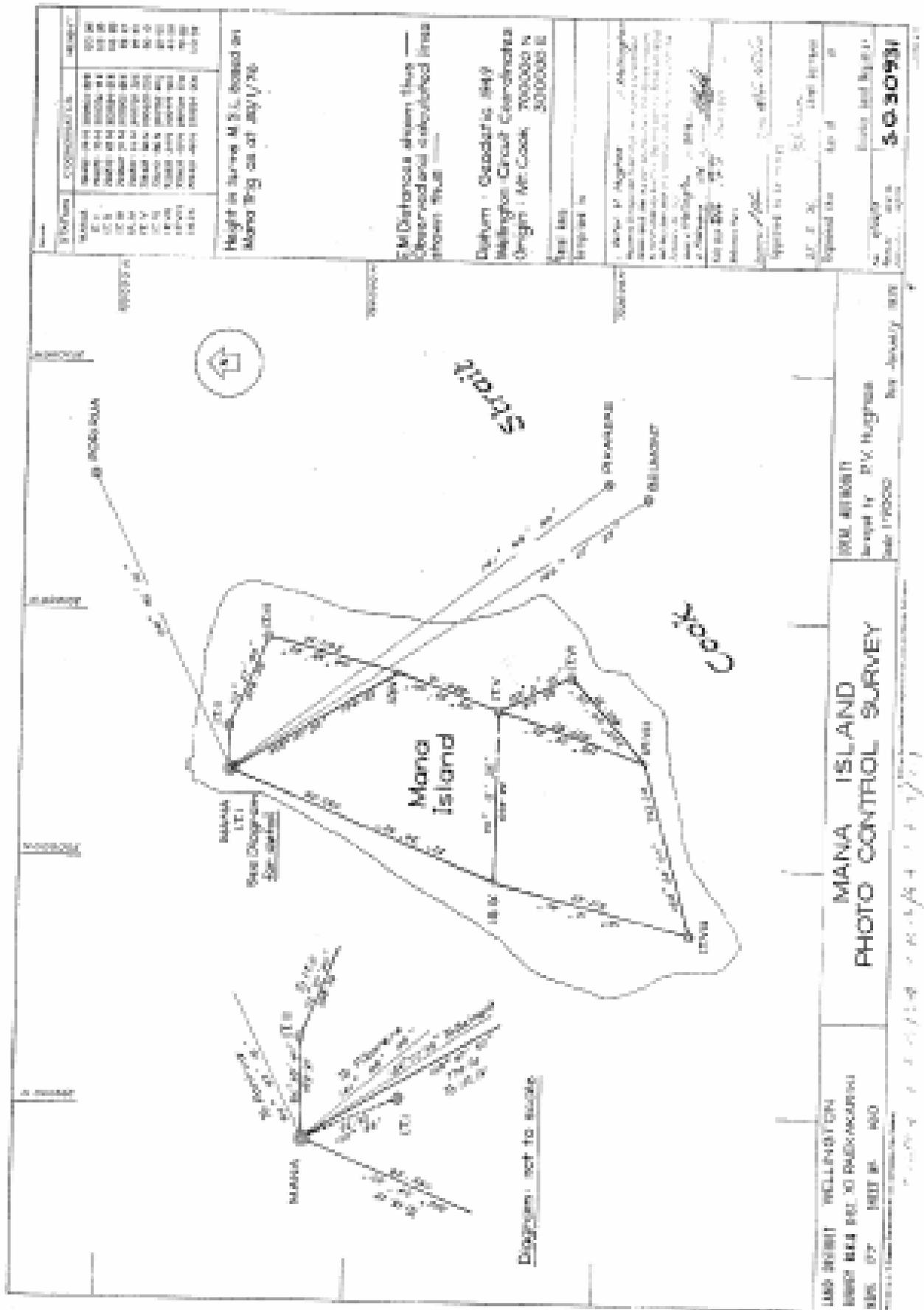
This Deed written on this First day of December in the Year of our Lord 1865 is a full and final sale conveyance and surrender by us the Chiefs and People of the Tribe Ngatitōa whose names are hereunto subscribed. And Witnesseth that on behalf of ourselves our relatives and descendants we have by signing this Deed under the shining sun of this day

The Deed states that it includes rights to all trees, minerals, waters, rivers, lakes, and streams, and includes “...all our right title claim and interest whatsoever thereon To Hold to Queen Victoria Her Heirs and Assigns as a lasting possession absolutely for ever and ever”. The sale is not easy to fathom, given that the island had already been Crown-granted and had passed out of Ngati Toa ownership some years before. The ‘sale’ should probably be regarded as a cash extinguishment for any subsisting Native title claims. As the island was subject to a Crown grant it is clear that the Native Land Court could have had no jurisdiction over it.

8.4. Later History⁹⁴³

According to several sources the island was subsequently conveyed to the Wellington Provincial Government. With the ending of the provincial system the land will have reverted in the Crown in right of New Zealand as a whole, but the exact mechanics of what happened to the island at that point have not come to light. In 1873 J.F.E. Wright obtained a 21-year lease of Mana for an annual rental of £52 and, in 1886, the Vella family commenced a 70-year association when a sublease was granted to Mariano Vella. In 1893 Mana was first temporarily, and then later, permanently reserved for defence purposes. The Gazette notice states that in accordance with section 235 of the Land Act 1892 the land listed in the notice is temporarily reserved from sale. The notice provided also that all 525 acres of Mana is

⁹⁴³ This section is based on a reconstruction of the subsequent tenurial history of Mana Island based on title records and Gazette references carried out by Mark Shroder of Kensington Swan, Barristers and Solicitors. The island has essentially remained in Crown ownership since 1865.



Mana Island Photo Control Survey, 1976. LINZ.

temporarily reserved for defence purposes. However, some sources suggest that the 10 acres which comprised the landing place reserve were exempted. Also in 1893, by a Warrant dated 12 October, the Crown created a Landing-place Reserve as delineated on the plan marked L and S 22/2704.

In 1948 the island was declared ordinary Crown land and ceased to have the status of a defence reserve. The Gazette notice dated 23 June 1948, provided that the Governor-General, in accordance with section 7(1)(b) of the Public Reserves, Domains, and National Parks Act 1928, revoked the reservation for defence purposes over the whole of Mana Island aside from the Landing-place Reserve. Thus Mana was declared Crown land available for disposal under the Land Act 1924. Five years later, on 29 October 1953, the Gault family purchased the lease of Mana pursuant to section 67 of the Land Act 1948. The leasehold estate was created via a special lease with perpetuity for 999 years.

On 22 August 1974 a Gazette notice regarding Mana declared that the Gault leasehold estate is to be taken for Agricultural Purposes (Research Station). This step was taken pursuant to section 32 of the Public Works Act 1928 by the Minister of Works and Development. The taking concerned 495 acres of the Island, thus exempting the 30 acre Landing-place reserve. In 1973 the Ministry of Agriculture and Fisheries took over Mana Island for use as an exotic sheep quarantine and breeding research station. Following an outbreak of scrapie in 1978 the quarantine and research programme was discontinued and the Island passed to the Department of Lands and Survey.

The previous year, in 1977, The Porirua City Council had the street reserve between the shoreline and the unsurveyed south-eastern reserve portion of the island closed. The 20 metre wide strip had been deemed a 'legal road' and had been vested as a public street, as apparent from the various plans of the island.

In 1982, via Gazette notice, the Minister of Lands, pursuant to the Reserves Act 1977, revoked the reservation as a reserve for Government purpose (landing reserve), being 4.0469 hectares in Block XI (SO 11047), and 3640 square metres being Section 34, Block XI (SO 31571). By Gazette notice on 31 October 1988, pursuant to the Land Act 1948, the Minister of Conservation set apart Mana Island as a scientific reserve subject to the provisions of section 21 of the Reserves Act 1977. Mana, having been deemed a scientific reserve, came under the control of the Department of Conservation. The area set apart is described as 200.3194 hectares situated in Block XI, 4.0469 hectares also in Block XI, 3640 square metres being Section 34, Block XI (SO 31571), Block XI, and 12.1406 hectares of Crown land reserved from sale in Block XI shown in SO 11047.

CHAPTER 9:

‘A Very Sacred Possession’: Kapiti Island Part 1: The Native Land Court Blocks

9.1. Introduction

This chapter and the next focus on the later tenurial history of Kapiti Island. This is a discrete topic, the island being separated from the mainland not only physically but also in terms of how both Maori, especially Ngati Toa, and the Crown have dealt with it. Since it ceased to be Te Rauparaha’s stronghold in the 1840s, it had few occupants and instead was primarily used as farmland until the Crown moved in the 1890s to acquire it as a nature reserve under the authority of special legislation. Kapiti Island lay outside the earlier pre-emptive purchases and continued to have the status of Maori customary land until it was investigated and partitioned by the Native Land Court.

This report contains two chapters on Kapiti. Chapter 9 is a block history of each of the five Kapiti blocks, based upon an exhaustive examination of the files of the Maori Land Court, based these days in Wanganui. It addresses the Native Land Court’s divisions and allocations of ownership interests with regard to the various Kapiti blocks, and chronicles the passage of those blocks out of Maori ownership. Chapter 10 surveys the acquisition by the Crown of the island for the purpose of creating a wildlife sanctuary. It recounts the information available in the files relating to the Crown acquisitions, beginning in the 1890s but continuing through the earlier part of the twentieth century.

Kapiti Island is 10 km long and about 2km wide at its widest point. The island lies 5km offshore and covers 1965 hectares, and is separated from the mainland by the Te Rauoterangi Channel. The highest point on the island is the peak of Tuteremoana (520 m). The name “Kapiti” is an ancient one, the full name of the island being – according to the *Encyclopaedia of New Zealand* - Te Waewae Kapiti o Tara raua ko Rangitane. The island was also apparently known as Motu Rongonui (‘Famous Island’) although this does seem to be a name in use today. Captain Cook saw the island and gave it name “Entry Island”, by which it is known in some post-1840 documents. Mostly, however, it is referred to, as it is today, as “Kapiti”.

The island has played a central role in Ngati Toa history. The battle of Waiorua, which established Ngati Toa hegemony over the region, was fought on the island, probably in 1824. Later the island became a centre of the whaling industry. There were eventually eight stations on Kapiti or its adjacent islands, at Waiorua, Te Kohuoterangi, Rangatira, Taepiro,

Wharekohu, Tokomapuna, Motungarara, and Tahoramaurea. William Wakefield, visiting Te Rauparaha at Kapiti in 1839, thought that “the whaling establishment here is most complete and very superior to those of the poor shore parties we have seen”.⁹⁴⁴ The largest of the Kapiti stations was Jillet’s station at Waiorua Bay, and in 1846 between 50-60 Europeans lived there. Today, apart from around 13 acres hectares still in Ngati Toa ownership around Waiorua Bay near the northern tip, the island is owned by the Crown. It is of course an internationally famous nature reserve. Formerly managed by the Department of Lands and Survey, the vastly bigger Crown-owned portion of the island is now managed by the Department of Conservation, which took control of the island in 1987. The island is now pest and predator-free (the last possum was caught in 1986) and is mostly now covered in forest, although – as this and the following chapter will show – much of the forest on the island is comparatively recent second-growth. For some of its 19th and 20th century island large areas of the island were cleared and farmed, and the island became overrun with rats, goats, and possums. Its present-day appearance is, then, actually quite recent. The regenerating forest is mostly dominated by kohekohe, tawa, and kanuka, although there are some areas of original forest on the island with 30m trees. The island is vitally important as a bird sanctuary and is the only really large and important sanctuary between the Hauraki Gulf and New Zealand’s sub-Antarctic islands. Landing on the island is now by permit only.

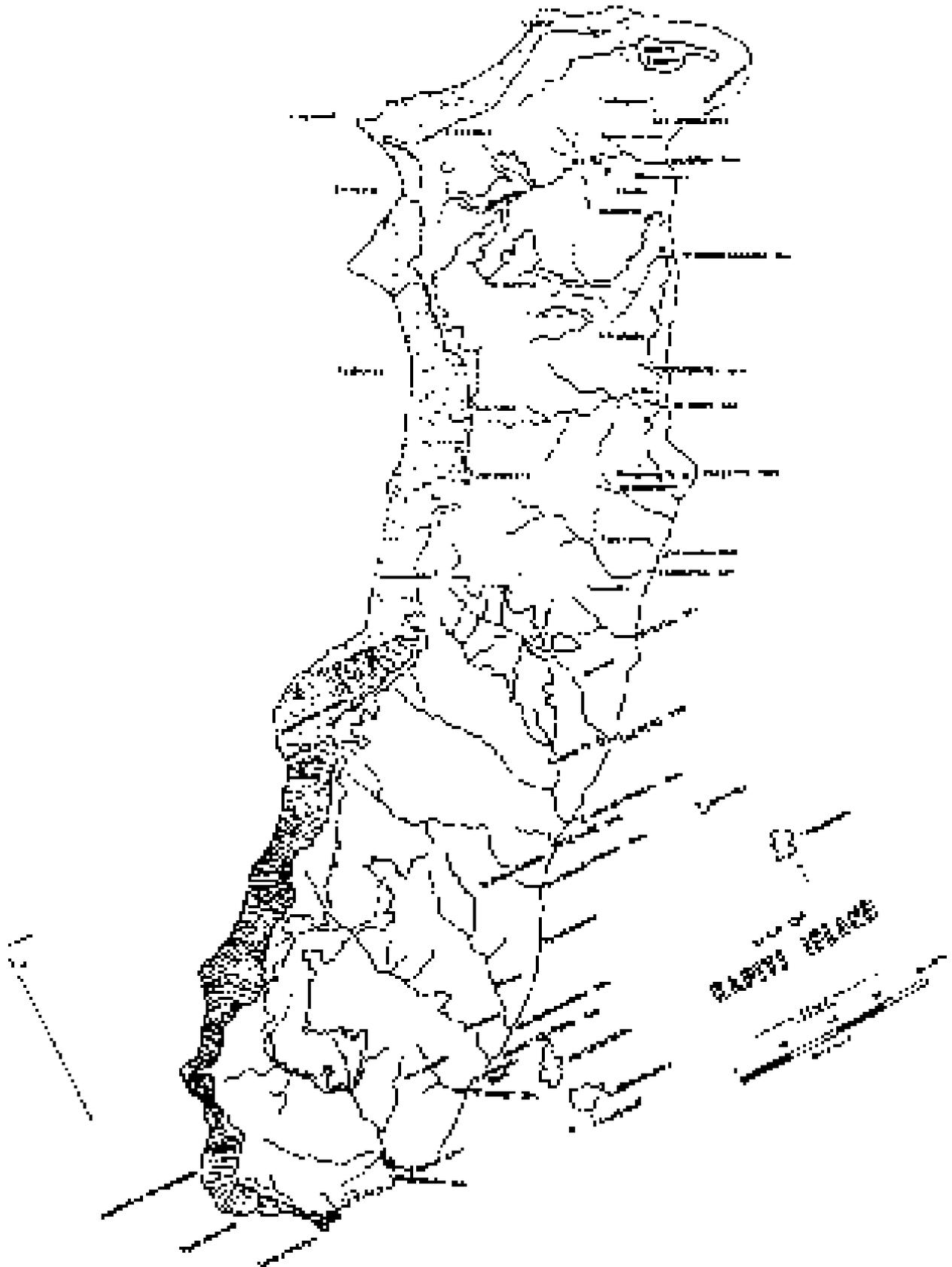
9.2. Background to the Native Land Court investigations of Title

All or part of Kapiti Island was subject to several Old Land Claims, mostly relating to the whaling activities that had taken place on and around the island during the first four decades of the nineteenth century. In particular, there were the claims of Joseph Toms, William Mayhew, Thomas Evans and the joint claim of Daniel Cooper, James Holt and William Barnard Rhodes. The claims largely failed, apart from a small area at the south end of the island of some 617 acres that was awarded by Commissioner William Spain to Mayhew.⁹⁴⁵ The detail of those claims and the circumstances under which they arose are canvassed in the companion report by Professor Boast, dealing with the pre-1865 era.

After the collapse of the whaling industry in the 1840s, the whalers and their wives left the island, although some merely went across to the mainland nearby:

⁹⁴⁴ Wakefield, Journal, ATL qms2102, entry for 16 October 1839.

⁹⁴⁵ Maclean, *Kapiti*, 160-63.



'Map of Kapiti Island', Carkeek, *The Kapiti Coast*, 1966.

For the first time in centuries Kapiti was almost uninhabited. Although local Maori were regular visitors, after 1850 none actually lived on the island. The only residents were the European farmers Cimino and O'Meara, who leased from Wi Parata land at the northern end; and David Brown and his family, who lived at Wharekohu on land his father, Andrew Brown, had bought from Captain Mayhew.⁹⁴⁶

Both Cimino and O'Meara continued farming until Wi Parata reasserted control over the land in 1870.⁹⁴⁷ Brown continued for another decade after that, his Wharekohu farm extending over most of the southern half of the island as the Maori owners leased their lands there to him. However, he seems to have abandoned the farm finally after his last sheep return was made in 1874. Maclean concludes: 'The latter part of the 19th century was a quiet period on Kapiti. Few people visited the island except local Maori who came to fish and hunt.'⁹⁴⁸ Presumably, that author means 'additional to the Pakeha lessee farmers'. Wi Parata lost his seat in Parliament and was freed to spend more time on the island from the early 1870s. He built 'a corrugated iron house, cheerless and miserable in the extreme', one room, 10 feet square, with a fire at one end and windows on the other three walls. There was at that time also a small whare at Rangatira Point used by 'fishing parties of natives'.⁹⁴⁹

Various Pakeha maintained an interest in acquiring the island. In 1876, Wairarapa land magnate John Martin offered Wi Parata £8000 for the island, unsuccessfully. There was now a possibility that the land might be sold, though, as the parent blocks into which Kapiti was divided had just been passed through the Native Land Court.

Maclean has summarised succinctly many of the issues surrounding the use of the Native Land Court process as applied to Ngati Toa lands generally, but to Kapiti particularly. The Maori owners had to go the court to prove their hereditary entitlement and this court process came at considerable cost, which usually had to be paid for by sale of the land once it had passed through the court. He comments further that 'the legal process was contrary to customary Maori tenure, pitting hapu against hapu, to prove exclusive individual ownership', however he also says that as the land had often been occupied by successive groups, 'all had valid claims'.⁹⁵⁰ Such statements, of course, appear to assume that prior to the Native Land Court's creation, Maori tribal groups always lived in harmony and never had disputes over

⁹⁴⁶ Maclean, *Kapiti*, 159.

⁹⁴⁷ Although at some point during that same period, Bob Gillett was also leasing that portion, as is apparent from the Native Land Court evidence given in 1874 surveyed below. Cimino's name has been sighted by the present writer only in Maclean's book; perhaps he and Gillett were the same person.

⁹⁴⁸ Maclean, *Kapiti*, 164.

⁹⁴⁹ Maclean, *Kapiti*, 165.

⁹⁵⁰ Maclean, *Kapiti*, 167.

land use and ownership, that the court never gave effect to Maori customary tenure, that it always required proof of exclusive individual ownership, and that serial land occupation gave everyone in that series equally valid claims. These assumptions are demonstrably false as absolute propositions.

Where Maclean's criticism is on surer ground is where he points out that, unlike in a general court, where the judicial reasoning is set out often at great length, the judge's decisions appear arbitrary in the original investigations of these Kapiti blocks, although there were many claimants involved with complex histories. The judgments are given in single sentences that 'could not accommodate these complex shifting patterns ... [and] usually reflected the status quo'. Further, 'those who were dominant figures within Ngati Toa at the time, such as Tamihana Te Rauparaha, Matene Te Whiwhi and Wi Parata, usually emerged as winners'.⁹⁵¹ As will be seen below, this is far too simplistic with most blocks defined by this initial investigation having multiple ownership—which was not necessarily an advantage at all—and he takes no account of the law within which the judge, John Rogan, had to work, nor of the judge's years of experience in working within the court system, nor of the potential input of the assessor sitting with Rogan, nor of the frequently completely contradictory testimony given before the court—as seen below. Still, the fact that the decisions were given without reasons is of little help for those not present at the hearings and who are interested in why the court reached its conclusions.

9.3. The Native Land Court Investigations: Introductory Survey

The initial subdivision of Kapiti took place on 1 May 1874 in the Otaki courtroom of Judge John Rogan, one of David Williams's 'famous five' original judges of the Native Land Court. By this time, Judge Rogan had a decade's broad-ranging experience as a senior judge of the court and its sister Compensation Court dealing with the 1860s confiscations.

At a Native Land Court sitting at Otaki on 22 October 1882 before Judge Robert Trimble and Assessor Tapihana, Kapiti blocks were partitioned, from which Crown grants resulted.

In May 1891, Judge Trimble further subdivided Rangatira No 4, awarding C and F to Erenora Tungia, E to James Howard Wallace, and D and G to Heni Matene te Whiwhi.⁹⁵² These certificates were, though, cancelled by Judge Alexander Mackay 'in consequence of irregularity' on 18 August 1896.⁹⁵³

⁹⁵¹ Maclean, *Kapiti*, 167.

⁹⁵² MA 1/82 5/5/126 pt 1.

⁹⁵³ Court orders, 8 May 1891. MA 1/82 5/5/126 pt 1.

The southernmost end of the island, known as Wharekohu and comprising 617 acres, was a grant to Andrew Brown. Block No 1 was a small enclave at Te Mingi on the south-east. The other four main blocks were slices across the island of varying sizes, numbering from the south. No 2, above No 1, was also known as Maretakaroro. No 3 was Kaiwharawhara. No 4 was Rangatira and 4A and B were on the eastern coast by Kahikatea and Te Rere respectively. No 5 was Waiorua, with A, B and C spaced up the eastern coast.⁹⁵⁴

There were also several small islands—Tokomapuna (1 ac), Motungarara (3 ac) and Tahoramaurea (3 ac)—off the south-eastern coast towards the mainland.

By 1895, then, the Kapiti blocks, totalling some 4373 acres, were designated thus:⁹⁵⁵

BLOCK	AREA	DESIGNATION
No 1	34ac 1r 9p	Not restricted
No 2	757ac 0r 0p	Not restricted
No 3	375ac 0r 0p	Not restricted
No 4	1502ac 2r 0p	Inalienable by sale, mortgage or lease for longer than 21 years
No 4A	50ac 0r 0p	Not restricted
No 4B	10ac 0r 0p	Not restricted
No 5	1589ac 0r 0p	Not restricted
No 5A	4ac 0r 0p	Not restricted
No 5B	50ac 0r 0p	Inalienable by sale, mortgage, or lease for longer than 21 years except with Governor's consent
No 5C	2ac 0r 0p	Absolutely inalienable. A burial ground

9.4. Initial Title Investigation: April 1874

A. Introduction

The title awards completed by Judge John Rogan on 1 May 1874 resulted from hearings begun on 17 April.

⁹⁵⁴ 'Island of Kapiti' Map, February 1898. MA 1/81 5/5/126 pt 1.

⁹⁵⁵ Edward Buckle, 19 August 1895. Annotation to Ross to Minister of Lands, 8 August 1895. MA 1/81 5/5/126 pt 1.

The first stage was a request by Wi Parata that Kapiti be heard at Waikanae instead, but although he received a little support he was opposed by Tamihana Te Rauparaha, Hemi Koti and Matene Te Whiwhi (who led the party that had applied for the investigation) and so the court declined the request, saying that if it proved necessary to adjourn to Waikanae the court would do so.⁹⁵⁶

B. Kaiwharawhara (Kapiti No 3)

Kaiwharawhara was the first block heard. Hemi Koti was the claimant together with his mother Waitaora Te Kanawa. She had inherited the block from her uncle Te Kakakura. She and Te Rauparaha had come to Kapiti 'in a canoe belonging to Ngati Toa', landing 'near Kawharu', 'and proceeded at once to pick wild cabbage'. No other person was living there then. Hemi told the court that Te Rakakura, 'a chief of Ngatitira hapu of Ngatitooa', moved with his hapu between Kapiti and the mainland several times, then remained there permanently until Ngati Raukawa arrived, clearing the land. A portion of Ngati Raukawa moved there for a while too, but returned to the mainland, leaving Ngati Toa in possession. Ngati Toa then divided, some going to the South Island while Te Rauparaha and Te Rakakura went to Porirua but some remained on Kapiti. Te Rakakura joined Te Rangihaeata in the fighting of the 1840s and afterwards lived at Te Rangihaeata's pa, Poroutawhao. Te Rainga let some land to the Pakeha settler, Brown, but Brown was chased off by Rangiruraka. Kingi Hare then re-let it to Brown and this was agreed to as the rent was shared around. Waitaora and others had left the land some two decades previously and it was now let solely to Brown.

Henare Te Hererau lodged a counter-claim for part of the block. He testified that he was of the Ngati Rohakatere [Whakatere?] hapu which had come nearly five years after Ngati Toa and six years before Ngati Raukawa. They lived there at Waiorua and elsewhere with Ngati Tu by consent of Te Rakakura. His hapu built a pa with an urupa and cultivated there until 1840. By this time, Henare said, Te Rakakura and all his people had gone to Porirua and left them there alone. They had embraced Christianity and they left only in 1840, when churches had been built at Pukekura, Waikanae and Otaki, so that they could be near the churches. But they left behind a couple of men and continued to visit their Kapiti kainga. Everybody left Kapiti in 1850. Questioned by Hemi Kuti, Henare stated that Ngati Toa and Ngati Rohakatere [Whakatere?] were the people of Kapiti, that when his people went to Kapiti they found Ngati Te Rara there. But Henare admitted knowing nothing about the current leasing arrangements.

Te Watehi[?] identified himself as also being of Ngati Rohakatere [Whakatere?], who had cultivated the land before leaving. He supported Henare and asserted that when he ceased

⁹⁵⁶ 2 Otaki MB (Friday 17 April 1874). The photocopy of the minute book viewed for this project had no legible page numbers.

occupying the land he 'did not leave the land, I retained my hold on it. No one disputed my right to occupy'. Questioned by Hemi Kuti, he agreed that 'in old times' Ngati Toa had occupied the land, but stated that he himself had 'at the time of the second migration', while 'At the present time Kapiti is Ngatitōa's and mine also'. Te Watehi admitted that Wi Parata let the land now and that although he claimed his burial ground he himself let no land. He admitted that he had received his land from Whanga, who was Ngati Raukawa, not from Ngati Toa.⁹⁵⁷

Matene Te Whiwhi testified that his land belonged to Ngati Tera, a large hapu of which the chiefs were Te Rakaheria and Te Kanawa. He agreed that many hapu had come with Ngatiawa, but most went back to Oahu. Chief amongst the hapu that remained on Kapiti originally were Ngati Whakatere, but they went to Manakau at the time of Haowhenua and remained there. Henare had, Matene said, already failed to substantiate his claims at a prior court hearing held at Waikanae. Matene concluded his testimony by saying: 'After Kapiti was used as a place of refuge by all the tribes, N. Toa alone remained.'⁹⁵⁸

Having heard the evidence, lasting a day, Judge Rogan stated that the court had heard sufficient to enable it to give judgment. This it did on the following morning, awarding Kaiwharawhara to Hemi Kuti and group, and stating that the claims of Henare Te Hererau were not proved. The memorial of ownership cited below was then ordered in favour of Hemi Kuti and eleven others on Saturday 18 April 1874.

C. Rangatira (Kapiti No 4)

Immediately after making the award in Kaiwharawhara Kapiti No 3, the court began to hear 'the claim of Matene Te Whiwhi', i.e. Rangatira Kapiti No 4.⁹⁵⁹

Matene testified that he belonged to Ngati Toa and lived at Otaki. The Rangatira land had belonged to Te Rauparaha, Te Rangihaeata, Mahurenga, Nohorua and Aratangata. At the present time, it belonged to him and Tamihana. Back in the time of the Ngapuhi raid it had been Te Pehi's and he had given it to Te Rangihaeata. When Ngati Toa arrived at Waikanae, on the following day they had crossed 'to cut up Kapiti our way'. This had happened in stages over a two-year period when, led by Te Rauparaha, 'we cut up the whole island'. They also claimed the bush for various purposes, including food, such as at Pukewahine and Tuteremoana[?] where the cultivations could still be seen. When Ngati Raukawa arrived, Te Rauparaha and Te Rangihaeata told Matene to 'go and shew your Parents the land, as

⁹⁵⁷ On the photocopy viewed, his reply when asked how Whanga got the land in the first place is illegible.

⁹⁵⁸ 2 Otaki MB (Friday 17 April 1874).

⁹⁵⁹ 2 Otaki MB (Saturday 18 April 1874).

cultivations for them', on the other side of Pukewahine. Raukawa stayed for two years before going back to Otaki, never to return.

Matene continued: 'The first people who arrived at Kapiti were N. Toa, 2nd N. Tama & then N. Awa.' The Taranaki tribes, who had been at Kahuoterangi and Waiorua, had left Ngati Toa on the island when they moved on to Port Nicholson. At the time of Haowhenua (conventionally dated to 1834), Ngati Toa had divided, with Nohorua going away to Te Awaiti and Cloudy Bay which he shared with Mahurenga. Kapiti was left to 'Te Rauparaha & Te Rangihaeata, to Tamihana and to me'. In 1836, Te Maeneene [sic], part of Rangatira, was sold by Te Rauparaha, but this transaction was obstructed by Topeora and did not proceed, but instead was offered to Thomas Evans. In 1849, Tamihana and Matene let some of the land and no-one disputed their right to do so up to the present day and only lately had there been any talk of a dispute. They still received £10 per annum in rent, which seemed low but the land concerned was 'mountainous'. 'We' ceased to occupy the land in 1845 and Ngati Toa had not occupied it since Haowhenua. The block's northern boundary at Te Rere, which had been set by Te Rauparaha, was the undisputed boundary between 'our' claim and that of Wi Parata.⁹⁶⁰

Matene's claim was challenged by Ropata Hurumate[?] who lived at Porirua and stated that the land belonged to his hapu and him and was not Matene's or Tamihana's, whose piece was at Wharekahu. Ropata's hapu were Ngati Haurua, Ngati Tera Kuao, and Ngati Tumania,

⁹⁶⁰ 2 Otaki MB (Saturday 18 April 1874).

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which had come onto this block when Ngati Toa crossed over to Kapiti, while Matene's party went to the other side of the island. Mahurenga and his children came from Wharekahu and occupied and cultivated on Rangatira for 3 years, then Te Rauparaha came and lived at Taipiro within the block for 1 year until the fight at Waiorua. At the time of Haowhenua, Ropata's hapu were on Rangatira and, he said, they still held possession, although he had himself gone to live at Wainui near Waikanae after Haowhenua and Wi Parata and his people were now on the land. Ropata stated that he knew Te Rauparaha and the chief had not defined the boundary of this land. Matene had engaged Hoani Taipua as the conductor of his claim and Hoani cross-examined Ropata, gaining admissions that Ropata's group had not surveyed the land, nor did they live there, travelling there only to fish, while there had been no objection made to the lease by Tamihana and Matene. He claimed that Wi Parata joined him in objecting to Matene's claim, but could not explain why Wi Parata had not included Rangatira in his own claim. He agreed that Ngati Toa had divided both before and after Haowhenua to leave Kapiti, which was when he himself had gone.

Te Horo Hawea, who had been born at Porirua but had now lived for 20 years in Nelson Province, was a member of Ngati Toa and Tumama[?]. He said that according to his knowledge the land had been Mahurenga's and was now held by Tamihana Te Rauparaha, a relation of Te Horo's. Te Rauparaha and Te Rangihaeata had been based at a clearing at Pukewahine. 'We' occupied until Haowhenua and then went to Porirua. Rangatira had been a living place for both Te Horo's father and Te Rauparaha. He supported Ropata's statement that Tamihana's survey had been allowed to proceed by the counter claimants only so that the case could be brought to the court, but unlike Ropata admitted Tamahana's/(Matene's?) group to some of the kainga within the block. The block presently was 'all Ngatitoo's'.

The hearing of Rangatira No 4 continued on Monday 20 April after a break for Sunday. Rapihana Te Otaota of Ngati Toa, Ngatitumania and Ngatihaumia was the next counter claimant. He stated that when Ngati Toa crossed over to Kapiti, Te Rauparaha and Te Rangihaeata went to Wharekohu with Kimihia hapu. Other hapu went to Rangatira – Ngati Tumania, Ngati Hangai[?] and Ngati Haumia. He named several old men of Ngati Tumania and said they were all of Ngati Toa, and that Nohorua and Te Aratangata had come to Rangatira to live with them, while Te Rauparaha remained at Wharekohu for 3 years, then at Taipiro within Rangatira until the Waiorua battle. There was subsequently another battle known as Pehikaka[?] and at that time Te Rauparaha and Te Rangihaeata lived with 'considerable numbers' of their people in a pa built on Rangatira. Ngati Tama at that time occupied one side of Rangatira until they moved on to Wellington. After Haowhenua, Te Rauparaha and Te Rangihaeata shifted over to Mana with many of their people, but later Te Rauparaha came back to live on Tahoramourea, an island just off Kapiti, and by then

European whalers were also starting to live on Kapiti. Te Rauparaha then wished to sell Rangatira for a quantity of tobacco, but the Ngati Tumania men prevented him from doing so. Te Rangihaeata insisted, though, and they finally agreed to the sale of the portion where Te Rangihaeata's houses stood for a case of tobacco.⁹⁶¹

The Kuititanga then took place, after which Te Ota leased Maraetakaroro to Brown. Another lease was thwarted by Ropata, then Tamihana and Matene leased out Taipiro and Kahikatea only, where they were confined. The sheep on Rangatira belonged to Brown, while Wi Parata placed sheep belonging to Bob Gillett on his block and leased that block to Gillett. Rapihana had heard that Ropata and Ngahuka had broken the survey chain when Tamihana tried to have the Rangatira boundaries surveyed. Rapihana admitted Tamihana and Matene to the area between Taipiro and Kahikatea only. Te Rauparaha's house, called Te Umukiohau, was a little to the north of Te Kahikatea. Questioned by Hoani Taipua, Rapihana objected to Te Horo Hawea's evidence, saying that Te Horo was not an old man. What he objected to in relation to Tamihana was 'the name of Rangatira' (probably meaning a claim to the entire block instead of just a portion), while he stated that Ropata's claim was only partly correct.⁹⁶²

Next was Nopera Te Ngaha, of Ngati Kahutaihi of Ngati Toa. He asserted that the Te Rere boundary was an old one and gave evidence about many specific incidents in the pre-European period. Pehitaka was a chief of Ngati Toa, killed when Ngati Toa attacked the Ngati Tama pa at Maeneene in revenge for the killing of another Ngati Toa man, Karewa. Topeora made peace, but Ngati Tama then went to the mainland. 'Kapiti might be compared to a hive of bees at this time, the people were so numerous upon it.' But then some went across to Cloudy Bay since the whalers had established themselves there. When Te Rauparaha was cultivating on Rangatira, Nopera was cultivating at Maeneene. Nopera corroborated Matene's and Rapihana's evidence regarding the sale. Responding to Hoani Taipua's questions, Nopera stated that Te Rangihaeata's men cultivated the Rangatira land of Waitohi, Te Rangihaeata's mother, while the cultivation at Tuteremoana was Waitohi's and Matene's and Rapihana's evidence about the different hapu cultivating there was incorrect. Tuteremoana was now Matene's, while the land from Kahikatea to the southern boundary presently belonged to Matene and Tamihana. Nopera also openly admitted Tamihana and Matene to the top portion at Te Rere as Matene and his 'party' lived 'many years' on the block.⁹⁶³

Hira Te Aratangata was next to give evidence. Hira also lived at Porirua and belonged to Ngati Toa, claiming an interest in this block through his 'parents' Nohorua (actually uncle) and Te Aratangata. Toko, Rautahi and Te Whataupoko were relations of Nohorua, Te Aratangata, Mahurenga, Te Rangihaeata and Te Rauparaha. Nohorua had cultivated at

⁹⁶¹ 2 Otaki MB (Monday 20 April 1874).

⁹⁶² 2 Otaki MB (Monday 20 April 1874).

⁹⁶³ 2 Otaki MB (Monday 20 April 1874).

Kahikatea, although Hira had not done so personally. Perhaps he had been too young as Hira had gone to Cloudy Bay after Haowhenua, leaving the named persons to ‘take care of the land’, specifically allowing them to occupy between Rangatira Point and Te Maeneene.⁹⁶⁴

Hohepa Horomona Nohorua, also of Ngati Toa and now living at Porirua, claimed in this block through his grandfather who had cultivated on it. He stated that actually no-one had cultivated on the block after Nohorua and Te Aratangata had left Kapiti. He had disturbed Tamihana’s survey and set out his own boundaries from Kahikatea to Tuteremoana to include his own cultivations, telling the court that it was for himself and Matene to divide the land and that the ‘upper portion’ was Matene’s. Ropata’s piece was within Hohepa’s block. Judge Rogan intervened at Hohepa’s claim to be able to differentiate out various people’s entitlements, asking if Hohepa had cultivated on the land. When Hohepa answered ‘No’, the judge declared shortly, ‘Then you can’t know much about it.’ Hohepa’s evidence concluded at that point.⁹⁶⁵

Pumipi Ropiha testified next, claiming briefly on the basis of having heard of a grandfather who cultivated at Te Tokakaurau.⁹⁶⁶

Next came Paranihia Paruparu, of Ngati Toa, now living at Otaki, but claiming the whole of Rangatira through his grandfather, Mahurenga, on behalf of himself and Erenora. He allowed that Matene had a claim, stating that Te Rauparaha had occupied only under the authority of Mahurenga, who was Tamihana’s uncle.⁹⁶⁷

Erenora Rangitura of Ngati Toa and Ngati Hangai and Paranihia’s sister now lived at Otaki. She claimed the portion also claimed by Tamihana since it was through their ancestor that Tamihana had any right on the block and he had no cultivations there. She stated that there were separate portions of Kapiti, Te Rauparaha at Wharekohu and Mahurenga at Rangatira.⁹⁶⁸

Wi Parata then gave evidence, admitting that he had no claim in this block but saying that Tamihana and he had arranged the boundary between their interests shown on the map before the court. The Te Rere boundary had been set at Waikanae in 1847 when Rawiri Kingi was still alive and the land was first leased, and it had been set because Wi Parata had heard that it was an ancient boundary. There had been a meeting and the boundary agreed to after some contention. Taepiro had been occupied by Te Rauparaha’s slaves and ‘the people’ were living at Waiorua. Wi Parata had been letting his lands and he had heard that Matene and Cootes were letting the remainder without disturbance. In 1862 Tamihana had laid off his boundary and Wi Parata and ‘Ngatitoo’ went too, apart from Matene. Ropata had laid off a

⁹⁶⁴ 2 Otaki MB (Monday 20 April 1874).

⁹⁶⁵ 2 Otaki MB (Monday 20 April 1874).

⁹⁶⁶ 2 Otaki MB (Monday 20 April 1874).

⁹⁶⁷ 2 Otaki MB (Monday 20 April 1874).

⁹⁶⁸ 2 Otaki MB (Monday 20 April 1874).

boundary at Kahikatea according to Maori custom, while Wi Parata had laid off his own boundary at Te Rere ‘dividing my claim from Ngatittoa and Tamihana’s’. In 1871, ‘they’ had extended their line up the mountain (presumably Tuteremoana) and in 1872 the boundary was surveyed. Only two Pakeha had been leasing on Kapiti, David Brown and Bob Gillett, with the dividing line between them at Te Rere.⁹⁶⁹

The hearing continued on a third day, Tuesday 21 April 1874. Matene Te Whiwhi resumed giving evidence in support of his claim, reminding the court that the block had been in his group’s possession for 30 years without dispute until now. He said that the cultivation referred to by Nopera had been a large one with a number of large houses belonging to Te Rangihaeata on it. There was also a burial ground at Rangatira where Matene’s brother, Kahira, and Tamihana’s mother, Te Akau, were both buried. Cross-examined by Atanatiu he stated that the block belonged to Te Rauparaha and Te Rangihaeata alone and that he and Tamihana succeeded them. He admitted Nohorua and Mahurenga until 1840, ‘then they ceased’. He had obliterated their cultivations but his remained. ‘We’ were in occupation until 1840 and had remained since that time too. In 1846, Te Rauparaha and Te Rangihaeata had sold Maeneene and no-one objected.⁹⁷⁰

D. Waiorua (Kapiti No 5)

This case continued on immediately after the conclusion of the evidence relating to Rangatira.

Wi Parata was the claimant here on behalf of himself and Ropata Hurumutu. Being the northern portion of the island there was only the southern boundary and this was what he had arranged with Tamihana and Matene. His ancestors had been in the first canoe to land on this block and they divided the land prior to any other Ngati Toa arrivals. This took place some time prior to the battle at Waiorua, after which, he said:

Ngatittoa considered that they had established themselves, the other tribes were defeated. Ngatittoa considered themselves the conquerors of the Country.... My ancestors lived permanently on the land. At the time I arrived at years of discretion I saw them on the land. This was at the time of the Kuititanga. They were living at Waiorua together with the whalers. There were no other Maoris on the land. These old men occupied it up to the time when the whalers ceased to use it as a whaling station. Bob Gillett and O’Meara remained there. The Natives still continued to remain there. In 1868 Te Oriura and Teretiu died. I buried them. These were the persons who pulled the first canoe on land. My mother let the land in 1847. No one said a word against it. The Europeans remained to look after the old men.... The first rent was distributed to my ancestors according to Native custom. In 1853 my mother died and I administered the

⁹⁶⁹ 2 Otaki MB (Monday 20 April 1874).

⁹⁷⁰ 2 Otaki MB (Tuesday 21 April 1874).

property. When she was ill and near death she desired to be taken to Waiorua to die there. She died at Waiorua.... [but was buried at Waikanae] I then let the land up to 1870. I purchased the sheep & cattle that were running upon the land [for £one[?] thousand pounds also two boats. The sheep & cattle are there now. I purchased all the property connected with the run. My possession has not been disturbed up to this time. I have been in possession of the land from the first. I have lived at Waikanae & crossed over from time to time to Kapiti. I hold the land now.⁹⁷¹

Hoani Taipua appeared in this block's investigation to conduct the case for the objectors. The first witness he called was Ngahuka Tungia, who lived at Porirua but claimed the entire block. He stated that any dispute regarding the Te Rere boundary was only of a very late period, but that the boundary had been that of his parents and no-one else had been on the land apart from Tungia his father, Mahi Te Hua and Te Tahuarehu. He stated that Wi Parata had rights only through his mother, and then only at Waiorua, not over the whole block, and claimed that he himself had let the land for 20 years, but could not remember the dates. Wi Parata, Ropata and others had received only the rent from a portion north of a boundary from Waiorua across the island. He also claimed half of the sheep. Cross-examined by Wi Parata, Tungia stated that he had lived there with his parents up to the time of Kuititanga and that they died at Pukerua after that. He conceded that their authority ran only over 'their piece' of the block and that his letting had also been restricted to that portion.⁹⁷²

The second objector was Rene Te Tahua of Ngati Toa and Ngati Koata, who lived at Porirua and Arapawa and claimed the land on either side of Waiorua Stream. Rene may have been a sibling of Ngahuka or a child of Te Tahua, and likewise admitted Wi Parata at Waiorua only. Te Tahua died at Kaititi on Kapiti and was put into a cave at Wharekohu. Then a relative, Te Hiko, Te Pehi's son, lived continuously on the land. Rene listed all those who had been present when Metapere arranged the first lease, after she invited them. They had included Oriuora[?], Ropata, Pitiroi, Mohi Te Hua, Te Waka, Nopera, Rawiri Puaha, Rene and Ngahuka, and Rene said that the lease was established 'by consent of these people'. They were all Ngati Toa and 'It was then the land was divided up as stated by Ngahuka.' Bob Gillett received one side of Waiorua and O'Meara the other. After Rawiri Kingi died, Gillett gave up his portion and O'Meara took over the whole block, with a new lease agreement being signed at Waikanae. Rene, together with Wi Parata, Ropata and Ngahuka were the persons placed in the lease agreement, with Wi Parata receiving the rents from the northern portion and Ngahuka those from the southern portion. Rene only heard of the arrangement regarding the sheep after returning some time later from Arapawa, and was then assured of having a share in the deal. Only later again was Rene made aware that Wi Parata had paid for

⁹⁷¹ 2 Otaki MB (Tuesday 21 April 1874).

⁹⁷² 2 Otaki MB (Tuesday 21 April 1874).

all the sheep ‘with money’, presumably implying that the sharing arrangement would not then be pursued. Rene gave up all claims and cultivations on the north side of Waiorua to Wi Parata, but wanted preserved the burial ground at Ngaiapiko. Rene ceased occupying the land at the time of Te Hiko’s death and Ngahuka had ceased prior to that.⁹⁷³

The evidence in this case continued at 2 Wairarapa MB 51 which has not been sighted in the course of research for the present report. The court’s decisions on these blocks are recorded in the block histories below.

What can be said about these hearings is that there was certainly no whitewash by the Native Land Court of the case presentation process. Although important men were involved, they did not get an easy ride through the court, with many people having a chance to object. Wi Parata, Matene Te Whiwhi and Tamihana Te Rauparaha clearly did not dominate the people to the extent that they were able to simply demand and receive whatever they wished.

In these accounts there is valuable information regarding the Ngati Toa settlement of the region, and especially Kapiti, and of the events surrounding it. The accounts are not always coherent or congruent, but they were being advanced amidst an adversarial process that required everyone to be in to win as individuals or groups of individuals rather than just hapu or whanau, and therefore to omit or downplay aspects that were not favourable to one’s claim.

The evidence reveals that by the mid-1870s Ngati Toa were spread around several different areas. Some were in the Otaki district, others at Waikanae, some in Te Tau Ihu in places like Arapawa and the Nelson district, while the majority appear to have been at Porirua. There had been extensive use of Kapiti for dwelling, cultivation and fishing, some of which was continuing. Economic use was being made of much of the land by Ngati Toa, with a little habitation by Wi Parata and leasing of much of the rest of the usable area.

9.5. Native Land Court: Block Histories

A. Introduction

The history of each Kapiti block may be gleaned, at least in outline, from the files of the Maori Land Court. The difficulty with these files is that they seldom give any real idea of the circumstances of the Maori owners parting with their land, or even of how they were using it while they had it, apart from leases. They can tell us how and when lands were disposed of, but seldom why.

⁹⁷³ 2 Otaki MB (Tuesday 21 April 1874).

B. Te Mingi Kapiti No 1

The ownership history of Te Mingi Kapiti No 1 is uncomplicated and briefly set out.

On 25 April 1874, Judge Rogan in the Native Land Court at Otaki, partitioned out a block of 34ac 1r 9p, named **Te Mingi Kapiti No 1**, and ordered that a certificate of title for the block be made out to Tamihana Te Rauparaha alone. No restrictions as to dealing were made on the block.⁹⁷⁴ A certificate of title was issued: C/T 5/10.

On 12 October 1875, the Trust Commissioner gave a certificate approving a transfer from Tamihana Te Rauparaha to Wiremu Parata.⁹⁷⁵ The certificate stated that a rent of £17 was being charged (although this is unclear and may have been the purchase price).

A caveat placed on Te Mingi by the District Land Registrar on 14 January 1898 closed this title to further registrations. This was presumably in response to the Crown moves to acquire Kapiti Island, as discussed below.

There were seven successors in title to Wi Parata in Te Mingi, all of the Parata whanau apart from Metapera Ropata. Their interests were all transferred to the Crown in 1902, the order being gazetted in 1902.⁹⁷⁶

C. Maraetakaroro Kapiti No 2

Judge John Rogan and Assessor Inoke Te Whanake formed **Maraetakaroro Kapiti No 2** in the hearing at Otaki on 1 May 1874. The block comprised 757 acres and was placed in the names of Hare Reweti Tangahoe, Wiremu Parata Stubbs LC, Hemi Matenga Stubbs LC, Ropata Tangahoe, Hepere Riki, Heta Te Whakatari, and Hirini Tangahoe.⁹⁷⁷

The successors to Heta Te Whakatari were Rahapa Hohapata ($\frac{1}{2}$), Tutere Ropata ($\frac{1}{4}$) and Hirini Tangahoe ($\frac{1}{4}$).⁹⁷⁸ The successors to Hare Reweti Tangahoe's interest were Ropata, Hirini and Hare Reweti Tangahoe.⁹⁷⁹

Partition came with the new century. In November 1901, following the Crown's commencement of purchase activities on Kapiti, the Minister of Lands applied to have the Crown's interest in Maraetakaroro ascertained by the Native Land Court.⁹⁸⁰ On 13 December 1901, Judge Mackay and Te Whatahoro partitioned the block, awarding the Crown **Block 2A**,

⁹⁷⁴ Court order, 25 April 1874. OTI 121 Maraetakaroro Kapiti Block Order File.

⁹⁷⁵ TCC 122.

⁹⁷⁶ Schedule of ownership orders. OTI 121 Maraetakaroro Kapiti Block Order File. The successors were named in succession order 18/7/22, 121 Otaki MB 59.

⁹⁷⁷ Order, 1 May 1874. OTI 121 Maraetakaroro Kapiti Block Order File.

⁹⁷⁸ Succession order, 13 June 1894. OTI 121 Maraetakaroro Kapiti Block Order File.

⁹⁷⁹ Succession order, 17 August 1897. OTI 121 Maraetakaroro Kapiti Block Order File.

⁹⁸⁰ Minister of Lands to Chief Judge, 14 November 1901. OTI 121 Maraetakaroro Kapiti No 1 and 2 Applications 1872-1944.

comprising 261ac 1r 15p. The residue of 495ac 2r 25p was designated as **Block 2B**.⁹⁸¹ Wiremu Parata Stubbs, Hemi Matenga Stubbs and Heperi Riki each received 108ac 0r 22p, while Ropata Tangahoe received 144ac 0r 29p and Tutere Ropata Tangahoe was awarded 27ac 0r 10p. None of these interests was made inalienable by the court.

Block 2B was further subdivided in June 1903, with **Block 2B1** of 324ac 1r 26p being awarded equally to Wiremu Parata Stubbs, Hemi Matenga Stubbs and Heperi Riki, who had pooled their 108-acre shares.⁹⁸² **Block 2B2** of 171ac 0r 39p was awarded to Ropata Tangahoe and Tutere Ropata Tangahoe in the proportions that their relative interests brought in.⁹⁸³

In 1903, a solicitor for several owners wrote to Judge Mackay setting out his own inquiries as to relative ownership rights in 'Kapiti No 1' [sic]. He stated that Ngamoana Ropata was entitled to 25 acres and Ropata Tangahoe to 194 acres on his own behalf and as successor to Hare Reweti his deceased father. This left 300 acres to be divided equally between Wi Parata, Matenga and Heperi Riki.⁹⁸⁴

When the Crown moved in 1912 to buy Block 2B2, £192 5s 2d was paid to the Public Trustee on behalf of three minors, Haumia Ropata, Ngarua Ropata and Pohe Ropata. Metapere Ropata and Tutere Ropata, acting as their trustees, then had to apply to the Native Land Court to order the Public Trustee to pay out the funds to the three.⁹⁸⁵

The purchase of Block 2B2 was not completed until the proclamation of transfer was gazetted on 25 March 1915.⁹⁸⁶

In 1918, arrangements were made to exchange the undefined interest of the Hemi Matenga trustees (Malcolm Webster and Thomas Neale) in Maraetakaroro 2B1 for a 121-acre portion of Waiorua 1B2B, which was then Crown land at the north-west tip of the island near Arapawaiti Point.⁹⁸⁷ The Matenga interest was in fact 108 ac 0r 22p, its unimproved value was £355 with £10 of grassing, while Waiorua 1B2B was worth £355 unimproved value, £8 of grassing and £10 of fencing, totalling £373.⁹⁸⁸ The exchange orders were completed by 3 December 1918.⁹⁸⁹

⁹⁸¹ Orders, 13 December 1901. OTI 121 Maraetakaroro Kapiti Block Order File. The court was sitting under the Native Land Act 1894 s 78.

⁹⁸² Partition order, 13 June 1903. OTI 121 Maraetakaroro Kapiti Block Order File.

⁹⁸³ Partition order, 13 June 1903. OTI 121 Maraetakaroro Kapiti Block Order File.

⁹⁸⁴ TR Ellison to Judge Mackay, 17 June 1903. OTI 121 Maraetakaroro Kapiti No 1 and 2 Applications 1872-1944.

⁹⁸⁵ Application, 11 March 1912. OTI 121 Maraetakaroro Kapiti No 1 and 2 Applications 1872-1944.

⁹⁸⁶ NZG (1915) 142.

⁹⁸⁷⁹⁸⁷ Under-Secretary of Lands and Survey to Registrar, Ikaroa NLC, 7 September 1918. OTI 121 Maraetakaroro Kapiti No 1 and 2 Applications 1872-1944.

⁹⁸⁸ Application for order of exchange, 10 September 1918. OTI 121 Maraetakaroro Kapiti No 1 and 2 Applications 1872-1944.

⁹⁸⁹ Judge Mackay to Under-secretary, Lands and Survey, 3 December 1918. OTI 126A Waiorua-Kapiti No 5 Correspondence 1914-1918.

Once those arrangements had been completed, the proclamation of the transfer of **Maraetakaroro 2B1** to the Crown was gazetted on 16 January 1919.⁹⁹⁰

Further detail on the exchange of Hemi Matenga's estate is given below in this chapter.

D. Kaiwharawhara Kapiti No 3

Unlike Blocks 1 and 2, for which the certificates of title were made in the names of a small group of less than 10 owners, the certificate of title for Kaiwharawhara Kapiti No 3 was issued on 18 May 1874 by Judge Rogan under s 17 of the Native Land Act 1867. This meant that this block was put in the names of 10 owners, and the complete list of persons found to be interested was written on the back of the certificate. This added Hemi Matiaha and Ropata Te Ao.⁹⁹¹ However, the subsequently issued certificate of title listed only the 10 as legal owners: Hemi Kuti, Harati Kuti, Hana Kuti, Tare Kuti, Tatana and Tane Kuti were all designated half-castes, and Hema Te Ao, Hoani Tapua, Waitaoro Te Kanawa, and Hori Te Waru were designated aboriginal natives.⁹⁹²

The Kaiwharawhara No 3 Block was passed through the Native Land Court without restriction because the owners wished to sell. They did so promptly to Wi Parata, but then difficulty arose in completing the sale.

Hemi Kuti applied on 22 June 1874 to the Native Land Court for a copy of the certificate of title to Kaiwharawhara. This appeared to be because he and others were concerned that the title had been awarded without restrictions on alienability. He sought a rehearing, but when Chief Judge Fenton forwarded the request to Wellington, Native Under-Secretary H.T. Clarke replied that Native Minister Donald McLean did not consider that the grounds were such that he could recommend a rehearing to the Governor.⁹⁹³ Hemi Kuti then telegraphed the court's Chief Clerk stating that all the owners of Kaiwharawhara were unanimous in their wish to sell, and asking if they could do so.⁹⁹⁴ In September 1878 Hemi was still asking for the title issue to be resolved so that the sale could be completed.

Judge Puckey ordered that 3 children—Riria Wi Neera (13), Hohepa Wi Neera (11), Sarah Wi Neera (9) and William Wi Neera (5)—succeeded to the Kaiwharawhara interests of Harati Kuti.⁹⁹⁵ He later ordered that Waitaoro Te Kanawa should be succeeded by his

⁹⁹⁰ NZG (1919) 11.

⁹⁹¹ Title order, 18 May 1874. OTI 123 Kaiwharawhara Kapiti Block Order File.

⁹⁹² OTI 123 Kaiwharawhara Kapiti Block Order File.

⁹⁹³ H.T. Clarke to Chief Judge Fenton, 23 September 1874. OTI 122 Kapiti No 3

Correspondence.

⁹⁹⁴ Hemi Kuti to A Dickey, 11 December 1874. OTI 122 Kapiti No 3 Correspondence.

⁹⁹⁵ Testamentary order, 31 August 1881. OTI 123 Kaiwharawhara Kapiti Block Order File.

children: Hemi Kuti, Hana Wi Neera and Taremita Anaru.⁹⁹⁶ Hema Te Ao was succeeded by Hema Ropata Te Ao.⁹⁹⁷

On 21 November 1891, Judge Alexander Mackay and Assessor Tamati Tautuhi partitioned Kaiwharawhara. The partition took out **Kapiti 3B** of 10 acres, placing it in the names of Tatana Te Whataupoto and Heni Matiaha equally. The new block was not made inalienable.⁹⁹⁸ The remaining 365 acres was renamed **Kapiti 3A** and was divided up proportionally between 15 owners, who included the already-determined successors to the deceased original owners. This Kapiti 3A block was not made inalienable either.⁹⁹⁹

This partition was challenged by Tatana Te Whataupoko and Heni Matiaha, who gained an order from Chief Judge GB Davy for a rehearing. This took place in February 1895 before Chief Judge Davy, Judge WJ Butler and an Assessor, where the applicants were opposed by Hemi Kuti (Ngati Te Ra of Ngati Raukawa) who supported Judge Mackay's order and who had conducted the whole case before Judge Mackay on behalf of all the claimants.¹⁰⁰⁰ The contest was between these individuals claiming to be representatives of a larger section of Ngati Toa, and a broader group of Ngati Raukawa, at least the Ngati Te Ra hapu.

The applicants' principal complaint was that the court had awarded an unduly large share to Ngati Raukawa, who, it was alleged, were rightly admitted in No 2, but whose territory extended no further than the Kaiwharawhara Stream.¹⁰⁰¹ Tatana recounted that after Haowhenua, the Raukawa contingent left Kapiti for Paremata, whereas all of Ngati Toa were on Kapiti and after the fighting in the South Island his own grandparents were the only ones who lived at Te Ahihurahura on this block, Te Whataupoko and his whanau. Their family life had been lived on the block, especially at Mataihuka, and they claimed from the stream to Te Pouakakarehe. Ngati Raukawa and Ngati Huia had, he pointed out, alienated their Kapiti lands by lease to Pakeha. Since they then went to the mainland to live from Kukutauaki northwards, Tatana argued that their interest in the land, having been exercised directly for only two years, reverted to Ngati Toa who remained. Tatana's objection was that in the partition members of Raukawa had received 30 acres each, totalling 325 of the 375 acres, while he and Heni received only 25 acres each. Tatana recounted the history since the conquest in detail and identified numerous sites where Ngati Raukawa had been, which were outside the 200 acres he now claimed, and was extensively cross-examined by Hemi Kuti. He was also questioned at some length by the Assessor.

⁹⁹⁶ Testamentary order, 1 July 1887. OTI 123 Kaiwharawhara Kapiti Block Order File.

⁹⁹⁷ Succession order, 1 August 1889. OTI 123 Kaiwharawhara Kapiti Block Order File.

⁹⁹⁸ Partition order, 21 November 1891. OTI 123 Kaiwharawhara Kapiti Block Order File.

⁹⁹⁹ Partition order, 21 November 1891. OTI 123 Kaiwharawhara Kapiti Block Order File.

¹⁰⁰⁰ The case is in 28A Otaki MB 89-116, 131, also reproduced in MLC MB 28A (Repro 448).

¹⁰⁰¹ 28A Otaki MB 89-104.

Hemi Kuti also gave evidence for his side, agreeing that from the time of the conquest Kapiti had been ‘Ngatitōa’s pataka’.¹⁰⁰² He stated that when the whole of Ngati Toa came to Kapiti, Ngati Te Ra of Ngati Raukawa came with them. The island had been divided up amongst Ngati Toa’s hapu: Ngati Te Uru and Ngati Te Maunu had both had portions at the southern end of the island, some Ngati Te Maunu were at the northern end, and there were portions for Ngati Kimihia. After the battle of Waiorua, Ngati Toa invited Ngati Raukawa to come and live on Kapiti also and their hapu who had occupied on the present block included Ngati Whakatere, Ngati Pare, Ngati Te Akamapuhia, Ngati Waihurihia and some of Ngati Kauhata. Then ‘the land from Waikanae northwards to Rangitikei was given to N’ Raukawa by the N’ Toa’, at which point Raukawa then crossed back to the mainland. Hemi described Ngati Te Ra cultivations as being extensive, but ‘All the cultivations on this block were originally forest and were cleared by the Maoris.’¹⁰⁰³ He stated that they had successfully resisted, to the point of bloodshed, intrusions by the Toa hapu Ngati Te Uru, and that when the bulk of Raukawa went to the mainland some remained on the block and others returned from time to time. He claimed that the Ngati Toa leader Te Whataupoko had been ‘mentally weak’, as were his daughter and now the present objector, his grandson Tatana, and that such persons ‘afflicted in this manner cannot acquire large interests in land’.¹⁰⁰⁴ Therefore rightly, Hemi argued, those few members of Ngati Toa had only the few acres they lived on at Te Ahihurahura. The block had been leased to David Brown from 1844 or 1845, who leased about half of the island. Ngati Te Ra numbered about 50, plus slaves, and effectively formed one hapu with Ngati Karewa, with several burial places on this block. When everyone was on the island, Hemi said, there were about 200 people, including Ngati Raukawa. He had not lived on the land since it was leased, but he had drawn the rent and had allowed Tatana into the block at all only out of aroha.

Accepting Hemi Kuti’s arguments, on 8 February 1895 the court confirmed Judge Mackay’s original partition orders.¹⁰⁰⁵ There were no reasons given in the judgment, but the issues canvassed in the evidence had been standard means of proving one’s customary rights in the Native Land Court, viz.:

- original rights from conquest from Muaupoko and Ngati Kahungunu,
- occupation,
- leaving and remaining on the land,
- claiming of sites and areas,
- successful defence of the land against challengers,

¹⁰⁰² 28A Otaki MB 104.

¹⁰⁰³ 28A Otaki MB 106.

¹⁰⁰⁴ 28A Otaki MB 109.

¹⁰⁰⁵ 28A Otaki MB 131. Also Order on rehearing, 8 February 1895. OTI 123 Kaiwharawhara Kapiti Block Order File.

- who delineated the boundaries, both traditionally and for more recent surveys,
- use of the land,
- burial of ancestors and relatives on the land, especially in recognised urupa,
- acceptance by others including those who now opposed, and
- who arranged the lease and received the rent once Pakeha arrived' thereby demonstrating recognised ongoing control over the land.

Hoani Taipua's successors in title were Pitiera Hoani Taipua, Umu Kaihau Taipua and Tohuroa Hira Parata.¹⁰⁰⁶

As part of its programme of acquiring Kapiti for the nature reserve after 1897, the Crown applied to have its interests ascertained in **both blocks of Kaiwharawhara Kapiti 3**. On 13 December 1901, Judge Mackay and Assessor Te Whatahoro heard the application, the court confirming and ordering that the Crown had acquired the entire 10 acres of 3B and 365 acres of 3A, i.e. the whole of the No 3 Block.¹⁰⁰⁷ The certificates of title that resulted were 3A C/T 119/52 and 3B C/T 119/53.

E. Rangatira Kapiti No 4

Along with the other Kapiti blocks, title to **Rangatira Kapiti No 4** was awarded by Judge John Rogan on 1 May 1874. Certificates of title were ordered for:

- **Block 4** (1575 acres) in the names of Tamihana Te Rauparaha, Matene Te Whiwahi, Rakapa Topeora, Pipi Kutia, Hoani Te Okoro, and Heni Matene Te Whiwahi.¹⁰⁰⁸
- **Block 4A** (50 acres) was ordered for Hira Te Aratangata, Kerehi Te Teke, Hohepa Nohorua, and Pumipi Pikiwera.¹⁰⁰⁹
- **Block 4B** (10 acres) was ordered for Paramihia Paruparu, Erenora Ngahaka and Pare Kaahu.¹⁰¹⁰

Judge Rogan's order does not say so on its face, but the file note of the ensuing certificate of title in 1882 notes that Rangatira Kapiti No 4 was to be 'Inalienable by sale or by mortgage or by lease for a longer period than 21 years'.¹⁰¹¹ This restriction was repeated on the court order apportioning the owners' relative interests.¹⁰¹²

¹⁰⁰⁶ Succession order, 9 July 1901. OTI 123 Kaiwharawhara Kapiti Block Order File.

¹⁰⁰⁷ Orders in favour of the Crown, 13 December 1901. OTI 123 Kaiwharawhara Kapiti Block Order File.

¹⁰⁰⁸ Order, 1 May 1874. TCC 334 Rangatira Kapiti Alienation File.

¹⁰⁰⁹ Order, 1 May 1874. TCC 334 Rangatira Kapiti Alienation File.

¹⁰¹⁰ Order, 1 May 1874. OTI 125 Rangatira Kapiti 4B Block Order File.

¹⁰¹¹ TCC 334 Rangatira Kapiti Alienation File.

¹⁰¹² Order, 18 August 1896. TCC 334 Rangatira Kapiti Alienation File.

Applications for a rehearing were soon sent in from Porirua by Ngahuka Tungia and others, complaining that the land had been awarded to Wi Parata after the court—presumably meaning Judge Rogan in person—had interviewed Te One Omara secretly outside of the court hearing and had not permitted him to give evidence of the complainants’ rights. They said that the court had ignored their own evidence of their mana over Rangatira, and also that not all the Kapiti lands had been included in the hearing advertisement, but only for the Kapiti lands of Tamihana Te Rauparaha, Matene Te Whiwhi, Tiapo and Hare Reweti (and they agreed that the judgments for those lands were correct). A first rehearing application went unanswered by Chief Judge Fenton, so a second was submitted on 1 September 1874.¹⁰¹³ Part of the problem was that the specific area complained about was not named, and the court’s internal assumption was that the complaint was about Waiorua. Judge Rogan annotated the application that he believed Ngahuka had no ground for complaint and Omara was actually ‘opposed entirely to Ngahuka’.

A third rehearing application was made by the same group on 3 October 1874. To their previous allegations, they added the information that at the court’s hearing certain Pakeha former whalers testified to the court that the complainants had been on the land continuously since their whale-catching days.¹⁰¹⁴ A fourth letter was sent on 5 November 1874, reiterating that in the court they were not shown to be wrong and alleging that neither they nor their Pakeha witnesses were listened to by Judge Rogan. They insisted they would not cease to agitate about this land.¹⁰¹⁵

The letters were forwarded to Native Minister Donald McLean, who decided not to advise the Governor to order a rehearing.¹⁰¹⁶

The owners originally admitted by the court were Tamihana Te Rauparaha, (d. 1874), Matene Te Whiwhi (d. 1881), Rakapa Topeora alias Kahoki (d. pre-1879), Pipi Kutia (d. 1891), Hoani Te Okoro (d. pre-1895), and Heni Matene Te Whiwhi alias Heni Te Rei Parewhanake.

Matene Te Whiwhi and Heni Te Rei succeeded in 1879 to the interests in Kapiti No 4 of Rakapa Kahoki, who had died some three years earlier. Matene, who lived at Otaki, identified himself as a chief of both Ngati Toa and Ngati Raukawa, and Rakapa’s next of kin, being her step-brother. Rawiri and Henare Wirihana (aged 17 and 12) and Ririha Matene were also added as successors at Heni’s request, Heni being appointed trustee for the two minors.¹⁰¹⁷

¹⁰¹³ Ngahuka Tungia et al to Chief Judge Fenton, 1 September 1874. OTI 124 Kapiti No 4 Correspondence.

¹⁰¹⁴ Ngahuka Tungia et al to Chief Judge Fenton, 3 October 1874. OTI 124 Kapiti No 4 Correspondence.

¹⁰¹⁵ Ngahuka Tungia et al to Chief Judge Fenton, 5 November 1874. OTI 124 Kapiti No 4 Correspondence.

¹⁰¹⁶ HT Clarke to Fenton, 11 November 1874. OTI 124 Kapiti No 4 Correspondence.

¹⁰¹⁷ 4 Otaki MB 70 (30 October 1879).

A certificate of title—C/T 31/105—was issued for **Rangatira Kapiti No 4** on 17 October 1882. An order was made in 1896 determining the original owners' relative interests, but antedated to the date of this C/T. The block was now 1502 acres and apportioned as follows: Tamihana Te Rauparaha, Matene Te Whiwhi, Rakapa Topeora, Hoani Te Okoro, and Heni Matene Te Whiwhi (274 ac 2r 0p each) and Pipi Kutia (130 acres).¹⁰¹⁸

A succession order for the interests of Rakapa Topeora was made on 30 October 1879 in favour of Matene Te Whiwhi, Heni Te Rei, Ruiha Matene Te Whiwhi (d. 1890), Rawiri Wirihana (d. 1878), and Henare Wirihana (d. pre-1891).¹⁰¹⁹ And Erenora Tungia alone succeeded Hoani Te Oro on 23 July 1885.¹⁰²⁰ Erenora Tungia also later succeeded to Parauhia Paruparu's one-third interest in Block 4B.¹⁰²¹

Judge Trimble partitioned Rangatira in May 1891. He made no orders for succession. The people who therefore should have appeared on the partition orders under the Native Land Court Act 1886 s 26 were Tamihana Te Rauparaha, Matene Te Whiwhi, Pipi Kutia, Heni Matene Te Whiwhi/Te Rei, Ruiha Matene Te Whiwhi, Rawiri Wirihana, Henare Wirihana, and Erenora Tungia. At the partition hearing, Heni Te Rei claimed and was awarded 3 shares, but this appeared to have been incorrect.

Judge Trimble awarded **Rangatira Kapiti 4 C and F** to Erenora Tungia, **Blocks 4 D and F** to Heni Matene Te Whiwhi, and **Block 4 E** to James Howard Wallace, a half-caste.¹⁰²²

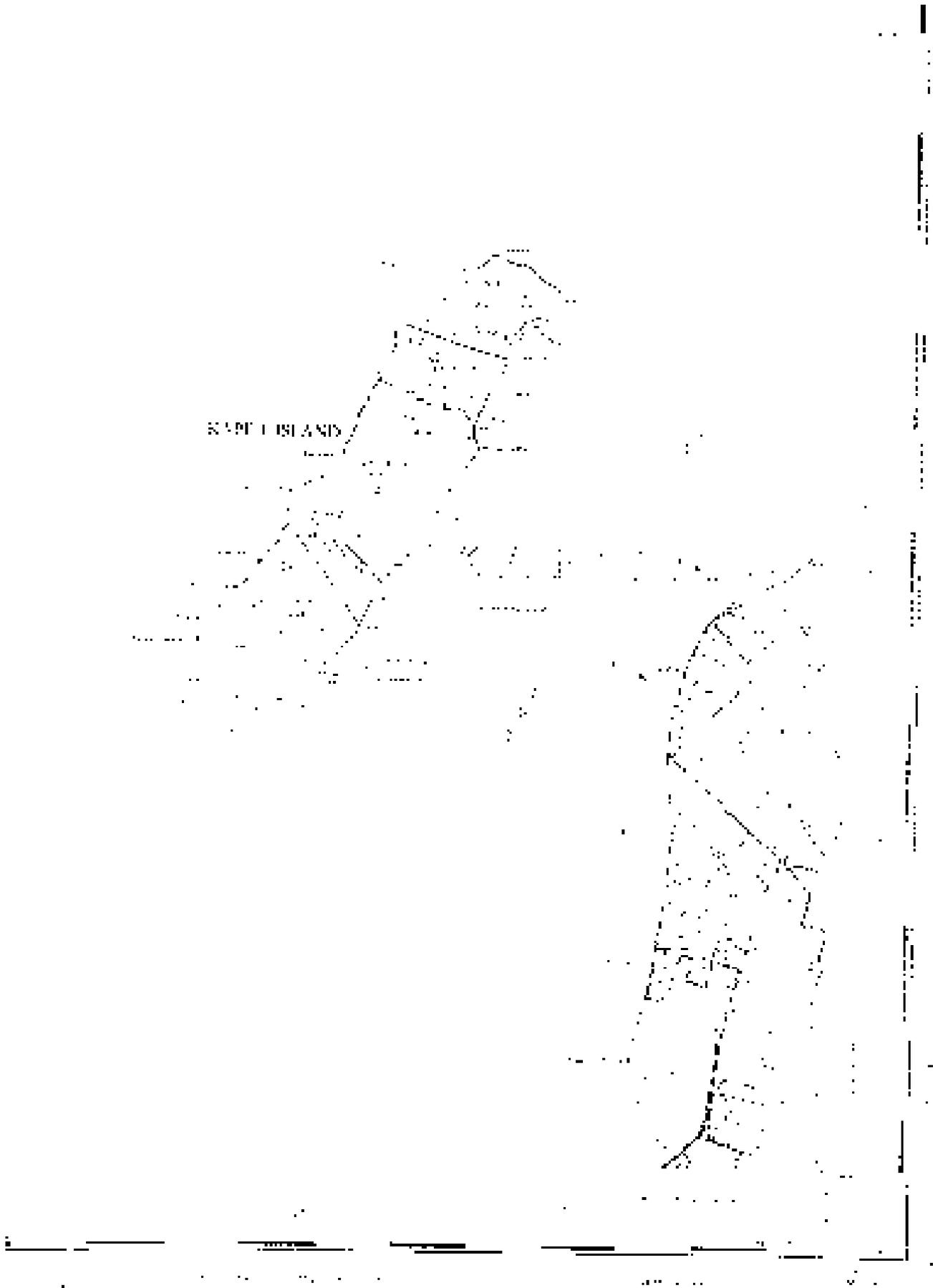
¹⁰¹⁸ Order declaring relative interests, 18 August 1896. TCC 334 Rangatira Kapiti Alienation File. The division was made on the application of Heni Te Rei.

¹⁰¹⁹ Testamentary order, 30 October 1879. TCC 334 Rangatira Kapiti Alienation File. At the same time, Heni Te Rei was appointed trustee on behalf of Rawiri and Henare Wirihana who were minors.

¹⁰²⁰ Succession order, 23 July 1885. TCC 334 Rangatira Kapiti Alienation File.

¹⁰²¹ Testamentary order, 25 August 1883. OTI 125 Rangatira Kapiti 4B Block Order File.

¹⁰²² Partitions orders, MA 1/82 5/5/126 pt 2.



Map of Kapiti Island, 1961.

Part of NZMS 177A Kapiti Sheet NI56, Department of Lands and Survey.

Subsequently, James Howard Wallace (Hemi Warahu) claimed through a will of Tamihana Te Rauparaha and as successor to Pipi Kutia and he was admitted on 10 December 1891. In June 1893, Judge Mackay then made the additional succession orders to admit successors to Ruihi Matene Te Whiwhi, Rawiri Wirihana and Henare Wirihana.

By late 1895 the partition orders were still incomplete as in addition to some confusion over owners' names the subdivisions had not yet been surveyed. There was nothing on the record to show in which subdivision the successors were entitled to be admitted, which prevented the allocation of interests. These problems were thwarting Crown attempts to purchase. Finally, Chief Judge Davy concluded that the former proceedings should be treated as invalid and have the original partition application notified as a subsisting application to be dealt with by the court. The partition application was then included in the Otaki panui for June 1896. Judge Trimble's orders were cancelled by Judge Mackay in consequence of irregularity on 18 August 1896. The file does not contain any further information of the state in which the block was then left. It has been inferred that the blocks 4C to 4F were reconstituted again as Rangatira Kapiti No 4.

The interests of Pipi Kutia deceased in Block 4, totalling 130 acres, were sold to T.C. Williams of Wellington, Alfred Knocks of Otaki, and Ernest Von Sturmer of Bunnythorp who lodged a caveat preventing registration of other interests or dealing with the block.¹⁰²³ This caveat lapsed on 16 July 1898.

F. Blocks 4A and 4B

On 5 July 1887 Judge Puckey subdivided **Block 4A** between the original owners thus:

- Block 4A1 (12ac 2r 0p) was awarded to Hohepa Nohorua alias Hohepa Horomona.
- Block 4A2 (12ac 2r 0p) was awarded to Hira Te Aratangata.
- Block 4A3 (12ac 2r 0p) was awarded to Pumipi Pikiwera.
- Block 4A4 (12ac 2r 0p) was awarded to Herehi Te Teke.¹⁰²⁴

Block **4A3** was sold by Pumipi to Malcolm Maclean on 27 August 1897 for £20, and the transfer was checked by a justice of the peace. Pumipi declared that he still had enough land for his support, having 200 acres at Hongoeka and several acres at Wainui.¹⁰²⁵

¹⁰²³ Caveat, 27 February 1897. MA 1/82 5/5/126 pt 2.

¹⁰²⁴ TCC 334 Rangatira Kapiti Alienation File.

¹⁰²⁵ Declarations under Native Land Court Act 1894 and Native Land Laws Amendment Act 1895 s 5. TCC 334 Rangatira Kapiti Alienation File.

The Minister of Lands applied in November 1901 to have the Crown's interests in Rangatira Kapiti No 4, in 4A2, in 4A4, and in 4B ascertained at the next sitting of the Otaki court.¹⁰²⁶

Judge Mackay found that the Crown had acquired **Blocks 4A2 and 4A4**.¹⁰²⁷ So that point ownership passed completely to the Crown from Maori.

A certificate of title to **Block 4B**—C/T 31/78—had been issued in 1882. Erenora Tungia succeeded her younger sister, Paranihia Paruparu, in 4B in 1883, being her only surviving relative and Paranihia having died intestate.¹⁰²⁸ The hearing to determine the Crown's interests in 4B having been adjourned after the 1901 application, a new application was made in mid-1906.¹⁰²⁹ In 1912, Judge Gilfedder declared the Crown to have acquired Erenora Tungia's interests in Block 4B.¹⁰³⁰

On 2 March 1923, Judge Gilfedder partitioned 6a 2r 26p from Block 4B, creating **Block 4B1**, which he then declared to have been acquired by the Crown.¹⁰³¹ He also declared that the remaining area, **Block 4B2**, containing 3a 1r 14p, be held equally by 5 owners: Heni Matene, Hepiri Paneta, Arapere Paneta, Hera Paneta and Tame Tuari.¹⁰³²

The Crown subsequently proclaimed a prohibition in 1933 on all alienation of **Block 4B2**, being the balance of the land in C/T 31/78.¹⁰³³ The reason for this was the Crown's use of the island as a sanctuary making it undesirable for private individuals to purchase sections on Kapiti, so the proclamation was presumably made under the 1897 Act.¹⁰³⁴ The Crown did not proceed with purchase of the block and it remained unsaleable for three decades. The Crown did express an interest in purchasing it in 1935, when it was thought the main owner was Tame Tuari/Tom Stewart, who lived at Paraparaumu. However, all of the owners were actually dead, with no successors appointed and inquiries took until mid-1937 to trace most of them. It took another year for a valuer to find time to get to the island and value 4B2 (3ac 1r 14p) at £5. Against this tiny value was set the number of successors in title and a survey lien against this small block of £15 8s plus interest since 1925, nearly £10. The Crown offer to simply accept the land in exchange for satisfaction of the lien was not accepted by the successors, and neither was the alternative offer of 10 shillings each.¹⁰³⁵

¹⁰²⁶ Minister of Lands to Chief Judge, 14 November 1901. OTI 125 Kapiti No 4 (Rangatira) Applications 1878-1940.

¹⁰²⁷ TCC 334 Rangatira Kapiti Alienation File.

¹⁰²⁸ 5 Otaki MB 349 (25 August 1883).

¹⁰²⁹ Minister of Lands to Chief Judge, 3 August 1906. OTI 125 Kapiti No 4 (Rangatira) Applications 1878-1940.

¹⁰³⁰ Order in favour of the Crown, 2 March 1912. OTI 125 Rangatira Kapiti 4B Block Order File.

¹⁰³¹ Order, 2 March 1923. TCC 334 Rangatira Kapiti Alienation File.

¹⁰³² Order, 2 March 1923. TCC 334 Rangatira Kapiti Alienation File.

¹⁰³³ NZG, 20 July 1933, 1923.

¹⁰³⁴ Under Secretary to Native Minister, 13 June 1933. MA 1/82 5/5/126 pt 3.

¹⁰³⁵ MA 1/82 5/5/126 pt 3.

On 26 November 1964, the Commissioner of Crown Lands applied to the Maori Land Court under s 438 of the Maori Affairs Act 1953 to have Block 4B2 vested in the Maori Trustee for the purpose of arranging a sale to the Crown. Judge MC Smith ordered that 4B2 be vested in the Maori Trustee in order that the land could be sold to the Crown at a price agreed between the Maori Trustee and the Commissioner of Crown Lands, and that the proceeds be held for the beneficial owners in their respective shares. This course was approved by Maori Affairs Minister JR Hanan on 23 February 1965.¹⁰³⁶ The purchase negotiations must have been rapidly successful, as **Block 4B2** was proclaimed to be Crown land on 11 June 1965.¹⁰³⁷

G. Rangatira Kapiti No 4

A hearing was held at Otaki before Judge Mackay in December 1901 to deal with the Crown's application.

Rangatira Kapiti 4 sec 1 at 821a 3r 10p was more than half of the original Rangatira Block. At the 1901 hearing, Judge Mackay determined that it had already been acquired by the Crown and so ordered.¹⁰³⁸

Rangatira Kapiti 4 sec 2 was 304 acres exactly. In 1901, it was ordered by the court to be the property of Heni Te Rei alone, and without restriction as to alienability.¹⁰³⁹

Rangatira Kapiti 4 sec 3 was only 6 acres exactly. In 1901, it was ordered by the court to be the property of Heni Te Rei alone, and without restrictions as to alienability.¹⁰⁴⁰

Rangatira Kapiti 4 sec 4 was 370ac 0r 30p. This block came before Judge Mackay in the Native Land Court in December 1901. The interests of Hemi Warahi/Wallace in Rangatira Kapiti 4 sec 4 were awarded to 8 members of the Wallace family, 6 being minors, on 13 December 1901, but with effect from 1 March 1893.¹⁰⁴¹ The Crown was awarded 822 ac 1r 10p. The children of James Wallace were awarded the 370-acre Kapiti No 4 section 4, which the Crown leased for 21 years at £13 17s 6d annually, because of the need to wait until the last of them attained their majority in March 1915.¹⁰⁴²

The interests of the 6 children were vested by the court in 3 trustees: George Harper (solicitor, Otaki), Catherine Margaret Hombersley and Alfred Knocks.¹⁰⁴³ The following day, the court declared that, following a Crown declaration that it had acquired an interest in

¹⁰³⁶ 44 Wellington MB 29.

¹⁰³⁷ NZG, 17 June 1965, 971.

¹⁰³⁸ Order in favour of the Crown, 14 December 1901. TCC 334 Rangatira Kapiti Alienation File.

¹⁰³⁹ Order for residue, 14 October 1901. TCC 334 Rangatira Kapiti Alienation File.

¹⁰⁴⁰ Order for residue, 14 October 1901. TCC 334 Rangatira Kapiti Alienation File.

¹⁰⁴¹ Succession order, 13 December 1901. OTI 125 Rangatira Kapiti 4B Block Order File.

¹⁰⁴² Return showing rent on Kapiti No 4 section 4 1902-09. MA 1/82 5/5/126 pt 1.

¹⁰⁴³ Order under Maori Real Estate Management Act 1888 (Rule 123), 13 December 1901. OTI 125 Rangatira Kapiti 4B Block Order File.

Rangatira Kapiti 4 itself, the owners of 4 sec 4 were Hemi Warihi and 7 of his 8 successors just determined.¹⁰⁴⁴ The name missing from the declaration was that of Marion Wallace. This was presumably because in September 1901 her solicitor had written to Sheridan expressing her desire to sell her share as soon as possible, even prior to the court's determination of succession.¹⁰⁴⁵

The trustees for the Wallace children pressed the Native Land Purchase Department to proceed with the sale of their Kapiti interests. The only sticking point appeared to be whether the money would have to pass into the hands of the Public Trustee or could be paid directly for the trustees to invest themselves.¹⁰⁴⁶

Rangatira 4 sec 4 was further partitioned on 25 July 1922 by Judge Gilfedder on the application of Mereana Warihi/Marion Wallace (Mrs. D'Ath), one of Hemi Warahi's earlier successors. It became **Section 4A** (16ac 1r 0p) for Marion Wallace as 1/8 successor to Hemi Warihi, and the residue of 353ac 3r 30p **Section 4B** for the remaining owners or the Crown if it had purchased.¹⁰⁴⁷ Mrs. D'Ath then applied for these partition orders to be cancelled on the grounds that Section 4A as awarded to her was actually 'precipitous and inaccessible'.¹⁰⁴⁸ The matter was adjourned for her to negotiate the matter with the Lands Department with a view to working out an exchange. A judicial conference took place after which Judge Gilfedder wrote to the Native Minister to recommend that instead she be given 16¼ acres (the same area) at Kahuoterangi, or alternatively that she be given 10 acres south of Tame Tuari's area and that this be made up of 4 acres of flat land and 6 acres on a hill face.¹⁰⁴⁹ Her application was dismissed on 18 May 1925. She remained strongly opposed to the sale of her sole interest in Section 4A until her death in August 1955. Over the year following her death, Lands and Survey kept inquiring of Maori Affairs whether anything was known about her successors' willingness to sell, and but Maori Affairs advised that they were not prepared to do so.¹⁰⁵⁰ The Maori Land Court file ends at that point.

Maclean describes Marion D'Ath as:

a small feisty woman with a big voice and a passion for acrobatic flying. Fiercely proud of her heritage [as Ngati Toa descended from Te Rauparaha], she was not to be trifled with. One of her favourite pastimes was decapitating daisies with a stockwhip....¹⁰⁵¹

¹⁰⁴⁴ Order for residue, 14 December 1901. OTI 125 Rangatira Kapiti 4B Block Order File.

¹⁰⁴⁵ Harper to Sheridan, 19 September 1901. MA 1/82 5/5/126 pt 2.

¹⁰⁴⁶ Harper to Sheridan, 11 June 1902. MA 1/82 5/5/126 pt 2.

¹⁰⁴⁷ 23 Wellington MB 244.

¹⁰⁴⁸ Application, 6 February 1925. OTI 125 Kapiti No 4 (Rangatira) Applications 1878-1940.

¹⁰⁴⁹ Gilfedder to Native Minister, 23 July 1923. TCC 334 Rangatira Kapiti Alienation File.

¹⁰⁵⁰ MA 1/82 5/5/126 pt 3.

¹⁰⁵¹ Maclean, *Kapiti*, 259-60.

The Crown did approach the family after her death, but they were no more inclined to sell and her son, Wallace, alarmed officials by threatening to build a casino on the land. This would, of course, have been recognised as a complete impossibility had any of them actually been familiar with the land on ‘the steep, unstable hillside on the southern side of the Te Rere’. However, Marion’s children were eventually persuaded to sell, apparently in 1963 for £100. This was more than twice the block’s valuation, but the department felt compelled to seize the only chance it might get.¹⁰⁵²

Summary of Disposal of Rangatira Kapiti 4¹⁰⁵³

Subdivision	Date of Order	Area	Superseded	New C/T No
Rangatira Kapiti No 4				31/105
4A1	5 July 1887	12a 2r 0p	Crown	112/87
4A2	13 Dec 1901	12a 2r 0p	Crown	119/54
4A3	5 July 1887	12a 2r 0p	Crown	112/54
4A4	13 Dec 1901	12a 2r 0p	Crown	111/297
4B1	2 Mar 1923	6a 2r 26p	Crown	424/60
4B2	2 Mar 1923	3a 1r 14p	Crown	
4 sec 1	14 Dec 1901	821a 3r 10p	Crown	119/47
4 sec 2	14 Dec 1901	304a 0r 0p	Crown	119/48
4 sec 3	14 Dec 1901	6a 0r 0p	Crown	119/49
4 sec 4A	25 July 1922 [actually 1963]	16a 1r 0p	Crown	
4 sec 4B	25 July 1922	353a 3r 30p	Crown	

H. Waiorua Kapiti No 5

Judge John Rogan in the Native Land Court at Otaki ordered the issue of a certificate of title to Waiorua Kapiti No 5 (1589 acres) on 24 April 1874, in favour of 10 owners.¹⁰⁵⁴ The order was made under the Native Lands Acts 1865 and 1869, which is probably why there were only 10 owners included as although this hearing was after the Native Lands Act 1873, the application for investigation of title must have been made prior to then and so it remained

¹⁰⁵² Maclean, *Kapiti*, 261.

¹⁰⁵³ OTI 125 Rangatira Kapiti 4 Block Order File (General Land).

¹⁰⁵⁴ Order, 24 April 1874. OTI 126 Waiorua Kapiti Block Order File (General Land).

subject to the older legislation. The court’s interpretation of section 23 of the 1865 Act was that it could not order certificates of title to more than ten owners in any given block, regardless of the size of the tribal group **that interests**. At the same time, the court was generally constrained by section 17 of the Native Lands Act 1867 to make a separate list of all those found to have an interest in the block, although this was not registered in any way other than in the court’s files. In the case of Waiorua Kapiti No 5 those interested were: Wiremu Parata Stubbs*, Hemi Matenga Stubbs*, Ropata Hurumutu*, Hani Kamu Te Hiko*, Raiha Puaha*, Metapere Ropata Hohepa*, Winara Parata Stubbs*, Hira Parata Stubbs*, Kerehi Parata Stubbs*, Makiri Parata Stubbs, Atareta Parata Stubbs, Pehi Parata Stubbs, Unaiki Parata Stubbs, Tutere Te Matau, Ropata Tangahoe*, Hiniri Tangahoe, Renata Te Kotua and Te Hipirini.¹⁰⁵⁵

Waiorua Kapiti No 5 was leased by Wi Parata Te Kahakura to Henry Augustus Field. This transaction was approved by the trust commissioner in late July 1881, although it was actually dated from 1 June 1879.¹⁰⁵⁶ The lease was for the full 1589ac, for a term of 14 years, at an annual rent of £250 for the first seven years, rising to £300 for the second seven years.¹⁰⁵⁷ The lease being in the name of Wi Parata must have been with his acting on behalf of the other owners. When Renata Te Kotua gave his share in this land to his nephew, Hohaia Te Kotua, Hohaia’s name was admitted into the lease by the Trust Commissioner’s Court on 26 September 1894.¹⁰⁵⁸

Waiorua Kapiti No 5 was divided on 1 May 1874 into 4 subdivisions:

No 5	19 owners	1589 acres
No 5A	3 owners	4 acres
No 5B	1 owner	50 acres
No 5C	1 owner	2 acres

Despite Judge Rogan’s order having been made in 1874, Block No 5 seems not to have had its Native Land Court certificate of title actually issued until 27 July 1887, or perhaps 23 September 1887.

Block No 5 was further partitioned on 24 March 1892 into: **Section No 1** 1234 acres (18 owners) and **Section No 2** 355 acres 4 owners.¹⁰⁵⁹ In November 1901, the Minister of Lands

¹⁰⁵⁵ Order, 1 May 1874. OTI 126 Waiorua Kapiti Block Order File (General Land). Those names marked * were those included on the certificate of title.

¹⁰⁵⁶ Mackay to Travers & Son, 27 July 1881. TC 405 Waiorua-Kapiti No 5 Alienation File.

¹⁰⁵⁷ TC 405 Waiorua-Kapiti No 5 Alienation File.

¹⁰⁵⁸ Notice for Trust Commissioner’s Court, 26 September 1894. TC 405 Waiorua-Kapiti No 5 Alienation File.

¹⁰⁵⁹ Order, 24 March 1892. OTI 126 Waiorua Kapiti Block Order File (General Land).

applied to have the court ascertain the extent of the Crown's interests in the various Kapiti No 5 subdivisions: Block 5 sections 1 and 2, Block 5A and 5B.¹⁰⁶⁰

Subdivision 1A

Part of No 5 – 1A – of 194ac 1r 20p was acquired by the Crown on 13 December 1901, as Judge Mackay cut up No 5 Section 1 into this portion which now went to the Crown, and the remainder, now called 1B, which did not.¹⁰⁶¹

Subdivision 1B

The residue of No 5 – 1B – of 1039ac 2r 20p was allotted to 10 owners, including Wi Parata Kakakura of Waipunahau (381ac), Hemi Matenga (351ac), and others mostly of the Wi Parata whanau.¹⁰⁶² A certificate of title C/T 119/153 was issued on 24 June 1902.

Peehi Parata sold his interests to the Crown on 9 February 1901. In 1908 Judge Rawson in the Native Land Court made succession and trustee orders regarding Peehi's interest, which then required cancellation because of the sale seven years earlier.¹⁰⁶³

Hemi Matenga of Wakapuaka was awarded 1B1 (265ac 1r 4p) when 1B was subdivided by Judge Gilfedder in Wellington on 11 November 1912.¹⁰⁶⁴ The residue, now 1B2 (735ac 0r 20p), was awarded to 12 owners, of whom one was the Crown with an interest of 32ac 2r 12p.¹⁰⁶⁵ This order for 1B2 was superseded by one of the same date in which the number of owners was reduced to 9, the area was reduced to 639ac 2r 28p, but the Crown's acreage remained the same, being the interest of Whakarau Te Kotua.

In July 1914, the Crown was urgently negotiating for the interest of Whakarau Te Kotua in Waiorua Kapiti. He had succeeded to 1/5th of Wi Parata's interest, amounting to 81ac 1r 33p.¹⁰⁶⁶ This was part of a further subdivision of 1B into 2A for non-sellers and 1B for Crown purchase. However, the Maori Land Board advised the Department of Lands and Survey that it considered that 'the interest of Whakarau and the other natives in this land would be prejudicially affected by an alienation at the present time', and recommended that Whakarau, in order to retrieve his finances, should dispose of his smaller and less valuable interests.

¹⁰⁶⁰ Applications, 14 November 1901. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹⁰⁶¹ Order in favour of HM, 13 December 1901. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹⁰⁶² Partition order, 13 December 1901. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁶³ Welch to Rawson, 24 April 1908. OTI 126A Waiorua-Kapiti No 5 Correspondence 1914-1918.

¹⁰⁶⁴ Partition order, 11 November 1914. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁶⁵ Partition order, 11 November 1914. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁶⁶ Fisher to Registrar, 20 July 1914. OTI 126A Waiorua-Kapiti No 5 Correspondence 1914-1918.

The Crown was keen to complete the purchase of the whole of 1B2 and on 10 November 1914 sought from the court a complete list of owners and their respective shares.¹⁰⁶⁷ At this time the ownership of the 735 acres was:¹⁰⁶⁸

- Wi Parata 407 acres (now divided between Utauta Wi Parata, Metapere Wi Parata, Mahia Hawea, Ngaperā Wi Parata, Horomona Wi Parata and Whakarau Te Kotua),
- Tere Mahia 106 acres,
- Tutere Te Matou 53 acres, and
- Winara Wi Parata 32 acres,
- Hira Wi Parata 32 acres,
- Atareta Wi Parata 32 acres,
- Metapere Wi Parata 32 acres,
- the Crown 32 acres, and
- Ngahurumoana Te Whiti (minor) 4 acres.

On 16 March 1917, Judge Gilfedder partitioned 1B2, with ten owners being placed in 1B2A of 235ac 1r 1p. He allocated their various interests with Utauta Wi Parata receiving 133 of the 235 acres.¹⁰⁶⁹

Judge Gilfedder considered the partition in the Native Land Court at Otaki on 11 April 1917 in order to amend an error that had been found in the court's orders of 16 March 1917.¹⁰⁷⁰ The 1B2A block, remaining in the hands of 10 non-selling owners, had been computed as 257ac 3r 9p, while 1B2B, which was ordered to be vested in the Crown, had been computed at 381ac 2r 39p. The unsold portion was now reduced to 235ac 1r 31p and the Crown's portion was correspondingly increased to 404ac 0r 37p. The Crown appealed against the 16 March 1917 award on the basis that the area awarded to the non-sellers contained 'only a small area of cliff land whilst the residue of the block awarded to the Crown contains about 130 acres of worthless cliffs'.¹⁰⁷¹ The Crown must have lost this appeal, because on 18

¹⁰⁶⁷ Fisher to Registrar, 10 November 1914. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹⁰⁶⁸ OTI 126 Waiorua Kapiti No 5 Applications 1880-1948. The interest of the 11-year old boy was vested in Hira Parata and Metapere Ropata as trustees. Order, 1 May 1907. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁶⁹ Partition order, 16 March 1917. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁷⁰ 54 Otaki MB 23, correcting 54 Otaki MB 21.

¹⁰⁷¹ Under-secretary for Lands, notice of appeal, nd. OTA 126A Waiorua-Kapiti No 5 Correspondence 1914-1918.

September 1917, the Native Appellate Court awarded 3 guineas in costs to the Maori respondents.¹⁰⁷²

The other subdivision, 1B2B of 404 acres, was, as noted, awarded to the Crown immediately upon partition,¹⁰⁷³ and then proclaimed as Crown land under the Native Land Act 1909 s 374 on 9 July 1918, completing the Crown purchase process.¹⁰⁷⁴ Its area was now calculated at 404 acres – an increase of 23 acres on the area discussed in court.

In 1922, ‘by mutual consent’ 1B2A was divided into two portions. Utauta Wi Parata (i.e. Utauta Webber) received her 133 acres to be called 1B2A sec 1, while the 101 acres residue was renamed 1B2A sec 2 and was to go to the other owners and then on the same day was ordered to the Crown as purchaser.¹⁰⁷⁵ This order must have not taken effect for some reason, though, as in September 1931 Hira Parata was finally telling the Native Department that he was prepared to sell his share of 28ac 1r 16p. He had previously been ‘very resolute in his refusal to sell’ and so it was proposed to immediately offer him the £4 per acre paid for the 61ac of this block the Crown had purchased by then.¹⁰⁷⁶ The Crown did not act fast enough, however, as by February 1932 Hira Parata was refusing to sell.¹⁰⁷⁷ Within a fortnight, he had changed his mind yet again and walked into the Native Department office in Wellington. Officials having learned from their earlier experience, his interest was purchased for £113 8s 0d and the transfer completed on the spot.¹⁰⁷⁸ Only then did Lands and Survey raise the issue of outstanding survey liens on the 101-acre block dating from 1915, of which Hira’s share would have been £2 14s 6d.

In 1930, the Chief Surveyor lodged a caveat with the Land Registrar forbidding the registration of any memorandum of transfer or other instrument affecting Waiorua Kapiti 5 1B1.¹⁰⁷⁹

In 1963, 1B2A1 and 1B1 were partitioned by Judge Jeune in the Levin Court under s 182 of the Maori Affairs Act 1953. One new block of 12.14ha was to be called Waiorua Kapiti No 6 and placed in the names of 6 owners.¹⁰⁸⁰ Another block of 149.28ha was renamed Waiorua Kapiti No 7 and vested in the Crown at that time.¹⁰⁸¹ At that same hearing, Judge Jeune approved the exchange of No5 1B2A1 of 105 acres for another block entirely,

¹⁰⁷² 4 WnAppMB 72. The Appellate Court comprised Chief Judge Jackson Palmer and Judge RN Jones.

¹⁰⁷³ Partition order, 16 March 1917. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹⁰⁷⁴ NZ Gazette, 18 July 1918.

¹⁰⁷⁵ 23 Wellington MB 209; Partition orders, 18 July 1922. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹⁰⁷⁶ Jones to Under Secretary for Lands, 2 September 1931. MA 1/82 5/5/126 pt 3.

¹⁰⁷⁷ Jones to Under Secretary for Lands, 23 February 1932. MA 1/82 5/5/126 pt 3.

¹⁰⁷⁸ Jones to Under Secretary for Lands, 5 March 1932. MA 1/82 5/5/126 pt 3.

¹⁰⁷⁹ Notice of caveat, 22 September 1930. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁸⁰ Partition order, 3 April 1963. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁸¹ Partition order, 3 April 1963. OTI 126 Waiorua Kapiti Block Order File (General Land).

Motungarara B, as a direct swap with the Crown paying an additional £60 plus all survey costs.¹⁰⁸²

There must have been some confusion about No 7, or breakdown in the title process, because in 1996 Judge Marumarū had to issue a determination of the status of the Waiorua Kapiti No 7 block, confirming that since 1963 it had been Crown land, to ensure that No 7's status was correctly recorded in the Land Registry Office.¹⁰⁸³

On 24 June 1963, Block I sec 1 of 121 acres was proclaimed as Crown land under the Maori Affairs Act 1953 s 265.¹⁰⁸⁴

Further details about the Crown's gradual acquisition of the Wi Parata/Webber whanau's interests in these blocks is narrated below in this chapter.

Block No 5 Section 2 of 355 acres, was awarded upon partition in 1892 to four owners: Raiha Puaha, Hanikamu Te Hiko, Ropata Tangahoe and Hirini Tangahoe, and their relative interests were determined at that time.¹⁰⁸⁵

On 30 September 1896, No 5 sec 2 and No 5B, totalling 405ac, were leased as one unit by Ngahuka Tungia and others to Charles Morison, on a 21-year lease at a rent of £30 7s 6d.¹⁰⁸⁶

Following an application by the Crown for a determination of its interests in No 5 sec 2, Judge Mackay created Subdivision 2A as containing the 285ac acquired by the Crown on 13 December 1901.¹⁰⁸⁷

The residue No 5 sec 2B of 70 acres was allotted to 1 owner, Ropata Tangahoe—presumably the only non-seller amongst the original owners.¹⁰⁸⁸ The 70-acre subdivision 2B was proclaimed Crown land under the Native Land Act 1909 s 374 on 14 April 1915 following Crown purchase.¹⁰⁸⁹

I. Waiorua Kapiti No 5A

¹⁰⁸² Exchange order, 3 April 1963. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹⁰⁸³ Determination of Status, 7 May 1996. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹⁰⁸⁴ NZ Gazette, 4 July 1963, 905.

¹⁰⁸⁵ Partition order, 24 March 1892. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹⁰⁸⁶ Application for confirmation of alienation, 18 November 1896. TC 405 Waiorua-Kapiti No 5 Alienation File.

¹⁰⁸⁷ Order in favour of HM, 13 December 1901. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹⁰⁸⁸ Order for residue, 13 December 1901. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹⁰⁸⁹ NZ Gazette, 22 April 1915.

Waiorua Kapiti No 5A (4 acres) was originally awarded on 1 May 1874 by Judge Rogan to Mere Nikora/Mary Nicol, Henere Inia and Hone Nikara/John Nicol, all half-castes.¹⁰⁹⁰

Mere Naera Pomare of Waikanae applied on 9 July 1887 for the partition of 5A, but this application was dismissed, however her application to succeed Hone Nikora/John Nicol, a half-caste, was ordered.¹⁰⁹¹ Mere Tuhata applied in 1903 to succeed to the interests of Mere Nikora, who was identified here as an original owner who was not identical with either Mere Maaka or Nikora the successor of Hone Nikora—presumably other people who had an interest in other blocks.¹⁰⁹² This application was dismissed on 5 July 1904.

No 5A was leased from 15 April 1897 by Henere Inia to Charles E. Lowe for a rent of £2.¹⁰⁹³

In 1948, the Crown acted under the Maori Purposes Act 1948 s 17 to vest its interests in Waiorua Kapiti 5A in Mrs. Utauta Webber in fee simple. This would be done on the completion of mutually satisfactory arrangements under which the Crown would be granted a right of way over blocks 5 1B2A sec 1 and 5 1B1 to Crown lands.¹⁰⁹⁴ This vesting of 1ac 1r 14p in Mrs. Webber was ordered by Judge Whitehead in January 1949.¹⁰⁹⁵ Mrs. Webber, as a life tenant in the estate of the long-deceased Hemi Matenga (who was still the owner of 5 1B1), had a house on the block but no interest in the freehold.

Waiorua Kapiti 5A was partitioned in March 1949 by Judge Whitehead and 45 people were declared to be the owners of 5A2 (2ac 2r 26p).¹⁰⁹⁶

In April 1965, the Commissioner of Crown Lands applied to the Maori Land Court under the Maori Affairs Act 1953 s 438 to vest Waiorua Kapiti 5A2 in the Maori Trustee for the purposes of sale to the Crown. However, Judge Melville Smith instead ordered that 5A2 be vested in the Maori Trustee to be leased to the Crown for a term of not more than 50 years, reserving reasonable rights of entry to the beneficial owners.¹⁰⁹⁷

J. Waiorua Kapiti No 5B

Waiorua Kapiti No 5B was created by Judge Rogan on 1 May 1874. On the same day, a 50-acre portion called Kahuoterangi was cut out of it and ordered in the name of Ngahuka Tungia, ‘and whenever the said land is granted by the Crown the legal estate therein shall be made to vest in the Grantees on the 1st day of May 1874.’¹⁰⁹⁸ In 1900, the court ordered the

¹⁰⁹⁰ Order, 1 May 1874. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁹¹ Application, 9 July 1887. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹⁰⁹² Application, 9 July 1903. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹⁰⁹³ TC 405 Waiorua-Kapiti No 5 Alienation File.

¹⁰⁹⁴ Chief Surveyor to Registrar, 14 December 1948. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁹⁵ 37 WnMB 104.

¹⁰⁹⁶ Partition order, 25 March 1949. OTI 126 Waiorua Kapiti Block Order File.

¹⁰⁹⁷ 44 WnMB 65-66.

¹⁰⁹⁸ Order, 1 May 1874. OTI 126 Waiorua Kapiti Block Order File (General Land).

Crown to pay to Hohaia Te Kotua £62 10s for a 50-acre portion of Waiorau Kapiti No 5.¹⁰⁹⁹
In 1901 a block of the same size was ordered by Judge Mackay to be Crown land.¹¹⁰⁰

Waiorua Kapiti No 5B sec 1 (1039ac 2r 20p) was partitioned into 5B section 1A (304ac 2r 0p) and 5B section 1B (735ac 0r 20p). Block 5B1A was awarded to Hemi Matenga solely and Block 5B1B was awarded to 13 owners, of which one was the Crown with an amount of 32ac 2r 12p.¹¹⁰¹

The Minister of Lands applied to have the Crown's interests ascertained in Block 5B1B in August 1906. After being adjourned on 5 April 1909, the court made its order on 26 January 1911.¹¹⁰²

In July 1912, three owners applied to have 'Waiorua Kapiti No 5' partitioned. Apparently referring to 5B sec 1, this partition hearing took place at Wellington on 11 November 1912.¹¹⁰³ However, Hira Parata and others appealed on the grounds that they were not present or represented at the hearing and that they considered the partition unfair. Judge Gilfedder explained that the block had been valued and the valuer was present at court, there had been an afternoon of hearing and discussion at which the appellants had been present, the appellants were hostile to the woman (Utauta Wi Parata/Mrs Webber) who had sought partition, Judge Gilfedder told them that if they could not show any good reason to the contrary he would cut out Mrs. Webber's interests in the south-east and adjust according to valuation. However, the appellants did not appear at the subsequent hearing and the judge acted as he had said he would. The appeal proceeded after a £30 deposit was required of the appellants, but was dismissed on 18 September 1914.¹¹⁰⁴

K. Waiorua Kapiti No 5C

On 17 March 1915, the taking of Waiorua Kapiti No 5C, 2 acres, was proclaimed as changing from Native land to Crown land under the Native Land Act 1909 s 374 following Crown purchase.¹¹⁰⁵

¹⁰⁹⁹ Order, 18 June 1900. OTI 126 Waiorua Kapiti Block Order File (General Land).

¹¹⁰⁰ OTI 126 Waiorua Kapiti Block Order File (General Land).

¹¹⁰¹ Partition notes, Waiorua Kapiti No 5B sec 1, nd. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹¹⁰² Application, 3 August 1906. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹¹⁰³ Application, 9 July 1912. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹¹⁰⁴ Memoranda. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹¹⁰⁵ NZ Gazette, 25 March 1915.

CHAPTER 10:

“The only land now remaining to the Ngati Toa”: Crown Acquisition of Kapiti

10.1. Introduction: The Development of a an Environmental consciousness in colonial New Zealand

This chapter, the second of our two chapters on Kapiti, surveys the process by which the Crown acquired nearly all of Kapiti Island from its Maori owners, nearly all of whom were Ngati Toa. The island was taken for conservation purposes.

During the late nineteenth century much of New Zealand’s land area was devastated by fire and plough as it was transformed from forests into farms. Maclean comments:

As always, the first casualties were the birds. Not only did they lose much of their natural habitat, but they were also confronted by a number of introduced predators such as cats, dogs, ferrets, rats, stoats and weasels, against which they had no defences. Faced with this combined onslaught, the birds dwindled rapidly. Some species, such as bellbird and tui, managed to survive in reasonable numbers but species that were already declining before European settlement, such as the hihi and huia, simply vanished in most cases.¹¹⁰⁶

As a result of slowly developing concern about these extinctions, by the last decade of the century there were moves afoot to make provision for the protection of some species after all, and the creation of a small number of wildlife reserves. The movement was led by Thomas Potts, a Canterbury naturalist who began campaigning in the late 1860s. Particularly, in order to save the birds that were being decimated by the forest clearings, from the 1870s Potts proposed a series of island reserves to be set aside as sanctuaries for native birds. Kapiti was not one of his original choices and the Government was not listening as by the early 1880s even it was importing stoats, ferrets and weasels—just at the time when a series of floods and other problems on and below cleared lands finally rammmed home the message that forests were worth preserving. By the beginning of the 1890s prominent citizens were supporting the island reserve idea, culminating in Governor the Earl of Onslow naming his son Huia.¹¹⁰⁷ Little Barrier and Resolution Islands were acquired for this purpose, but Kapiti was overlooked as having little native bush and few rare birds itself.

¹¹⁰⁶ Maclean, *Kapiti*, 173.

¹¹⁰⁷ Onslow was governor 1888-1892. In 1886 FD Fenton, former chief judge of the Native Land Court publicly advocated the purchase and use of Little Barrier Island. McLean, *Kapiti*, 175.



Group on Kapiti Island [between 1908-1911]. Photograph taken by Richard Henry.
Shows Henare Tahiwī (with banjo), Te Waari Te Rei (centre back), Hona "Jack" Wepa (seated in doorway), and Ruihi Wepa (foreground). Of Ngati Toa and Ngati Raukawa ki te Tonga descent.
Alexander Turnbull Library, Wellington.

The Crown's acquisition of Little Barrier Island in fact has a number of interesting parallels with Kapiti. Both islands were taken so that they could be used as island sanctuaries, and both islands – as it happens – were Maori-owned at the time. In the case of Little Barrier (Hauturu) there was growing pressure on the government from the Auckland Institute and other bodies to acquire the island as a bird sanctuary. This cause attracted the influential support of Sir Robert Stout, Walter Buller and the Governor, Lord Onslow. Faced with this pressure the government responded coercively. In 1894 McKenzie, the Liberal Minister of Lands, introduced a Bill which simply extinguished the Ngati Wai non-sellers' interests and ordered that compensation be paid to the Public Trustee on their behalf. The Bill was enacted as the Little Barrier Purchase Act 1894. The sums were paid out to the Public Trustee who then solemnly drew up a deed conveying the non-sellers' interests to the government, which now legally, if not morally, had a clear title to the island.

“Conservation” is sometimes seen as the opposite or antithesis to land “use”. Conservation, supposedly, involves *not* using land; rather it is leaving it in its “natural” state. But of course this is mistaken. Conservation is a form of land use like any other. “Conserving” land involves managing it, of making particular choices to the exclusion of others. There is now a flourishing literature on the extent to which “scenery” and “conservation” and “landscape” are all culturally constructed. Simon Schama, one of the most prominent of modern historians, is a distinguished contributor to this growing literature.¹¹⁰⁸

10.2. Pressure for Public Acquisition of Kapiti

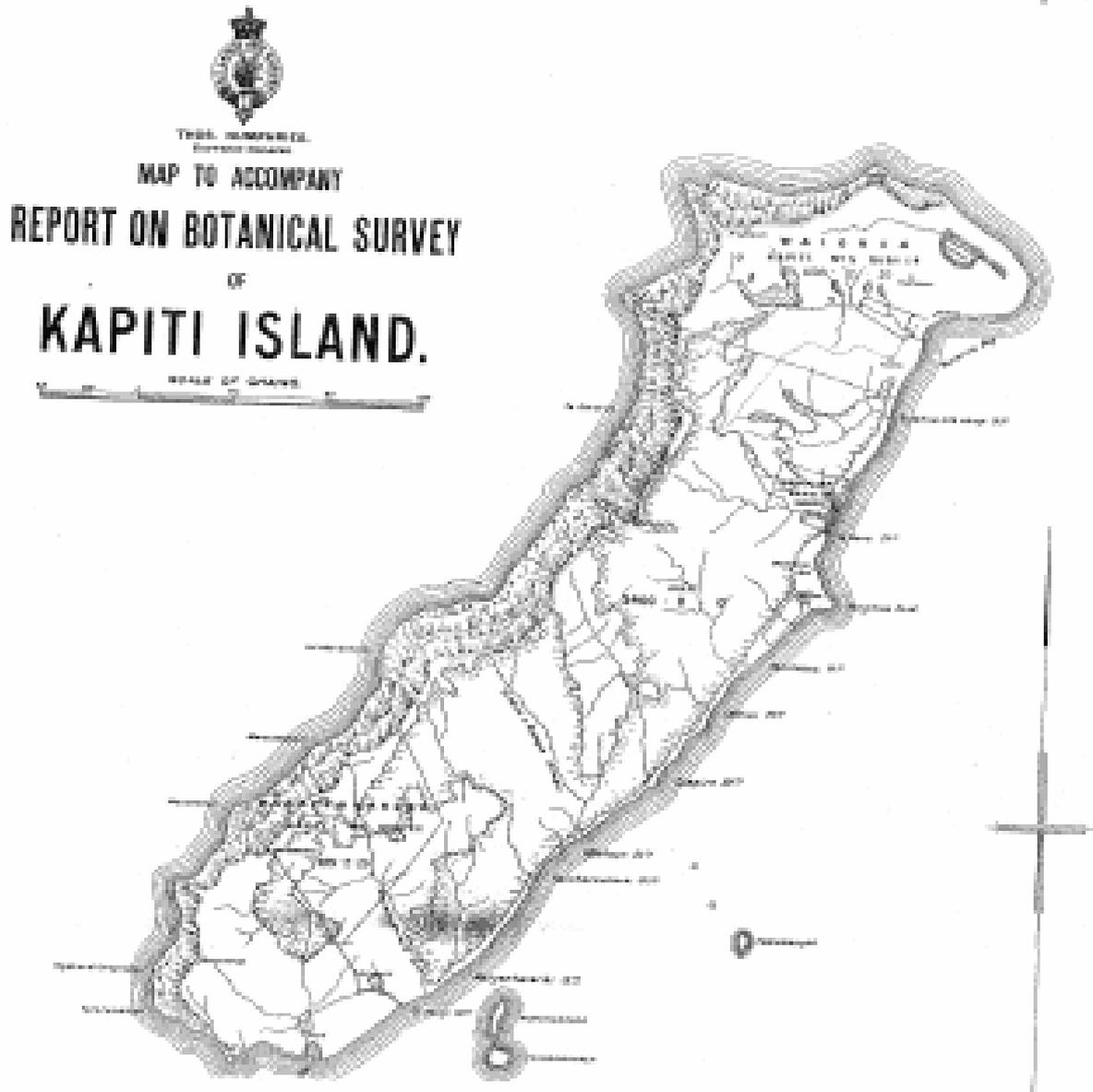
In the case of Kapiti, Alfred Ross of Marton had acquired a 21-year lease over 4317 acres of Kapiti from 1 January 1893 on which he ran over 5000 sheep. At the south end of the island, C.R. Burns leased the remaining 617 acres.¹¹⁰⁹ Shortly after Ross’s lease began the Wellington Acclimatisation Society arranged with him to make Kapiti into a game reserve, chiefly because it was isolated and was free of stoats, weasels, cats and other enemies of ground game. The Society then liberated a number of Californian Quail, Pheasants and Tenerife Pheasants, all of which immediately began to thrive. In what would soon prove to be one of the most counter-productive acts affecting Kapiti, in what would seem at the present day to be an almost unbelievably ill-conceived move, in early 1894 the Society obtained from its Southland equivalent several couples of Tasmanian Black opossums and liberated them on the island.

However, beyond game species, the Acclimatisation Society also saw a broader purpose for Kapiti as a wildlife sanctuary. Several species of native birds, rapidly disappearing from the mainland, were still on Kapiti and the Society thought that most native species would find Kapiti congenial. Indeed, its chairman declared, ‘From a scientific point of view therefore its advantages cannot be too highly estimated.’¹¹¹⁰ He calculated that if the Government bought the island, the rental from the sheep runs would cover the purchase outlay. Ironically, given the Society’s introduction of the possums, he warned that there should be stringent provisions against any destruction of native flora and fauna, and advised that the Society could assist with the protection.

¹¹⁰⁸ Simon Schama, *Landscape and Memory*, HarperCollins, London, 1995. See also Tim Bonyhady, *The Colonial Earth*, Melbourne University Press, Melbourne, 2000; William Cronon (ed), *Uncommon Ground: Rethinking the Human Place in Nature*, W W Norton and Co, New York and London 1995; Thomas R Dunlap, *Nature and the English Diaspora: Environment and History in the United States, Canada, Australia and New Zealand*, Cambridge University Press, Cambridge and New York, 1999.

¹¹⁰⁹ At least, these were the figures Ross gave, but they do not correspond to Buckle’s list.

¹¹¹⁰ Alex Rutherford, memorandum, 12 September 1895. MA 1/81 5/5/126 pt 1.



Map to Accompany Report on Botanical Survey of Kapiti Island,
Department of Lands and Survey.

It became known in mid-1895 that the Government was considering developing Kapiti as a wildlife reserve—although not whose idea it first was—and that the Sir Walter Buller was actively promoting the concept. Buller had never visited the island but praised Kapiti lavishly as a potential wildlife reserve. However, not only was it all still almost entirely in Maori ownership, but there was extensive European interests already in place. Particularly, as Maclean explains:

It was a complicated situation. Captain John Ross did farm on Kapiti, but his land was leased from its Maori owners by a retired surveyor, Harry Field, who lived at Waikanae. He, in turn,

leased it to Ross and his sons, Alfred and Arthur. They regularly travelled to the island from their principal farm near Marton. Field did not farm the island himself because of poor health.... [In 1896] he became MP for Otaki. Once in Parliament he did not have time to maintain his interests on the island; he terminated his leases and sold his sheep on Kapiti to the new lessee, Malcolm Maclean, and his brother, Robert. They lived on the island with their families and farmed the Rangatira, Kaiwharawhara and Maraetakaroro blocks.¹¹¹¹

The termination of Harry Field's leases allowed others to negotiate with the Maori owners.¹¹¹² Harry's brother W.H. (Willie) Field, a Wellington lawyer who features frequently through this study, as well as the Maclean brothers, each purchased prime 12½-acre blocks on the waterfront near Rangatira.¹¹¹³ Another Wellington lawyer, Charles Morison, already a substantial landowner at Waikanae, leased a block at Waiorua from September 1896 and in early 1897 Charles Lowe acquired a 21-year lease of 1234 acres at the northern end of the island. These men added additional parcels as they could so that by April 1897 almost all of Kapiti was leased or owned by Europeans.¹¹¹⁴

The Field family certainly took a close personal interest in Waiorua Kapiti No 5 lands. The Trust Commissioner's files, i.e. those of the official whose sole purpose was to prevent fraud relating to the alienation of Maori land, carry several documents relating to the alienation by way of mortgage to Part Waiorua Kapiti No 5 Sec 2 and Part Kukutauaki No 1B. The deed was dated 2 November 1897. The mortgagor was Hanikamu Te Hiko of Porirua, who declared that he had sufficient land for his support, namely 49 acres at Wairau and White Bay (Blenheim), 10 acres at Kahutea, 21 acres at Takapuwahia, and other lands at Porirua. However, the mortgagee was Isabel Jane Field, her solicitor was William Hughes Field, and the licensed interpreter who guaranteed the deal had been fully translated and explained was Henry Augustus Field, while the justice of the peace who certified that the translation had been duly made and that Hanikamu 'seemed perfectly to understand the same' was none other than the same Henry Augustus Field of Waikanae.¹¹¹⁵

¹¹¹¹ Maclean, *Kapiti*, 178.

¹¹¹² Harry Field came to Waikanae in 1878 after a surveying career. He was fluent in Maori and married Hannah, daughter of Tom Wilson and Hanake (Wirehana Te Awawa) who had established the Ferry Inn at the Waikanae River mouth. He farmed there and leased land on Kapiti, but relinquished the Kapiti leases when he was elected to Parliament. Elected for a second term in 1899, he died four days later and the resulting by-election returned his younger brother, Wellington lawyer and land speculator Willie Field. Maclean, *Kapiti*, 179.

¹¹¹³ W.H. (Willie) Field had become attracted to the Waikanae area after staying with his older brother, Harry. As a Wellington lawyer, he bought whatever Waikanae land came on the market and commuted to Wellington. He soon became one of the local bankers in the Kapiti district as there were no banks as such, lending to both Maori and Pakeha. This he used to acquire land to repay debts, especially from Maori who were otherwise unable to repay his loans. Maclean, *Kapiti*, 182.

¹¹¹⁴ Maclean, *Kapiti*, 178.

¹¹¹⁵ TC 405 Waiorua-Kapiti No 5 Alienation File.

Alfred Ross, who was already trying to sell his leasehold interest and who was already in touch with the Acclimatisation Society, heard of the Crown's interest and offered to sell to the Government instead, with or without his 5300 sheep.¹¹¹⁶ Alex Rutherford, Chairman of the Wellington Acclimatisation Society, estimated the island to contain 4940 acres. Block No 5 was at the northern end and Ross reportedly leased it from Wi Parata and others for £150 per annum. The middle portion of 2734 acres was also leased by Ross for £136 10s, totalling £286 10s for 4323 acres, and Rutherford said Ross had 4500 sheep there. The southern portion was leased by Burns from its Maori owner, a Mrs Burns of Porirua—one might guess that she was closely related to him, and perhaps of Ngati Toa antecedents.¹¹¹⁷ Neither mentioned it, but it may have been less than coincidence that Rutherford's letter recommending the development of Kapiti as a wildlife reserve was written on the day that Ross's offer was received by the Native Land Purchase Department.

Philip Sheridan, heading the Native Land Purchase Department, straightaway wrote to Wi Parata advising of the suggestion that had been made concerning the wildlife reserve and asking whether he and the other owners would be prepared to sell it to the Government for that purpose.¹¹¹⁸ He also asked Surveyor-General Percy Smith about the island's land value, which Smith then gave as 30s per acre as Crown land, but that Sheridan could offer up to 10s per acre to purchase it.¹¹¹⁹ Sheridan, though, thought that the 10s for the entire purchase would hardly buy out just the Pakeha lessees. He considered that the titles were in 'a state of chaos and confusion' and if he did make a purchase he would be unable to supply sufficient information to the Crown law officers for them to make up proper deeds of purchase. The Ross leases, it transpired, were not registered, and so also difficult to value, but Sheridan had 'a shrewd suspicion' that Ross was acting 'under advice' in offering them to the Government—perhaps referring to the Acclimatisation Society, but more likely implying a speculative scheme of Field's or Morison's. He recommended proceeding to deal with the freehold issue—which he could not see being resolved in any reasonable period—and only then to worry about the leases. He also recommended that Ross be told that the Government was not interested in taking over his interests,¹¹²⁰ which Minister of Lands John McKenzie did.¹¹²¹

The Department's interest having been aroused, though, it did not lose it, despite the apparent difficulties. Sheridan pursued with Edward Buckle, Registrar of the Native Land Court, the clarification of the title of Kapiti No 4, and upon hearing that Judge Mackay was to sit in Otaki on 26 June 1896 sought that the Chief Judge urgently add an application to

¹¹¹⁶ Alfred Ross to Minister of Lands, 8 August 1895. MA 1/81 5/5/126 pt 1.

¹¹¹⁷ Alex Rutherford, memorandum, 12 September 1895. MA 1/81 5/5/126 pt 1.

¹¹¹⁸ Sheridan to Wi Parata, 17 September 1895. MA 1/81 5/5/126 pt 1.

¹¹¹⁹ Percy Smith to Sheridan, note, 18 October 1895. MA 1/81 5/5/126 pt 1.

¹¹²⁰ Sheridan to Minister for Lands, memo, n.d. MA 1/81 5/5/126 pt 1.

¹¹²¹ Minister of Lands to A. Ross, 4 November 1895. MA 1/81 5/5/126 pt 1.

partition Rangatira Kapiti No 4 to the court's business.¹¹²² Two MHRs, Wilson and Newman, met personally with Minister McKenzie to press for the purchase of Kapiti, and recommended that the Native land purchase officer should meet with the former lessee, Harry Field, who would be able to give full information regarding the title and thus expedite the purchase.¹¹²³

Wi Parata only replied to Sheridan's query in June the following year. He left no room for doubt or equivocation, declaring:

Friend my reply is I shall never sell any interest in the said Island.

This is an absolute reply. I will never sell that Island, and further, neither will the whole of my family or my younger brother part with their interests.¹¹²⁴



A trypot at Waiorua Bay, Kapiti Island, 1948. Frank Fitzgerald.
Alexander Turnbull Library, Wellington.

¹¹²² Memos, 26 May to 10 June 1896. MA 1/81 5/5/126 pt 1.

¹¹²³ McKenzie to Native Land Purchase Officer, 25 May 1896. MA 1/81 5/5/126 pt 1.

¹¹²⁴ Wi Parata to Sheridan, 19 June 1896. MA 1/81 5/5/126 pt 1.

Chris Maclean is of the opinion that the sudden interest shown by the new group of Pakeha was calculated speculation. The Government's interest was now publicly known and they aimed to acquire what they could before the Government prohibited private land deals. There was a risk that the Government might acquire the island compulsorily and pay little compensation. However, European landowners and leaseholders would be in a much stronger position to negotiate than Maori would have been, including the possibility of maintaining some form of permanent presence on the island, perhaps to visit and stay if not to farm. Maclean observes:

No one understood this better than Field and Morrison. Both were experienced land buyers who had been systematically building up their holdings on the coastal plain at Waikanae since land in the area became available for sale in the early 1890s, much later than in other parts of the country.... Now that the government's interest was common knowledge, Kapiti's Maori owners might be induced to part with their land.... Kapiti would be no different [from most of the other lands Ngati Toa had parted with in the preceding 50 years]. If the Crown wanted it, the island would be taken one way or another.¹¹²⁵

Willie Field's strategy was clear: to acquire as much land as he could on the island so as to be in the strongest possible position when the Government came to want to acquire the island. The mortgage over the northern part of the island – resulting from a £168 loan made to the Maori owners – was in his wife's name, and he required Charles Lowe to pay the rent to him, a transparent strategy that fooled no-one, including the Government.¹¹²⁶ Maclean notes that Field's strategy ran directly counter to the Liberal Government's key policy of bursting up large estates and to its stated intention to acquire Kapiti as a reserve. By late 1897, Field owned land at Rangatira, had control over some of the best farmland in Waiorua, and was also receiving rent for part of Kaiwharawhara.¹¹²⁷

10.3. Opposition to Kapiti Bill

On Wednesday 15 December 1897, a week before the end of the parliamentary year, the matter came before the Native Affairs Committee when it considered Petition No 318, that of Raihi Puaha and 11 others, opposing the Kapiti Island Public Reserve Bill that the government had introduced. The lease to Isobel Field mentioned above became known and was part of the context for the Government's actions. The Committee consisted of 13 members, including Premier Richard Seddon, but also including all 4 members from Maori

¹¹²⁵ Maclean, *Kapiti*, 179.

¹¹²⁶ Maclean, *Kapiti*, 180.

¹¹²⁷ Maclean, *Kapiti*, 181.

seats (Heke, Parata, Kaihau and Pere), plus James Carroll and Willie Field, and Philip Sheridan to provide any advice required.¹¹²⁸

‘A number’ of the Maori owners who objected to the Kapiti Island Public Reserve Bill attended the meeting in support of the petition.¹¹²⁹ Before the Committee, Hemi Kuti, whose personal interests were in Block No 3, was the first of the 5 speakers and left no doubt about the opposition of himself and his party:

What we above all other things desire is to retain this land in our possession. This land has been the support – the mother’s milk – of our ancestors and ourselves from the time of their coming from Kawhia, and it is the only land now remaining to the Ngatitōa. The Ngatitōa hapu still are, as they have always been, supporters of the Government, and they have sold all their other lands to the Government – more than twenty millions of acres – that is, in both Islands. Well, the purchase-money received has been spent. We are now at the present day in occupation of the island. We live upon it. From the time of the *Raupatu* (conquest) up to the present day we have been in continuous occupation. During recent years the land has been under lease, and we receive the rents from time to time.¹¹³⁰

He made it completely clear that the island was necessary for the economic support of the owners, through income, through providing a place to be when other lands were gone, and through the food resources it contained:

Now, our descendants will not be able to live on money, but they will on the land. The money that I alluded to just now as the purchase-money of lands sold to the Crown has melted away; and, as I have said before, this is the only land that we still hold in our possession, and that we would be able to leave to our descendants. Another thing is that Kapiti is a desirable possession in this way: By its natural resources it provides a lot of food – birds, fish, potatoes – food of all kinds; in fact, no part of the main-land provides food so abundantly as this island. This, then is the point of view from which we look upon the present proposal.¹¹³¹

Carroll questioned him about the leases. He replied that some were at 2s per acre, some at 1s, and others for less. But he added: ‘What I wish to point out is that as soon as these leases have expired our descendants then surviving will go back to the island to live,

¹¹²⁸ Native Affairs Committee, ‘Report on the Kapiti Island Public Reserve Bill’. AJHR, 1897 sess II, I-3c.

¹¹²⁹ At least some of them were named by Tatana Whataupoko to the Committee: Te Whiwhi, Hemi Kuti, the two Ropata brothers, Erinora, Raiha Puaha, plus Wi Parata who was absent. Tatana and Hemi were part-owners of the 375-acre No 3 Block and he stated that Erinora had an interest of about 250 acres, Te Whiwhi 400 acres, and the Ropata brothers 4-500 acres. AJHR, 1897 sess II, I-3c, 5.

¹¹³⁰ AJHR, 1897 sess II, I-3c, 2.

¹¹³¹ AJHR, 1897 sess II, I-3c, 2.

recognising that it is, as I have said, a place that provides abundant supplies of food.’¹¹³² The total rents received from the island he estimated at something over 1s per acre.

He told Wi Pere that his people had left the island and leased it to Brown perhaps around 1850 and then leased it to Brown. Others had left later, but all was now leased. Hemi Kuti told Wi Pere that he personally would not object to his interests passing to the Crown, and he would be prepared to receive lands around Levin, Otaki or Shannon, but that he could not speak for other people with interests and wanted to preserve their traditional lands for their descendants. He did not want monetary compensation because ‘money has a faculty to melting away in various directions’.¹¹³³ He confirmed with Mr. Kaihau that the entire island was under lease, except perhaps for a few very small pieces that were used for occupation when they travelled back to use the island’s resources, and ‘Ropata and others who have not leased’ still lived there. He clarified this to say that one or two small pieces had been mortgaged and 10 or 12 acres sold privately, but that the owners of Maraetakaroro, particularly the two Ropata brothers, were moving back onto their land now that the lease had expired.¹¹³⁴ The tribal members went back there ‘at certain times’, presumably seasonally for accessing food resources. He also stated that Ngati Toa had no land left in the South Island, which may not have been entirely the case given the ongoing interests in D’Urville Island, at least. He rejected the suggestion of the government paying them a perpetual annuity instead of outright purchase, since this was effectively just another lease and would still leave their descendants landless. He also claimed that all owners opposed the Bill, although Wi Parata was not present. Hone Heke put to him directly the issue of the relative importance of money compared with land. Hemi Kuti replied: ‘... in my opinion, land is a more valuable possession to [Maori] than money can ever be’.¹¹³⁵

However, in response to a question from another Committee member, Hemi Kuti conceded that ‘if the Government feel compelled to take this island, we can do nothing but suffer it; we cannot hope to successfully contend against them’.¹¹³⁶

The second speaker was Tatana Whataupoko, who explained that Ngati Toa had never been prepared to part with this island, even when selling other lands to the Crown in the 1840s. He stated plainly: ‘Our desire is, first, to oppose this Bill, and our reason for doing so is that we have no desire to sell the land whatsoever.’¹¹³⁷ He told the Committee that even when the southern portion had been sold to Brown, the Pakeha had subsequently been driven off by Te Rangihaeata ‘because they [Ngati Toa] were not willing that this land should

¹¹³² AJHR, 1897 sess II, I-3c, 2.

¹¹³³ AJHR, 1897 sess II, I-3c, 3.

¹¹³⁴ AJHR, 1897 sess II, I-3c, 4.

¹¹³⁵ AJHR, 1897 sess II, I-3c, 4.

¹¹³⁶ AJHR, 1897 sess II, I-3c, 3.

¹¹³⁷ AJHR, 1897 sess II, I-3c, 4.

pass'.¹¹³⁸ Since then the land had remained in their possession and they had drawn from it the financial benefit of the rents, but if the Bill went ahead they would cease to derive any benefit at all from it. He responded to Carroll's proposition of an annuity for 'as long as any of them or their descendants live', together with some trusteeship role, by reiterating: 'I stick to what I first said—that I oppose the Bill and will continue to oppose it'. He would not be drawn on any proposal for an exchange of land because no such proposal had yet been made to them.¹¹³⁹ When pressed by several members for a response to some alternative management or alienation proposals, he refused again to make any statement other than that he had been selected as a representative to put to the Committee the present wish of his people; any alternative proposition would have to be taken back to the people for discussion and a collective decision.

Tatana did say that he would be prepared to agree to a reserve proposal that ensured 'that the land should be restricted in such a way as to prevent every possibility of selling it to any one'.¹¹⁴⁰

Despite the clear concerns the Maori speakers reiterated numerous times, as Chris Maclean observes with considerable understatement, the members of the Select Committee members' questions 'made it clear that they did not attach the same importance to the island's historic associations', and were instead really only interested in a mechanism to facilitate Maori abandonment of the island in return for alternative lands or monetary compensation. It was also suggested that the island be made a reserve for Ngati Toa, but that it be used as a bird sanctuary under Crown control. The Maori present were asked to go home, consult with their people, and return with an answer on the following day.¹¹⁴¹

Premier Richard Seddon had played no active part in proceedings until finally revealing the Bill's real purpose when he asked the next speaker, Hanikamu Te Hiko: 'Are you aware of negotiations going on for the sale of Kapiti to persons other than the Government?' Hanikamu denied knowledge of such negotiations, but did say that Hohepa Horomona and another had sold 12 acres each privately. He asked for time to go back to the people and discuss other options that had been raised by Committee members with Hemi and Tatana.¹¹⁴²

Raiha Puaha, whose interests were in Waiorua No 5 Block, rejected any attempt to part her from ownership of her land, saying:

¹¹³⁸ Another Committee member, Mr Monk, challenged Tatana's version of events in the 1840s, indicating that the land was given to Brown in compensation for his goods being seized by Ngati Toa after the 'Wairau massacre'. Tatan argued against this construction being put on events and also insisted: 'But Wairau was not a massacre. Yes; it [the taking of Brown's possessions] was after the fighting at Wairau, the blame of which rests at the door for the Pakeha, who instructed that the Maoris should be shot when they fought.' AJHR, 1897 sess II, I-3c, 5.

¹¹³⁹ AJHR, 1897 sess II, I-3c, 4.

¹¹⁴⁰ AJHR, 1897 sess II, I-3c, 5.

¹¹⁴¹ Maclean, *Kapiti*, 182.

¹¹⁴² AJHR, 1897 sess II, I-3c, 6.

I will not agree to this Government Bill which proposes to seize and take from us our land. Of course, it means the whole island, and that includes my land; and as far as I am concerned I will not agree. If everyone else is going to sell, let them sell, but my land I shall keep for my child. I will not accept any money for it. My land will remain mine in the midst of that Government land. I need not say anything more to the Committee than this: that nothing will induce me to agree to the Bill.¹¹⁴³

However, shortly afterwards it was revealed that her lands in Waiorua were already leased to Charles Morison for 1s 6d per acre, although he was apparently not farming there. Similarly, Hanikamu had already leased his share of Waiorua No 5 to Isobel Field, Willie Field's wife. Seddon asked her what value per acre she put on the land, but she replied that she put no value on it, but that she wanted someone to occupy the land and improve it', which was why she had leased it for farming. What the lessee did to improve it for his stock was his concern. She was reluctantly prepared to consider in principle an exchange of land but:

I should be very exacting in my demand as to what should be a just equivalent for this land and would have to be satisfied that I got all I asked for before I would accept it. Because this is a very sacred possession. Kapiti is a name famous in the mouths of the Ngatitoa; it has been connected with them for generations, and it is *tupuna* to my child.¹¹⁴⁴

Seddon again challenged Raiha Puaha: 'I should like to get some explanation as to why you love the lawyer [i.e. Morison] better than the Government.' But she tartly told him: 'That is my business.' He then wondered what she would do if the Government offered her three shillings per acre, but she rejected the very thought:

I would not let them have it if they offered me £1. It is a valued possession of our ancestors; and if the Government got hold of it, we should never see it again and my son would never be able to look upon the land and say, 'That is the island that belonged to my ancestors.'¹¹⁴⁵

Similarly, Heni Te Rei, the last of the petitioners to make a submission, refused to agree to the Government plan to acquire the island. Focusing on the references in the petition to Kapiti being their *waiu*, or mother's milk, handed down through generations, she explained that it referred to the way in which the island sustained them, through rental income, but also through providing physical sustenance from the food resources there, birds and fish

¹¹⁴³ AJHR, 1897 sess II, I-3c, 6.

¹¹⁴⁴ AJHR, 1897 sess II, I-3c, 6.

¹¹⁴⁵ AJHR, 1897 sess II, I-3c, 6.

especially. This sustenance had been preserved through the lease periods by the retention of small sites for Ngati Toa to return to while harvesting them. She stressed the human impact it would have on the owners immediately and on their descendants thereafter:

And may I say that, when I discovered the Bill that has been proposed by the Government to deal with the island in this way, I have been weeping ever since; and I feel that I cannot, under any consideration, agree to such a proposal. I cannot agree to the island passing over to the hands of the Government any away from us, because it has been a valued possession handed down to us from generations to generations, and that we hold in remembrance of our ancestors. And, no matter how you propose to take it, I will never, under any consideration, agree to it. I put it to the Government in this way: that I am absolutely without another acre of land in the world except what I hold in that island; and are they going to take that from me? I am the mother of many children, and the grandmother of many grandchildren. That is all.¹¹⁴⁶

Maclean observes that there was a clear cultural division between the attitudes of the committee members and those of the Maori petitioners: ‘to the politicians, land was a tradable commodity; to the owners, it was a link with their forebears and a source of prestige’.¹¹⁴⁷ Of course the Maori owners were trying to preserve the links with their forebears and preserve their whenua for their own mokopuna, but nevertheless Maclean overstates the distinction somewhat. It is clear, even from the information generated by the Select Committee, that a few were prepared to sell interests in Kapiti, but that many, perhaps virtually all, were prepared to alienate their land by way of lease, that is precisely to treat it as a tradable commodity with a commercial value from which a cash income could be generated. Raiha’s comments surely reflect that position, that she was prepared to lease the land and gain an income—to use the land as a *temporarily* tradable commodity—but that she was not prepared to relinquish permanent ownership due to the link with their tupuna (and mokopuna). Quite apart from any ‘Maori perspective’, this surely was a commercially mature attitude in European sense, trying to retain the asset which was valuable culturally and economically while gaining a financial benefit from it as well. It deserved recognition as such, both then and now.

It appeared that they had wasted their breath and that their traditional association with the land meant nothing to the Government. Once they had left the room, ‘King Dick’ Seddon told the Committee that the Bill would proceed anyway, that the Maori owners would be compensated, and that he would move a motion to that effect the next day. He stated that his motion would have the Committee recommend that ‘full and liberal value be paid for the island, and the proceeds invested in annuities for the owners and their descendants, or in the

¹¹⁴⁶ AJHR, 1897 sess II, I-3c, 7.

¹¹⁴⁷ Maclean, *Kapiti*, 182.

purchase of lands of equal value'.¹¹⁴⁸ This sounds fine enough—provided that the owners were agreeable to being deprived of their lands, *and* that 'a full and liberal' amount of money actually compensated for the values other than monetary that the owners placed on their lands, *and* that once the quantum of money was settled (no mention of how this would be done) the owners did not want to decide for themselves how to dispose of the proceeds.

However, when the Committee reconvened Seddon withdrew that proposed motion in favour of another simply that the existing Bill be proceeded with. Instead of this revision, though, Hone Heke moved an amendment that the Bill be not proceeded with, but that a short Bill should be passed that would merely prohibit for twelve months all private dealings in regard to Kapiti, whether original or already underway, while the Government negotiated with the owners and endeavoured to 'arrange matters'. The idea of vesting in the Crown all such private interests already acquired seems to have been added after leaving the Committee.¹¹⁴⁹ Heke's amendment was passed in the Committee with only Seddon, Carroll and 2 Pakeha Committee members opposing it (probably the 4 Government representatives), and the Bill sent to the printer on the same day. Seddon then moved successfully that the Committee refer Raiha Puaha's petition to the government 'for consideration' – not the 'favourable consideration' that these days at least is virtually essential for a government to pay any attention at all.

Chris Maclean believes that the substantial change in Seddon's position was the result of 'some hard talking overnight'. He was unable to determine who had spoken directly to Seddon but notes that the only known Kapiti owners who had been absent during the Committee hearings were Hemi Matenga and his brother Wi Parata.¹¹⁵⁰ He thinks it likely that the influential Wi Parata spoke directly to Seddon about the pair's interests, and also that Harry Field, who, although closely involved if not now himself directly interested, was actually a member of that Select Committee, might also have been involved.¹¹⁵¹ This may be overstating the 'negotiations', though, as on the Committee minutes it was not Seddon who had a change of heart, but Committee members who may otherwise have supported him. What went back to the House from the Committee and then became the Act was Hone Heke's amended Bill, and Seddon had voted against that. It seems rather that it was parliamentary process in action to defeat the Liberal Government's action with a compromise, as the Maori members (other than Carroll who was a prominent member of the government), with

¹¹⁴⁸ AJHR, 1897 sess II, I-3c, 1.

¹¹⁴⁹ Sheridan to Reid, 16 December 1897. MA 1/81 5/5/126 pt 1.

¹¹⁵⁰ Maclean thinks it is 'curious that Wi Parata chose not to appear before the Committee', but has no explanation for his absence. Maclean, *Kapiti*, 186.

¹¹⁵¹ Maclean, *Kapiti*, 184. Maclean has sighted a fragment of Harry Field's personal diary which, although not for this exact date, does show that about the time Isobel Field's land became known Field visited both Seddon and Land Minister McKenzie, and that Wi Parata also made regular visits to Wellington. This tradition of informal consultations almost certainly included talks about Kapiti, which would have been carried on at this focal point.

interested party Field, and 3 Pakeha members included Committee chairman M. Houston. Also, it is incorrect to say that Wi Parata played no part in the Committee hearing—he was a member of the Committee, and is listed as having attended the hearing, although he was not reported as having spoken at all. Perhaps what is surprising, given modern concepts of conflict of interest, is that both he and Willie Field, people with considerable direct personal interests in the matter being heard, were permitted to take part at all as Committee members.

On the same day that the Committee finished dealing with the Bill, a Wellington law firm—that in which Willie Field was a partner—wrote on behalf of several clients who did have interests in Kapiti. Maclean believes that ‘Although it was not signed by a named individual, it was clearly the work of Willie Field.’¹¹⁵² He also comments that: ‘If anyone had failed to grasp the immediate purpose of the bill, the lawyers’ last-minute appeal made it obvious.’ The letter was received by the Committee after the Bill had been considered and it was read—to whom and why is not recorded, perhaps simply to get it onto the record.¹¹⁵³

It began by reminding the Committee that at least some of the Maori owners were opposed to the Bill, while this intervention was ostensibly on behalf of several of the firm’s Pakeha clients—but it was actually really only on behalf of one. According to Field’s firm’s letter, Malcolm Maclean presently held leases over the larger portion of the island, over ‘practically all’ of the Rangatira, Kaiwharawhara and Maraetakaroro blocks. The leases were valid and would be confirmed by the Native Land Court, although they had not been entirely completed, due to some signatures still being missing. Maclean had been in active possession for 18 months and made his home there, as well as making improvements to the land (presumably fencing, clearing and grassing). These incomplete leases were ones where he held the balance of the lease entered into by H.A. Field MHR – i.e. Harry Field – in or about 1881. In some cases, Maclean had already paid the Maori lessors several years’ rent in advance. Maclean had also purchased outright 12.5 acres—one-quarter of the Rangatira Kapiti 4A Block—and this purchase had been confirmed by the Native Land Court, so that he now held it in fee simple and intended building on it for his family’s summer use. Further, he also held a confirmed mortgage over the interest of Hanikamu te Hiko, which was 100 acres in the Waiorua Kapiti No 5 Block section 2. Maclean objected to the prospect of having his land and interests taken from him by the Government. The lawyers warned that ‘It would therefore be grossly unfair that the Bill ... should not protect our client’s leases.’¹¹⁵⁴

As with Maori owners’ objections, this letter too fell on deaf ears amongst the politicians and the revised Bill proceeded to its second reading in Parliament four days later on 20 December 1897. Seddon himself introduced it in the House, explaining that ‘it was the

¹¹⁵² Maclean, *Kapiti*, 184.

¹¹⁵³ AJHR, 1897 sess II, I-3c, 2.

¹¹⁵⁴ Stafford Treadwell and Field to Chairman, Native Affairs Committee, 16 December 1897; 17 December 1897. MA 1/81 5/5/126 pt 1. The full letter is also reproduced at Maclean, *Kapiti*, 184-85.

earnest desire of the government to conserve the island, and in obtaining possession of the island they would be able to conserve the flora and fauna of the island.’ He acknowledged that the present Bill did not acquire the island, as had originally been intended, but what it did do was forestall the otherwise inevitable transition from the present 21-year leases to acquisition of the freehold by private interests. He continued, implicitly presenting the prevention of land dealings in relation to Kapiti as being in reality a magnanimous measure to protect Maori interests:

That was always what happened. If a person wanted a piece of Maori land he would take out a lease of the land, then the Maori would borrow on the land, and all this person had to do was to reply, “Yes, if you give me a purchasing clause”, and the result was invariably the same. He could trace how all the land had been secured. It started with a lease or the landing of money, and it was then only a question of time when the freehold would go from the Natives.¹¹⁵⁵

Only one other speaker rose in the House with regard to this Bill, Hone Heke, MHR for Northern Maori. He was of the opinion that both sides were acting for ‘sentimental’ reasons, the Government in protecting native birds, and the Maori owners whose opposition was based on the grounds that the Bill ‘tended to deprive them of all their interests in Kapiti Island, and all the old associations of their ancestors and forefathers’.¹¹⁵⁶ Implicitly, such sentimentality must have been presumed to be undesirable, and the Maori owners should apparently have been motivated solely by economic interest.

There was no further debate and the Bill received its third reading later that day. This was the penultimate day of the parliamentary session and there was an extensive backlog of legislation to finalise, particularly the controversial Horowhenua Bill, promoted by the Minister of Lands to deal with his personal foe, Sir Walter Buller. No-one was really paying attention to the much less sensational Kapiti issue.

The Bill reached the Legislative Council on the following morning. The first and second readings were mere formalities. On the third reading, though, the MLC for Westland, James Bonar, opposed it as he thought ‘an injustice was being done to the Natives’. Hori Kerei Taiaroa for Otago spoke against the Bill for the speed of its passage. He made a more general criticism of the way in which the Liberal Government conducted its dealings with Maori, protesting about ‘the manner in which the Government made a practice of leaving all Bills which affected the Natives until the last days of the session’. Another speaker agreed, saying such practice was a ‘disgrace’, but then the debate was diverted from the substantive Kapiti issue to procedural outrage over the use of such unparliamentary language. The final speaker,

¹¹⁵⁵ NZPD, 100 (1897), 915.

¹¹⁵⁶ NZPD, 100 (1897), 915.

Charles Bowen of Canterbury, also criticised the hasty dealing with the Bill. However, he thought that if there had been more time for considered debate much of the opposition to it would have disappeared, which sounds as if he thought that the opposition was solely based on these procedural grounds, rather than on principled concern for the Maori owners' position. Ultimately, Bowen applauded the aim of preserving, while there was yet time, 'the flora and fauna of the colony, which were disappearing in a lamentable manner'. This suggests that Bowen may have appreciated that wildlife from elsewhere were to be brought to Kapiti for sanctuary, whereas others seemed mistakenly to think that there was still wildlife and flora on Kapiti itself to be saved and that this was the Bill's purpose.¹¹⁵⁷ The Bill passed that day.

Maclean summarises:

From that moment private transactions involving and on Kapiti became illegal, and those other than 'the original Native owners' who had existing interests, were required to forfeit their land or lease in return for compensation. Henceforth, Kapiti was to be a public reserve for the conservation of its 'natural scenery' and for the preservation 'of the flora and fauna of New Zealand'.¹¹⁵⁸

10.4. Title to Kapiti at the time of the Kapiti Island Act

Kapiti Island was already well carved up by the time the Kapiti Island legislation was passed, reflecting both original claims brought to the Native Land Court and recent partitions. The state of the various Kapiti titles at the time of the passage of the Act was officially summarised thus:¹¹⁵⁹

- Kapiti No 1 (Te Mingi), 34 ac 1r 9p, Crown grant vol. 5 fol. 10 (12 January 1875), owned by Wiremu Parata
- Kapiti No 2 (Maraetakaroro), 757 ac, Crown grant vol. 23 fol. 123 (1 April 1881)
- Kapiti No 3A (Kaiwharawhara), 365 ac, Partition order under NLC Act 1886 (21 Nov 1891), previously under cert of title under s 17 of the Native Land Act 1867.

¹¹⁵⁷ NZPD, 100 (1897), 927.

¹¹⁵⁸ Maclean, *Kapiti*, 186-87.

¹¹⁵⁹ 'Ownership of the freehold of the Island of Kapiti at the date of the passing of the Kapiti Island Public Reserve Act 1897'. MA 1/82 5/5/126 pt 1.

- Kapiti No 3B (Kaiwharawhara), 10 ac, Partition order under NLC Act 1886 (21 Nov 1891), previously under cert of title under s 17 of the Native Land Act 1867.
- Kapiti No 4 (Rangatira), 1502 ac, Land transfer cert vol. 31 fol. 105 (17 October 1882)
- Kapiti No 4A1, 12 ac 2r, Partition order under NLC Act 1894 (18 August 1896), the whole of 4A at the time comprised in Land transfer cert vol. 31 fol. 77 (17 October 1882), owner William Hughes Field
- Kapiti No 4A2, 12 ac 2r, Partition order under NLC Act 1894 (18 August 1896), the whole of 4A at the time comprised in Land transfer cert vol. 31 fol. 77 (17 October 1882),
- Kapiti No 4A3, 12 ac 2r, Partition order under NLC Act 1894 (18 August 1896), the whole of 4A at the time comprised in Land transfer cert vol. 31 fol. 77 (17 October 1882), owner Malcolm Maclean
- Kapiti 4A4, 12 ac 2r, Partition order under NLC Act 1894 (18 August 1896), the whole of 4A at the time comprised in Land transfer cert vol. 31 fol. 77 (17 October 1882)
- Kapiti No 4B, 10 ac, Land transfer cert vol. 31 fol. 78 (17 October 1882)
- Kapiti No 5 section 1 (Waiorua), 1233 ac 2r 20p, Partition order under NLC Act 1886 (24 March 1892), both previously comprised in cert of title under s 17 NL Act 1867, Hohaia te Kotua as to 50 ac being the undivided share of Renata te Kotua
- Kapiti No 5 section 2, 355 ac, Partition order under NLC Act 1886 (24 March 1892), both previously comprised in cert of title under s 17 NL Act 1867
- Kapiti No 5A, 4 ac, Land transfer cert vol. 45 fol. 261 (23 September 1887)
- Kapiti No 5B, 50 ac, Land transfer cert vol. 45 fol 266. (23 September 1887)
- Kapiti No 5C, 2 ac, Land transfer cert vol. 267 (23 September 1887)
- Browns Special Grant, 617 ac, Crown grant to Andrew Brown (24 January 1851), owners heirs of John Gibson Brown and David

What this official summary does not reveal, though, and merely hints at, is the series of lease arrangements with Pakeha already mentioned above. This was probably because the Ross and Maclean leases had not been registered and so did not appear on the official title documentation.

10.5. The Kapiti Island Public Reserve Act 1897

The brief Kapiti Island Public Reserve Act 1897 was passed on 22 December 1897 as just described above.

The Act's Preamble noted that the island was 'principally owned by Natives who are not in beneficial use or occupation'. It also declared that it was desirable that the island should be acquired by the Crown as a public reserve 'for the purposes of conserving the natural scenery and of the said island, and providing a preserve for the flora and fauna of New Zealand'. To achieve this purpose, pending this acquisition all private dealings should be 'prohibited and determined'.

Section 2 provided that from the date of the Act's passing, it was unlawful for anyone to acquire an estate or interest in any Kapiti lands unless they were both acting on behalf of the Crown and under written authority of a Minister. This applied whether the dealing was an original transaction, or completing a transaction initiated prior to the Act.

Section 3 provided that all estates and interests, including freehold, held by anyone other than Maori, were to immediately vest in the Crown, and the owners compensated.

This compensation was to be negotiated or, failing a negotiated settlement, to be made as under the Public Works Act 1894 for Maori or other lands taken for public works (s 4).

Anyone claiming such a compensable interest had to already possess a deed or other instrument and also to register that deed or instrument with the District Land Registrar within three months of the passing of the Act, or at least to deposit the deed or instrument, together with a certified copy, with the Registrar within that time (s 5). No claim for compensation would be entertained without such registered proof (s 6).

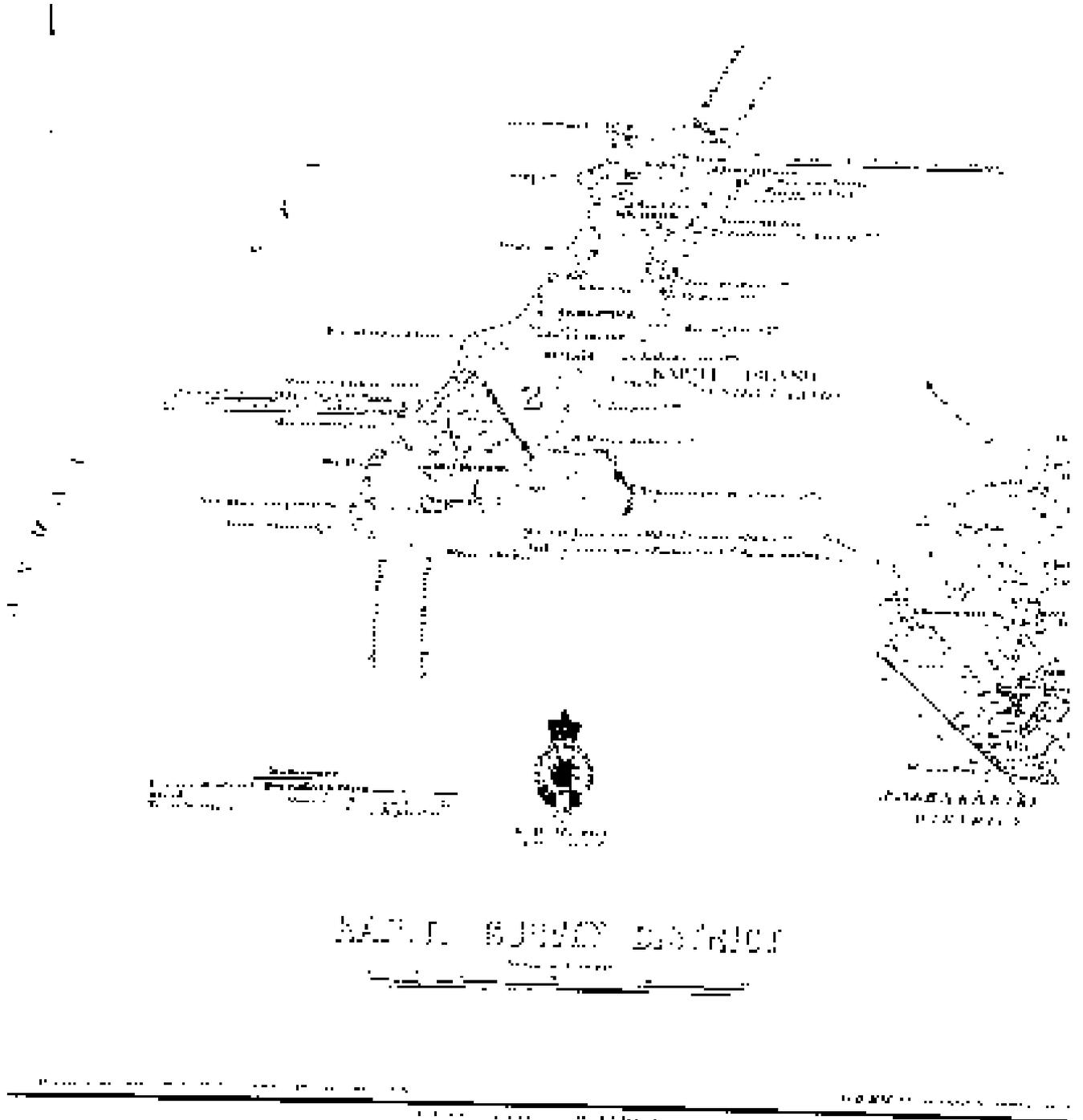
Once again, Chris Maclean summarises the position following the passage of this statute:

Seddon had certainly succeeded in stopping Field, Morison and others from ever owning private land on the island, not just for 12 months as the Native Affairs Committee had suggested. But the Act offered no solution to the problem of Maori ownership. It was, as the original motion passed by the committee noted, 'a short Bill' intended to prevent 'private dealing while providing a year to resolve the matter of Maori ownership of most of the island. If no agreement was reached, compensation would be determined by [sic, 'under'] the Public Works Act. In the meantime, Maori retained ownership of their land, but without the power to sell or lease (except to the Crown), they were denied the essential elements of freehold tenure.¹¹⁶⁰

However, as Maclean also points out, once this Act prohibiting private dealing had passed, the Crown had no incentive to tidy up satisfactorily or rapidly the issue of Maori

¹¹⁶⁰ Maclean, *Kapiti*, 187.

ownership. The Government had responded to public pressure and had by simple legislative fiat secured the island for the Crown without the need for any immediate monetary outlay, so there was little motivation to do more than acquire interests on an ad hoc basis.



Kapiti Survey District, date unknown.
Department of Lands and Survey.

10.6. Acquisition of Interests under the 1897 Act

Premier Richard Seddon instructed that advertisements drawing attention to s 5 be placed in all newspapers between Wellington and Palmerston North without delay.¹¹⁶¹ The Crown programme of compensation for those with legally provable property rights on Kapiti was then put into effect.

Thus on 11 January 1898, Andrew Brown's heirs claimed from the Crown £1300 compensation, which was the price they had previously negotiated with prospective purchasers for the 617-acre block. They also wanted interest, calculated at 3 11/13% per annum added from 22 December 1897, since that was the rate agreed to be paid by the purchasers until the contract was completed.¹¹⁶² The government valuation of Wharekohu/Brown's Grant was £1381 capital value, made up of £1148 owners' interests in land and improvements and £233 lessees' interests.¹¹⁶³

The same law firm represented the purchasers, Collins and McKenzie, who claimed that their efforts over two years to turn it into a sheep farm had improved the land's value by virtually half the purchase price or £625, which they now sought, along with compensation for the stock they would be forced to sell precipitately unless they were permitted to continue grazing there rent-free until 31 October.¹¹⁶⁴

C.E. Lowe also claimed £5430 for his leasehold interests and improvements in a transaction directly with Maori owners.¹¹⁶⁵ The total claims amounted to £21,475 8s 6d, Land Purchase Officer Sheridan considered to be 'a very modest sum'.

In the end, however, Sheridan advised that apart from the Brown grant all of the other transactions were unregistered and otherwise more or less incomplete and informal, so that only the two claims for that 617 acres could be substantiated. Malcolm Maclean and Robert Maclean had claimed for £14,120, but as they had been occupying on uncompleted and unregistered leases he thought they could have no legal claim for compensation for disturbance under the Act. Since the Crown therefore declined all of the claims, litigation was inevitable. Later, claims were also filed by Willie Field, Isobel Field and Hohaia te Kotua.¹¹⁶⁶

¹¹⁶¹ Seddon to Minister of Lands, 27 December 1897. MA 1/81 5/5/126 pt 1.

¹¹⁶² Brandon and Hislop to Minister for Lands, 11 January 1898. MA 1/81 5/5/126 pt 1.

¹¹⁶³ Entry in General Valuation Roll, 31 August 1898. MA 1/81 5/5/126 pt 1.

¹¹⁶⁴ Brandon and Hislop to Minister for Lands, 7 February 1898. MA 1/81 5/5/126 pt 1.

¹¹⁶⁵ Bell, Gully and Bell to Minister for Public Works, 21 February 1898. MA 1/81 5/5/126 pt 1.

¹¹⁶⁶ W.H. Field's claim was for £625 on the basis of 12.5 acres of land worth £125, being Rangatira Kapiti No 4A1 (for which he had paid Maori £10) and £500 for loss of proposed investment as he had planned to built and rent out 6 summer cottages there, plus costs and expenses. Isobel Field's claim was for the 100-acre Waiorua Kapiti No 5 sec 2 concerning which she was claiming £290 for loss of principal and interest plus investment and costs. Hohaia te Kotua's claim was for a 50-acre undivided share in 1589-acre Waiorua Kapiti No 5 at £10 per acre, plus costs. Hohaia's claim was for a total of £550 and he had a Wellington valuer prepared to act as assessor in the Compensation Court.

The Brown claims, being freehold land, could be heard by a compensation court under s 40 of the Public Works Act, but the Maclean claims had to be dealt with by the Native Land Court under s 90 of that Act.¹¹⁶⁷ This discussion amongst the officials took no account of any move the claimants may have made, in accordance with s 5, to register prior transactions; presumably the agreements had been verbal only and there were still no deeds or instruments to register. A later memo indicates that few or none of the deeds were signed by all of the owners, while any that were made before the Native Land Court Act 1894 required a Trust Commissioner's certificate under the Native Lands Frauds Prevention Act 1891, without which they were 'of no more value than an unproved will'. Sheridan also disparaged the deed registration process as of little meaning since 'almost any deed will be registered for what it is worth if it does not affect a land transfer title'.¹¹⁶⁸

E.D. Bell, for Lowe, responded that he was bringing proceedings in the Supreme Court as in his opinion the Native Land Court only had jurisdiction under s 90 to determine compensation between Maori and European owners and then when Maori owners claimed—and here there was no such claim.¹¹⁶⁹ The Supreme Court sitting as the Compensation Court, led by Chief Justice Sir Robert Stout, visited the island and duly ruled on compensation payable. Maclean notes that the awards varied according to the identity of the claimant, that Maori were awarded about 12s 6d per acre for their interests while Europeans received some five times that amount at about £3 5s per acre.¹¹⁷⁰

Isobel Field's compensation claim was settled out of court for £168. She had not been using the block, but it was collateral security for a valuable block back on the mainland coast. Collins and McKenzie were awarded £488 10s. The Maclean brothers were awarded £1125 and Lowe £925. Mary Anne Brown was allowed her full claim interest to a total of £1587 12s 10d.¹¹⁷¹ There was then extensive debate amongst lawyers and officials as to whether Mary Brown could receive the entire award that was intended to cover the interests of all 4 of John Gibson Brown's children and all 14 of David Brown's children.¹¹⁷² In a laboriously argued judgment, Judge Alexander Mackay in the Native Land Court awarded Hohaia te Kotua £62 10s, given that he could not use the land and that the lessee had also to be paid out from the land's value.¹¹⁷³

Notice requiring claim to be heard in the Compensation Court, 11 July 1898. OTI 126 Waiorua Kapiti No 5 Applications 1880-1948.

¹¹⁶⁷ Sheridan to McKerrow, 3 May 1898. MA 1/81 5/5/126 pt 1.

¹¹⁶⁸ Sheridan to Sir Robert Stout, 30 August 1898. MA 1/81 5/5/126 pt 1.

¹¹⁶⁹ Bell to Under-Secretary, Public Works Department, 23 June 1898. MA 1/81 5/5/126 pt 1.

¹¹⁷⁰ Maclean, *Kapiti*, 190.

¹¹⁷¹ Judgment of Compensation Court (Stout P), 14 September 1900. MA 1/82 5/5/126 pt 1.

¹¹⁷² MA 1/82 5/5/126 pt 2.

¹¹⁷³ *Hohaia te Kotua v Minister of Public Works*; Kapiti Waiorua Block No 5. MLC Wellington 18 June 1900. MA 1/81 5/5/126 pt 1. The order directing that the Minister pay the sum of £62 10s to Hohaia was made on the same day. OTI 126 Waiorua Kapiti Block Order File (General Land).

While the negotiation and litigation process was dragging on for a couple of years, at least some of the lessees refused to pay rent to the Maori owners, yet the Crown did not have clear possession. Those Maori owners were therefore left financially embarrassed. Heni te Rei (Te Whiwhi), for example, who lived at Paraparaumu and Kapiti had an interest amounting to about 400 acres, for which she was entitled to £16 rent per year.¹¹⁷⁴ Hohaia was not paid either, but this turned out to be because he had not produced the original of the deed of transfer to himself, but merely a certified copy as required under the Kapiti Act.¹¹⁷⁵

Sheridan resisted paying any more government money for Kapiti in the meantime, including the rents to the remaining Maori owners. He complained in September 1900 that since almost all the compensated interests were uncompleted and unconfirmed leases, the £4219 paid in compensation, together with nearly £750 in lawyers' fees, had bought the Crown precisely nothing—apart from Brown's 617 acres—except the privilege of paying rents to the remaining owners. The lawyers retained by the Crown had failed to provide him with an authoritative answer regarding what lands had been acquired thus far, and so he considered himself unable to determine the rights of the Maori who were applying to him for their rents. He therefore recommended that the Crown proceed with purchasing the freehold interest from the Maori at once, which could be done even more expeditiously since extensive valuations had been paid for as part of the compensation process.¹¹⁷⁶ In fact, by the end of this process, the Crown had done a little better than that. It had acquired, in addition to Brown's Grant, Kapiti No 1 (Te Mingi) 34 acres, Rangatira Kapiti 4A1 12 acres, Rangatira Kapiti 4A3 12 acres, and Waiorua Kapiti 5 sec 1 50 acres (Hohaia te Kotua's undivided share).¹¹⁷⁷

Shortly afterwards, an Otaki solicitor named Harper contacted Sheridan, saying that he knew of a number of Ngati Raukawa who wished to sell their shares on Kapiti—and offering to undertake the work of collecting their signatures, of which he thought there would be 'a great many'.¹¹⁷⁸

This collection must have proceeded apace, as by 15 April 1901 Sheridan was writing to Pare Kahu at Waikanae, offering to pay his train fare into Wellington to be paid the £4 3s 4d allocated for his very small (¾ acres) share. The fare offer was made because of the smallness of the amount and since 'nearly all the other owners have received their shares'.¹¹⁷⁹ Pare replied that he could not come to town due to severe illness, but that he actually wanted to see Sheridan about the four years' rent he was owed and to inform him that although his share was small it was for a canoe landing site which should therefore be of the same value as

¹¹⁷⁴ Hone Heke to Sheridan, n.d. [August 1899]. MA 1/81 5/5/126 pt 1.

¹¹⁷⁵ Sheridan to Stafford Treadwell and Field, 22 December 1900. MA 1/81 5/5/126 pt 1.

¹¹⁷⁶ Sheridan to Premier, 22 September 1900. MA 1/81 5/5/126 pt 1.

¹¹⁷⁷ 'Areas which have become vested in freehold in Her Majesty....' MA 1/82 5/5/126 pt 1.

¹¹⁷⁸ Harper to Sheridan, 11 February 1901. MA 1/82 5/5/126 pt 1.

¹¹⁷⁹ Sheridan to Pare Kahu, 15 April 1901. MA 1/82 5/5/126 pt 1.

a site for a shipping wharf.¹¹⁸⁰ Sheridan replied that the lease of 10 acres was from Pare, Parenohia and Eremora to Harry Field for 21 years from 21 April 1881, but that it was never ‘fulfilled’ and so Pare had no legal claim for rent. But since Pare was so ill, Sheridan agreed to make an exception and pay him rent from 21 April 1898, amounting to £4, but warned that this would be the last rent from the land.¹¹⁸¹ This lease must have been one that had passed from Field to either Maclean or Ross and from them to the Crown.

Sheridan’s management of the purchase process came in for criticism from some Pakeha at least. Throughout 1901 Harper, the Otaki solicitor, wrote to him asking for some payment for and assistance with settling the estate of James Wallace and expedition of the sale as the owners needed the proceeds.

The other main critic was the lawyer-politician-speculator Willie Field, whose intensions of making a sizeable profit from his speculative dealings on Kapiti were proving fruitless. He claimed the outrageous sum of £675 in compensation for his 12-acre portion of the Rangatira Block, apparently to express his displeasure at having his other investments subverted by the Government. However, the Government added insult to injury by simply ignoring him and gradually acquiring the remainder of the island around him. In September 1900, he was writing directly to Seddon in ‘imperious’ tones demanding immediate Cabinet attention for his claim (at the time of other apparently less pressing matters such as the Boer War) and did indeed manage to get the compensation due his clients the Maclean brothers. In February 1901, Field—now a first-term MHR as well as a claimant—wrote to Premier Seddon recommending that a rental arrangement be reached promptly with the Maclean brothers as ‘the most excellent tenants and caretakers’ who could be completely relied on to perform their agreement and take care of the island. In the meantime, the buildings and fences were falling into disrepair and the land was reverting from pasture to scrub and noxious weeds, while not a penny of revenue was being recouped towards the Crown’s outlay. He stated that the settlers up the coast had always believed the taking by the Government was ‘a needless expense, but the unbusinesslike management, or rather want of management, of it, since it was taken, is bringing the Government into ridicule, and my electorate is of course the one which suffers’. He declared that there was absolutely no reason for not pressing on with the purchase from Maori, while the apparent withholding from the Maori owners of the rent due to them was ‘most adversely commented on’. He said it was believed that it was being done deliberately since they were ‘in great need, in order to disgust them into selling their freehold’, which, if true, was ‘a most improper’ method, and the rents should be paid as due.

¹¹⁸⁰ Pare Kahu to Sheridan, 2 May 1901. MA 1/82 5/5/126 pt 1.

¹¹⁸¹ Sheridan to Pare Kahu, n.d. MA 1/82 5/5/126 pt 1.

Seddon called for a report from Sheridan for Cabinet as the present situation ‘cannot much longer be tolerated’.¹¹⁸²

Sheridan indignantly ‘denied absolutely’ that there was a shilling rent owed to any Maori who had ever applied for payment. He noted that some Maori believed that the Government was responsible for rents in arrears prior to its taking over the lands, but Sheridan insisted that this was a matter for the former lessees. He challenged Field to produce one Maori who had applied with a claim against the Government, whose claim had not been settled. He also stated that the purchase of the Maori interests was ‘progressing very satisfactorily’, but until all interests in larger blocks had been obtained the Crown could not lease out any more than the small areas it had acquired under the 1897 Act.¹¹⁸³ This response did not, of course, help out Maori owners who were left short of the rents of some four years already by this time, due from Pakeha who were using the protracted Crown negotiations as an excuse, while the Crown, in the person of Sheridan as head of Native land purchasing, was taking no responsibility for such hardship resulting from its own failure to bring matters to a conclusion within a regime that it had itself set up.

By mid-1902, Sheridan had cleared the way for the Surveyor General to lease out much of the Kapiti land acquired by the Crown. He advised that there was no reason why the Crown lands should not be leased ‘in moderate areas for short periods on the best terms available’ and subject to the conditions in the preamble of the Kapiti Island Public Reserve Act 1897. In the Kaiwharawhara No 3 Block there were some graves which Sheridan had promised the Maori would be fenced in. He told the Surveyor General that it would be as well—‘but is not absolutely necessary’—that this small area and Te Mingi No 1 should be omitted from the leases. Te Mingi No 1 had, he said, become Crown land on the passing of the Act, but Wi Parata had not made a compensation claim within the statutory period, so the matter remained potentially unresolved.¹¹⁸⁴ This does not, though, appear directly in the Act, section 3 of which seems to apply only to non-Maori. Still, Wi Parata did hold under Crown grant and maybe Sheridan regarded that as sufficient. No reason was given for Wi Parata’s failure to ask for compensation, which leaves open the question of how willing he was to part with the Kapiti land.

Sheridan expected the imminent completion of the purchase of the Wallace children’s interests (which together comprised the 370-acre Kapiti No 4 sec 4).¹¹⁸⁵

Another small glitch in the payment process arose in early 1901 when Sheridan received from Tere Maihi Kawiti of Kawakawa in the Bay of Islands a request for the proceeds from

¹¹⁸² W.H. Field to Seddon, 26 February 1901, and annotations. MA 1/82 5/5/126 pt 1.

¹¹⁸³ Sheridan to Premier, 4 March 1901. MA 1/82 5/5/126 pt 1.

¹¹⁸⁴ Sheridan to Surveyor General 9 July 1902. MA 1/82 5/5/126 pt 2.

¹¹⁸⁵ Sheridan to Surveyor General 9 July 1902. MA 1/82 5/5/126 pt 2.

Waiorua. There was also a deed from 1879 in which Wi Parata had acquired all of Tere Maihi's interests, but this did not appear to Sheridan to be legally binding. Wi Parata's response was a blanket prohibition on paying anything to Tere Maihi.

The Macleans did remain on the island for several years, living and farming at the Government's pleasure. They, their wives and families all together occupied a four-roomed farmhouse at Rangatira, known as 'The Whare', that had been built by Harry Field.¹¹⁸⁶ For this house and grazing over the central and southern portions of the island they paid £70 rental. Rob took his family back to the mainland in 1902. On 27 March 1903, Cabinet decided to accept an offer from the Maclean brothers to pay £50 for ten months' grazing of the island, with an undertaking that Malcolm Maclean would reside on the island and protect the birds and bush. On 18 December 1903, the Minister of Lands authorised the Commissioner of Crown Lands to offer the Macleans another year at £70 rent.¹¹⁸⁷

In August 1904, in response to a parliamentary question by Mr. Duthie MHR, the Department of Lands and Survey reported on the state of Kapiti Island and made several recommendations for its management.¹¹⁸⁸ There were large areas covered by various types of native and some English grasses. Tauhinu scrub had a great hold on some areas, particularly towards the south, where it could be five feet high and almost impassable, but when it was burnt native grasses came up thickly. The noxious weed sweet vernal was prevalent throughout the pasture.¹¹⁸⁹ The remaining clumps of bush, often consisting of kohekohe, akeake and karaka, should not be cut down. Two areas deserved fencing for special protection. One, east of the Kapiti trig, was a fine piece of bush containing rata, kohekohe, tawa, miro, hinau, rewarewa, and matai trees, together with mahoe, kawakawa, karamu, matipo and nikau shrubs. The other, between the Taepiro clearing on the north and the ridge dividing the Kaiwharewhare [sic, Kaiwharawhara?] and Maraetakaroro valleys on the south, was the best bush on the island, with the same trees, except that the ratas were not dying and the undergrowth was denser.

Wool, for which large areas of land were required, was the only source of revenue, since sheep carcasses for meat were useless due to lack of shipping facilities. The Taepiro clearing was the best pasture and showed how good the soil was, especially for native grasses. The

¹¹⁸⁶ Maclean has a photo of The Whare, together with the new house built for government caretakers in 1912. It was intended for single men who each had their own front door, so cannot have been very comfortable or convenient for two married couples and families all together. Maclean, *Kapiti*, 211.

¹¹⁸⁷ Maclean, *Kapiti*, 191.

¹¹⁸⁸ R.P. Greville, 15 November 1902. MA 1/82 5/5/126 pt 1.

¹¹⁸⁹ This was probably sweet vernal grass, defined by *Webster* thus: "a low, soft grass (*Anthoxanthum odoratum*), producing in the spring narrow spikelike panicles, and noted for the delicious fragrance which it gives to new-mown hay" – an English pasture grass that like much else apparently turned into a weed when imported to the Antipodes.

grass should be eaten down and the tauhinu scrub controlled, otherwise the entire island would eventually be swept by fire.

There were numerous wild goats, probably 500, which were useful if kept in check and out of the bush areas. There were myriads of quail, some native pigeons, numerous tuis, thousands of mokimoki, plentiful kakariki and native robins, and some mutton bird nesting sites on the eastern cliffs near Maraetakaroro and in several places on the western cliffs.

A second report, this time prepared by Sheridan, was published in the parliamentary papers in response to yet another parliamentary question by Mr. Duthie.¹¹⁹⁰

As to the wildlife concerns regarding the island generally, Sheridan reported that of the 4 deer liberated by the Acclimatisation Society, 1 had been found dead entangled in a fisherman's net on a beach, but no search had been made for the others and there was 'no reliable information as to the percentage of deaths amongst the other fauna on the island'. Quail, kereru, tui, mokimoki, kakariki, native robins and mutton birds were 'numerous and prolific'. Malcolm Maclean occupied the island as caretaker on a yearly tenure for which in addition to his caretaking work, he paid an annual rental of £70.¹¹⁹¹

The general acquisition process had cost the Crown nearly £9000 so far. Only some £2900 had been paid to Maori, nearly all for purchase of freehold. However, another £4352 had also been paid in Compensation Court awards some of which went to Maori owners, while another £294 had been paid in rent to Maori on European leases. Of the Compensation Court awards, the Brown family had received £1587, Collins and McKenzie £484, Charles Lowe £925, the McLean brothers £1125, and Hohaia Te Kotuku £62.¹¹⁹²

The quantities of Kapiti land remaining in Maori ownership were:

Kapiti No 2B	495ac 2r 25p
Kapiti No 4B	10ac 0r 0p
Kapiti No 5 sec 2B	70ac 0r 0p
Kapiti No 5 sec 1B	1039ac 2r 20p
Kapiti 5A	4ac 0r 0p
Kapiti 5C	2ac 0r 0p

Several blocks had been vested in the Crown in freehold under section 3 of the 1897 Act. These were:

Block	Area	Proprietors	Compensation paid
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¹¹⁹⁰ AJHR, 1904, G-8.

¹¹⁹¹ AJHR, 1904, G-8, 3.

¹¹⁹² AJHR, 1904, G-8, 2.

Brown's grant	617ac	Andrew Brown's heirs	£2071
Kapiti No 1	34ac 1r 9p	Wi Parata	No claim lodged
Kapiti No 4A1	12ac 2r 0p	WH Field	Unresolved
Kapiti No 4A3	12ac 2r 0p	Malcolm McLean	Incl in £1125
Kapiti No 5 sec 1	50ac	Hohaia Te Kotuku (interest)	£62 10s

The portions of the island that had the freehold still vested in the Maori owners and were subject to the encumbrance of 21-year leases were:

Block	Area	Lease start	Rental	Lessee	Compensation paid
No 2	757ac	21 July 1896	£45	McLean Bros	£1125 for all
No 3A	365ac	1 July 1896	£15 12s 6d for both	McLean Bros	
No 3B	10ac	1 July 1896		McLean Bros	
No 4	1502ac	1 January 1896	£50	McLean Bros	
No 4A2	12ac 2r 0p	1 July 1896	£2 10s	McLean Bros	
No 4A4	12ac 2r 0p			McLean Bros	
No 4B	10ac			McLean Bros	
No 5 sec 1	1234ac	10 Feb 1897	£74 10s	Charles Lowe	£925 for both
No 5A	4ac	1 April 1897	£2	Charles Lowe	
No 5 sec 2	355ac	16 Sept 1896	£30 7s 6d for both	CB Morrison	No claim
No 5B	50ac	16 Sept 1896		CB Morrison	
No 5C	2ac				

To summarise:

- The Crown by this time in mid-1904 held a total of 2998ac 3r 14p in unencumbered land transfer freehold title. The blocks it held were: Brown's grant, 1, 2A, 3A, 3B, 4 sec 1, 4 sec 2, 4 sec 3, 4A1, 4A2, 4A3, 4A4, 5 sec 1A, 5 sec 2A, and 5B.
- Maori ownership had not yet been extinguished over 6 blocks totalling 1621ac 1r 5p. These blocks were 2B, 4B, 5 sec 2B, 5 sec 1B, 5A and 5C.

The acquisition process was once more reported to Parliament in October 1911.¹¹⁹³

The total area of Kapiti Island was 4990ac 1r 9p. Of this, 3778ac 3r 0p were now vested in the Crown, which included all of Brown's Grant, Kapiti 1 and Kapiti 3 and much of Blocks 2, 4 and 5. Two areas totalling 124ac 1r 22p were under negotiation for purchase:

- Kapiti 2B sec 1 (balance) 108ac 0r 22p
- Kapiti 4 sec 4 (balance) 16ac 1r 0p

Another 1087ac 0r 18p – i.e. just over one-fifth of the island – were still in Maori ownership with no purchase negotiations under way:

- Kapiti 4B (balance) 3ac 1r 14p
- Kapiti 5 sec 1B (balance) 1009ac 0r 17p
- Kapiti 5 sec 2B 70ac 0r 0p
- Kapiti 5A (balance) 2ac 2r 27p
- Kapiti 5C (cemetery)¹¹⁹⁴ 2ac 0r 0p

Of the 3778 acres in Crown ownership or under negotiation, 1778 acres were still in native forest and 2000 acres were in grass, tauhinu, manuka or other scrub.

The Crown had to that date paid out £12,789 11s 6d in acquiring the lands now in its hands. Much less than half of that, though, had been paid to the Maori owners in acquisition of their interests. The expenditure had been as follows:

Acquisition of Interests

- Acquisition of native freeholds £5,208:16:10
- Rents on leases £452:17:1

Compensation

- Brown family £1,587:12:10

¹¹⁹³ Return to an order of the House of Representatives dated 13th day of October 1911. OTI 126 Waiorua Kapiti Applications.

¹¹⁹⁴ It will be noted that there is no mention of the cemetery reserve in No 3 that was supposed to be fenced off there in 1902. See above.

• Collins & McKenzie	£484:0:0
• Charles E Lowe	£925:0:0
• McLean Bros	£1,125:0:0
• Hohaia Te Kotuku	£62:10:0
• Isabel Jane Field	£168:12:0
• Wm Hughes Field	£272:12:0

Expenses:

• Law Costs	£806:6:8
• Wages, supervision etc	£1,041:19:3
• Valuations	£467:8:4
• Other expenses	£132:16:6

Since the passing of the 1897 Act, the Crown had received revenue from the land totalling £228 6s 8d.

10.7. Later Dealings

It will be noted that the Commissioner of Crown Lands and the Department of Lands appear frequently in this account. This was because Kapiti, along with other such reserve areas, had been taken under the provisions of the Lands Act 1892 and therefore the Department of Lands had responsibility for it. Such reserves were the focus of a ‘turf war’ between the Department of Lands, the Department of Internal Affairs, which administered the Animals Protection and Game Act but had no control over the islands set apart for ‘the preservation of native fauna’, and the Department of Tourism and Health Resorts, which gained control in 1904 of Resolution Island and Little Barrier Island, both reserves like Kapiti.¹¹⁹⁵ Kapiti was of interest to the Department of Tourism and Health Resorts but in 1906 the Lands Department appointed E.A. Newson as the island’s caretaker as ‘a visible display of Lands’ authority’, against the advice of the Tourism Department’s inspector, James Cowan, to appoint a local Maori.¹¹⁹⁶ This was followed by Lands having distinguished botanist Leonard Cockayne visit and report on the island’s vegetation.

In 1907, raising further inter-departmental rivalry, the Minister of Public Health announced that his department planned to take over Kapiti for use as a leper colony, as Mokopuna Island near Matiu/Somes and Quail Island in Lyttelton Harbour had been. ‘Rejection of the idea was swift and universal.’ W.H. Field led the protest in Wellington and

¹¹⁹⁵ Galbreath, *Working for Wildlife*, 12.

¹¹⁹⁶ Maclean, *Kapiti*, 194.

the newspapers joined in. At Waikanae a large public meeting was addressed by Hemi Matenga, who, since the death of his brother Wi Parata, was the largest landowner on Kapiti. Hemi declared that:

There were natives affected with leprosy before the Pakeha arrived in this country, when the white man came here the disease departed. Two years ago the Maori Council made a law that all the native villages should be cleaned up, and now the Government has found away again for the natives to get this disease.¹¹⁹⁷

The proposal was quickly scrapped, but still spurred Lands into taking greater control. Minister of Lands Robert McNab tabled in Parliament Cockayne's report as a tangible assertion of the control Lands had and its plan for the management of the island. Cockayne's recommendations formed the nucleus of the management scheme asserted over the island for the next 80 years.

Wi Parata had died in 1906 and the Crown was keen to acquire his Kapiti land interests, but this was forestalled by his brother, Hemi Matenga, and his children, especially his daughter, Utauta, and his son, Hira. Further, Wi Parata's interests were divided by his will, which was administered by Hira and Hemi, between his five adult children. The Crown persisted, acquisition having been approved by Cabinet in 1905. The Commissioner of Crown Lands was encouraged in 1907 by the Chairman of the Native Affairs Select Committee that: 'Because of the Crown's desire to secure all of Kapiti Island negotiations should proceed post-haste to ensure the successful acquisition of Maori owned land.'¹¹⁹⁸

Hemi Matenga had been born the son of Te Rangihiroa's daughter, Metapere Waipunahau, and an Australian whaler, George Stubbs. He was the younger brother of Wi Parata Te Kakakura and originally they lived on Kapiti at Motungarara and Waiorua. When in 1849 most of Te Ati Awa returned to Taranaki, they left their Waikanae lands to Metapere. Wi Parata became the leading chief of the district upon Metapere's death. Hemi, meanwhile, lived for many years at Wakapuaka, near Nelson, marrying Te Puoho's grand-daughter, Huria. Huria and Hemi became national heroes for rescuing the crew of the *Delaware* in 1863. Upon Huria's death in 1909, Hemi returned to Waikanae as the leader of that community in his brother's place until his own death in 1912. As he and Huria had no children, most of his property passed to Wi Parata's children, his niece, Utauta Parata, inheriting his land and house on Kapiti.¹¹⁹⁹

All of Wi Parata's children had 'compelling reasons for retaining their Kapiti land', which Maclean summarises:

¹¹⁹⁷ *New Zealand Times*, 3 April 1907. Quoted in Maclean, *Kapiti*, 195.

¹¹⁹⁸ Quoted in Maclean, *Kapiti*, 196.

¹¹⁹⁹ Maclean, *Kapiti*, 197.

The island was an important source of identity and mana, not merely to the Parata family but also to Ngati Toa and its allies who had shared the stronghold. . . . Kapiti was the motu rongonui, the famous island, where these tribes had achieved ascendancy. It was also the place where numerous forebears were buried. Most were hidden in fissures and caves but Te Rangihiroa, the kaitiaki of Kapiti, was buried in the open, on the edge of the beach at Waiorua, in view of anyone who landed there.

Kapiti was also significant for economic reasons. The hills at Waiorua had been farmed for more than 30 years, first by Wi Parata, then by his son Winara. In 1907 the property carried 1400 sheep. Although farming on Kapiti had always been marginally profitable, the farm there was still a valued part of the Paratas' larger sheep operation which was based at Waikanae.¹²⁰⁰

The Webber family lived and farmed on Kapiti for many years. Their four-roomed house was built by Hemi Matenga who had left a life interest in his land to his niece, Mrs Utauta Webber, nee Parata, who enlarged and improved the house.¹²⁰¹ While he remained alive, Utauta and her husband, Hona Webber, and their six children moved into his house at Waiorua and began farming there in 1909. Hemi was a frequent visitor and Utauta nursed him during his final years. The Webber family's move to Kapiti was part of a deliberate plan to maintain a physical Ngati Toa presence on Kapiti in the face of the Government intention to acquire the whole island and the Lands and Survey caretaker's presence: 'Someone had to be seen to be living there.'¹²⁰²

This was, apparently, a successful ploy, but not so successful that the Webbers and other Maori owners retaining interests on Kapiti could relax their vigilance. Maclean comments:

The Webbers' presence effectively stymied the Crown's plan to acquire the remainder of Kapiti, but the prospect of the acquisition of their land remained a threat. Utauta, in particular, devoted much of her energy to lobbying successive generations of officials and politicians to ensure they were able to remain.¹²⁰³

The government intention was apparently to remove the Webbers in short order and extend the Crown ownership over the northern end of the island. A Marine Department plan dated 19 August 1910, shows a design for a harbour at Waiorua. Chris Maclean, wondering why the Crown would be wanting design and build an expensive wharf for the Webbers, reaches the very reasonable conclusion the intention was actually for this harbour and wharf

¹²⁰⁰ Maclean, *Kapiti*, 197-98.

¹²⁰¹ A photograph of the house and associated farm buildings is at Maclean, *Kapiti*, 212.

¹²⁰² Maclean, *Kapiti*, 199.

¹²⁰³ Maclean, *Kapiti*, 199-200.

to service the sanctuary and Crown leasehold runs at the northern end ‘once the Webbers had been removed, either by negotiation or by compulsion’.¹²⁰⁴

Conservationists put pressure on the Government during the second decade of the twentieth century, but officials concluded that it would cost at least £7000 to buy the entire northern portion still in Maori hands. To recoup such an outlay the Crown would have to continue pastoral leasing on those lands but this would also entail even more expenditure for maintaining the farm. Instead, a land exchange was devised whereby the remaining Maori-owned blocks within the reserve would be swapped for additional land adjacent to the Waiorua farm.

The remainder of the Maraetakaroro Block (2B1) was owned by the trustees of Hemi Matenga’s estate. They agreed in 1918 to the Crown’s proposal and additional land (Waiorua 1B2B) was added to the Waiorua Block still in the Webbers’ hands, although this was a larger area than originally proposed. The other Maori-owned block was Rangatira No 4, and it took until 1922 for its purchase to be completed by the Crown. The details of these blocks’ court and title histories are set out above. A coloured map of the 1914 proposal, showing the two blocks sought and the area proposed to be exchanged, is reproduced in Maclean, *Kapiti*, 213.

Some years later, Lands and Survey informed Mrs Webber that the Waiorua house was not actually on her land, but on the 4-acre Waiorua Kapiti 5A, owned equally by the Crown, Henere Inia and Mere Nikara, but surrounded by land she did partly own (the 235-acre Waiorua Kapiti 5 1B2A. Apparently Hemi Matenga had confused 5A and 5C when locating his residence. Although she had tried to acquire 5A, the provisions of the 1897 Act prevented her from doing so. The Webbers lived there for nearly 40 years until 1947 when the house was totally destroyed by fire, together with an extremely valuable collection of Maori heirlooms. After the death of her husband, Mrs Utauta Webber remained there for some time, but in the mid-1940s moved across to Paraparaumu, visiting Waiorua periodically.

The management of the farm, which comprised 133ac of Mrs Webber’s freehold and an interest in another approximately 500ac, was left in the hands of her son, Winara Webber. He and his family had by 1948 been living in two small sheds made of car cases. The Webbers had wished to erect a new house but the only suitable place was back on 5A where the flat land with a water supply was, together with the ‘plantations’ the Webbers had been cultivating. Henere Inia was prepared to sell his 1/3 interest to her, which could be partitioned out to give her 1¼ acres but the transaction could not proceed because of the 1897 Act’s prohibition of transactions between private persons. Her lawyers made representations to the Native Department for assistance, even amending legislation.¹²⁰⁵ The Native Department was

¹²⁰⁴ Maclean, *Kapiti*, 206.

¹²⁰⁵ Morison Spratt & Taylor to Under Secretary Maori Affairs, 2 February 1948. MA 1/82 5/5/126 pt 3.

prepared to support this and later to sell to her the Crown's third share as well as it was then discovered that in 1922 the Native Land Court had partitioned 1B2A and imposed a condition that the Crown would exchange its interest in 5A for a 10-foot right of way through her interest in 1B2A.¹²⁰⁶ A provision to make all of this possible was finally approved by all concerned and included as section 17 of the Maori Purposes Act 1948.

Mrs Webber died in early 1954. Almost immediately the Director-General of Lands asked whether this was an opportune time to attempt to acquire more of the Maori-owned land on Kapiti, but was told firmly by Maori Affairs that more time should be allowed to pass before such matters were raised. Officials therefore decided that they should wait for a year before re-opening negotiations.¹²⁰⁷

In 1962 a valuation report described Waiorua Kapiti 51B1 (265ac) as unoccupied and run down. Over ¼ was a shingle bank with much very exposed, 39 acres were poor soil with shingle, 125 acres were poor clay on greywacke hills, 6 sandy acres had been cultivated in the distant past, while only 8 acres were reasonably good land. There was a woolshed that was in a very poor state but still used, together with sheep yards and dip, and a bach built of car cases and an ex-army hut sitting on sleepers. Fencing was neglected and the salt rapidly ruined wires. Pastures had been neglected and were poor while tauhinu, thistle and stinging nettle were across the flat land. Breeding ewes were grazed on this land in conjunction with the Webber land and lambs once weaned were removed to Otaihanga on the mainland. The entire block with improvements was given a capital value of £1080.¹²⁰⁸

Through this period, relations between the Webbers and the Crown were often strained. Some were caused by the Webbers' land management methods, as when burn-offs brought threats of legal action should the fires spread into the reserve area. The Webbers, through their lawyer, complained that the Crown caretaker was shooting their sheep and asked the Crown to fence off the reserve. The caretaker was authorised to shoot any sheep found on Crown land and a 1919 report estimated that some 800 sheep were running wild in the reserve area.¹²⁰⁹

Once Hona Webber had died, the Crown land acquisition was quietly revived. Utauta was convinced to consider selling at least the hill country portion of the farm, and possibly all of it.¹²¹⁰ The land received a private valuation of £7 per acre and the buildings at £2000. An acquaintance wrote to Internal Affairs urging them to lease the land with a view to purchase as it was already in a sad state of disrepair, however nothing was done either by Mrs Webber

¹²⁰⁶ MA 1/82 5/5/126 pt 3.

¹²⁰⁷ MA 1/82 5/5/126 pt 3.

¹²⁰⁸ Director-General Lands and Survey to Secretary Maori Affairs, 17 January 1963. MA 1/82 5/5/126 pt 3.

¹²⁰⁹ Maclean, *Kapiti*, 215.

¹²¹⁰ Maclean, *Kapiti*, 250-51.

or Internal Affairs, as it was wartime and there were other more pressing demands on government finances.¹²¹¹

By the early 1950s it had become impossible to resurrect the farm's fortunes and it was decided to sell it. Some within government wished to simply take it by legislation, but the Director-General of Lands and Survey thought it best to proceed by negotiated purchase.

The purchase of the first of the six remaining blocks of private Maori land took almost ten years to complete, largely because of resistance amongst the owners who comprised all of Hona and Utauta Webber's remaining children and two grandchildren. The deal struck was that a significant portion of the farm would be sold to the Crown and in return each of the owners would receive a one-fifth share of a 30-acre block especially created on the shores of Waiorua Bay, together with an interest in a 1.75-acre block at the southern end of Motungarara, and a small cash payment. It was acknowledged that Mike Webber could continue to farm the block purchased by the Crown, even though, as Maclean says, 'he had long since given up the attempt'.¹²¹²

Maclean also comments on the cavalier attitude of the Crown towards formalising these negotiated arrangements. He observes:

The new foreshore block at Waiorua would be divided between the five descendants (and their heirs) when they had agreed how this would be done. To the Crown, the partition was vital because it would create individual titles that the owners could then sell, if they chose, to the government. In fact, the proposed division did not happen because there was no agreement between the people involved. The department did not facilitate a consensus; nor did it ensure that the land, once owned by the Webbers and now registered as Crown land, was formally designated as part of the nature reserve. At the time this did not seem important, for Crown land was inviolate, and the Waitangi Tribunal did not exist; but the Crown's failure to complete these legal niceties later caused real difficulty.¹²¹³

There was internal quibbling amongst officials that in fact the net result had been of little benefit to the Crown, one Lands and Survey official complaining:

Reading the file it may appear that we played into the Webber estate's hands in arranging this deal. There are now 6 titles in place of one and we have not gained much except land which the Webbers did not use in any case.¹²¹⁴

¹²¹¹ Maclean, *Kapiti*, 251.

¹²¹² Maclean, *Kapiti*, 258.

¹²¹³ Maclean, *Kapiti*, 258.

¹²¹⁴ Quoted in Maclean, *Kapiti*, 259.

The Crown, of course, was supposedly wanting the land for an entirely different purpose from the reasons the Webbers were attached to the block, so whether or not the Webbers used it was really irrelevant. Maclean also comments that the Crown was lucky even to get its toe in the door given the general extreme resistance to selling any Kapiti land.

The next block acquired was the 16-acre portion of Rangatira No 4 owned by Marion D’Ath (nee Wallace) and her whanau, as discussed above.

The acquisition of Rangatira 4A left only three blocks in Maori ownership: the 35-acre remnant of the Webbers’ farm and the two tiny sections of Waiorua 5A2 (two acres with 45 owners) and Rangatira 4B2 (3 acres with 15 owners). The department applied to the Maori Land Court for permission to acquire the blocks by compulsory purchase. The court granted the request for Rangatira 4B2, but could not do so for Waiorua 5A2 because one of the owners, Te R. Pomare, objected, wishing to retain his whanau’s traditional association with the land.¹²¹⁵

Maclean observes that this was a consistent attitude displayed by the Maori owners since an earlier generation had given evidence before the Native Affairs Select Committee in 1897. Instead of the late nineteenth-century attitude, the Crown was this time more willing to compromise and a deal was struck to the effect that the Crown would lease the land rent-free for 50 years while Pomare would remain on the block’s title.

The only Maori land then remaining out of Crown ownership was the farm remnant (which MacLean now says was 30 acres, rather than 35) now forming the Webber beach portion, and the part of the old farm in the area of steep cliffs and hills at the northern end of the island.

In 1967, Mike Webber sold the hilly farm area to the Crown because—according to Maclean’s sources—‘he wanted to see the whole island become a nature reserve’.¹²¹⁶

This concluded a 15-year campaign to acquire the entire island apart from the family allotment at Waiorua. The Crown expected this, too, to come to it soon, believing that Mike Webber and another whanau member were sympathetic, and so it began negotiations. It took 5 years before a meeting was held to divide the block into individual lots, but when it did occur the participants’ motivations had changed. Pike Barrett, who called the meeting, wanted the partition to go ahead, but so that her son John and his wife Susan could build on one section, not so that the block could be alienated. Once this was realised, the Commissioner of Crown Lands instead tried to find some legal mechanism

By which the existing owners can be prevented from increasing their assets on the Island and so prolong the purchase of the remaining interests by the Crown. It should also be borne in mind

¹²¹⁵ Maclean, *Kapiti*, 262.

¹²¹⁶ Maclean, *Kapiti*, 262.

that the increased activity brought about by permanent structures on the Island increases the number of unauthorised landings on the Crown portions and the danger of fires and the introduction of noxious plants and animals by people landing on the parts of the Island over which we have no control.¹²¹⁷

Instead, the Crown delayed further, thwarted from using the suggested coercive powers by the way in which Kapiti fell between jurisdictions. It was topographically part of Hutt County, but removed from the County Council's governance because of its designation as a nature reserve. The Ministry of Works believed it could intervene under the Town and Country Planning Act to prevent any building on Kapiti Island. Later, when the Barretts were found to be digging a ditch in preparation for building their house, Works thought it might re-use the 1897 legislation to redesignate the land as a 'proposed reserve' and thereby prevent any building. However, it was realised that since Lands was both encouraging the partitions—albeit for its own purposes—and simultaneously asking Works to intervene to prevent the partitions from being used for their 'logical purpose', a court might well not view this favourably. While the governmental agencies debated amongst themselves, the Barretts stole a march on them by simply going ahead and building their house. Later Fred (Boysie) Barrett also built his own dwelling and from 1996 was a permanent resident on the island.¹²¹⁸

10.8. The Kapiti Sanctuary

In 1896, Wi Parata had released on his farm at the northern end of the island a pair of weka from Stewart Island. Only the male survived and a female from elsewhere was released as a replacement partner, resulting in Kapiti having many hybrid weka which cannot now be released back on the mainland for fear of threatening the genetic integrity of other weka.¹²¹⁹

The Macleans, acting as lessee/caretakers, were apparently careful to preserve such wildlife as remained on Kapiti, but the Crown was doing nothing about developing it as the intended wildlife sanctuary.

In 1902 an extensive study was done by a Lands Department surveyor, R.P. Grenville, but his maps were not completed until 1912.¹²²⁰ He recorded not only the landforms and other features such as houses and fences (as in his 1904 report cited above), but also the bush (mostly kohekohe, tawa, hinau, rewarewa and dead rata) and the devastation caused to the undergrowth by wild goats, sheep and cattle. Maclean observes:

¹²¹⁷ Commissioner of Crown Lands to Director-General of Lands, 6 December 1971. Quoted in Maclean, *Kapiti*, 262.

¹²¹⁸ Maclean, *Kapiti*, 262-63.

¹²¹⁹ Maclean, *Kapiti*, 65.

¹²²⁰ Part of one showing the northern end of the island, most of Waiorua No 5, and containing land owned by Wi Parata and Hemi Matenga, is reproduced in Maclean, *Kapiti*, 192.

That Kapiti was over run by wild goats, sheep and cattle showed the neglect which was largely the result of the confused administration of the island reserves. They were a novel concept, without guidelines for a clear system of management.... And as no single agency had sole control over endangered species it was difficult to initiate measures that might offer birds such as huia a chance of survival.¹²²¹

In 1906, the Lands Department appointed a caretaker for the island, E.A. Newson, who was replaced after two years by his brother C.E. Newson. The Government had done very little to create the wildlife sanctuary that had been the reason for taking Kapiti Island. By 1911, it had placed on the island a dozen each of: Antipodes Island parakeet, Macquarie Island parakeet, and a flightless duck. In many respects the history of Kapiti has some parallels with Tongariro National Park.¹²²² The Tongariro National Park Act was passed in 1894 – seven years after Te Heuheu’s ‘gift’ of the peaks, made effective by the Native Land Court in September 1887. Yet the government moved slowly when it came to surveying and managing the park, indicating that while the Crown was certainly willing enough to acquire land from Maori for conservation or sanctuary purposes, it had little understanding and less commitment to public lands management for conservation purposes at this time. In the case of Tongariro no scientific survey was done until 1906-7, and it was not until 1931 that the first resident park ranger was appointed.

Returning to Kapiti itself, the Maori presence remaining on the north end of the island was regarded by officials as being at odds with the overall public purpose of a wildlife sanctuary. The naturalists who visited repeatedly made this point. An example is James Drummond in 1908, who reported having observed a large grass fire that swept across the Maori-owned farmland—probably a deliberate burn-off to facilitate pasture growth—and stopped only at the border of the government land.¹²²³

However, Pakeha poachers and rustlers were also a threat, and law-breakers to boot, but the authorities could not stir themselves to address that issue at all, even when the complaints of the Maori owners especially Hemi Matenga and the Webbers, about specific and known individuals, were supported by the caretaker. The caretaker wrote bitterly to the Under-Secretary for Lands in March 1911 that:

¹²²¹ Maclean, *Kapiti*, 191.

¹²²² On the acquisition of Tongariro see Robyn Anderson, *Tongariro National Park: An Overview Report on the Relationship between Maori and the Crown in the Establishment of the Tongariro National Park*, 2005, Wai 1130 Doc# A9; Paula Berghan, *Block Research Narratives of the Tongariro National Park District*, 2004, Wai 1130 Doc#A37; Andrew Joel, *The Origin of the Gift of the Peaks and the Establishment of the Tongariro National Park*, Wai 1130 Doc#A56. For a brief account see R P Boast, *Buying the Land, Selling the Land*, 341-352.

¹²²³ Quoted in Maclean, *Kapiti*, 200.

The sheep stealers have been over about the south end of Kapiti every fine Saturday, Sunday and holiday since I complained to you about them. They have paraded their contempt for me and for the owners of the sheep. Nearly everyone here knows that Howell was caught red-handed and got off scot-free, but most important, they know he is still the most frequent visitor to Kapiti; and no doubt they say to themselves—Preserving Kapiti is only a bit of a joke.¹²²⁴

If the sheep owners were the Maori landowners, particularly the Webbers, as seems likely given how many were Maori-owned sheep and the fact that the poachers had been caught by Maori, then, in addition to Crown designs on their real property, there was no Crown protection for their personal property rights either.

Maclean concludes that the development of Kapiti as a sanctuary, for which the Crown had been so keen in the late 1890s and had passed the Kapiti Island legislation, had not been advanced in any practical way after a decade of the twentieth century. He writes:

When [caretaker] Richard Henry retired from the government service in the winter of 1911, Kapiti was little closer to being a functioning reserve than it had been in 1897. The only steps taken towards creating a sanctuary had been on paper: the island had been mapped by Greville, its history described by Cowan, its botany recorded by Cockayne and its birds listed by Drummond.... Its potential as a sanctuary remained unrealised. Sheep, goats and wild cattle still roamed the reserve as they had in 1897, cats and rats kept the birds in check, and hunters and rustlers still carried out their activities at will....¹²²⁵

Ross Galbreath notes that the Department of Internal Affairs, which generally looked after non-domesticated fauna under its powers derived from the Animals Protection and Game Act, and administered the acclimatisation districts, for example, was often criticised at this time for its lack of action in respect to Kapiti—which of course was not its responsibility and over which it had no control. Kapiti had become by now ‘the focus of attention for the rising public interest in the preservation of native bush and native birds’.¹²²⁶ These ideas were supported by influential politicians, including F.H.D. Bell, one-time Prime Minister and from 1912-15, Minister of Internal Affairs. There was also a clutch of new conservation societies springing up in the community, including in 1914 an original New Zealand Forest and Bird Protection Society, which took up the poor state of the Kapiti sanctuary as one of its primary causes.¹²²⁷ Internal Affairs could do little, though, since it still had no control over Kapiti. Some birds were successfully transferred from another sanctuary at Goulard Downs in the

¹²²⁴ Quoted in Maclean, *Kapiti*, 205.

¹²²⁵ Maclean, *Kapiti*, 205-207.

¹²²⁶ Galbreath, *Working for Wildlife*, 13.

¹²²⁷ This society failed and by 1934 both its work and its name had been taken over by another organisation, which maintained a lively interest in Kapiti.

South Island to Kapiti in 1915 but conservationists vociferously opposed later attempts. It was not the 'natural ark' concept that was at issue but rather they were afraid of the placement of species and sub-species in the wrong island, raising the risk of unintended hybridisation.

The island transfer technique was tried again in the mid-twentieth century. In 1968 a pair of takahe were transferred to a large fenced-off area of Kapiti as a form of natural aviary where they might breed undisturbed. This pair refused to breed and in 1970 another pair was brought from Fiordland, but they failed to adapt and died within weeks, resulting in the cessation of this transfer programme for these birds. Kakapo had been transferred back in the 1890s but wiped out by the introduced predators: stoats, cats and rats.¹²²⁸

A complicating factor in the development of the sanctuary was the clash between the nature sanctuary concept and implementation, and the traditional Maori usage of Kapiti as a source of food and resources. This is a separate issue from the mere rustling of sheep, poaching and hunting for sport committed by Pakeha as Maori had been using the island for centuries and none of the legal or property developments in the late nineteenth century had addressed this issue directly. An example of the problem was publicised in 1912 when conservationist Harry Ell, now a Cabinet minister, reported to the Minister of Lands that:

Maoris from outside districts were in the habit of shooting birds on Kapiti Island, one settler alleging that on one occasion a Maori got away with over fifty birds.¹²²⁹

Two points stand out. First, the complaint was about Maori from 'outside districts' so it may be that ongoing birding by at least the recognised owners of lands on the island may have been tolerated. Secondly, the 50-bird allegation was made by a 'settler', but there were no settlers there and if the complainant had been the official caretaker (rather than a 'European') why not say so? Still, the continuation of Maori usage of a major food source, especially by a local and closely connected group such as Ngati Toa, was in direct opposition to the development of Kapiti as a national wildlife sanctuary.

A conservationist who visited Kapiti in 1914 observed not only little development of the sanctuary but actually a great decrease in bird life since the mid-1890s. This he blamed in large part on Maori 'poachers':

The great decrease in bird life is probably caused by cats and other enemies and poaching especially by Natives and it seemed to me the island was a preserve and shooting ground and grazing land for the benefit of Maoris. They should be called on to fence if possible to do so, and kept on their own land. Many rumours are afloat as to poaching by natives from the mainland and there can be no doubt that such occurs. The Island did not have the appearance of being used

¹²²⁸ Galbreath, *Working for Wildlife*, 176.

¹²²⁹ Quoted in Maclean, *Kapiti*, 210.

as a bird sanctuary by any means and it seemed to me the present means of protection are absolutely inadequate.¹²³⁰

No mention here of the rustling and hunting by named Pakeha reported by the caretaker; the blame is all on the Maori. Fencing off the northern portion by them would also hardly prevent cats attacking birds further south or their birding if they had a mind to. The Webbers can hardly have been having personally the effects being attributed them here, while those from the mainland may well have been continuing to do what the tribe had always done. The use of the term 'poaching' implies that at least in the writer's mind a law was being broken, but it is not immediately apparent what that law might have been beyond the Crown's acquisition of the title to parts of the island and therefore trespass by unauthorised persons. How extensive this broader cultural conflict problem was is presently unknown as very little has been sighted discussing the matter directly. At the very least, though, it raises what must have been an ongoing concern for Ngati Toa, that the loss of their land resulted in the loss of the resources associated with it. Whether they comprehended that this secondary loss would occur when they agreed or were obliged to part with their land is unknown as the documentary record seems to contain no reference to the issue. This silence, while hardly conclusive, at the least suggests that this was not a matter that concerned officials, politicians and other Crown representatives.

Likewise, as also discussed above, the continued Maori ownership and use sat uneasily beside the sanctuary on the 'island ark'. The conservationists were concerned about the Maori sheep, Professor Kirk from Victoria University College writing for Internal Affairs in 1919:

Although the Natives have the right to muster over the whole Island the difficulties of mustering on Kapiti are so great that very many of these sheep have never been docked or dagged; and it may be taken for granted that they have never been dipped.... It would be hard to find anywhere else in New Zealand sheep that present the marks of neglect so obviously.

These sheep, with the wild goats, are setting a limit to the life of the forest. Not only do they present to a very large extent the growth of young trees, but they open up the forest to the sweep of the wind. They prepare it for invasion by grass, tauhinu, manuka and other hardy plants.¹²³¹

However, even here it was not the sheep themselves, so much as who should manage them, and how, that were in issue. Professor Kirk was sceptical that even if the island were wholly taken over by the Crown as a reserve that governments could resist trying to make money from it by running their own sheep.

¹²³⁰ Quoted in Maclean, *Kapiti*, 210.

¹²³¹ Quoted in Maclean, *Kapiti*, 216.

Informal visitation continued both with the Webbers hosting friends and the Crown caretaker similarly showing Pakeha around the island. In 1921 a party including Les Adkins was taken by the caretaker around the island, and he pointed out highlights such as an old church site beside the Maraetakaroro Stream, and took the into a cave on the Wharekohu hillside ‘which was formerly used by the Maoris as a burial place—we descended into it with candles and found human bones’.¹²³² There is no indication that Maori had given approval for their urupa to be used as a tourist feature.

However, trips to Kapiti became popular with tramping clubs in the 1920s and 1930s, especially landing at Waiorua Bay and to a lesser extent at Rangatira. These excursions are described in Maclean, *Kapiti*, 225ff as is the development of the Webbers’ homestead and grounds as well as mainland bases for day trips. This era ended with the death of Hona Webber at the end of the 1930s, Utauta’s subsequent departure for the mainland, and the Crown caretaker’s departure at much the same time in 1942, leaving only the government possum trapper.

In March-April 1922, the government finally agreed to a fenceline separating farm from forest and a group led by Willie Field negotiated the line with the Webbers. At the same time, the Lands Department finally moved to exterminate the possums that were devastating the forest, building a hut and employing a trapper. The Webbers were given a deadline to remove their sheep from Crown land.¹²³³ Subsequently a feeble attempt was made to muster remaining wild sheep, but it was eventually decided simply to shoot them. An eradication campaign was also mounted against the goats, but it still took until 1928 to kill them all. The fence had already disintegrated by 1936 and had to be replaced, which was arranged by the Crown caretaker.¹²³⁴

World War II stopped the tourist excursion industry to Kapiti. The U.S. Marines based locally practised on coastal beaches for retaking the Pacific and civilian use of the channel was almost impossible. Kapiti itself seems not to have been used as its topography was wrong for the terrain the soldiers would encounter when they left New Zealand to participate in the Pacific War. The island and its manifold problems were largely neglected through the war period and for at least a decade afterwards. Possums multiplied, rats almost reached plague proportions around Waiorua and its potato crop, wild sheep again roamed in numbers, particularly after the fence collapsed. For a time there was an unsuccessful attempt to make the farm viable once more but in the early 1950s it was decided by the Webbers to let the farm go and the process of removing the sheep began.¹²³⁵

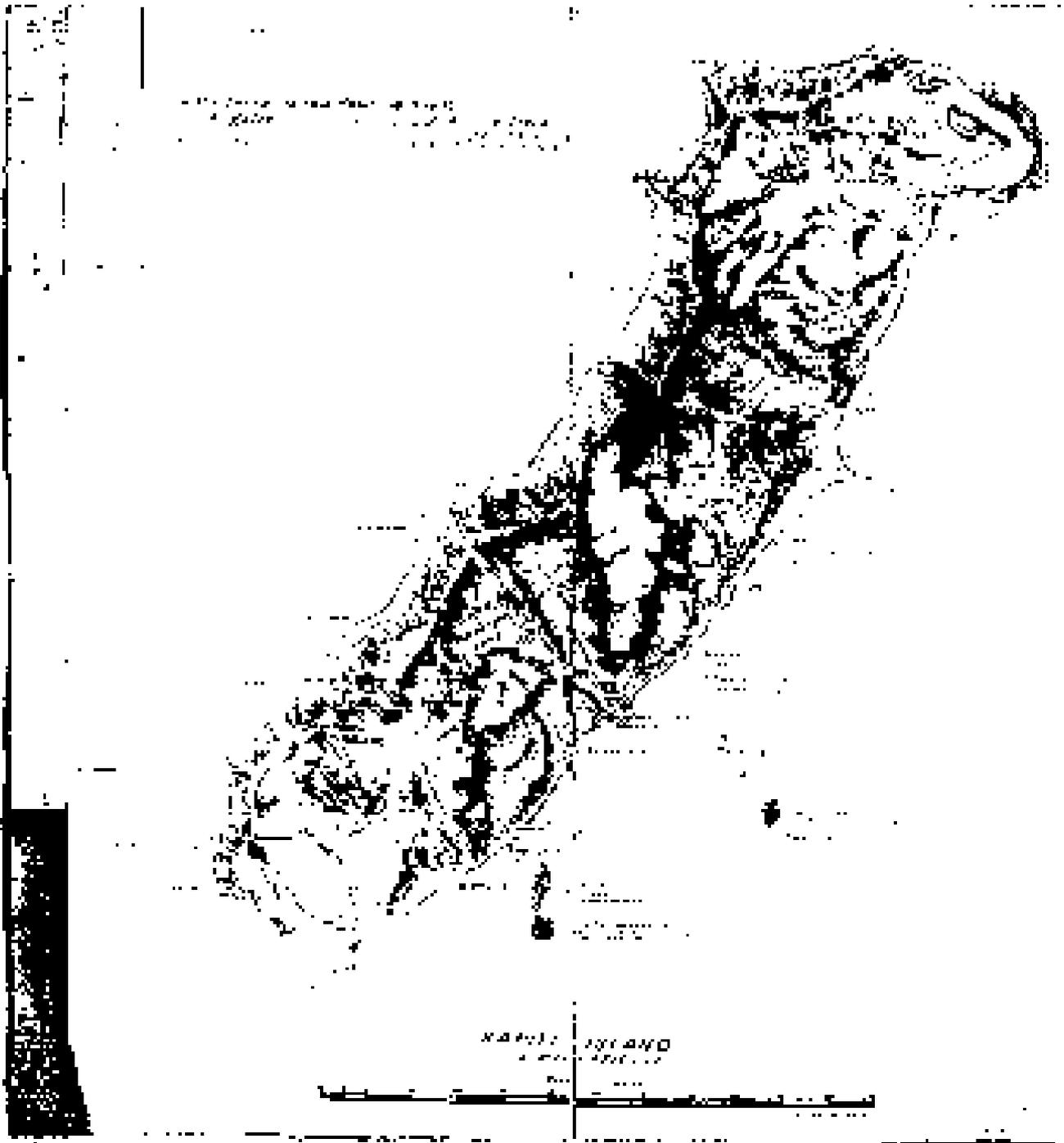
¹²³² Adkins, quoted in Maclean, *Kapiti*, 217.

¹²³³ Maclean, *Kapiti*, 220-21.

¹²³⁴ Maclean, *Kapiti*, 244.

¹²³⁵ Maclean, *Kapiti*, 257.

Only in the late 1960s, when the Crown finally acquired all but the last 30 acres belonging to the Webbers at Waiorua, was a coordinated sanctuary management plan with an appointed advisory committee overseeing the whole. Detailed investigation of the conservation management of the Kapiti Nature Reserve is beyond the brief for this project, but an accessible overview is provided in Chris Maclean's *Kapiti*, especially in Chapter 15.



Map of Kapiti Island, date unknown.

Of significance, though, was the relationship between the Webber whanau and the succession of government caretakers. Originally, they had been neighbours on an isolated island and depended on each other to some extent. Then as the whanau multiplied to more than 50 by the 1980s, the usage changed in quantity and quality. Maclean reports:

It was their birthright to come and go from their land of the island and to invite friends and relatives to visit or stay on Kapiti. At times some of the family lived at Waiorua. Inevitably, with so many people involved, behaviour varied. Drunken parties and rubbish left lying around angered Rewa Webber, who remembered the bay in its heyday.¹²³⁶

It also drew a negative response from the Crown caretaker who saw undisciplined behaviour as a threat to the nature reserve by increasing the risk of dogs and rats escaping, the number of new buildings being erected, including several slipways, and the risk of fire. His attempts to draw his concerns to the whanau's attention were supported by Jean Webber, who was upset at how the place had been let go in comparison with how Hona and Utauta had maintained the land and gardens. But they were resented by others such as Rarangi Howard who objected to interference with their use and enjoyment of private land.¹²³⁷

There was considerable disunity amongst the owners as to what to do with the land. Some wanted to sell to the Crown, such as Rewa Webber who wished her share to be added to the reserve; some like Lorraine Spratt wanted individual titles defined so as to facilitate their building houses. Others, such as John Barrett, were opposed to partitioning as they believed it would lead inevitably to selling the land. In 1989, the Crown offered John Barrett \$85,000 for his share, but he declined the offer.¹²³⁸

Six months later, those supporting a partition applied to the Maori Land Court for a partition order for Waiorua Kapiti No 6. John Barrett, in opposing the application, offered a proposal for a management plan. When Judge H.B. Marumaru gave his decision in 1990, he rejected the application, emphasising the traditional connection with the land, the fact that Waiorua No 6 was the last remnant of the Parata land, and the management plan. He stated:

In my view, the concern of the objectors to retain the whole block as one for development and protection under the management plan reflects a Maori customary preference which in this case must prevail over the wishes of some of the family for individual ownership.¹²³⁹

¹²³⁶ Maclean, *Kapiti*, 275. See also quotes from Rewa Webber at 276.

¹²³⁷ Maclean, *Kapiti*, 276-77.

¹²³⁸ Maclean, *Kapiti*, 277.

¹²³⁹ Quoted in Maclean, *Kapiti*, 278.

As Maclean notes, Judge Marumaru's decision meant that the Crown's intention to take over the entire island had not quite succeeded and private Ngati Toa owners were to remain a permanent feature on the island. Moreover, the decision was in principle completely the reverse of how the court had operated in earlier years to partition readily and to facilitate alienation, with its decisions materially assisting the Crown acquisition programme.

This permanent Ngati Toa presence has also enabled them to have some ongoing input into decisions about the island's management. Maclean concludes that:

Since [Judge Marumaru's decision], the landowners at the northern end, and the descendants of the Maori owners displaced in 1897, have played a crucial part in the two main initiatives of the 1990s: the establishment of the Kapiti Marine Reserve and the eradication of rats from the island. Both succeeded, in part, because of support by local iwi. In return, they have been given a much greater role on Kapiti.¹²⁴⁰

Whether Ngati Toa themselves feel that they have been adequately involved in decision-making is another matter, needless to say.

The Kapiti Island Marine Reserve, mentioned by Maclean, was established in 1992 and was the subject of a Conservation Plan released in May 1998.¹²⁴¹ The Kapiti Marine Reserve covers a reasonably extensive area of seafloor, split into two separate sections, a small area on the western side of the island (342 ha.) and a much larger eastern portion (1825 ha.) which is bounded by the eastern coast of the island and which extends across Rauoterangi Channel to connect with the Waikanae Estuary Scientific Reserve on the mainland. Management of the reserve appears to be low-key to the point of virtual non-existence. According to the *Management Plan*:¹²⁴²

¹²⁴⁰ Maclean, *Kapiti*, 281.

¹²⁴¹ Department of Conservation, *Kapiti Island Marine Reserve Conservation Management Plan*, Wellington, 1998.

¹²⁴² *Ibid*, 11.

The marine ecosystems around Kapiti have been modified by over 150 years of recreational and commercial fishing activities and by the effects of land clearance on Kapiti Island and the mainland about Kapiti District. It is not possible to restore these habitats to their original state nor is it the intention to modify them greatly by direct intervention. Therefore the intention is to accept the reserve's modified state, monitor changes in species composition and density, perhaps intervening if rare and vulnerable species are moving to local extinction.

Because of ecological relationships it is expected that the reduced disturbance (especially the prohibition on fishing) will affect a wide range of species within the reserve, not just those affected directly by human activity.

As is noted in Report No 3, The Kapiti marine reserve is not, as far as the writer is aware, a controversial issue for Ngati Toa.

Treaty issues were raised, but not concluded, when the Commissioner of Crown Lands was called upon to adjudicate between the competing claims of conservationists wishing to keep the island protected and 'Kapiti Island Maori' who wished to promote an ecotourism lodge venture. He refused to approve the lodge for conservation reasons, but also emphasised the Maori Treaty rights. By the end of the twentieth century, more proposals were being mooted.

10.9. Conclusion

This study of the history of the lands on Kapiti Island has revealed a number of issues.

Over a period of several decades, beginning in 1874, the Native Land Court determined the customary ownership of Kapiti, and then subdivided it according to the owners' wishes, first into 5 'parent' blocks, and then into a number of smaller blocks, some as small as only a residential block. The evidence given in those early hearings contains much information about the early history of Ngati Toa in the Kapiti/Horowhenua/Porirua region, but that has not been relevant to the present report.

There was some contention about who had rights in the initial title investigations, but the only dispute was over the place, if any, to which a few Ngati Raukawa were entitled, relative to Ngati Toa. There is no question that nearly all Maori admitted as owners to the various Kapiti blocks were members of Ngati Toa. They were not only one or two rangatira, either, but included a significant number of others, depending on the blocks.

Subsequent to the initial investigation of customary ownership, there were various hearings relating to succession to the interests of those initial owners, but they petered out within only a few decades as the Crown bought the lands. Other hearings were to create partitions and many, perhaps most of those were due to the Crown seeking to have its interest

separated off from those of non-sellers, creating ever smaller portions of land, which become less and less economic and therefore less likely to be attractive to retain—a process that has been labelled ‘serial partitioning’ elsewhere in other regions.

It is clear that the Maori owners were fully aware of what they wanted to do with their Kapiti lands; they wished to retain sufficient lands to continue to form an endowment or patrimony upon which they could maintain an adequate economic and resource base. In almost all cases, the owners were no longer living on Kapiti during the last third of the nineteenth century, but they continued to visit the island and use its resources, retaining small bases for themselves while leasing out the great bulk of the island in order to gain a rental income from it. This is a rational economic choice. It does not indicate that they were not attached to the island emotionally and culturally, but rather it does show that they were trying to get ahead in the new settler society and colonial economy. It is arguable that, by depriving them of their ability to continue leasing Kapiti lands while accessing the traditionally important resources, the Crown prejudicially affected them economically and closed the door on a perfectly viable means of at least some members of Ngati Toa supporting themselves and conducting their own affairs.

Small portions were sold prior to the Crown’s acquisition of the island. These totalled only a small fraction of the island’s area. The sources studied for this chapter did not reveal much by way of motives for those sales, motives which very likely had nothing to do with Kapiti at all but much more to do with the overall economic state of Ngati Toa generally or the personal finances of a handful of individuals. Professor Boast’s study of the Crown purchasing process across Ngati Toa’s lands may reveal more of their motivations for sale and lease over the whole of their portfolio of lands and resources and influenced by changing Crown policies and practices.

The individualisation process introduced by the Native Land Acts from 1862 and then 1865 made possible such alienations to private individuals. Previously, Maori had had to sell to the Crown alone and were prohibited from gaining any rental income from their lands. Their only options pre-1862 were either to farm them themselves without capital and experience, or to sell to the Crown. Thereafter the fragmentation of title allowed people to deal individually, to personal advantage and the detriment of the tribal estate. Although because of the Crown’s intervention on Kapiti this may not have been as big an issue there as it was elsewhere, it still provided the Crown with a small list of owners with clearly defined interests who could then be approached and ‘compensated’, rather than the potentially messier methodology of dealing with the tribe en bloc.

The Crown’s process of acquisition, too, was accomplished under the shadow of the Kapiti Act of 1897. In one blow, this choked off any means of Ngati Toa gaining ongoing income from the island by their chosen method of leasing to Pakeha farmers and left them

with but one choice: to undertake the difficult task of farming what remained of the island themselves, or to sell to the Crown.

As has been shown above, the large bulk of Kapiti passed out of Maori hands almost instantly in 1897 or within the next half-decade or so as a result of the statutorily created situation. Only some 20%, mostly in the north, remained after this time and by means of the exchanges and purchases much of that had gone by 1920. Probably only the fact that the Webbers managed to maintain an economically viable farm at Waiorua until around 1940 preserved that area for so long.

The compensation process may have been fair, although some of the figures cited above indicate that the Maori owners were paid considerably less per acre than were the Pakeha with lease or freehold interests on the island. This may have in part reflected the fact that the Pakeha had outlaid cash in developing the farms, whereas Maori tended to be just the landowners. Still, a cash payment for land assessed financially does not replace the loss of a patrimony in which the mokopuna can be tangibly connected to the tipuna. Nor did it reflect the more gradual loss of access to other resources such as birds and fish.

The Crown's lackadaisical management of the nature reserve for decades after its coercive acquisition of the island rather gives the lie to any argument for the need to take the land as coercively and rapidly as it did. Had it been such a pressing matter as to require the urgent legislation rushed through on the last two days of the parliamentary session, then one might have expected active and rapid development of the reserve. But this did not happen. The narratives by Maclean and Galbreath explain much of why it did not happen, but do not really help in understanding why the Crown had to legislate in 1897 to take the island off Ngati Toa in such a fashion. The reason perhaps lies in the personal element of Seddon's conflict with Field and Morison; the Premier wanted to thwart them and this was a convenient way of doing so. If that is the case, then it fits well with the simultaneous vendetta the same politicians were conducting against Sir Walter Buller in Horowhenua. The governmental style meant that they pursued their own ends, often apparently personal, at the expense of and largely heedless of the rights and interests of Maori, in one case the Muaupoko of Horowhenua and in the other the Ngati Toa of Kapiti.

CHAPTER 11

The Acquisition of Ngati Toa Land for State Housing

11.1. Introduction

This chapter deals with yet a further blow to Ngati Toa's much-depleted estate in the Porirua region: the taking of land for housing purposes by the government after World War II. Until this time Porirua had remained a quiet country town. Following the Second World War, however, Ngati Toa now found themselves at the centre of one of the country's most elaborate and large-scale public housing schemes, in the course of which the Porirua basin was transformed into an important dormitory suburb and manufacturing centre. A key aspect of this was state housing.

Until the period of the Great Depression and the election of the First Labour Government in 1935, the general policy of New Zealand governments was to encourage the country's citizens to own their own homes. The new Labour Government continued to encourage this through the availability of affordable credit for housing via the State Advances Corporation. This enabled some Maori to gain housing, provided they met lending criteria (which would have included being able to use the property as security). But at the same time the government also fuelled the expansion of relatively low-cost housing across tracts of land hitherto unused except for various forms of agriculture.

This chapter discusses two issues in relation to land and housing for Ngati Toa. The first is the more general policy and practice regarding land for housing, especially state housing, which impacted considerably on the taking of land throughout the Porirua basin. The second is the effects on Ngati Toa in the land blocks at Takapuwhia. The two issues are connected but not identical. As is also noted, there is additional discussion of the links between these issues and the social and economic situation of Ngati Toa in the companion "Social Impact" report.

11.2. State Housing Policy for Maori

The provision of housing for Maori, with state assistance, was provided for in the Native Housing Act 1935, an Act which—heavily amended and in 1947 renamed the Maori Housing Act—is still in force today. Its aim was explicitly 'to make better provision for the housing of the Maori people'. It was administered by the Board of Native Affairs, created the previous year.

Provision of housing was taken to include both the building of new dwellings and improving existing housing conditions. To undertake these tasks, under section 3 the Board was provided with funds for various purposes: for the erection, repair, alteration or improvement of dwellings and outbuildings, fences and such; to repair, alter, improve or install systems for lighting, heating, sanitation, water supply and other conveniences; to purchase land for a housing site; and to drain, cultivate or otherwise improve a dwelling's land.

The funds were to be loaned, not simply granted, though, and this was to be done through mortgages over the land concerned or assignment of proceeds from other land sales or other income such as the sale of the land's produce (s 4). The Board was not bound to accept only a fixed level or type of security, but had considerable flexibility as to what it considered 'expedient'. Payments could be made from assignments of money from lands vested in trustees, including the Native and Public Trustees (s 6). The repayment of such advances was to be supervised by the Native Land Court which had the ability to make charging orders regarding moneys and vesting orders regarding affected lands (ss 8-9). The interest rates charged were not to exceed those issued by the Mortgage Corporation for other state housing loans (s 10).

The Board was also given completed power to supervise the carrying out of the work funded and to inspect and supervise the property for so long as the person still owed money to it (ss 11-12), while additional similar loans could be made on the same property, if necessary (s 13).

Native Housing Regulations were made under this Act on 23 December 1936. These, though, were considered probably ultra vires by Judge Harvey of the Ikaroa Native Land Court and Maori Land Board insofar as they put upon Maori Land Boards new housing responsibilities when the Boards' duties and functions were already fixed by statute. Native Department circulars then negated many of the regulations and much of the Act. While he and all his staff would 'strain every nerve' to assist the Department to help Maori, they could not be put in impossible positions and he sought immediate clarification. Regarding the security the Board of Maori Affairs might require, he gave detailed guidance about building sites, house design and building arrangements.¹²⁴³

Still, this was not a free handout, but an entrenched Labour Party position of advocating lending for home ownership, while the Native Department resisted being given a landlord role. However, 'the insistence on a policy of lending excluded Maori who were

¹²⁴³ Judge J. Harvey to Board of Native Affairs, 25 March 1937. MA W2490 30/1 pt 1. Several months later, someone, probably Judge Harvey again, gave the Under-Secretary detailed guidance on how to set up a group housing scheme under which Maori effectively formed their own building society to fund their own housing developments resulting in freehold houses.

unable to save a deposit for a house'.¹²⁴⁴ Within two years, it had become apparent that many Maori were so poor they could not meet even that insistence. In response a limited fund of £100,000 was established, but even that amount was not fully taken up.

In July 1937 the Registrar of the Wellington Native Land Court was instructed to supervise a comprehensive housing survey amongst Maori in the lower North Island and South Island. Judge Harvey already had Mr. Te Whiti Love beginning on the Hawkes Bay and Wairarapa districts, and it was suggested that Mr. Hari Katene of the Wellington Native Land Court, who was 'a young Chief of the Ngati-Toa, Te Atiawa and Ngati-Raukawa Tribes', could do the districts covered by those tribes and up through the Manawatu and Rangitikei.¹²⁴⁵

A major legislative overhaul was made only three years after the first in the Native Housing Amendment Act 1938, expanding the Board's powers and interests considerably. Crown land could be set aside by proclamation and the Board could acquire land itself for Maori housing (ss 2-3). The Board could also carry out on its own initiative house building or improvement and any necessary associated works (s 4). The Board could also sell or lease for up to three years at a time any houses it built or acquired, but only to Maori (ss 5-6, 13). Until the purchaser had paid off the property fully and then acquired its certificate of title, it could not be on sold or otherwise alienated without the Board's approval (ss 11-12).

In addition to these Board of Maori Affairs activities, a Special Housing Fund was to be established with an annual appropriation of £50,000 to the Native Trustee 'for the purpose of housing for indigent Natives', plus other sums that might be added and all accumulations (s 18(1)). It was intended to provide for those Maori who could not provide the security necessary to gain a Board loan and would be doled out to individual Maori Land Boards as they applied for it, so that they could expend it as directed by the Board of Maori Affairs (s 18(2-4)). This seemingly met Judge Harvey's reservations about the operation of the 1935 Act.

The Native Department was beginning to provide housing in Porirua Pa by early 1940, by which time one house had been completed, another was under construction and five more were planned and approved.¹²⁴⁶ By 1941, Native Minister H.G.R. Mason was expressing his concern that the growing demand for better Maori housing was outstripping the Department's abilities and Government's finances. He demanded an investigation of methods of mass production of two to four bedroom houses.¹²⁴⁷

¹²⁴⁴ Ferguson, *Building the New Zealand Dream*, 164.

¹²⁴⁵ Under-Secretary of Native Affairs to Registrar, 12 July 1937. MA W2490 30/1 pt 1.

¹²⁴⁶ Medical Officer of Health to Director-General of Health, 6 February 1940. H 1 12189 172/21/41.

¹²⁴⁷ Minister of Native Affairs to Under-Secretary, Native Department, 22 July 1941. MA W2490 30/1 pt 1.

State provision of housing for Maori was therefore available by two routes, through the Native Housing Act and through the general state housing system.

During World War II, there began an influx of Maori into urban areas as part of the general mix of ex-servicemen, pensioners and other low-income groups, industrial and town workers. Accommodation was urgently required for all of these groups. The 1936 census had identified 700 Maori living in the Wellington and Hutt Valley district, but in 1945 there were 1200. For most of these, larger family homes were the type of accommodation required, rather than, say, blocks of flats. The Board of Maori Affairs had statutory authority for the erection of rental houses for Maori, but given the war-time conditions this had been restricted by Cabinet direction to merely advancing money for housing loans only.

The Native Department set up its own technical branch for the construction of houses and other buildings for which loans had been authorised. But there was a problem of scale and it was really able to cope only with the scattered and smaller scale projects in the more remote townships, not the heavy, concentrated programme looming in urban centres such as Wellington. The Department therefore thought that the best option was that the general state housing programme be expanded to include the erection and administration of properties for Maori in the larger urban centres. The problem was that the alternative government organisation, the Housing Construction Division of the Ministry of Works, had in 1945 no authority to build and allocate state houses for any specific section of the community. Native Minister H.G.R. Mason suggested to his colleague, the Minister of Housing, in May 1945 that they agree to have the Housing Construction Division's authority extended and that the two departments could then collaborate on the programme, from selection and purchase of suitable land, to house types, fixing of rents, tenancy allocations and such. Where there was no existing state housing administration, the Native Department could undertake the administration once the houses were completed.¹²⁴⁸ The Health and Native departments were agreed that state housing was 'strongly advocated as a means to assist in overcoming the unsatisfactory conditions under which the majority of these Maoris are now living'.¹²⁴⁹

Nothing much seems to have happened and in September 1947 the Under-Secretary was still trying to gain Treasury support for developing state rental housing for Maori in urban areas, given 'the profound sociological problem facing the Maori today' and the resulting 'acute shortage of accommodation'.¹²⁵⁰ The Treasury though claimed Board of Native Affairs support in saying that 'education and civic spirit have not advanced so far as yet' that tenancy could be considered—they were worried that Maori would not look after the properties. They also said that Maori were free to apply for state housing 'so long as they pass

¹²⁴⁸ Mason to Minister of Housing, 25 May 1945. MA 1/613 30/5 pt 1.

¹²⁴⁹ Mason to Minister of Housing, 18 September 1945. MA 1/613 30/5 pt 1.

¹²⁵⁰ Under-Secretary, Native Affairs, to Secretary to the Treasury, 16 September 1947. MA 1/613 30/5 pt 1.

tests similar to those applied to Europeans (character etc)'. Any desire to retain a 'marae principle' in keeping Maori housing together geographically was dismissed as 'looking backward rather than forward'. Anyway, Maori were constantly defaulting in regard to tax and rates and so could not be trusted with state rentals too.¹²⁵¹

In response, an internal Native Department memo criticised the Treasury response as lacking a grasp of the current Maori situation, concentrating on rural areas where there was little or no demand or justification for rental schemes, when the issue was with urban centres. Rather, many urban Maori could not find even poor accommodation and often men had to leave their families behind in pa while they went to live in Public Works Department camps. The memo asserted baldly that 'Maoris do not get a fair allocation of State Rental Houses.' The memo also implied that the Treasury was grasping at straws because it was committed to opposing the initiative and straying beyond its proper role in order to do so. Any tax problem should be dealt with by the Tax Department, while rates issues were generally with unproductive rural land and were anyway a local body problem. The memo concluded quoting and commenting on the Treasury memo:

'Any great impetus on the part of Maori Housing will tend to distract from the progress of other housing....' This is I think the crux of the veiled insinuating objections and lukewarm evasive approval contained in the Memorandum. In reply I would say 'Are not the Maoris the worst housed section of the community? Are they not the section of the community which causes the greatest concern in matters of health—due to their inferior housing? Are they not entitled to their fair share of the progress of this nation?'¹²⁵²

Maori Affairs won the contest at Cabinet level on 17 November 1947 for the provision of state rental housing to Maori at the same interest rates as for state housing construction. This, though, entailed setting up new funds as Maori Affairs had only funds for permanent housing with mortgages and the Lands for Settlement Account.¹²⁵³ Treasury, though, still disagreed, arguing that the approval related only to rural areas, and opposing any purchase of existing houses, although it did agree to Maori Affairs taking over at cost price Housing Department houses once built for its own internal rental scheme.¹²⁵⁴ Native Under-Secretary Shepherd was 'disturbed' that Treasury would not support any

¹²⁵¹ Secretary to the Treasury to Minister of Finance, 18 September 1947. MA 1/613 30/5 pt 1.

¹²⁵² 'Comments on Treasury Memorandum of 18/9/47', 22 October 1947. MA 1/613 30/5 pt 1.

¹²⁵³ G.P. Shepherd, Under-Secretary of Maori Affairs, to Secretary to the Treasury, 20 February 1948. MA 1/613 30/5 pt 1.

¹²⁵⁴ Asst Secretary to the Treasury to Under-Secretary of Maori Affairs, 12 March 1948. MA 1/613 30/5 pt 1.



Maori children, Porirua district. [ca 1940], Photograph by John Dobree Pascoe.
Alexander Turnbull Library, Wellington.

extension to urban areas when all the submissions and discussion had been precisely for that purpose, while the rural emphasis was irrelevant to present needs. He could see ‘no reasonable objection to the proposal’ given the urgent and obvious need, and had already reached an agreement with Housing for 60 state houses in Auckland while those in Wellington and Hutt City were also in immediate view.¹²⁵⁵ Treasury did not withdraw its opinions, but did note this development and agreed to ‘raise no objection’ to Maori Affairs administering rental housing in larger towns.¹²⁵⁶

¹²⁵⁵ Under-Secretary of Maori Affairs to Secretary to the Treasury, 16 April 1948. MA 1/613 30/5

pt 1.

¹²⁵⁶ Asst Secretary to the Treasury to Under-Secretary of Maori Affairs, 28 April 1948. MA 1/613 30/5 pt 1.

In the event, it was not the Maori Affairs Department but the State Advances Corporation that was chosen to administer Maori rental housing. The initial allocation of tenants to houses was to be made by the local Maori Affairs Registrar and the Welfare Officer and a selection committee who would prefer those with permanent residence and who would ‘appreciate the benefit of decent accommodation’. Welfare Officers were to ensure that properties were properly maintained by tenants as the Department was conscious that this was an experiment in which it was imperative to make a good showing from the outset.¹²⁵⁷ An additional complication was that the Rehabilitation Department had an acute shortage of houses for ex-servicemen, including a large number of Maori.¹²⁵⁸ The criteria the Maori Affairs Department applied focused on urban workers outside their tribal areas. It could therefore only consider ex-servicemen if they came within the existing categories.¹²⁵⁹

Reinforcing the Pakeha ideal of nuclear families living in their own homes, supporting themselves and not being any further burden on the state, the State Advances Corporation had as a core principle the spreading of Maori people throughout the Pakeha population, rather than letting them remain or join together in communal clusters. Only pressure from existing Maori centres, such as Orakei, Waiwhetu and Takapuwahia allowed those centres to remain standing and other Maori to be allocated state houses in and around those centres. Policy did not change, though, and ‘pepper-potting’ continued of Maori into the Pakeha population. Few Maori did apply under this general scheme because they knew this non-concentration policy would combine with their low incomes to disqualify them for the state housing policy of the Pakeha. However, the Government had its eye on Pakeha voters and so:

By keeping Maori state housing separate under the pool system, the government maintained the illusion that state housing was a mainstream tenure for ordinary citizens.¹²⁶⁰

When T.T. Ropiha became Maori Affairs Under-Secretary in late 1948, he urged to the Minister that housing was one of the most pressing problems facing Maori society. They were trapped between high costs of sections and building and a loan limit of £1500, even if they were earning good wages. However, two factors particularly prevented state housing being made available to them. First, it was contrary to government policy to put groups of houses for Maori together, except where there was already a ‘predominantly Maori population’ — such as the existing papakainga area at Takapuwahia—and the government preferred integrating Maori tenants amongst Pakeha. Secondly, Maori Affairs had no organisation for

¹²⁵⁷ Shepherd, memorandum, 5 August 1948. MA 1/613 30/5 pt 1.

¹²⁵⁸ Director of Rehabilitation to Under-Secretary of Maori Affairs, 24 September 1948. MA 1/613 30/5 pt 1.

¹²⁵⁹ Asst Under-Secretary of Maori Affairs to Director of Rehabilitation, 1 October 1948. MA 1/613 30/5 pt 1.

¹²⁶⁰

building in urban areas and to try to build one up would merely copy the existing Housing Department. He therefore asked for Cabinet approval for state houses to be made available as a matter of policy to Maori proportionate to their numbers in the population, for an immediate allocation of tenancies for Maori, integrated throughout state settlements, and that selection committees be created comprising the Under-Secretary, three district officers (registrar, housing officer, welfare officer), and two local Maori representatives (the chairmen of the tribal committee and the tribal executive).¹²⁶¹

Housing Officer Paul Potiki pointed out that rising land values, high building costs, more stringent building standards and higher living costs all combined to prevent the Native Housing Act 1935 from being effective in urban areas. State Advances considered Maori as unsuitable to be tenants and since it was able to effectively screen and pre-select applicants there were indeed very few Maori applicants as they perceived no point in trying. State Advances claims that Maori allocations were proportionate to the population could not be checked due to its secrecy concerning figures, but were unlikely as each case was considered individually. Cases were not judged solely on their merits, he said, as he was prepared to show SAC officials the shocking living conditions Maori were trying to escape. Although there was no present problem in Wellington, it was looming and social problems would soon result. State Advances' biggest fear appeared to be that Maori would be difficult tenants to supervise, especially in terms of looking after their properties, but he was again willing to show officials random Maori houses better looked after than any tenanted by Pakeha.¹²⁶²

An interdepartmental meeting of senior Housing, State Advances and Maori Affairs officials in March 1949 agreed that Housing would construct all Maori rental homes with numbers available subject to periodic review. The rental houses would be interspersed in single units through normal state rental settlements and no purely Maori settlements would be provided in predominantly Pakeha localities. Maori Affairs would select the tenants (State Advances and the Maori tribal organisations would be represented), but State Advances would administer and maintain the properties with Maori Affairs providing its expertise and resources to help maintain good relationships, to train all tenants in 'modern home management' and to provide regular welfare inspections.¹²⁶³ This, then, was the policy that applied thereafter throughout the Porirua area, such as at Titahi Bay or Cannon's Creek, outside the Takapuwahia papakainga area.

The way in which this policy was actually put into practice over the following decade or more, through the 1950s and 1960s, has been discussed in greater detail in the 'Social Impact' report.

¹²⁶¹ Ropiha to Minister of Maori Affairs, 16 November 1948. MA 1/613 30/5 pt 1.

¹²⁶² Potiki, memorandum, 11 March 1949. MA 1/613 30/5 pt 1.

¹²⁶³ 'Notes of a meeting....', 23 March 1949. MA 1/613 30/5 pt 1.

The key features are the attempts by Maori Affairs to have an equitable allocation of state housing made to needy Maori, and the resistance to that allocation by first Treasury and then State Advances and the Housing Department who clearly believed that Maori should be back in rural areas out of sight, or, if that were no longer possible, that for some reason they did not deserve an allocation even proportional to their numbers within the population. This prejudice did not affect the numbers of state houses actually being built (and therefore the land needs of the building programme) but it did affect how many Maori could gain shelter in those state houses.

11.3. The Taking of Ngati Toa's Porirua Land for State Housing

There were, then, two separate but interlocking and interdependent Crown policies regarding the provision of state housing for Maori, the general one run by the Housing Division of Public Works, and the targeted one for Maori generally run (or at least advocated for) by Maori Affairs.

The particular relevance of this new Crown state housing policy to Ngati Toa is that early in the piece Crown agents eyed, then pursued, Ngati Toa's remaining Porirua lands. This was in order to allow the construction of a new wave of state houses once the initially available lands had been consumed.

Alisdair Scrimgeour has explained why the Government was interested in Porirua for its housing development. Several options were considered for relieving the pressure on central Wellington, including the Tawa-Porirua basin. Scrimgeour comments:

Porirua possessed several advantages over the other areas. Land prices were cheap: £50 per acre compared with £300 in the Hutt Valley. The framework to transport people and goods in and out of Porirua already existed with the electrified Main Trunk Line passing through the Basin. Plans had been drawn up for the construction of a new road between Johnsonville and Porirua. The natural topography and resources were adequate to provide services such as water reticulation and storm water drainage. For these reasons, Porirua was chosen as the best site.¹²⁶⁴

Scrimgeour also points out how highly planned the Porirua development was. It was to provide for housing, a regional shopping centre and some commercial and industrial development. The initial housing development used the easier topography and the first state housing areas were in the east. By the early 1950s, expansions had used up that easier

¹²⁶⁴ Scrimgeour, *Village*, 6.

topography and new technology made larger scale earthworks possible, so the landscape was changed dramatically in places.

Scrimgeour does not discuss the matter, but one reason why land was cheaper in the Porirua area may have been that some of it was being purchased from Ngati Toa, whereas little Hutt land was Maori-owned by this time. Ngati Toa's land at Porirua was also largely open farm land, as compared with the market gardens and existing closer development up the Hutt Valley. Further, it had already become apparent by 1942 that all readily available land in the Hutt Valley would soon be used up.

There was also a growing local need for state housing in Porirua. In 1945, the population in the Porirua district was around 5000, but by 1965 it had mushroomed to 20,000, which was enough for it to be declared a city. Three to four hundred families a year were arriving, many of Pacific Island origin. This expansion outstripped the provision of facilities, while private householders had long complained about the overlooking of their needs for the most basic utilities as all available resources were focused on the state housing developments.

Gael Ferguson has argued that Porirua was 'possibly the best example of the development of a mass housing scheme in New Zealand'. It was intended to be 'a whole "new town" or city, with its own industrial and commercial base, along the lines of ideas developed in England after the Second World War'.¹²⁶⁵

Earthworks relating to the central shopping area for the Porirua area began in 1959 and finally moved 770,000 cubic metres. The largest earthworks project was even greater, to flatten a hill on 36 hectares of the hospital farm grounds and convert it into industrial land, especially for the Todd Motors assembly plant. Some 460,000 cubic metres of the spoil, about two-thirds of this project's total, was deposited at the southern tip of Porirua Harbour to reclaim another seven hectares of land reaching as far as the present Te Hiko Street. The land used for Whitireia Polytechnic is also wholly reclaimed from the Porirua Harbour.¹²⁶⁶ Ngati Toa objected strongly to the destruction of the Parumoana shellfish beds and argued that their rights were not only customary but had been recognised by the 1883 Parumoana judgment. However,

In the decision-making style of the day, the work went ahead anyway, and claims for compensation were dismissed despite meetings, submissions, and petitions. Sacrifices, after all, had to be made – they were part of the price to pay for progress.

The issue was the subject of further submissions to the government in 1960 when the reclamation for the central business district was being proposed. But again, in the words of the Maori Affairs Committee who considered the petition, 'there is no proof that the Porirua Maoris

¹²⁶⁵ Ferguson, *Building the New Zealand Dream*, 200.
¹²⁶⁶ Scrimgeour, *Village*, 15.

have sustained a practical loss of such a nature and magnitude as to deserve consideration by the Crown....¹²⁶⁷

What would have been a loss, and of a significant magnitude, to Ngati Toa—particularly after their earlier loss of their other lands and resources—was of little significance to Pakeha officials and politicians. This issue is discussed in greater depth elsewhere in the research supporting Ngati Toa’s Treaty claim.

The issues of land development, housing, provision of utilities such as roading, water and sewerage, health and social development are all inextricably intertwined. Each affects the other and so many issues appear in this chapter that are also dealt with in others. Most of the other issues have been discussed in the companion Social Impact Report. A chronological narrative of all together would be impossibly unwieldy, yet to separate them out into themes risks losing the salient point that Ngati Toa at Porirua were having to cope with all of these issues simultaneously, that TB, poor water, substandard housing, demands to sell surrounding land, damage to shellfish in Parumoana and such were all part of the tidal wave of pressures threatening to overwhelm them from the 1940s. The impossibly dense chronological narrative might well better reflect the reality as it confronted them.

This chapter discusses the issues surrounding the Crown acquisition of Ngati Toa land around western Porirua. Mostly, these were around the fringes of the papakainga, but as noted these issues and lands are all very closely intertwined. The Takapuwahia Township sections have generally been discussed in the Takapuwahia chapter elsewhere in the present report.

11.4. Water Supply and Sanitation

The use of land for housing at Takapuwahia was not developed in isolation from the broader social and health issues facing the community. As already noted, mostly these are discussed in the companion ‘Social Impact’ report. However, some require mention here as part of the context of the Crown involvement in Takapuwahia lands.

In 1931, the Makara County Council and Native Affairs Department became concerned at unsanitary conditions, overcrowding and a reported outbreak of tuberculosis at Porirua Pa. In September, Dr W.F. Findlay, the Wellington Medical Officer of Health, made an inspection together with Mr. Wineera (a member of the Maori Council) and Mr. Lerwill, (sanitary inspector for Makara Council).¹²⁶⁸ Findlay found that there were 20 houses to accommodate 80 adults and 64 children. The houses themselves did not look good, but were

¹²⁶⁷ Keith, *Tides*, 17.

¹²⁶⁸ W.F. Findlay to Director-General of Health, 21 September 1931. MA 1/609 30/3/112.

all weatherproof, clean, tidy and sanitary, even being ‘the best kept Maori houses I have seen in the Wellington Health district’. Although some houses held two married couples—presumably with children—Findlay did not consider that all were presently overcrowded, but that they were becoming so as the children grew.

Findlay attached a table setting out the occupancy of the 20 households by name and his recommendations for the four worst situations which required additional and better accommodation. He also recommended a gravitation water supply, although without suggesting from where funds for any such improvements might be available.

At the time, though, Dr Findlay did comment once more on the apparently intractable nature of the Maori housing problem, particularly due to no-one having the responsibility and the funding to tackle it in any substantial way. All medical officers of health were ‘impressed with the difficulties and needs’ regarding the Maori housing problem. The local body’s powers under the Health Act were ‘usually inoperable’. The Maori Land Settlement Scheme might provide a solution but was an extremely slow process. He wondered if an arrangement could be established whereby each Maori council levied breadwinners and the Maori Purposes Board or Native Department also contributed.¹²⁶⁹

In December 1932, the population of the Porirua Pa was enumerated by the Makara County Council Inspector, family by family.¹²⁷⁰

Population of Maori Pah, Porirua, 15 December 1932

No of families	Chn 16+	Chn 16-	Adults	Total	No of rooms	Condition
2	5	5	4	14	3	Not satis. O/crowded
1	3	6	2	11	6	Fair
2		3	3	6	5	Fair
2		6	5	11	4	Fair
2	1	2	3	6	4	Satisfactory
1	1	1	2	4	4	Satisfactory
1		5	2	7	4	Satisfactory
1		5	2	7	1	Not satis.
1		1	2	3	3	Fair
1			2	2	4	Satisfactory

¹²⁶⁹ W.F. Findlay to Director-General of Health, 21 December 1932. H 1 8456 194/1/20.
¹²⁷⁰ Encl in W.F. Findlay to Director-General of Health, 21 December 1932. H 1 8456 194/1/20.

2	1	5	4	10	4	Fair
2	2	5	3	10	6	Satisfactory
1	1	6	3	10	4	Fair
1	2	4	2	8	3	Poor conditn.
1		1	3	4	1	Unsatis. shack of covered car timber
1		3	5	8	1	Fair
2	1	5	6	12	5	Fair
2	1	3	6	10	4	Fair

Little or nothing seems to have been done, though. The Makara County Council made periodic complaints about the state of things at the Porirua Pa, but no government assistance was forthcoming. Dr Findlay tried several times through this period to arouse a flicker of government interest. He said that the village committee were trying their best to obtain houses from the Public Works Department and were trying to fund some themselves, including from proceeds from the Nelson Tents and from levying Pa occupants.¹²⁷¹

Although circulated, the only response to Findlay's letter seems to have been the Native Trustee's recognition that better housing was 'essential' for five families at Porirua, but said it was not possible to do anything for them. However, this did not result in any actual assistance because he maintained that the South Island Benefit Fund he administered returned only a few shillings per year to the individual beneficiaries, which would not have paid the interest on a scheme to buy houses from the Public Works Department. Further, buying houses outright was not within the scope of the trust associated with the Benefit Fund.¹²⁷² It may be noted that the Native Trustee and the Under-Secretary of Native Affairs were often the same man, as with G.P. Shepherd a decade later, and that in any case the two departments were extremely closely intermingled both in terms of their personnel and their operations and administration.

Prosser as an individual also continued to press the roading and water issues and these, together with discussion of other utilities and the associated rating problems, together with the pressure on Ngati Toa at Takapuwhia relating to them, form essential context for the ongoing discussion. Internally the Native Department recognised the urgency of these issues and that some aspects were not merely inconvenient but actually dangerous. Nevertheless, rather than

¹²⁷¹ W.F. Findlay to Director-General of Health, 8 January 1934. MA 1/609 30/3/112.

¹²⁷² Native Trustee to Native Minister, 27 February 1934. MA 1/609 30/3/112.

providing a direct solution itself, it looked to the emerging Housing Construction Division schemes to provide opportunities for linking both the existing homes and new houses to permanent amenities.¹²⁷³

11.5. Land and Houses: The Government Development of Porirua

The government development of the Tawa Flat-Porirua-Titahi Bay area caught up with the Maori land at Takapuwhia and nearby in late 1944. The Department of Housing Construction had a proposed programme of housing construction ‘of major proportions’ through those areas and contemplated the wholesale taking of ‘extensive areas’ under the Public Works Act.¹²⁷⁴ Attention had been drawn to the Takapuwhia lands by the offering for sale by Mr. David Prosser of several blocks including Takapuwhia D1A1B. He apparently owned and held in trust and perhaps leased this, together with H1 D1A2A and D1A2B. His lands adjoined and ‘practically surrounded’ other Maori lands, but could not be developed economically without the acquisition of those lands too.¹²⁷⁵ The Native Department moved to call a meeting of owners to discuss matters, but was pre-empted by the Housing Construction Department. These were other blocks in which that department was also interested:¹²⁷⁶

Popoteruru Block	CT 247/29	11ac 3r 0p
Tutaeparaikete No 1	Sub 1A	8 3 37
Tutaeparaikete No 1	Sub 2	3 1 20
Takapuwhia B2	CT 247/30	15 3 14
Takapuwhia B3	CT247/176	12 2 15
Takapuwhia C2A3	CT 246/175	4 3 39
Takapuwhia C2A2	CT 294/157	4 3 39
Takapuwhia C2A1	CT294/30	4 3 39
Takapuwhia D1B	CT 239/225	27 3 20
Rangituhi Blk.	No CT	9 0 0
Mahinawa Blk.	CT 4/6	3 2 21
Mahinawa D2	No CT	3 0 0

¹²⁷³ Memorandum for Under-Secretary, Native Department, 29 August 1947. MA 1/613 30/4/20 pt 2.

¹²⁷⁴ Director, Housing Construction, to Under-Secretary, Native Affairs, 6 February 1945. MA 1/74 5/5/59 pt 1.

¹²⁷⁵ Director, Housing Construction, to Under-Secretary, Native Affairs, 20 December 1944. MA 1/74 5/5/59 pt 1.

¹²⁷⁶ Director, Housing Construction, to Under-Secretary, Native Affairs, 6 February 1945. MA 1/74 5/5/59 pt 1.

Mahinawa E2	CT 37/49	3 0 0
Mahinawa 1C2	Pt CT 385/185	6 2 1

The Housing Construction Department's approach was simply to request the Native Minister's consent to the inclusion of these blocks in the acquisition process. It ignored the Native Department's proposal to set up meetings with owners at which Housing Construction could be represented. The Native Department reaction was that the taking of these lands would appear to Ngati Toa to be a confiscation. It replied to Housing that, since there was only limited Maori land in the district, the proposal to take the lands specified would have 'a far-reaching effect on the future welfare of the Maoris themselves'. It therefore proposed to hold the meetings and give the owners 'a frank statement of the extent of the proposal'.¹²⁷⁷

A year later, the Minister of Works gazetted a notice of intention to take the lands and significant others nearby 'for better utilization' under the Public Works Act 1928 and the Finance Act No 2 1945 s 30.¹²⁷⁸ The Native Department lodged a pro forma objection on behalf of the Maori owners of Takapuwahia D1B, D1A1A, D1A1B, D1A2A, D1A2B, D2, E1, E2, G1, G2, H1, H2, H3, H4, Rangituhi, part Kenepuru 1A, Urukaika, Mahinawa 1A, 1B, 1C1, 1C2, Popoteruru and Tutaeparaikete 1 subs 1A and 2.¹²⁷⁹ The basis of this objection was that these blocks were Maori land and consent had not yet been given by the Native Minister as required by the Statutes Amendment Act 1936 s 32(1).

A meeting of owners was finally held at Porirua Pa on 19 May 1946 with senior government representatives also attending.¹²⁸⁰ After Mr. Hammond, the Assistant Director of Housing Construction, had outlined to the 13 owners present the government proposals, the Native Under-Secretary, G.P. Shepherd, spoke in support of the proposals. He told them of the Native Department's interest in Maori housing and industrial training and said that 'the Native Settlement should be in keeping with the new Porirua to come'. He recommended that the land be taken as proposed, but that an area immediately behind the marae be held in the Crown's name and then transferred to the Native Department for administration under the Native Housing Act. The proposals were then explained in Maori by M.R. Jones, the Native Minister's private secretary. 'The meeting accepted the proposals in a reasonable manner & no strenuous objection was evident.'

Shepherd told those at the meeting that Native Affairs would have set aside under its administration a block of 100-200 acres behind (west of) the township on which the present

¹²⁷⁷ Under-Secretary, Native Affairs, to Director, Housing Construction, 13 February 1945. MA 1/74 5/5/59 pt 1.

¹²⁷⁸ NZG, 21 March 1946, 359.

¹²⁷⁹ MA 1/74 5/5/59 pt 1.

¹²⁸⁰ Takapuwahia Block Land for Housing, meeting at Porirua Pah, 19 May 1946, minutes. MA 1/74 5/5/59 pt 1.

and future Maori population could be housed. Those who would receive compensation as owners would have the right to acquire freehold and build under the Housing Act, while others could rent state houses built there. He also held out the carrot that, since their marae was 'handy to the capital City', it could be that it would be developed as a national marae, and that the Government 'might spend substantial sums in this direction'.¹²⁸¹ No promises were contained in any of this speculation, beyond the intention for the acquisition of the block by the Native Affairs Department. There would 'presumably' be rights to built and rent, while the marae suggestion was on a 'might be developed' and a 'might spend' basis only. Nevertheless, coming from the Native Under-Secretary himself, such insubstantial suggestions must have been perceived as much more weighty than they were. And therefore much more of an incentive to Ngati Toa to acquiesce to the proposals. Henshilwood's perception was that these new sections, serviced with roading, water, sewerage and such, would be subject to rating, but there is no record that the people had this explained to them.

However, all was not quite so straightforward. Apart from the vagueness of whatever 'reasonable manner' and lack of 'strenuous objection' had been displayed at the meeting, a petition had already been lodged by members of Ngati Toa, the signatories to which almost universally stayed away from the meeting, having already made known their views through the petition and by instructing a lawyer, S.A. Wiren, to act for them. Wiren corresponded with the Prime Minister, saying that Shepherd and Hammond had been unaware of the petition and its contents, and no-one had been authorised to speak on the petitioners' behalf. He asserted that he had not been aware of the meeting with the officials, and neither had 'most of the principal owners' of the affected lands. But, he had subsequently spoken with Shepherd personally, as well as some of the petitioners, including Mrs Wineera and the Te Hiko, Rene and Manunui families. He therefore proposed a second meeting when specific proposals could be brought, instead of the generalised statements made previously.¹²⁸²

The issue of rates and utilities infrastructure was contemplated by the Maori as well as the Council. They were advised by a local member of the Makara County Council; a solicitor named Bothemley [sic] who had married into the Gear family. He told them that the Council could not take land for back rates owing, and advised them to pay none, saying: 'You don't have to pay if you don't want to. You've got nothing here, what are you going to pay rates on?... He was a member of the Council at the time and he said: They haven't done anything for you so what are they going to charge you rates for?'¹²⁸³

The housing construction at this time was being under taken by a local team of Maori tradesmen headed by Jim Elkington as a deliberate Maori Affairs initiative to provide

¹²⁸¹ Henshilwood, memo to Under-Secretary, 10 December 1948. MA 1/74 5/5/59 pt 1.

¹²⁸² S.A. Wiren to Prime Minister, 15 July 1946. MA 1/74 5/5/59 pt 1.

¹²⁸³ Ruihi Solomon, interview, 23.

employment for local Maori. They were a unit of 7 workmen, mostly from one family with one (unreliable) Pakeha journeyman carpenter. Four were Rehabilitation Trade Trainees, and another, Sam Elkington, was being trained as a painter and decorator. They had been employed on wages, but at their own request in late 1947 were moved to a labour-only contract basis. Sub-contractors were employed separately for specialist trades work, such as plumbing and electrical work. There was enough work being done at Porirua to provide the team full employment and although they had been slow, due largely to previous inexperience, the quality of their work was good and their speed increasing.¹²⁸⁴ The builders were erecting houses for themselves and their families, effectively providing a sort of sweat equity, thereby assisting in several ways to improve the community's quality of life.

The land acquisition matter remained unresolved for two years. Meanwhile, a Land Purchase Officer, Joyce, had completed the purchase of Prosser's land up to the edge of the Maori freehold blocks. The officers dealing with the lands understood Under-Secretary Shepherd's desire for a block behind the pa to be vested, although 'it is desired that the Maori subdivision should fall into line, as to housing, roading layout, drainage etc, with the general scheme', i.e. the Housing Construction Department's grand design for Porirua. The Native Department officer, O. Henshilwood, understood that 'substantial owners' such as Ramati Pataone would have a prior right of selection of sections in the intended subdivision and also receive sufficient compensation to build, or substantially pay for houses on those sections.¹²⁸⁵ Housing was continuing to move on the lands, if slowly. Prosser's interests as executor of the estate of Raiha Puaha meant he held most of the affected blocks, as well as some in his own right. These included: Takapuwahia D1A1A, E1, G1, G2, H2, H3, H4, Mahinawa 1A, 1C1, part Kenepuru 1A, and Urukaika. He also had a one-third interest in Takapuwahia D1A1B and a two-thirds interest in Mahinawa 1B. An agreement had also been reached with Te Oenuku Rene and Te Ruru Rene for the taking of the 25-acre Takapuwahia H1 and a right of way along the north-west edge of the Urukaika Block to Titahi Bay Road. These blocks together totalled nearly 500 acres.¹²⁸⁶ Apart from the two blocks in which Prosser held only a part-interest, proceedings for which were held in abeyance, they were taken under proclamation a month later.¹²⁸⁷

The compensation awarded to the owners of most of these various blocks was determined by the Maori Land Court as follows:¹²⁸⁸

Takapuwahia E1	(60 acres)	£1180
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¹²⁸⁴ Under-Secretary, Maori Affairs, to Minister of Maori Affairs, 26 October 1947. MA 1/613 30/4/20 pt 2.

¹²⁸⁵ Henshilwood, memo, 28 April 1948. MA 1/74 5/5/59 pt 1.

¹²⁸⁶ F. Langbein to Under-Secretary, Maori Affairs, 10 July 1948. MA 1/74 5/5/59 pt 1.

¹²⁸⁷ NZG, 5 August 1948, 975.

¹²⁸⁸ PH Dudson to Under-Secretary, Maori Affairs, 8 June 1949. MA 1/74 5/5/59 pt 1.

Takapuwahia H2, H3, H4	(39 + 14 + 214 acres)	£5413
Urukaika	(25 acres)	£4725
Mahinawa 1C1 & Takapuwahia E2	(1 + 3 acres)	£160
<u>Takapuwahia H1</u>	<u>(25 acres)</u>	<u>£579</u>
Total:	384 ac 2 r 18.1 p	£12,057

Two other blocks particularly in view were Takapuwahia D1A2B (28 ac 3 r 1.1 p) and Mahinawa 1B. The owners, though, were not resident. For Takapuwahia D1A2B there were 57 shares, of which 20 were held by Hiko Toa Rangatira who was living in Pukekohe and 33 were held by Matenga Te Hiko Matenga of Dannevirke. These men were followed up by Maori Affairs welfare officers and both agreed to sell for whatever compensation the Maori Land Court set. Matenga, at least, was a young married man with three children, without a home and boarding with a relative, and saw the sale as an opportunity to buy or build his own house. There was no further obstacle to the sale, since the owner of the balance of 4 shares was deceased.¹²⁸⁹

The Ministry of Works had not finished yet, though, and proposed incorporating the remaining areas of Maori land at Porirua into their broad scheme for housing development. These were not seen as Ngati Toa lands at all, but were constantly referred to simply as ‘Maori’ land, and officials saw the Porirua lands as being the only area within the greater Wellington region suitable for providing sites for specifically Maori housing purposes.¹²⁹⁰ It appears, therefore, that there was little appreciation in Crown circles that Maori in Wellington were not all the same. Nor was much, if any, consideration given to the concept that Ngati Toa might not be all that receptive to relinquishing the rump of their own traditional lands so that ‘Maori’ might be allocated state housing there. It seems simply to have been expected that this is what should and would happen.

As well as the additional areas involved, the Ministry of Works wanted to ‘improve’ the general layout of the Takapuwahia Pa to fit better with the general development project. It aimed to consolidate existing titles to Maori land at Porirua, alter section boundaries and realign roadlines.¹²⁹¹ The problem with implementing this intention was that the roadlines within Takapuwahia had never been laid off by the Maori Land Court such that they had become public roads. Instead, they remained in private Maori ownership.

Ngati Toa hoped to get compensation for the radar station land taken by the government and, assuming that they were obliged to contribute to the roading development costs that this might be offset against those costs. They also wanted the government to take

¹²⁸⁹ Under-Secretary, Maori Affairs, to Director, Housing Construction, 14 December 1949. MA 1/74 5/5/59 pt 1.

¹²⁹⁰ PH Dudson to Under-Secretary, Maori Affairs, 8 June 1949. MA 1/74 5/5/59 pt 1.

¹²⁹¹ PH Dudson to Under-Secretary, Maori Affairs, 8 June 1949. MA 1/74 5/5/59 pt 1.

the whole of the land involved and not just to pick the eyes out of it, leaving them with the relatively valueless residue.

Joe Rene stated the tribal attitude to the Takapuwahia land and its development:

About 1880 the tribal elders decided to divide up the sections around here to enable the people to stay together here on the lands handed down to them. Even after 60 years the Ngati Toa still live here. My desire is to see that after generations will have a properly planned place to live in. The most important thing is to keep the land together, for the generations to come. If it is necessary to sell land to meet roading costs, let sales be of back area[s] and leave the Maoris next [to] the village.¹²⁹²

Roading, drainage and sewerage continued to be pressing issues. Makara County Council was envisaging improvements to the Takapuwahia Township's roading as part of its planning scheme.¹²⁹³ The Council considered itself unable to spend any money on roading since the lands were not definable as county or public roads, and unless the Department of Maori Affairs paid to upgrade them to a suitable standard first. Maori Affairs wanted the responsibility to shift to the Housing Department.

The Crown response was, though, that the state housing roading was being done on Crown land and where such expenses were added on to the final section costs, not on privately owned land such as this. No government had ever used tax-payers' money to increase the value of privately owned land and there was no special case to be made for Porirua to be favoured over other settlements.¹²⁹⁴ So although the Council had raised the social implications of lack of development, the governmental response was entirely financial, and using only a limited view of the benefits to be gained from such expenditure.¹²⁹⁵

Nothing further was done about the housing, either, through this period and around Porirua Maori Village the town of Porirua grew, created by the Ministry of Works. The government expectation in 1952 of the extent of this development was that Tawa Flat-Linden would have a total population of 6000 when the current subdivisions were built up, with another 2620 in future subdivisions. The existing Porirua subdivisions would be built up to take only 700 people, but the future subdivisions would provide for 10,750 people, while the Porirua Pa and its extensions would amount to 800. Nearby at Titahi Bay, the existing subdivisions would provide for 2000 people, and future subdivisions another 4800, while

¹²⁹² Joe Rene. Notes of a Meeting at Takapuwahia Pa, 18 June 1950. MA 1/74 5/5/59 pt 1.

¹²⁹³ County Clerk, Makara County, to Secretary, Maori Affairs, 5 January 1952. MA 1/613 30/4/20 pt 1; Under-Secretary, Maori Affairs, to County Clerk, Makara County, 18 February 1952. MA 1/613 30/4/20 pt 1.

¹²⁹⁴ Minister of Maori Affairs to County Clerk, Makara County, 10 October 1952. MA 1/613 30/4/20 pt 1.

¹²⁹⁵ District Officer, Wellington, to Head Office, 23 February 1953. MA 1/613 30/4/20 pt 1.

there was a possibility that the broadcasting area could be subdivided too, for 1200 more people.¹²⁹⁶

In December 1952, Commissioner of Works E.R. McKillop pointed out to Under-Secretary Ropiha that it was better in terms of efficiency to include the Maori lands in that development.¹²⁹⁷ Also, the roading, schools and other facilities would provide those in the Maori settlement with additional benefits and facilities, as well as giving access to Maori blocks considered unsuitable for housing and which could therefore be left in Maori ownership. A roading development plan for the land behind the Maori village had been prepared some time before by the Town Planning Section of the Ministry of Works, but the land had not been acquired for settlement by Maori ex-servicemen or anyone else.

Another Maori Affairs official, J. McEwen, investigated the matter.¹²⁹⁸ He found that there were two issues. First, while the owners had agreed for Maori Affairs to take over and subdivide the land for Maori housing, they would oppose the straight state housing scheme—yet the Maori Trustee would be unable to fund a full purchase and development. He therefore proposed a compromise, with the Ministry of Works developing the whole area, but earmarking specific areas for Maori housing, either for purchase or rental. This would permit both proper planning and roading.

The second issue was that the Makara County Council was now refusing to issue any more building permits within the Pa area until the roading was formed up to state housing standards, since access was presently actually only provided by right of way.¹²⁹⁹ This was an urgent issue as the Pa population was increasing rapidly and the area was one of the few in the Wellington region where house sites were still available. McEwen thought the Council's roading standard was too high and recommended that the Department intercede with the County Engineer personally over both loosening the standard and having the Pa made a special rating area.¹³⁰⁰

A debate then ensued internal to the Department over the best mode of acquisition of the surrounding blocks. Proposals were put to the Board of Maori Affairs, but failed on presentation grounds. The situation at Takapuwahia was:¹³⁰¹

- Some 320 people lived in the Pa, of whom 174 were under 25 years of age.
- Most worked in Wellington, but lived permanently at Takapuwahia.

¹²⁹⁶ 'Proposal for Post Primary School at Porirua', 4 July 1952. App B. E 2 1956/2c [15/4/194].

¹²⁹⁷ Commissioner of Works to Under-Secretary, Maori Affairs, 15 December 1952. MA 1/74 5/5/59 pt 1.

¹²⁹⁸ McEwen to Under-Secretary, Maori Affairs, 13 February 1953. MA 1/74 5/5/59 pt 1.

¹²⁹⁹ County Clerk, Makara County, to Minister of Maori Affairs, 26 November 1952. MA 1/613 30/4/20 pt 1.

¹³⁰⁰ McEwen to Under-Secretary, Maori Affairs, 13 February 1953. MA 1/74 5/5/59 pt 1.

¹³⁰¹ McEwen, memorandum, 2 April 1953. MA 1/74 5/5/59 pt 1.

- ‘Many’ non-Ngati Toa Maori working in Wellington were also moving to Porirua to live.
- There were 57 Maori homes in Porirua Pa, most having been built in the late 1940s and mostly located on the Takapuwhia township sections.
- There were about 120 house sections, although some of the existing house sites comprised two sections, often of ¼ acre each.

The Department’s land acquisition proposal was:

Takapuwhia D1A2A & D1A2B	16 acres	£790 capital value
Rangituhi	8 acres	£850
Pt Takapuwhia D1B2, 3 & 4	27 acres	£1615
Takapuwhia D1A1A ¹³⁰²	6 acres	£300
<u>Takapuwhia D1A1B</u>	<u>21 acres</u>	<u>£1220</u>
Total	78 acres	£4775

These blocks were immediately to the west of and behind the Pa, in an ‘excellent situation’ facing north-east and overlooking Porirua Harbour. Thirty-nine acres were suitable for housing ‘for the many Maoris living in the Wellington District’ and the balance was steep, bush-covered hillside which would be suitable for adding to the Crown reserves in the area. The Ministry of Works had planned the roading necessary and had calculated that roading, survey, sewerage, water supply and drainage together would amount to £500 per chain of road which served 1.6 sections, working out at £333 per section.¹³⁰³

The land, costing £4775 on the government valuations, would be cut up into 120 sections, which would then cost applicants £375 per section. This compared with the £585-600 for which the state was selling general sections in the locality and a saving of £45 per house would be made by connecting to the town water supply instead of tank supply in other areas. As to the sections’ disposal, some 30 Maori housing applicants were currently requiring sections and it was thought that some 12 new applicants per annum could have their new houses built.¹³⁰⁴

There is no file record of official consultation with the Ngati Toa owners about any of these debates or proceedings, apart from a single visit to Takapuwhia by the Minister and Under-Secretary of Maori Affairs in December 1952. At that time, the owners were left with the understanding that the Department would acquire the lands for Maori housing

¹³⁰² This block was already owned by the Crown.

¹³⁰³ O. Henshilwood to Board of Maori Affairs, 23 March 1953. MA 1/74 5/5/59 pt 1.

¹³⁰⁴ O. Henshilwood to Board of Maori Affairs, 23 March 1953. MA 1/74 5/5/59 pt 1.

development.¹³⁰⁵ A series of conferences was held – without Ngati Toa input - between various combinations of officials from Maori Affairs, Makara County, Works, and Town Planning. They concluded amongst themselves that the proposal to which the Ngati Toa owners had given their agreement, the development by Maori Affairs, was too expensive for that Department and that development should instead be undertaken by Works, with a percentage of the sections being allocated to Maori housing on either a purchase or leasehold basis.

By late 1953, the town planners were requiring more detailed surveys and saying that the land could not be developed for less than £600 per section, a price that would hinder passing the freehold over to Maori applicants and greatly slow the Crown's ability to recoup the development expenditure. Some £80,000 was now thought necessary for the area's development and no-one was willing or able to meet that cost, neither Maori Affairs using its budget under the Maori Housing Act, the Maori Trustee, or Treasury through loans.

Maori Affairs Assistant District Officer Henshilwood was now considering the nature of the allocation of sites to Maori amongst the land to be acquired. Despite the express desire of Ngati Toa to keep the people together on the lands handed down to them, he now thought it would be better to avoid creating a 'Chinatown' in which too many Maori were clumped together and recommended that the issue be considered as a matter of policy. He thought it advisable that the Crown acquire all the lands, together with others nearby, and reserve a 'certain number' for Maori applicants who could afford to purchase them. If no Maori could afford them, he wondered if the Crown could lease them in perpetuity, in which case Maori could access loans under the Maori Housing Act.¹³⁰⁶

There seems to have been another body of opinion within Maori Affairs that was not so wedded to the broader housing development scheme, particularly since the project was beyond the means of Maori Affairs on its own. There were occasional file comments to the effect that a 'reasonable need' for the broader development scheme had not yet been established. Instead, the clear priority was for sorting out the situation within the existing settlement as to roads and other services. Since the lands were subdivided and owned by individuals, there was little scope for the Crown to make a profit by subdividing, which could then be put towards the roading costs. Sixty-one chains of essential roading were required and this would cost between £400 and £600 per housing section to bring up to state housing standard, costs that would have to be included in the prices charged for each section.¹³⁰⁷ Maori Affairs Head Office nevertheless decided to proceed with purchasing four or five sections of

¹³⁰⁵ O. Henshilwood to Board of Maori Affairs, 23 March 1953. MA 1/74 5/5/59 pt 1.

¹³⁰⁶ Henshilwood, memorandum, 16 November 1953. MA 1/74 5/5/59 pt 1.

¹³⁰⁷ Maori Affairs considered extracting a contribution from the 'South Island Tents' towards this roading, but this was decided against when it was found that only 7.57% of the 'Tents' beneficiaries lived in the affected area. Blane, memorandum, n.d. MA 1/74 5/5/59 pt 1.

Maori land, totalling some 100 acres, and doing the requisite development and servicing, with the object of disposing of the housing sections to 'any eligible Maori' whether on a freehold, leasehold, or deferred payment basis. Up to £500 for a topographical survey was also authorised, to come from Vote Maori Affairs Item Maori Housing and Land Settlement Special Fees and Expenditure and to be transferred to the land and recouped.¹³⁰⁸

Within two months, though, the Housing Division of the Ministry of Works had 'given further consideration' to the Porirua development. Instead of the developments that had been discussed over the preceding years, Housing now wished to take over for subdivision Takapuawahia B1, B2, B3 and Popoteruru. Only part of the area would be suitable for housing, giving 70 sections, but the remainder, being 'fairly steep and intersected by gullies', could be reserved for amenities and recreational facilities. Acquisition would be by proclamation with compensation fixed by the Maori Land Court. This was because, although Maori Affairs officials had already indicated informally that it was unlikely that many owners would object, the large number of owners in each block made it 'practically impossible to arrange a meeting and obtain the consents of all interested parties'.¹³⁰⁹

The cost of developing the land 'behind the Maori pa', was now calculated on a preliminary basis as running up to £71,295, or £485 per unit (section). This did not include any contributions to reserves, land costs, section survey or administration. Nor did it include paying for connections to the main sewage disposal or the main water supply. The sewer and water connections would be another £50-60 per unit. This development would yield 147 units.¹³¹⁰ However, comparisons with neighbouring state house developments indicated that the sections could only be sold for £300-450.

Maori Affairs contacted all owners of the B1, B2, B3 and Popoteruru blocks. They received only three objections from people worried about their becoming landless and being unable to pass on land to their children. Wikipiri Kapo insisted that he be enabled to retain a building section for each of his two daughters, however the presumption of the late 1940s had now changed and because of the costs of development as against the value of individual interests, there was no presumption that present owners could be guaranteed such an accommodation.¹³¹¹

It was finally proposed to call a meeting of owners in late 1954, once full valuations had been obtained. If the meeting took place, there was no minuted record filed.

Officials continued to consult amongst themselves apparently exclusively, sidelining Ngati Toa. Maori Affairs did argue that, 'in order to go some way towards meeting the

¹³⁰⁸ Secretary, Maori Affairs, memorandum, 16 December 1953. MA 1/74 5/5/59 pt 1.

¹³⁰⁹ District Commissioner of Works to Under-Secretary, Maori Affairs, 17 February 1954. MA 1/74 5/5/59 pt 1.

¹³¹⁰ Memorandum, n.d. MA 1/74 5/5/59 pt 1.

¹³¹¹ Henshilwood to District Commissioner of Works, 29 April 1954. MA 1/74 5/5/59 pt 1.

Maoris' objection to the loss of their ancestral lands', they should be allowed to acquire sections in the subdivision at market value. Works agreed.¹³¹² As there as no mention of any guarantee that they would be able to acquire the lands, or that they would receive assistance to do so, it is not clear how this provided for the existing Maori owners; allowing them to purchase at market value was no more than anyone else was able to do. Maori Affairs, though, understood 'market value' as being 'current market valuation and not at cost'—that is at the £350-450 the neighbouring sections fetched, rather than the £550-580 the sections would actually cost—since the full cost would result in few Maori applicants, if any. Neither would there be any Pakeha willing to pay so much over the odds, presumably, although this was not mentioned.

These sections - some 35 in number were initially recommended - would be scattered throughout the Porirua basin since 'the use of all of them for Maoris would represent an undesirable concentration in the area'.¹³¹³ A later draft simply said that it did not seem that the area itself should be acquired for Maori housing and that 'it would probably be better' to simply have 'scattered sections somewhat equivalent in number' to what the Maori land would have provided made available.¹³¹⁴ The policy backing for this judgment was that the total Maori population south of Plimmerton and Upper Hutt was 3320, of whom 600 were males between 16 and 30 and 575 females of the same age. Over the next five years, twenty to twenty-five Crown sections were therefore likely to be required annually, compared with the one or two presently available by ballot. 'Better progress' could be made with Maori housing if Maori could be offered suitable sections at reasonable prices on optional tenure under s 54 of the Land Act 1948.

The Secretary of Maori Affairs therefore recommended to the Minister that 125 sections (Works recommended 30) be made available over the next five years, spread throughout the residential areas of the Porirua Basin, as opposed to being at Takapuwahia specifically. They should be made available to 'deserving Maoris', as opposed to Ngati Toa. This would be 'fair and just treatment in return for making their lands available for general housing purposes to fit in with the general scheme of town planning for the Porirua Basin'.¹³¹⁵ It does not seem to have occurred to any of these officials, even those of Maori descent working with the Maori Affairs Department, that those who would be relinquishing their lands were a specific group—Ngati Toa—in a specific location—Takapuwahia—which was a

¹³¹² Commissioner of Works to Under-Secretary, Maori Affairs, 7 September 1954. MA 1/74 5/5/59 pt 1.

¹³¹³ Under-Secretary, Maori Affairs, to Minister, Maori Affairs, draft memorandum, n.d. MA 1/74 5/5/59 pt 1.

¹³¹⁴ The file contains numerous drafts. This appears to be the final advice to the Minister. Under-Secretary, Maori Affairs, to Minister, Maori Affairs, memorandum, 3 August 1955. MA 1/74 5/5/59 pt 2.

¹³¹⁵ Under-Secretary, Maori Affairs, to Minister, Maori Affairs, memorandum, 3 August 1955. MA 1/74 5/5/59 pt 2.

core remnant of their ancestral land from the 1820s. They were not generic ‘Maoris’ to whom it did not matter where they lived or what happened to the Porirua lands.

The Secretary then asked the Commissioner of Works for agreement with the proposals, and for the Lands and Survey officers to collaborate with Maori Affairs to negotiate for the purchase of the land. The Ministers of Maori Affairs and Works would then be asked to agree. Only then would negotiations be commenced with the Maori owners.¹³¹⁶ This agreement was secured on 28 June 1955 after the Minister of Works had been consulted, and collaboration was set up between Maori Affairs, the District Commissioner of Works, and the District Commissioner of Housing.¹³¹⁷

Ngati Toa called their own series of hui in July 1955.¹³¹⁸ There was no recorded discussion of the government’s housing plan, suggesting that they remained largely unaware of it. It is clear, though, that although they wanted development, they envisaged the land being retained in a centralised block. The improvement group was led by the District Welfare Officer, F.B. Katene, and L. Swainson, with the tribal committee chairman, Prosser, or his deputy, J. Elkington.

The Commissioner of Works wished to push on rapidly with the Popoteruru and Takapuwahia B2, B2 and B3 blocks, totalling 51 acres of mostly scrub and gorse land between Porirua and Titahi Bay, from which they could derive 70 reasonably serviceable sections. Even so, to construct the 51 chains of roading necessary would be a fairly expensive £41,820, making the cost per section £636, and this and other development costs made it prohibitive for the 131 Maori owners to do it themselves. The land was valued at £2500 but the actual compensation would be fixed by the Maori Land Court. He believed that many Maori objections would be overcome by the provision of those scattered sections for Maori. From discussions with Mr. D. Prosser at Porirua ‘at various times’, the Commissioner understood that the majority of owners living at or near Porirua were anticipating that the land would be proclaimed and that there was ‘very little objection’ to this. He concluded:

In view of all the circumstances, and particularly because of the multiple ownership, it is considered that no hardship would be caused if the land were taken by the Crown [under the Public Works Act 1928].¹³¹⁹

J.A. Mills, the Maori Affairs District Officer, did not think that any ‘greater result’ would be achieved by calling meetings of the owners of the blocks than had resulted from the sending out of special notices to all owners in March 1954, when several objections had been

¹³¹⁶ Secretary, Maori Affairs, to Commissioner of Works, 31 May 1955. MA 1/74 5/5/59 pt 2.

¹³¹⁷ Commissioner of Works to Secretary, Maori Affairs, 28 June 1955. MA 1/74 5/5/59 pt 2.

¹³¹⁸ Newspaper cuttings, 18 July 1955? MA 1/74 5/5/59 pt 2.

¹³¹⁹ Commissioner of Works to Minister of Housing, 26 July 1955. MA 1/74 5/5/59 pt 2.

received and ‘there is no doubt that other owners would object similarly’. Presumably, then, a ‘greater result’ would be greater acquiescence in the Crown plans, rather than a somehow qualitatively superior response. He recommended that if the Crown intended to proceed with taking or acquiring the lands notwithstanding the objections, that notice of the intention be gazetted and the owners be individually notified also.¹³²⁰

The Maori Affairs response was given by the Minister, E.B. Corbett, who stated that because there would be further objections to purchasing, ‘any attempt to purchase the land would be useless’. He advised that ‘if the land is to be acquired, it can only be by taking it compulsorily’ under the Public Works Act 1928.¹³²¹ The ministers thus agreed that Cabinet approval be sought for this taking.

In April 1956, the Chief Surveyor recommended that Maori Affairs ask the Housing Construction Division to investigate all subdividable land in and adjacent to Takapuwahia Village and to draft an overall, unified plan.¹³²² Apart from a preliminary survey made by the Ministry of Works, no further action was taken for two years.

In April 1957, a meeting was held at which a Department official, Blane, tried to encourage the owners to agree to the Council’s water and sewerage scheme. The meeting instructed him to tell the Council that they still wished to join up, but that they did not accept the new conditions. Blane, the official, recommended the Secretary write to the Council telling it this, what the Maori thought of the attempt to go behind the deal the Council had made with them, and also that the Department was not going to be put in the position of being a ‘chopping block’ between the Council and Maori.¹³²³ There followed correspondence between the Department and Council with the Department refusing to become further involved—since it was a matter between the Maori as citizens and the Council—and the Council therefore refusing to include the Pa in its scheme—‘a nice bit of blackmail’, as Blane described it.

By mid-1958, the situation regarding the 80 acres of the Rangituhi and various Takapuwahia D blocks had not been advanced, although the Housing Construction Division were ready to proceed with the development. Maori Affairs understood themselves to be authorised only to negotiate for purchase and did not believe they would gain ministerial approval for taking the land until ‘there was no prospect of succeeding by way of a meeting of owners’. However, progress along the lines of owner approval had been blocked by the Works Department incurring a claim from the Rene brothers for compensation and damages

¹³²⁰ District Officer, Maori Affairs, to District Commissioner of Works, 15 June 1955. MA 1/74 5/5/59 pt 2.

¹³²¹ Minister, Maori Affairs, to Minister of Housing, 2 September 1955. MA 1/74 5/5/59 pt 2.

¹³²² Chief, Surveyor, Lands and Survey, to District Registrar, Maori Affairs, 13 April 1956. MA 1/74 5/5/59 pt 2.

¹³²³ Blane, memorandum, 3 April 1957. MA 1/613 30/4/20 pt 2.

after it had encroached by some three acres onto their lands, and Maori Affairs did not see how the other owners could be advised to sell while this claim remained unresolved.¹³²⁴

Indeed, the Ministry of Works had been dealing with a lawyer, Wiren, acting for the Rene brothers and others interested in the encroached area behind Mana College. The Maori owners, not disposed to sell their lands to the Crown anyway, regarded the encroachment as an ‘arrogant trespass’ and were now ‘definitely opposed to selling any of their respective blocks’. Their counter-proposal was that the Crown purchase the encroached area at the full valuation of £650 per acre plus all transaction and survey costs, that it provide free, and as part compensation, an access strip from Kotuku St to Block D12A, suitable for formation into a road, and that it make a contribution towards the road’s formation. The Maori owners’ attitude was that:

they should keep the land available for the growing population of the Maori settlement at Porirua. Their concern is for the future—say 30 or 40 years hence and not for the immediate needs of to-day.¹³²⁵

This is a clear indication that Ngati Toa still wanted their community kept together on their ancestral lands and that they did not agree to the Works/Housing/Maori Affairs plan to allocate them sections scattered all over the Porirua Basin—if indeed they even knew of it. Officials clearly recognised this desire of the owners was at odds with their grand plan, District Commission Laing saying openly that accepting this proposition ‘would likely jeopardise the whole of the major scheme of development envisaged....’ He believed that ‘little progress will be made in acquiring this land unless the whole of the area is proclaimed’.¹³²⁶

The District Supervisor of Housing, F.C. Basire, refused to accede to the Rene brothers’ demands concerning costs or roading, since the Housing Division was going to be roading all the lands anyway. He urged the District Commissioner of Works to settle urgently the remaining claims related to the encroachment.¹³²⁷

M.R. Jones, the Assistant District Officer, had discussions with the Makara County Council’s Engineer and Mr. Tutu Wineera, its Maori member, as well as George Katene from Porirua concerning the incorporation of the Pa area into the general scheme for roading, water

¹³²⁴ Assistant Secretary, memorandum, 7 August 1958. MA 1/74 5/5/59 pt 2.

¹³²⁵ District Commissioner of Works to District Supervisor, Housing Construction Division, 9 July 1958. MA 1/74 5/5/59 pt 2.

¹³²⁶ District Commissioner of Works to District Supervisor, Housing Construction Division, 9 July 1958. MA 1/74 5/5/59 pt 2.

¹³²⁷ District Supervisor, Housing, to District Commissioner of Works, 26 August 1958. MA 1/74 5/5/59 pt 2.

and sewerage.¹³²⁸ The Council was keen to include the area and Wineera and Katene agreed also, no-one wanting it to end up as an ‘eye-sore’, as Orakei and Waiwhetu pa had been prior to their incorporation into their localities’ schemes. The two major difficulties were the cost of putting in the services and local body rates. To undertake this incorporation, the resulting extra rates would amount to 3.8d in the £, while it required taking the whole area behind the pa, which was largely unused and gorse-covered, under the Public Works Act. The alternative, which no-one desired, was to make the pa a special rating area and raise a special loan of £50,000, which would amount to 11d in the £ in special rates. Either way, the payment of rates would have to be enforced, which was a major difficulty, given that virtually no-one there was paying their rates.¹³²⁹ The Wellington District officers recommended that Head Office support the taking of the area behind the pa under the Public Works Act.

Maori Affairs had now searched the various block titles and found that many were actually in sole ownership, generally by people living at Porirua or around Wellington. Only three absentee owners were noted, who were living in Sydney, Foxton and Putiki. The 16-acre D1A2A was owned by Rawiri Paraone, who lived at Porirua. David Prosser was now deceased, but as Hohua Rawiri Puaha Prosser, he had owned three sections. Jones recommended that the Crown negotiate directly with the owners of each section. Of the multiply-owned sections, there were no more than 7 owners for any block, so they could also be negotiated with directly.¹³³⁰

In September 1958, the Board of Maori Affairs approved a loan for Matarina Brown to build a house at ‘Porirua Pa’. However, at the same time the Board noted that some 40 loans had been approved for houses there and expressed concern at whether the local county council was providing adequate services there, such as roading and water supply.¹³³¹

An additional complication became apparent in that as well as the land approved by ministers back in August 1955, subdivisions of Takapuwahia 1C were now also involved, some with housing (admittedly substandard), such that the owners would have to be moved and re-housed.¹³³² In October 1958, Maori Affairs Head Office made a policy decision that no further applications for housing loans were to be accepted and no further houses to be built in Porirua Pa. The District Officer being instructed only that he was to ‘tactfully explain’ that ‘proposals for the better utilisation of the area’ were currently under consideration.¹³³³ Whether this was to encourage compliance with the Crown’s development scheme or simply to avoid housing that would conflict with the ‘better utilisation’ was not explained. Two

¹³²⁸ M.R. Jones to Secretary, Maori Affairs, 2 September 1958. MA 1/74 5/5/59 pt 2.

¹³²⁹ In the previous year, as a special inducement, the Council had offered to accept one year’s arrears plus the current rates in full settlement, but even so only 13% of the total was collected.

¹³³⁰ Jones to Head Office, memorandum, 22 September 1958. MA 1/74 5/5/59 pt 2.

¹³³¹ Board of Maori Affairs, minutes, 1 September 1958. MA 1 Box 449 30/5 pt 4.

¹³³² File note, 1 October 1959. MA 1/74 5/5/59 pt 2.

¹³³³ Head Office to District Officer, 21 October 1958. MA 1/74 5/5/59 pt 2.

months later, the Board of Maori Affairs informed the Maori Land Court that it would refuse indefinitely to grant housing loans for building in or about the Pa area while the locality's development was being worked out, although it admitted that it was not yet even known whether the Pa area was involved at all in the development.¹³³⁴

On 5 December 1958, the Secretary advised the Minister that although the ministers of Housing and Maori Affairs had agreed in September 1955 to proceed with taking the blocks behind the Pa, it had not been 'opportune' to complete the process. What the development aimed to do was link the 'Prosser Block', already developed immediately to the south-west of the Pa, with the Titahi Bay housing development to the north. One 'inferior' house, probably the 'poorest' in the area, would need to be removed, and perhaps another, and so there would need to be negotiations with their owners, as well as with owners of various other sections, parts of which could be involved for access. But the provision of roading and other services might outweigh any need for compensation.¹³³⁵

It was now proposed to take negotiate for only a little over 2 acres, being Takapuwahia Blocks C1A1, C1A2, C1A3, C1C3 and C1C1.

By contrast, a total of some 160 acres was proposed to be taken under the Public Works Act. These blocks were the 8-acre Rangituhi, and various Takapuwahia subdivisions: C2A2, C2A3, C2B, C2C, C1C, D1A1B1, D1A1B2, D1A1B3, D1A1B4, D1B2, D1B3, D1B4, D1A2A, and A South 2.

Of these, Rangituhi had 7 owners, A South 2 had 68, and D1B3 and 4 had 6 each, but all the others had only one or two. D1A1B1-3 has been the property of the late David Prosser, but since he had been declared a European some years prior to his death it was unclear to the officials whether his property was, therefore, even Maori freehold land that should come under this regime.

The dispute between the Rene brothers and Works remained unresolved. Apparently some three acres of D1A1B4 and D1A2A, blocks that were unoccupied, unfenced and heavily gorse covered, had been excavated and included within the playing fields of Mana College. The Renes had claimed for trespass but Works were refusing to settle, holding that the demands being made were unreasonable. The claim of trespass would not be affected by the taking, however.

The Department had decided, though, that the lands contiguous to the Pa, and perhaps in it, too, should not be retained as a block in which Maori could remain physically together.

¹³³⁴ Secretary, Maori Affairs, to Registrar, Maori Land Court, Wellington, 5 December 1958. MA 1/74 5/5/59 pt 3.

¹³³⁵ Secretary, Maori Affairs, to Minister, Maori Affairs, 5 December 1958. MA 1/74 5/5/59 pt 3.

There has been a suggestion that the owners of the land at Porirua may wish to retain it so that it can be available for Maoris wanting sections for housing. It is questionable whether this proposition has much to commend it. The Pa Area (Takapuwahia Township), where most of the Maori houses are, is not a striking example of planned subdivisions. The aggregation of further Maori families in or about the Pa area is really against policy. It is much better that sections should be available to Maoris throughout the various State Housing areas.... The expectation is that about 125 sections [for Maori] will emerge from the subdivision of the land proposed to be taken. A like number of sections will go to Maoris in other State subdivisions.¹³³⁶

But the ‘suggestion’ had come from the Maori owners themselves, not from some uninformed official, and it was a clear expression of how they wished to live and how they wanted to preserve their community for their descendants. It was not a mere ‘proposition’, and its commendability was based on entirely different considerations from those of the officials which were focused on ‘planned subdivisions’. Moreover, it was not merely an aggregation of ‘Maori families’, but members of one tribal group, Ngati Toa, who were owners of ancestral lands and who wished to retain their ancestral lands. For the officials, trumping any such wish or priority was ‘policy’. The Department had a prior commitment to spreading Maori throughout state housing subdivisions because it was ‘much better’ to do so. This value judgment assumed that Ngati Toa did not know for themselves what was good for them.

Now the Secretary also asked the Minister to approve a policy whereby no further applications for advances for Maori houses in the Pa would be entertained until the final plans for the area had been settled.¹³³⁷ Note that this request was made two months after the District Officer had already been instructed to forestall such applications and on the same day as the Maori Land Court was being told what the policy was. Clearly, there was an expectation that the Minister would fall in with departmental decisions and endorse them retrospectively. A subsequent briefing paper stated that this ban was to prevent an ‘increase of the difficulties confronting the larger scheme’;¹³³⁸ officials did not want their plans for broader development hindered by the owners of Takapuwahia Pa building on their own land. On the one hand it might indeed have done Ngati Toa little good to go on building in a sub-standard environment; on the other hand they were prevented from doing as they wished with their own property while the wheels of government agencies, local and national, ground on very slowly with little consideration for and involvement with their own desires. The acquisition/development process had been dragging on for over a decade already by this time.

¹³³⁶ Secretary, Maori Affairs, to Minister, Maori Affairs, 5 December 1958. MA 1/74 5/5/59 pt 3.

¹³³⁷ Secretary, Maori Affairs, to Minister, Maori Affairs, 5 December 1958. MA 1/74 5/5/59 pt 3.

¹³³⁸ Secretary, Maori Affairs, to Minister, Maori Affairs, 23 April 1959. MA 1/74 5/5/59 pt 3.

M.R. Jones, the Maori Affairs Liaison Officer in the Minister's office, wrote directly to the Minister in support of the Secretary's memo.¹³³⁹ He had been personally involved in the earlier taking of the Waiwhetu lands under the Public Works Act for housing and was adamant that this had saved Waiwhetu from becoming 'a real eye sore'; he recommended similar 'strong action' in the case of Porirua Pa, up to the taking of the lands with safeguards for provision of homes for any existing owner who wanted one. He believed this would be the only way Porirua Pa would get properly formed streets, modern sanitation and a water supply.

The briefing to the Minister claimed that 'the interests and feelings of the people in the matter are not being overlooked'. However, it appeared that the interests were those as defined by the officials and the feelings were indeed ignored. The briefing paper went on:

It is well known that land for housing is very short in the Wellington Metropolitan area; the area to be acquired is too valuable for this purpose to be allowed to remain idle from the community point of view; though the land itself will not be used for Maori housing, it is proposed that an equivalent number of scattered sections be made available to Maoris within the Metropolitan area; compensation for the land taken compulsorily would be assessed by the Maori Land Court; and the method of compulsory acquisition is being adopted simply because of difficulties of proceeding by negotiation with a large number of owners.¹³⁴⁰

Here, in fact, the interests and feelings of the Ngati Toa owners were effectively almost entirely overlooked. The interest in acquiring the land was for the broader community of everyone living in the Wellington metropolitan area, not just the Maori of Takapuwahia, nor even the various residents of the Porirua-Titahi Bay locality. The land being taken would not be used for the interests of the existing owners, but they, regardless of their feelings about wanting their community and ancestral lands to be retained en bloc, would be relocated in scattered sections around the Wellington metropolitan area. Compensation would be assessed by the Maori Land Court, where their interests and feelings would be but part of the calculus. The method of compulsory acquisition was being used not simply because of the number of owners—there would have been no problem if they been in accord—but precisely because some considered their 'interests and feelings' better served by not parting with their lands, or at least on the government's terms. This had been confirmed in an earlier paragraph which stated that the negotiation process 'would probably be difficult and the outcome uncertain'.

The Ministers of Maori Affairs (Nash) and Works (Watt) then visited Takapuwahia together on 28 April 1959, meeting with 'several' Maori resident of Porirua, including George Katene and Mr. and Mrs Solomon. They were greeted by speakers complaining of the loss of local shellfish beds by public works in the harbour area over a considerable period, but

¹³³⁹ M.R. Jones to Minister, Maori Affairs, 23 February 1959. MA 1/74 5/5/59 pt 3.

¹³⁴⁰ Secretary, Maori Affairs, to Minister, Maori Affairs, 23 April 1959. MA 1/74 5/5/59 pt 3.

concerning which the Government had never admitted any responsibility. The speakers also asked that cemetery areas remain undisturbed by any development. Nash deflected the points, but promised to look fully into the claims and come back to discuss it with them.

The departmental file note by Maori Affairs Secretary Sullivan on this visit noted that the development task was so great, with major earthworks required to re-shape hills and gullies, that only the Crown could do it. That ‘feeling was shared by the local people present’ but only two were named: Mr. George Katene and a woman of the Rini [sic] family who said she owned D1A2A. An agreement over the magnitude of the task is not, of course, the same as agreement with the manner of its being done. Sullivan’s hope was not to disturb the township area or its Maori ownership, but that since the natural lie of the land was such that the drainage and sewerage services would run through the township, the township’s services could be incorporated and simultaneously upgraded: ‘We would like to help to bring this about, and Works also are sympathetically inclined.’¹³⁴¹

Sullivan’s attitude was not entirely altruistic, though. If the township’s utilities were upgraded by Crown action, the Secretary thought it would appropriate for the Government to suggest it be regarded as ‘a fair offset’ against the shellfish claims. The Crown should be careful to make clear to Ngati Toa that the shellfish claims were not admitted, but that instead the ‘notional’ offset could be regarded as ‘a reasonable way of looking at the matter’.¹³⁴² In this manner, at no additional cost beyond what was the best solution to providing for the land development it itself wanted, the Crown could thus be relieved of the shellfish claims.

Nash himself believed that there was general agreement on several points. The land was not being used to good purpose and the large number of owners prevented further development, ‘the general impression being that as long as the owners got fair compensation there would be no opposition to the acquisition’. While the land would divide readily into housing sections, the actual development would require heavy machinery, but then the development of the ‘back area’ would help greatly with the general improvement of the Pa.¹³⁴³ Nash instructed his department to join with Works in organising the land’s taking and also asked Works to ensure that as soon as the proclamation was issued to minimise the delay in the owners getting their money. He also specifically asked Works to ensure that its officers planned the services so as to give the Pa ‘all the benefits that can reasonably be given as an incident of the development’.¹³⁴⁴ Following the ministerial agreement to proceed with the taking, the Board of Maori Affairs was now prepared again to entertain loan applications under the Maori Housing Act 1935 for sections within Takapuwahia Township.¹³⁴⁵

¹³⁴¹ Secretary, file note, 30 April 1959. MA 1/74 5/5/59 pt 3.

¹³⁴² Secretary, file note, 30 April 1959. MA 1/74 5/5/59 pt 3.

¹³⁴³ Nash, notes of inspection, 4 May 1959. MA 1/74 5/5/59 pt 3.

¹³⁴⁴ Nash to Minister of Works, 12 June 1959. MA 1/74 5/5/59 pt 3.

¹³⁴⁵ Secretary, Maori Affairs, to District Officer, Wellington, 14 July 1959. MA 1/74 5/5/59 pt 3.

Clearly, not all owners were consulted or advised about the taking in a way in which they comprehended the full implications of what was occurring. In May 1960, a letter written on behalf of Mrs H.T. Takiari complained that the land had been taken before she, as an owner, was advised. She asked, ‘What right has the Government got to take the land first, without informing the owners beforehand?’ and ‘What right has the Government got to build homes for the Pakeha, in a Pa? Don’t you know, as a Maori, that the Pa is for the Maori people?’¹³⁴⁶ In fact, the process of taking the land had not actually been completed yet and the notification of intention to take had been misunderstood—it had also been gazetted on 10 March 1960 (p 326)—but that indicated a potential problem with the more remote, bureaucratic process in dealing with people who by their own admission had at best a primary level education.

This was not an isolated example. On a broader scale, many Porirua Maori, including land owners were uncertain about the blocks to be taken and came to visit the Associate Minister of Maori Affairs about this and other Porirua matters.¹³⁴⁷

Aunty Makere’s mother, Miria Hautonga te Hiko, strongly opposed the state advancement onto the section where the family lived. The land had belonged to Miria’s father-in-law but he had died before turning it over formally to Miria, so it did not belong to her and she came home one day to find her fruit trees had been bulldozed to create sections for some eight houses along Takapuwahia Drive. Makere remembers:

I was all for mum taking them to court and that—the cheek of some of them when it came to negotiating the price [for compensation] and I was saying ‘This land is priceless’.... One of the guys said: ‘Oh it’s always priceless when it comes to money.’ I said, ‘You cheeky....’ I said: ‘This land has been in my family for years.’ It was lawyers for the Ministry of Works. The Ministry of Works was taking it under proclamation. And so they took all that land and where those houses are on Takapuwahia Drive—there’s about eight houses—that was my grandfather’s.¹³⁴⁸

However, not everyone disagreed with the project and Makere points out that there was a degree of dissension amongst Ngati Toa themselves:

They brought the Prime Minister out here—it was Walter Nash. It was a good idea ... some owners in front were saying no but some owners at the back were saying yes. Well they wanted

¹³⁴⁶ A. Takiari to Acting Minister Tirikatene, 9 May 1960. MA 1/74 5/5/59 pt 3.

¹³⁴⁷ M.R. Love to P.P. Tamahori, 29 July 1960. MA 1/74 5/5/59 pt 3.

¹³⁴⁸ Makere Kohe-Love-Reneti, interview, 14.

to get to the land at the back—they had to take the homes and land in front. You can't always blame the government, you know.¹³⁴⁹

Matters still moved slowly. Through the early 1960s, focus for Takapuwahia remained on roads, water and drainage.

On 8 May 1963, Judge Gillanders-Scott in the Maori Land Court assessed the compensation payable by the Crown for taking Takapuwahia C2A2 at £4900, plus £645 1s 1d interest.¹³⁵⁰ Compensation for Takapuwahia C2B was assessed at £3296 13s 3d, perhaps also including interest.¹³⁵¹ Unfortunately, the files do not contain additional information about the compensation or prices paid so that the information is not complete.

The push factors driving the Crown's interest in Ngati Toa's Porirua lands had diminished substantially by the 1960s. Particularly, there was less demand for state houses and greater difficulty in filling those that were already in existence. In general terms, the National Government of the day claimed that this was because the national housing shortage was over. However, the State Advances Corporation, the very government body financing people into lost-cost housing, argued that it was because the Government had set the exclusion threshold so low that few had incomes low enough to be allowed to take up a state house.¹³⁵² Either way, it meant that there was no imperative felt by the Crown to nibble further for state housing at Ngati Toa's Porirua lands, greatly diminished as they now were.

11.6. Conclusion

The taking of land for housing around the Takapuwahia area was therefore an important issue for Ngati Toa after the Second World War as, motivated by the growth of cities through population growth and urban drift, the Crown sought to expand housing areas and particularly state housing. The Porirua basin was an ideal location for Wellington expansion.

Although much of their ancestral lands had already been alienated to Pakeha farmers as discussed in other chapters in this report, the state housing expansion nevertheless affected Ngati Toa living at Takapuwahia. They were affected by the issues related to the policies providing for state housing assistance to Maori generally, as some of the Takapuwahia sections were considered for housing – the key question being whether the provider would be the Maori Affairs or Housing departments. This debate was affected by the national

¹³⁴⁹ Makere Kohe-Love-Reneti, interview, 15.

¹³⁵⁰ A.G. Hercus to Maori Land Court, Christchurch, 9 May 1963. MA 1/74 5/5/59 pt 3.

¹³⁵¹ Assistant District Officer, Palmerston North, to Head Office, memorandum, 23 October 1963. MA 1/74 5/5/59 pt 3.

¹³⁵² Ferguson, *Building the New Zealand Dream*, 243.

governmental policies, but also by who would accept responsibility for providing all the other services Takapuwahia still lacked at that time, such as roading, water and sewerage, and which the local authority required to conform to its own standards.

They were also affected by the encroachment of Crown acquisitions around them for land for general state housing. The various smallish nibbles may not initially seem significant, but this was in the context of Ngati Toa having very little land left at Porirua, or at all by this time. The nibbles were also at the centre of the core Ngati Toa lands, the Takapuwahia papakainga, which were of concern to all, not lands that were primarily of interest to a smaller number of defined individual landowners. The attempts to acquire parts of the Whitireia Reserve have been discussed in the 'Social Impact' report.

While a small number of people with interests in the lands around Takapuwahia do seem for whatever reason to have been prepared to sell (the files do not record such information), others were not and managed to protect and retain the papakainga area itself. There were also challenges to the Crown process of land taking, indicating that there had not been adequate consultation with the Ngati Toa landowners or community before the process went ahead. It is not clear that they were told exactly what was going to happen or how. While it is good that Ministers of the Crown were prepared to participate in the process, it is also clear that they did not explain matters fully, while some officials, especially those from Housing rather than Maori Affairs, were highly resistant to even giving Ngati Toa proper information, let alone taking their concerns fully into account. Even amongst officials, it was recognised that Ngati Toa might well perceive what was going on as a confiscation. One can also discern that confronted with the full weight of state desire to acquire their land and an endless supply of politicians and officials, Ngati Toa may well have been somewhat overwhelmed and left wondering during the process; there is indication that there were those who simply did not understand exactly what was going on. In the end, Ngati Toa were in a position to reap the benefits of modern urban development, but it came at the cost of the loss of most of their remaining lands outside the boundaries of the Takapuwahia papakainga.

CHAPTER 12

The Native Land Court in the Northern S.I., the Nelson Tenth and Ngati Toa

12.1. Introduction

It was stressed at various points in Report One that as at 1840 Ngati Toa were based on both sides of Cook Strait. Although today the iwi are particularly associated with the Porirua area this was not always the case. From 1827-1832 Ngati Toa were involved in a number of campaigns in Te Tau Ihu,¹³⁵³ and by 1840 Ngati Toa's core areas were located on both sides of the Strait. When William Wakefield reached Queen Charlotte Sound in 1839 he found Ngati Toa hegemony to be well-established in the region.¹³⁵⁴ Ngati Toa were involved in the whaling industry on both sides of Cook Strait – in the South Island the main base was the Port Underwood area, dominated by Ngati Toa – and many of the Reverend Samuel Ironside's parishioners at Cloudy Bay were Ngati Toa. It was Ngati Toa who defeated the party of Nelson magistrates at the Wairau in 1843. However, in a series of events that closely paralleled the alienation of Ngati Toa lands in the North Island, with the capture of Te Rauparaha in 1846 Governor Grey was able to force through a major land transaction which saw most of Ngati Toa's South Island lands alienated to the Crown. The Wairau deed and the Porirua deed occurred at more or less the same time and were counterparts of one another. Further Crown purchasing in the 1850s extinguished Ngati Toa title to most of what remained.

This chapter deals with what was left after 1870. Two principal developments are explored: the process by which Ngati Toa found themselves excluded from beneficial interests in the so-called Nelson Tenth (just as they were simultaneously excluded from the Wellington Tenth) and the final processes of investigation and partition of the minuscule interests that remained, which were mainly in the Wairau Bar area. This chapter is added mainly to ensure that a complete picture is provided of the entirety of Ngati Toa's lands in the period traversed by this report.

It is appropriate to comment here briefly on the broader social and economic background to events in the Native Land Court in the Northern South Island. Since 1860 the Maori population of the northern South Island had continued to decline. In 1860 Gore Browne had reported that the Maori population of the South Island was "between two and three

¹³⁵³ See Report One, pp 43-6.

¹³⁵⁴ Wakefield, despatch of 17 August 1839, NZC 3/1, National Archives, Wellington (see Report One, p 51.)

thousand, of whom one half dwell in the Province of Nelson.”¹³⁵⁵ In 1874 Alexander Mackay reported that the total Maori population of Nelson and Marlborough was less than one thousand, including half-castes (Marlborough 452; Nelson 440).¹³⁵⁶ Even at this time groups were remigrating north: Mackay mentions the departure of a group of Ngati Rahiri living in Queen Charlotte Sound who had recently left for Taranaki.¹³⁵⁷

By 1875 virtually the entire South Island had passed out of Maori hands. In that year Mackay calculated that there were only four areas of Maori customary land still remaining in the whole South Island, these being Ruapuke, Rangitoto, Wakapuaka and West Whanganui.¹³⁵⁸ In a report filed in 1877 Mackay tabulated the remaining reserve areas in Nelson and Marlborough as follows (these figures presumably included Te Taitapu (West Whanganui), Whakapuaka and D’Urville):

Table:
Reserves, Marlborough and Nelson, 1887
 [source: 1877 AJHR G-9]

Province	Description of Reserve	Total Acreage	Total Acreage in
		(a-r-p)	Province
NELSON	NZ Co’s 10ths	5,053-1-30	
	Educational reserves	3,490-0-00	
	General reserves	50,022-2-1	58,565-3-31
MARL-			
BOROUGH	General reserves	21,41-2-8	21,414-2-8

In Mackay’s report on Upper South Island Maori in 1876 he notes continued departures to Taranaki (and the Waikato) - which were not necessarily permanent - and the continued impact of epidemics on the remaining Maori population. The birth rate had fallen well behind the death rate. Mackay was vague as to the nature of an epidemic which swept

¹³⁵⁵ Gore Browne to Newcastle, 22 February 1860, CO 209/153 (DB 1604-1623, at 1605).
¹³⁵⁶ *Further Reports from Officers in Native Districts*, 1874 AJHR 2C.
¹³⁵⁷ *Ibid*, 6.
¹³⁵⁸ *Report by Alexander Mackay on Land Purchases, Middle Island*, 1875 AJHR G-3, p. 3.

through the Maori communities of the Pelorus and the Wairau in December 1875, describing it only as “a type of low fever”.¹³⁵⁹

The rate of mortality during the past two years is high in comparison to the births - the total number of deaths recorded during the period being 66, and the births 46. Of the former, 14 were caused by a type of low fever that prevailed amongst the residents of Queen Charlotte Sound in December last.

The population at Motueka and Golden Bay has been diminished during the last two years by the removal to Taranaki and Waikato of a number of Natives, enticed there at the request of their friends to obtain a share of their patrimonial lands. It is expected that many of these people will return in course of time to resume possession of their properties in the localities where they formerly resided.

By 1878 the population had fallen again. The total Maori population for Nelson, Marlborough and Westland now stood at 692 (the census enumerator was again Mackay). The 1878 census breaks the figures down according to iwi/hapu affiliation, and shows Ngati Toa as living at the Wairau and in Pelorus Sound, Ngati Koata at Croizelles and D’Urville, and Ngati Rarua at the Wairau and at Motueka.

Table:
Maori Population, Northern South Island
[source: 1878 AJHR G-2]

Iwi/Hapu	Place	Males	Females	Males	Females	Total
		over 15	over 15	under 15	under 15	
Ngaitahu	Kaikoura	24	21	9	13	67
Ngati Toa, Ngati Rarua & Rangitane	Wairau	43	16	11	13	83
Rangitane & Ngati Toa	Pelorus	28	18	8	9	63
Ngati Awa	Q.C. Sound	43	36	32	27	138

¹³⁵⁹ Alexander Mackay to Under-Secretary, Native Department, in *Reports from Officers in Native Districts*,

Ngati Koata	Croizelles/D'Urville	18	16	4	10	48
Ngati Tama	Wakapuka	19	17	16	10	62
Ngati Rarua & Ngati Awa	Motueka	17	16	6	3	42
Ngati Awa &						
Ngai Tahu	Buller	21	6	5	3	35
Ngai Tahu	Westland	34	20	15	13	82
		284	186	115	107	<u>692</u>

The figures for the 1881 census are much the same, 83 people belonging to the Ngati Toa-Ngati Rarua-Rangitane people at the Wairau, 63 for Ngati Toa/Rangitane in the Pelorus area, and a Ngati Koata population of 40.¹³⁶⁰

12.2. Land Court Cases in Te Tau Ihu 1883-9

The Native Land Court came to the Northern South Island comparatively late and for this reason the cases lack the detail and evidential value of the material from some other areas (for example the voluminous material in the Otaki Minute Books dating from the 1860s). In fact the first case recorded in the Land Court's Nelson Minute Books was the Rangitoto (D'Urville) case of 1883¹³⁶¹ when Judge Mair awarded the whole island to Ngati Koata on the basis of Tutepourangi's gift after the battle of Waiorua. Other cases from around the same time are the Taitapu and Wakapuaka cases of 1883 and - most importantly - the Nelson Tenth's case of 1892. The late date of the latter case is explained by the fact that the Land Court did not acquire jurisdiction over Maori reserved lands until comparatively late in its history (the Wellington equivalent to the Nelson Tenth's case took place in 1888), although why the investigations of title to areas of customary Maori land at Rangitoto, Te Taitapu and Wakapuaka took place at such a comparatively late date is puzzling. In any event few participants in the events of the 1830s were alive in 1892 (some certainly were, however, such as Wirihana Turangapeka of Ngati Rarua). The cases of the 1880s were:

¹³⁶⁰ *Census of the*

¹³⁶¹ (1883) 1 Nelson MB 1 (transcription in Appendix)

(i) **Rangitoto case, 1883 1 Nelson MB 1.**

In this case, as noted above, the Court awarded Rangitoto to Ngati Koata on the basis of a claim by gift. The case was uncontested and virtually no evidence was recorded. Fuller details of the gift of Rangitoto by Tutepourangi of Ngati Kuia are however given by Ngati Koata witnesses in the Nelson Tenth claim in 1892 (see below).

(ii) **Taitapu Case, (1883) 1 Nelson MB 3.**

This case dealt with the Te Taitapu block on the West Coast. The main claimants were Ngati Rarua, and there were counterclaims by the Puketapu section of Ngati Awa and by Hoani Mahuika representing the pre-conquest tribes (Rangitane, Ngati Apa, Ngati Kuia). Ngati Rarua's claim was made on the basis of conquest and occupation, their principal chiefs being Niho and Whareaitu.¹³⁶² The Rangitane-Ngati Apa-Ngati Kuia claim was based on occupation, and the Puketapu case, like Ngati Rarua's, on conquest. In response to questioning from Paora Panirere of Ngati Awa, Wirihana Turangapeke (Ngati Rarua) rejected Ngati Awa's claim to an independent conquest of the area and insisted that only Ngati Rarua had followed up the conquest by occupation. The conquest was carried out by "Ngati Toa, Ngati Rarua and others" and "Ngati Toa was the chief tribe":

I know that I have a right to this land. I never saw you [Ngati Awa] on this land. I never heard that Ngati Awa never lived there, nor did I see Matimati there. I know nothing about Matiaha's occupation. I was not admitted by Ngati Awa. The conquest was made by Ngati Toa, Ngati Rarua and others. The canoes all came together but made separate victories. Each party came in their own canoes. Ngati Toa was the chief tribe. I know that Ngati Awa never occupied this land. You had no part in the conquest. Ngati Toa gave up Kotoku to Ngati Awa.

Alex Mackay, Commissioner of Native Reserves at Nelson - and soon to be a judge of the Court himself - also gave evidence. He said that Ngati Rarua and Ngati Toa came to Te Taitapu, that Ngati Rarua took possession, and that the rents from gold mining in the area had always been paid to Ngati Rarua "together with a few of Ngati Awa".¹³⁶³ The Court's judgment was very brief:¹³⁶⁴

¹³⁶² Henare Wiremu (Ngati Rarua), at (1883) 1 Nelson MB 9.

¹³⁶³ Evidence of Alex Mackay, at (1883) 1 Nelson MB 11.

¹³⁶⁴ (1883) 1 Nelson MB 67-8. See Appendix.

It appears that Ngati Rarua claim this land, and Ngati APA and Rangitane appear as Counter Claimants. The land was conquered, and the Court has no power to reinstate latter tribes. With reference to Ngati Awa, they may have taken some part in the conquest of this particular piece of land. The Court is not quite clear upon this point. In any case they do not appear to have occupied the land. Ngati Rarua appears to have undisputed possession.

From Ngati Toa's perspective, the most essential point to note is while Ngati Rarua readily accepted that "Ngati Toa was the chief tribe" they asserted that only Ngati Rarua could claim rights of *occupation* in respect of the Te Taitapu Block. Ngati Toa themselves took no part in this case.

(iii) Wakapuaka case

In this case Huria Matenga made a claim to the Wakapuaka block north of Nelson and Hemi Matenga of Ngati Toa and Ngati Awa descent appeared and gave evidence on her behalf. Competing claims were advanced by Meihana Karepa for Rangitane-Ngati Kuia-Ngati Apa and by Tipene Te Ruru ki on behalf of Ngati Koata. Hemi Whir (Rangitane) testified that the land was conquered by "Ngati Toa, Ngati Awa and Puketapu"¹³⁶⁵ some after Tutepourangi's gift. This gift did not extend only to Rangitoto itself but also included Wakapuaka (and other areas as well, presumably):¹³⁶⁶

Our chief on returning delivered up this land with Rangitoto to Koata. After this the invasion took place by which all the people here were destroyed. Te Patete and Te Whet lived here after the conquest. Some years ago (I cannot say how long) they shared the land with Huria's ancestors.

The two most important points to note are that Ngati Toa took part in the conquest of the area some time after Tutepourangi's gift, and that Ngati Koata and the pre-conquest tribes both accepted that the gift was not confined only to Rangitoto itself.

(iv) Wairau reserve case, (1889) 2 Nelson MB 1.

The principal area of Maori freehold land this case is concerned with is an area which still shows on the modern cadastral maps as the "Wairau Maori Reserve". As Hilary and John

¹³⁶⁵ (1883) 1 Nelson MB 15.

¹³⁶⁶ *ibid.*

Mitchell put it in their magisterial history of Te Tau Ihu Maori in the later 19th and 20th centuries.¹³⁶⁷

Despite its importance as a traditional pa site and as a small commercial centre (port, hotels, accommodation houses and stores) during the early colonial period, no Maori Reserves were set aside at the mouth of the Wairau River. The original Reserve, located on the western side of the river a few miles from the mouth, was deemed to be 770 acres (311.6 ha), but it was March 1889, thirty-four years after the agreement with McLean, before ownership interests, tribal and individual, of the Wairau Reserve were determined by the Native Land Court.

The origins of this reserve can be traced to the deed-era transactions described in Report No. 1. First there was the area reserved in the Wairau deed. Part of this recognised as belonging to Ngati Awa was subsequently acquired with the Waitohi deed. A further provision for reserves was made in the Te Waipounamu deed in 1853. The reserve area was apparently first investigated by Judge Mackay in 1889. Judge Mackay had already by this time formed fairly definite conclusions about the respective interests in the South Island of Ngati Toa, Ngati Koata and the other tribes. In the Wakapuaka case in 1883 Mackay, who before becoming a judge of the Native Land Court was then Commissioner of Native Reserves and Civil Commissioner for the South Island said that he was “thoroughly acquainted with the titles of persons and tribes to land; in fact I am better acquainted with that than the young men if not the elders”¹³⁶⁸ (a rather vain, not to say presumptuous stance). It was his view at that time that Ngati Toa’s lands were in Cloudy Bay (i.e. the Wairau) and Queen Charlotte Sound; Ngati Koata took D’Urville (Rangitoto) and Ngati Tama and others took possession of Wakapuaka. He seems to have never deviated from this opinion.

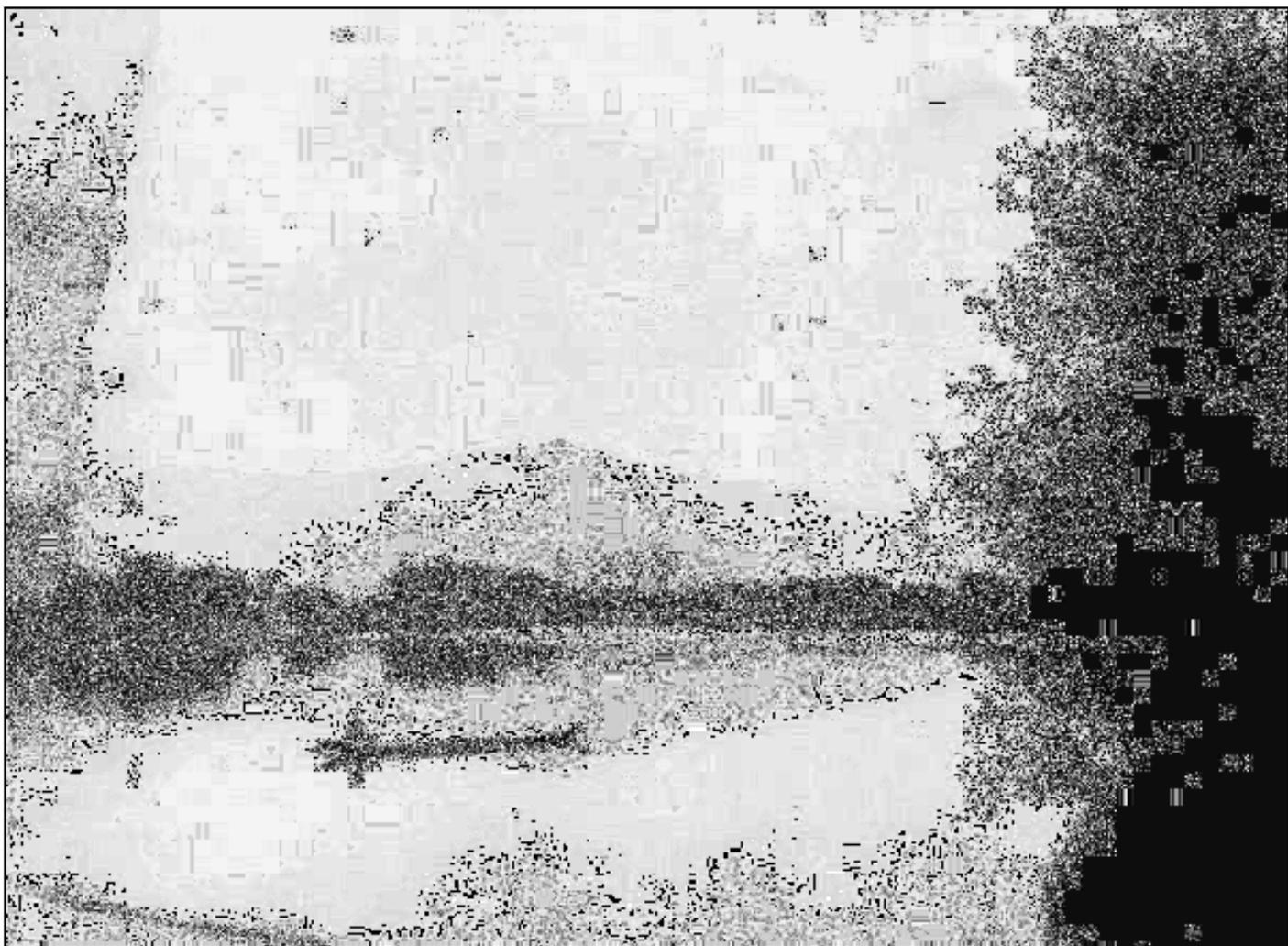
At the start of the 1889 hearing, which took place at Spring Creek, Wi Neera “applied for information from the Court respecting the principle upon which the Reserve was made”.¹³⁶⁹ Judge Mackay told Wi Neera that the purpose of the Reserve was made for persons in “bona fide occupation” at the time of the final settlement of Maori claims in the Marlborough-Nelson area. Judge Mackay split the reserve block into three, based on occupation: 300 acres for Ngati Rarua, 300 acres for Rangitane and 170 acres for Ngati Toa, although these acreages had to be adjusted when the block was surveyed (Tuiti McDonald later said that on survey the initial area of 770 acres was increased to 902 acres¹³⁷⁰).

¹³⁶⁷ Hilary and John Mitchell, *Te Ara Hou* (2007), 25.

¹³⁶⁸ Evidence of Alexander Mackay, Wakapuaka case, 17 November 1883, at (1883) 1 Nelson MB, 14.

¹³⁶⁹ Citing the summary of the legal history advanced in the Native Land Court in 1924 by McElvey on behalf of the Crown in the Wairau Commonage case: see (1924) 9 Nelson MB 17, at p. 19.

¹³⁷⁰ At (1925) 9 Nelson MB 65.



Waka on the Wairau River.

The Wairau River was a highway for waka and this dugout canoe on the Wairau near the Ferry Bridge was still in use about 1900. It was used to carry flax to a water-powered flax mill.

Alexander Turnbull Library, Wellington.

13.3. The Nelson Tenths case (1892)

The Native Land Court's investigation into the Nelson Tenths arose from an application to the Court made by the Public Trustee.¹³⁷¹

The investigation of the beneficial interest of the persons entitled the usufruct of these lands having been referred to the Court by the Public Trustee under the terms of Clause 16 of the Native Reserves Act, which provides that on doubts arising as to the persons beneficially interested in any lands administered by the Public Trustee it shall be competent for him to refer the matter to the Native Land Court.

¹³⁷¹ (1892) 3 Nelson MB 1, per Judge Mackay.

The case is the counterpart to the Court's investigation of the Wellington Tenths lands, heard under the same procedure at Wellington in 1888.¹³⁷²

There were five claims, advanced by (i) Tupoki (or Paka) Herewine Ngapiko on behalf of Ngati Rarua and Ngati Tama; (ii) Ihaka Tekateka "on behalf of the Ngati Koata and Ngati Toa and a section of the Ngati Tama and Ngati Awa";¹³⁷³ (iii) Huria Matenga on behalf of Ngati Tama; (iv) Hohaia Te Rangiauru on behalf of Ngati Awa; and (v) Meihana Kereopa's claim on behalf of the pre-conquest tribes, Ngati Kuia and Rangitane. The claims were confusing and overlapping, with three different groups making claims on behalf of Ngati Tama.

These claims were mainly managed in the Court by various "conductors", these usually being Maori individuals knowledgeable about the operations of the Court and affiliated to a claimant group in some manner, who acted as unofficial counsel. The conductor for the Koata-Toa case was Hohepa Horomona, who was Ngati Toa himself and lived at Porirua. Hohepa Horomona (i.e. Solomon) was the heir, presumably the son, of Horomona, one of the 26 Ngati Toa individuals named as recipients of the special reserves awards in 1853. Herewine Ngapiko and his group were however represented by one "Mr. Pitt", presumably a solicitor in private practice. The Ngati Kuia-Rangitane claimant, Meihana Kereopa, was the usual Rangitane claimant in the Court at this time and seems to have lived at Palmerston North.¹³⁷⁴

At the beginning of the case Hohepa Horomona asked for an adjournment.¹³⁷⁵

Hohepa Horomona stated that he appeared for the Ngati Koata, also for a section of the Ngati Toa, a section of the Ngati Tama and a section of the Ngati Awa, but only a short notice had been given of the intention to proceed with the case. He would ask the court to grant an adjournment to allow his party to arrange their case.

The Ngati Koata-Ngati Toa claimants were not the only ones left in some disarray by the timing and location of the hearing. The conductor of the Rangitane-Ngati Kuia case stated also "that these parties proposed to prefer a claim but they had not arranged their case or appointed a conductor" and the Ngati Awa claimants also seem to have been in a state of some confusion. The Minute Book does not record a formal response by the Court to Hohepa Horomona's request for an adjournment, but given that the Court went straight on with the

¹³⁷² (1888) 2 Wellington MB 130-7. This was also heard by Judge Mackay. On Ngati Toa and the Wellington Tenths see R.P. Boast, *Ngati Toa in the Wellington Region*, 160-3.

¹³⁷³ (1892) 3 Nelson MB 3 (per Judge Mackay).

¹³⁷⁴ MA Acc W 22218 Box 21.

¹³⁷⁵ (1892) 2 Nelson MB 170.

hearing one has to assume that the request was declined. As the hearing was at Nelson and was initiated by a notice of motion from the Public Trustee, Ngati Toa may not have heard about the hearing until it was too late. Hohepa Horomona seems to have done his best by using Ihaka Tekateka's evidence to support a joint claim by Ngati Toa and Ngati Koata, and by cross-examining witnesses at various points in order to have them clarify their precise relationship to Ngati Toa and Te Rauparaha.

Evidence for the combined claim was given by Ihaka Tekateka of Ngati Koata, who was himself of mixed Ngati Koata-Ngati Kuia descent.¹³⁷⁶ The claim, which it must be remembered related to lands at *Nelson*, was advanced on the basis of (i) the gift of Tutepourangi and (ii) conquest. The gift, said Ihaka, was made by Tutepourangi to Ngati Koata *and* Ngati Toa,¹³⁷⁷ and it did not relate only to Rangitoto (d'Urville) by any means, but in fact extended to Separation Point:¹³⁷⁸

On reaching Rangitoto Tutepourangi gave all this land to Ngati Koata and Ngati Toa. The boundaries of this tuku commenced at Rangitoto and went to Whitikareao on the mainland, thence towards the Kaiarau; Wakatu; Waimea; Motueka; on to Te Matau (Separation Point) the boundary terminated.

Ihaka claimed that Ngati Koata did not remain at Rangitoto with Tutepourangi but made their own expedition to the west - to Waimea, Motueka and Separation Point, and left Tekateka and others behind at Wakatu. Owing to these circumstances, said Ihaka, "I claim that the land referred to belonged to the Ngati Koata and Ngati Toa".

The Ngati Toa claim in this case thus appears to rest on Ihaka Tekateka's claims relating to the extent of Tutepourangi's gift and prior exploration and settlement before the main invasion subsequently led by Te Rauparaha. In this view the only groups involved at this preliminary stage were Ngati Toa and Ngati Koata; Ngati Rarua thus did not acquire any rights until they accompanied the main invasion and it is Ngati Koata who allocate land to Ngati Rarua at Motueka. (Ngati Rarua, needless to say, told a completely different story: that they separately conquered the Motueka, West Whanganui and Karamea areas from the pre-Rangitane people, the Ngati Tumatakokiri).

Apart from being linked with this rather contestable argument put forward by Ngati Koata, the Ngati Toa interest was, as noted advanced in Court to a large extent by cross-examination.¹³⁷⁹ Hohepa Horomona cross-examined Paka Herewine Ngapiko very closely. In

¹³⁷⁶ Ihaka's father was Tekateka of Ngati Koata, and his mother Nukuhoro of Ngati Kuia, Rangitane and Ngati Apa: see (1892) Nelson MB 253.

¹³⁷⁷ Ibid.

¹³⁷⁸ Ibid 255.

¹³⁷⁹ The Native Land Court developed the annoying practice of recording cross-examination as if it were evidence-in-chief, with the actual questions being omitted and the answers reconstructed as

response, Herewine Ngapiko insisted that Ngati Rarua were on *all three* South Island expeditions.¹³⁸⁰ It is obvious from the recorded responses that Hohepa made a point of questioning Herewine about the relationship between Te Rauparaha and Ngati Rarua. In the passage below Hohepa's questions have been reconstructed by inference from the context, and are in italics to indicate that they are only a reconstruction:¹³⁸¹

Q. What was the raupatu that conquered the South Island?

A. The raupatu that conquered the South Island was under Te Rauparaha assisted by: Ngati Toa, Ngati Koata, Ngati Rarua, Puketapu (these were the hapus who conquered the land on the South side of Cook Strait.) Ngati Tama, Ngati Mutunga, Ngati Hinetiu, Ngati Rahiri, Puketapu, Ngamotu, were the hapus who came with Te Rauparaha and settled at Kapiti.

Q. Do you admit that Te Rauparaha was paramount over all the hapus?

A. Rauparaha was the tino Rangatira who led the people to Kapiti, but I don't admit that he was the Rangatira who was paramount over the affairs of the hapus who conquered the district.

Q. Why did Te Rauparaha divide up the land amongst the hapus?

The reason that Te Rauparaha divided the land amongst the hapus was as a reward for their bravery.

Q. But why was it Te Rauparaha who divided up the lands?

A. He was the leader and that was why it devolved on him to divide the land amongst the people.

Q. Why was Te Rauparaha elected as leader?

The reason why Te Rauparaha was elected the leader was because he was the person who was instrumental in forming the expedition to Kapiti.

And, a little later:¹³⁸²

Q. How many sections of Ngati Rarua are there?

A. There are two sections of the Ngati Rarua: the section that occupied the land within the Nelson settlement, and the section who settled at Cloudy Bay.

Q. Did the section at Cloudy Bay obtain land there?¹³⁸³

A. This section did not gain land there.

Q. Which hapus gained land at the Wairau?

A. Ngati Toa and Ngati Rarua were the hapus who gained land at the Wairau.

positive statements (there are exceptions, such as the Chatham Islands investigations of title in 1870, where the questions are recorded). Mostly the questions being asked have to be guessed from the context; this is often not too difficult.

¹³⁸⁰ (1892) 2 Nelson MB 172,

¹³⁸¹ Ibid, 177.

¹³⁸² Ibid, 178.

¹³⁸³ From the context, probably meaning *at Nelson* - i.e. the Ngati Rarua section who lived at Cloudy Bay with Ngati Toa did not obtain rights at Wakatu.

Q. Did the Ngati Raruas at Wairau obtain land at Nelson?

A. The Ngati Raruas referred to did not acquire land in the Nelson district. This was the section under Te Kauhuta.

Q. To whom did the land at the Wairau belong?

A. The land at the Wairau belonged to Ngati Toa.

Q. Did Ngati Rarua have rights there?

A. Ngati Rarua lived there but I don't know if they acquired a right there.¹³⁸⁴

Q. Do you admit that Ngati Rarua at Wairau had rights at Motueka?

A. I admit that Ngati the Ngati Rarua at Wairau and the Ngati Rarua at Motueka had acquired rights in the land at Motueka.

Q. Do you admit that Ngati Toa had mingled claims to the land with all the other hapis?

A. I admit that Ngati Toa had mingled claims to the land together with the other hapus and that was the reason they were paid part of the purchase money.

From this reconstructed cross-examination the kind of case that Hohepa Horomona is putting to the Land Court on behalf of Ngati Toa becomes apparent. This was based on the paramountcy of Te Rauparaha as leader, and on the "mingled" rights held by Ngati Toa as an iwi with all the other hapus. In response, Herewine admitted that Te Rauparaha was the "tino rangatira" (but denied he was "paramount over the affairs of the hapus") and admitted that Ngati Toa had "mingled" claims. "This was why they were paid part of the purchase money" (here Herewine must be referring to the 1853 Te Waipounamu deed). On the whole Hohepa Horomona's cross-examination appears to be skilled and effective, forcing Herewine not only to contradict himself but also to concede Ngati Toa rights (later, when cross-examined by Hemi Matenga, however, he back-tracked and insisted that Te Rauparaha made no apportionment of the lands west of Whakapuaka).¹³⁸⁵

Judge Mackay thought that the evidence disclosed three main issues:

1. Whether all the land to the South of the Native boundary at [Waihi?] and extending to Separation Point was included in the Gift made by Tutepourangi to Ngati Koata and if so whether the force of this Gift was not afterwards set aside by subsequent events.
2. Whether the land comprised in the Nelson Settlement was fully acquired by the Conquest of the original owners by the Ngati Toa: Ngati Koata; Ngati Awa; Ngati Tama; and Ngati Rarua hapus.
3. Whether the former owners sustained any right to the land after the Conquest.

As well as these basic questions there were two supplementary issues:

¹³⁸⁴ Note that Hohepa has here made Herewine contradict himself.

¹³⁸⁵ See *ibid*, 181-2.

- (a.) In what position are the rights of the rights of the Claimants of certain hapus who had assisted in the Conquest but who had not occupied prior to the year 1840.
- (b.) Who are the persons of these hapus whose rights have not been prejudiced in this manner.

In regard to the first question, the extent of Ngati Koata's rights by gift, Mackay was dismissive:

Touching the first point the Court is of opinion that the evidence did not support the statement that all the lands form the Southern boundary of the land now owned [6.] by Huria Matenga and extending to Separation Point was included in the Gift by Tutepourangi to the Ngati Koata.

Mackay has no more to say on this, but presumably his view is that Koata's rights deriving from Tutepourangi's gift were confined to Rangitoto only.

Secondly, Mackay concluded that the entire region had been effectively conquered - i.e. there were no pockets of unconquered territory belonging to Rangitane-Ngati Apa-Ngati Kuia:

With reference to the second point the Court considers that the evidence discloses that the right to land was fully established in addition to the Conquest by the occupation of it by the several hapus who were found in possession on the arrival of the New Zealand Company.

Following from this, it followed that the entire corpus of Rangitane-Ngati Apa-Ngati Kuia rights had been completely extinguished by the conquests:

As regards the third point the Court is of opinion that the right of the former owners was entirely extinguished by the Conquest of Te Rauparaha and his allies and that at the time the land was sold they were living in a state of subjection to their conquerors consequently the Court dismisses this Claim.

Mackay next turned to the rights of Ngati Toa. Essentially Ngati Toa had no claim because their participation in the conquest of the Nelson region had not been followed up by effective occupation:

In the opinion of the Court the Members [7.] of the hapus who took part in the Conquest under Te Rauparaha who did not occupy the land comprised within the Nelson Settlement up to the year 1840 lost their right to it as no rights of ownership were exercised by such persons as

would confer a proprietary right to the soil, it being a recognised principle of Native custom that Conquest alone without occupation confers no right.

The only groups "who retained their right after the Conquest through residing on and cultivating the land" were Ngati Rarua, Ngati Tama, Ngati Awa and Ngati Koata. Thus Mackay bases this assertion on a particular view of Maori customary law, of course, but not only on that. He simply assumes that there was no Ngati Toa settlement in the Nelson area and points further west as at 1840. But is that correct? Dieffenbach's 1840 census records that at that time there are 400 people belonging to Ngati Toa, Puketapu and Ngati Tama living at Massacre Bay, Wanganui and Blind Bay; although some of the "Ngati Toa" might have mainly been Ngati Rarua this may not have been true of all (and in any case the degree of separateness between "Ngati Rarua" and "Ngati Toa" is an issue in itself).

As far as Mackay was concerned Ngati Toa only had rights in Marlborough, not Nelson:

As regards the Ngati Toa claim this hapu, although it took part with the other hapus in conquering the Country on the South side of Cook Straits did not occupy any portion of the territory gained in that manner within the Nelson Settlement. The only places retained by that hapu in the South Island were situated at Cloudy Bay, the Wairau and the Pelorus, these were the only places in the "bona fide" possession of this hapu at the foundation of the Colony; consequently they had not acquired any proprietary rights in any other part of the territory acquired from the original owners.

Here Mackay is directly following Commissioner Spain's report on the New Zealand Company's claim to a Crown grant at Nelson, although he ignores the fact that Spain saw the "alienation" by Ngati Toa as one of the main justifications for accepting the New Zealand Company's entitlement to a grant. The Ngati Toa claim to beneficial interests in the Nelson Tenth was therefore dismissed.¹³⁸⁶

Regardless whether Mackay is right regarding the extent of Ngati Toa settlement west of Nelson there is the further question as to whether Mackay had any justification for basing the claim the Nelson tenths on *occupation* at all.¹³⁸⁷ The Nelson Tenth were not in fact established to reflect occupation (it will be recalled that areas in actual occupation were separately excluded from the grant). They were in fact more in the nature of an endowment fund. The Nelson Tenth were supposed, moreover, to be a general endowment for all Maori with interests in the region. This *had* to include Ngati Toa as one of the principal reasons for Spain's allowing the grant in the first place was on the basis of the purchase from the Ngati

¹³⁸⁶ (1892) 3 Nelson MB 8.

¹³⁸⁷ My thanks to Matiu Rei for this point.

Toa chiefs. There is no reason why Ngati Toa should be excluded from a beneficial share in the Tenthhs because they received a separate payment from the Company, as other iwi *also* received separate payments with the various “releases” as well as Wakefield’s distribution of gifts and presents in to the residents of the Blind Bay area in 1842. The consideration for the extinguishment of traditional title in the Nelson area was payment in cash *and* the right to share in the “Tenthhs”, and there can be no reason for denying Ngati Toa a share in the latter. Rights of occupation were supposed to be protected by the award of *separate and additional* reserves. Mackay’s decision to base interests in the Tenthhs simply on the basis of occupation is simply a non-sequitur. The Land Court’s 1892 decision to exclude Ngati Toa from a share in the Nelson Tenthhs has been a very sore point with the tribe ever since.

Another matter of concern is the extraordinary amount of time it took before beneficial interests in the Nelson Tenthhs were fixed, which is something else that rankles with Ngati Toa. The “Tenthhs” were supposed to reflect interests that existed in 1840. They were supposedly part of the compensation for the extinguishment of Maori title *as governed by Maori customary as at 1840*. By 1892 a lot of water had flowed under the proverbial bridge. If the beneficial interests in the Tenthhs had been fixed at 1840 or soon afterwards when Ngati Toa was still a powerful presence and the authority of its chiefs recognised over a wide region (albeit with a certain amount of contestability) it is impossible to imagine that Ngati Toa would not have received some share, even a substantial share, in the reserves. Despite the Land Court’s formal adherence to the so-called 1840 rule, it seems likely that Mackay’s decision was more based on the circumstances of 1892 rather than those of 1840.

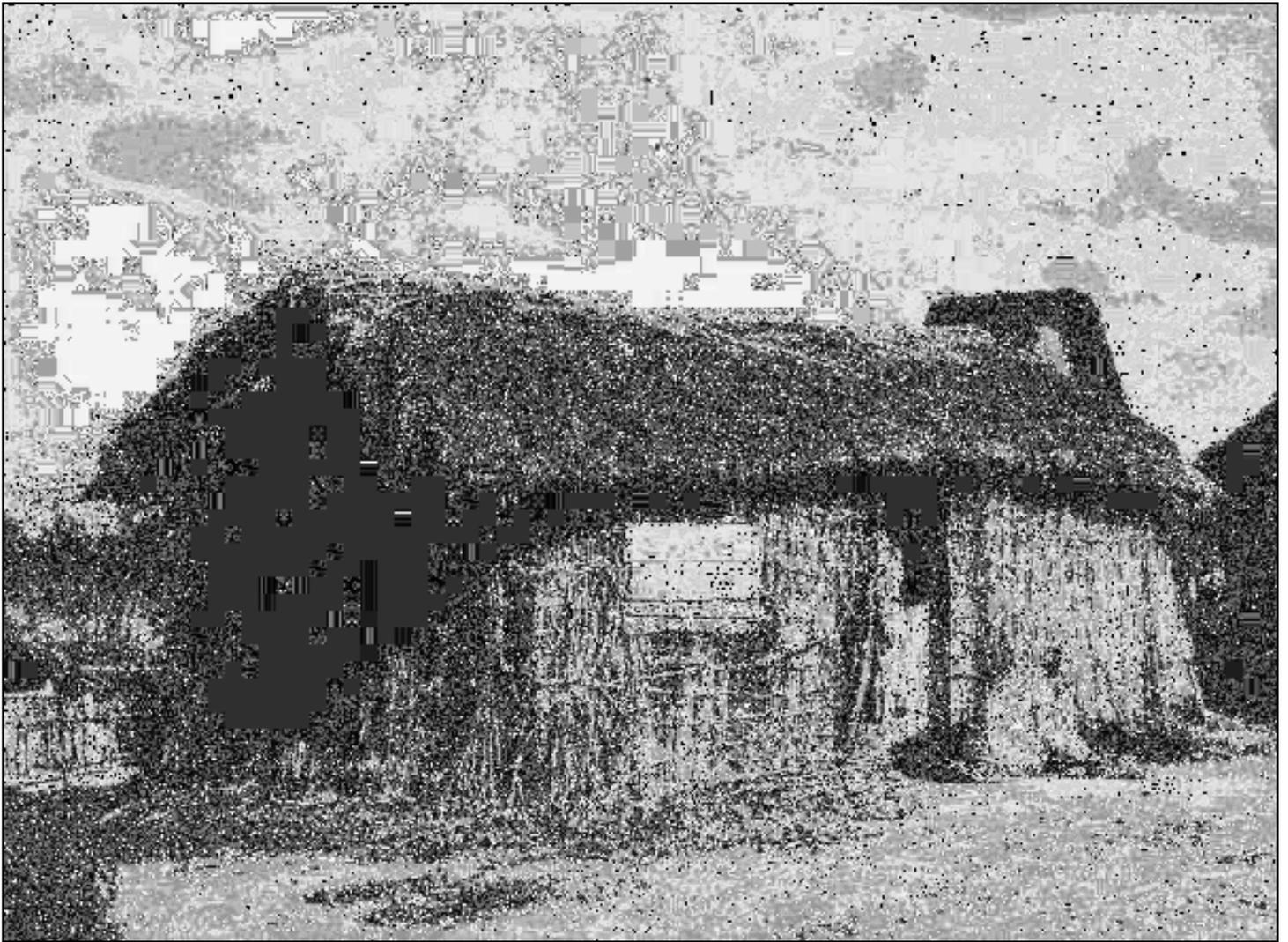
12.4. Survey and apportionment of the Wairau reserves

In 1889, as noted above, Judge Mackay conducted an investigation of the Wairau reserve and divided it amongst Ngati Toa, Rangitane and Ngati Rarua on the basis of actual residence. On this basis the larger part of the reserve went to Ngati Rarua (315 acres), the next to Rangitane (270 acres) and the smallest to Ngati Toa (183 acres).¹³⁸⁸ Shortly after this the reserve area was surveyed in accordance with the directions of the Court. What seems clear from the directions is the poor quality of much of the land, a “large Portion” of which was “unsuitable for cultivation”. Mackay directed the surveyors as follows:¹³⁸⁹

¹³⁸⁸ By this time the original figures had been amended slightly. The exact figures were:

	A	R	P	
Rangitane		270	3	36
Ngati Toa		183	3	21
Ngati Rarua		315	0	23

¹³⁸⁹ Mackay, memo of 5 July 1892, MA W 22218, Box 21 [Miscellaneous South Island Papers], Wairau Court Correspondence, WNA. It should be noted that in 1874 one Major Palmer of the Royal Engineers, in a long report on the state of the national surveys, had drawn attention to the deficiencies



Raupo Dwelling at Wairau Pa, photographed about 1900. Photographer Unknown.
Alexander Turnbull Library, Wellington.

of the New Zealand Company's surveys at the Wairau: "The New Zealand Company's work, which included the Wairau and Wakefield Downs, had been done in blocks, by contract, with theodolite and chain, and drawn to compass meridian on a scale of four inches to a mile. It was neither triangulated nor checked. Traverses, carried through the different blocks into which the work was subdivided, seem to have formed the framework on which the sections were to be tied. Large errors, nevertheless, were often introduced." See Report on Surveys by Major Palmer RE to Col. Sec., 5 April 1875, in *The State of Surveys in New Zealand*, 1875 AJHR H-1, at p. 17.

It would be advantageous so far as simplifying the location of the hapus if each would consent to have the whole area they are entitled to laid off in one block but it is possible that this cannot be accomplished due to the uneven character of the soil which renders a large Portion of the Reserve unsuitable for cultivation and in addition to this it will probably be found difficult to obtain the consent of those who have the scattered cultivations, to shift them to another locality.

Already by this time intermarriage between the Ngati Toa, Rangitane and Ngati Rarua people of the Wairau was having an impact on successions:

I annex a list of the persons entitled showing the area that has been allotted to each, and in connection therewith to explain that the subsequent apportionment has altered the areas originally apportioned to the three hapus. The alteration has been caused through persons in some of the hapus succeeding to deceased individuals included in the Lists submitted by other hapus to the Court for investigation.

However as the area had not until this time been properly surveyed, it was possible that it might exceed the presumed total of 770 acres. Mackay suggested that if so the areas should be expanded pro rata:

With reference to the possibility of the area exceeding 770 acres it would be advisable...to add the area proportionately to the quantities originally allotted to the several hapus, and then arrange the additional quantity over the persons included in the original lists...

12.5. Wairau commons case (1924) 9 Nelson MB 17

The Wairau Native reserve (which was, despite its name, not Maori reserved land but Maori freehold land) had a complex history. The land was prone to flooding. The Wairau shifted its course and on a number of occasions the Crown laid claim to the accretions within the reserve as well as to various other parcels. One such case related to a piece of land known as the Wairau Drain Reserve¹³⁹⁰, which the Crown laid claim to in 1924. Basically the Crown's argument was that with the Wairau deed the whole area became Crown land, and only those parts of the area specifically vested in Maori owners became Maori freehold land: as the drain

¹³⁹⁰ The title order refers to this blocks as Wairau 12 Drain Reserve. In the Minute Book the block is referred to as Wairau [12?] 9A and 9B.

reserve had never been so included it was now the Crown's property.¹³⁹¹ Local Maori opposed the Crown claim. Those who spoke against it were Tuiti McDonald, who described himself as "one of the last of the Rangitane tribe"¹³⁹², who was born in the South Island but who was then living at Levin, and Haparete Rore, who stated he was born in the district and belonged to Ngati Rarua and Ngati Toa. Judge Mackay agreed with the Crown argument and held that the Court had no jurisdiction to vest the area in trustees, but his decision was overturned by the Native Appellate Court. The Registrar was directed by the Appellate Court to call a special hearing of the Court so that the Maori owners of the reserve could be defined.

The separate hearing to fix the lists of owners in the reserve was held at Picton in 1927. Ngati Toa along with Ngati Rarua and Rangitane attended the hearing. According to the Minute Book:¹³⁹³

The representatives of the three hapus Ngati Rarua, Ngati Toa and Rangitane are here in full force and propose to hold a meeting today and draw up lists of names from each hapu to go into the title.

The meeting of kaumatua took place as planned and the lists of owners were handed in to the Court. There are 70 names in total, with 18 from Ngati Toa. The Ngati Toa names listed in the Court order and in the minute books are:

1. Hohepa Wineera
2. Ria Wineera
3. Herami Wineera
4. Rauparaha Wineera
5. Pene Wineera
6. Kanawa Wineera
7. Pere Wineera
8. Karaitiana Paneta
9. Rawiri Puaha
10. Arapere Paneta

¹³⁹¹ Ibid. The Crown argued: "1. Prior to investigation the Wairau was Crown land. 2. On investigation of title orders the awards were made provisionally - the note on the back of the order stating that the final orders that would be given on the partition orders subsequently made were to be the actual title to the land. 3. Any areas not included in these areas would remain Crown land, since prior to investigation of title this was the status of the Reserve and such areas not included would be outside the jurisdiction of the Native Land Court. 4. The drain reserve not being included in any of these partition orders and being moreover shown clearly as excluded from the abutting sections on the plans endorsed and partition orders is presumptive evidence that it was intended to remain Crown land."

¹³⁹² At (1927) 9 Nelson MB 129

¹³⁹³ (1927) 9 Nelson MB 112.

11. Hana Matene
12. Hunia Terangi Kauhoe
13. Maikara Terangi Kauhoe
14. Tami Tuari
15. Hera Rangitiere Pari
16. Hera Tamihana
17. Rihari O'Brien
18. Huirua Ngapaki.

The Wairau Maori community seems to have been a mixed Rangitane-Ngati Rarua-Ngati Toa community who nevertheless retained a sense of their separate identities. Members of this community swapped land around amongst themselves. For example at some point Rangitane gave up 4.5 acres to Ngati Rarua and were compensated by Ngati Toa who gave Rangitane some land in exchange in Wairau XII blocks 28 and 29.¹³⁹⁴ A church was built there and a meeting house. The Wairau river was a treacherous neighbour which shifted course from time to time confusing land boundaries and was also prone to flooding. There were particularly severe floods in 1923 and in 1939.¹³⁹⁵

12.6. Picton section 58 case, (1931) 9 Nelson MB 216.

The piece of land known as Picton section 38 (also known as Tua Marina reserve section 58 Block XII Cloudy Bay S.D.) was the subject of a case before the Native Land Court in 1931. The case was brought by Peter McDonald. The minutes read:¹³⁹⁶

Mr. Peter McDonald called attention to Mackay's compendium vol. 2 pp 138 and 338 to show that this piece of land was purchased from the proceeds of 334 Nelson Tenths and set aside for the benefit of the Ngati Raruas and Rangitanes. Mr. Smith said the Ngati Toa people had also a right and had been in the habit of taking wood from this land without any protest from the members of the two other tribes. After considerable discussion it was agreed that a certificate of title be issued...

The Court vested the block in a number of trustees, three of whom were Ngati Toa: Mere te Hiko, Teo Wi Neera and Rawiri Puaha. However the Native Trustee objected to the Court's

¹³⁹⁴ See Wairau F or 29 case, (1928) 9 Nelson MB 132.

¹³⁹⁵

¹³⁹⁶ (1931) 9 Nelson MB 216.

decision, arguing that the block was in fact vested in the Native Trustee as a firewood reserve for all the iwi with interests in the South Island Tenth. ¹³⁹⁷

The mixed Ngati Rarua-Rangitane-Ngati Toa Maori community at the Wairau was far from affluent. In 1937 J.H. Grace visited the area and described the settlements at Waikawa and Wairau as follows: ¹³⁹⁸

The living conditions generally in these two settlements are bad and something must be done before the health of those who now appear healthy and strong is undermined. There are too many old houses that should have been demolished long ago still harbouring large families, and some of which I venture to say are only fit for animals to live in. Tuberculosis is prevalent and is increasing its hold on account of the poor living conditions and overcrowded houses. Malnutrition is also evident.

12.7. Conclusions

This chapter documents a depressing history – depressing to research, and no doubt depressing to read about. In fact the fate of Ngati Toa in Te Tau Ihu, like that of other iwi in the region, has much in common with the history of Ngai Tahu at the same time. South Island Maori became virtually invisible, penned up on small and much-partitioned blocks and largely out of sight and out of mind as the South Island's pre-European past receded into oblivion. Two main trends have been explored here: Ngati Toa's exclusion from the Tenth's beneficial interests, which might have provided some kind of additional income and helped maintain a Ngati Toa presence in the South Island, and the sequence of small partitions and alienations which was the fate of the remaining pathetically small reserve areas at the Wairau.

¹³⁹⁷ Native Trustee-Judge, South Island District, Native Land Court, Wellington (the letter is pasted into 9 Nelson MB 218).

¹³⁹⁸ J.H. Grace, Domestic Survey of South Island Maori Settlements 1937, MS 173-4/5, WATL.

Chapter 13:

Conclusions

As was stated in the introductory chapter, this report has primarily focused on Ngati Toa during what might be called ‘the Land Court period’, roughly from the 1860s to the 1960s, although where necessary earlier material has been introduced or the story carried on down to the present (as, for example, with Kapiti and Whitireia).

First it may be useful to summarise the main events and trends. By 1860 Ngati Toa had already lost the bulk of its lands and had been reduced to the small areas in the Wairau area, the much larger reserve blocks in the Porirua deed, some smaller reserves in areas to the north, Kapiti Island, and such interests as the iwi still had in unpurchased lands in the Horowhenua and Manawatu areas. The iwi’s meager landholdings had also been reduced by the gift of the Whitireia block to the Bishop of New Zealand in trust for a college in 1848. The principal leaders of Ngati Toa by 1860 seem to have been Matene Te Whiwhi and Tamihana Te Rauparaha, but they also identified closely with their Raukawa side and belonged much more to the community at Otaki than to that at Porirua and Hongoeka.

There is not much information on the impact of the New Zealand wars on Ngati Toa specifically, although there certainly were some repercussions at Otaki, with many of Ngati Huia strongly supportive of the Maori king. The wishes of the younger men to go north and assist in the defence of the Waikato was only restrained by the older generation of chiefs with some difficulty, combined probably with an awareness of the risks of confiscation that might follow with the enactment of the New Zealand Settlements Act in late 1863. It seems that tensions over the New Zealand wars, however, became channeled into an enormously draining, complex and costly local struggle over the Rangitikei-Manawatu, Kukutauaki and Horowhenua blocks.

The catalyst that initiated these events was the Crown’s own decision to proceed with the Rangitikei-Manawatu purchase. The ‘dispute’ was not in any sense a simple matter of contested historical interpretations between Maori inter se, but arose entirely out of the government’s own purchasing activities, first with the original Rangitikei/Turakina Crown purchase (May 1849, with Ngati Apa as vendors) and then with the Rangitikei-Manawatu Crown purchase, finally finalised at Parewanui in December 1866. The latter was also primarily a Ngati Apa sale, with some Raukawa and Ngati Toa signatures on the Deed, but the purchase was a very controversial one which many Raukawa refused to sign. The non-sellers wanted to submit their claims to the Native Land Court, but the Court’s decisions of 1868 and 1869 in fact were a great disappointment to Raukawa and no doubt to those of Ngati Toa who supported them.

Following the Rangitikei-Manawatu Crown purchase of December 1866, there was a sequence of major investigations of title from 1869-1873, these being the Himatangi (Rangitikei-Manawatu) case in 1868, its rehearing in 1869, and the Kukutauaki and Ngarara investigations in 1873, and Ngati Toa's unsuccessful claim to Kukutauaki No 1 in 1874. Although there were still to be many investigations, commissions and inquiries into these blocks essentially the main pattern had been set; Rangitikei-Manawatu mostly went to Ngati Apa, Horowhenua to Muaupoko, Kukutauaki to Raukawa – in association with Ngati Toa and Ngati Awa – and Ngarara to Ngati Awa. Large areas of these blocks were purchased by the Crown, which, indeed, arising out of its negotiations with Ngati Apa, was very closely involved in the cases as an active opponent of Ngati Raukawa's claims. While some Ngati Toa rangatira at various times did support the Ngati Apa case (Tamihana Te Rauparaha, for instance), on the whole the fairly negative outcomes for Ngati Raukawa in these cases will have impacted on many Ngati Toa people as well.

Ngati Toa's connection with these major blocks and large-scale inquiries was direct, rather than indirect, as was explained earlier in chapters 1 and 2. As was noted above (part 2.9) Ngati Toa's 'indirect' involvement in the complex tenurial history of this area was multi-faceted. Much of the debate in the cases turned around relationships with Ngati Toa and questions of who was placed where, and when, by Te Rauparaha, and the independence – or lack of it – of the various groups from Ngati Toa. The evidence given in all of these cases, then, was given in a typically politicized and contested tenurial context, as was often the case in the Native Land Court. Ngati Toa rangatira participated in the hearings as witnesses or sometimes as claimants, and in a broader sense all the blocks were in Ngati Toa's rohe in any case, as that rohe would have been understood by old-school rangatira such as Te Rangihaeata. Te Rangihaeata had opposed even the Rangitikei-Whanganui (Turakina) block sale by Ngati Apa; how he would have reacted to the Native Land Court's decision in the Rangitikei-Manawatu decision – had he still been alive – can be readily imagined.

However Ngati Toa's interests in these more northerly Native Land Court blocks was not solely an indirect one, given the Native Land Court's findings in the Kukutauaki case in 1873. Here the Court found that Ngati Raukawa were entitled to a joint interest in this block along with Ngati Awa and Ngati Toa. How exactly the ownership lists were calculated and determined is not a point we have been able to research, but it does need to be reviewed at some point (perhaps as part of Ngati Raukawa's own separate research programme). It is possible that Ngati Toa people today might assume that their interests in such sections of the block as remains in Maori ownership comes from their Ngati Raukawa 'side', but this may not actually be the case.

Around the same time as its investigations into the large blocks around Otaki and Levin the Native Land Court also began its enquiries into Ngati Toa blocks proper, including

Kenepuru (November 1873) and Kapiti (1 May 1874). Kapiti aside, these blocks were all former reserve areas within the old 1847 Porirua deed. Kenepuru was awarded to Ngahuka Tungia, Raiha Ruaha, Ropata Hurumutu, Nopera Te Ngiha and Rene Te Tahua. Kapiti was divided into five blocks, Te Minga, Maraetakaroro, Kaiwharawhara, Rangatira and Waiorua. Koangaumu (on the southern side of Titahi Bay, bounded by the Thoms Grant and by the Kahotea and Takapuwahia Blocks) was investigated by the Native Land Court in 1880. A memorial of title under the Native Lands Act 1873 was issued to 13 individuals, including 1 share divided between the 6 'half caste' Shearer children. Aotea (also known as 'Schedule C' block) was investigated and partitioned in July 1881. The subsequent history of this block is very complex and to some extent obscure. Rangitoto (D'Urville) was awarded to Ngati Toa's Ngati Koata relatives in 1883, and in August 1883 Ngati Toa were successfully obtained a fisheries title to a part of Porirua harbour (Parumoana). Takapuwahia was investigated in September 1895 and the block was divided by Judge Mackay into two sections, a rural and a township portion; the rural portion was partitioned in its turn into blocks A-K, and the township portion into 126 residential sections (the details of the township sections, many of which remain in Ngati Toa hands, are set out in Appendix 1). Kahotea, or Kahutea, on the Whitireia Peninsula, was investigated and partitioned from 1895 to 1907.

Many blocks near Porirua were partitioned and sold to private purchasers such as the Jillett and Prosser families. It is very difficult to disentangle competing interests at this distance, but it does seem that there were divisions and tensions within the Ngati Toa community at Porirua over land matters. Apart from the usual intricacies and confusions inherent in the Native Land Court process, however, it seems that the key issues for Ngati Toa in this period lie particularly in three special areas, these being Taupo No 2, Whitireia and Kapiti itself. These areas have all been dealt with comprehensively above.

The Taupo No 2 Block at Plimmerton is covered above fully in chapter 6. The key event in the tenurial history of this Block was the Native Reserves Amendment Act 1896. The legislation vested the land in the Public Trustee, who was empowered to set aside one acre as a burial reserve and to lease out the balance on long-term lease. This was a most coercive and untoward action towards Ngati Toa, and the legislation and the subsequent history of this block raise numerous issues which are all discussed fully in the closing section of ch 6 and which do not need to be summarised here.

The most intricate and complex issue was the Whitireia block, one area in which the Native Land Court played no role. In 1848 Ngati Toa rangatira gifted a substantial area of 500 acres at the north head of Porirua harbour to the Bishop of New Zealand for a school, but as is well-known no school was ever built. Wi Parata spearheaded efforts to regain title to the area. He argued that as the gift had failed the land should be returned and reinvestigated by the Native Land Court; an important aspect of his claim was that he did not believe that

descendants of the original donors would necessarily gain title to Whitireia in the Court. The issue dragged on for decades. Wi Parata petitioned parliament about Whitireia in 1876 and in 1877 brought proceedings in the Supreme Court, this of course being the famous *Wi Parata v Bishop of Wellington* decision over which so much ink has been spilled. Wi Parata was unsuccessful, Prendergast C.J. holding that the Supreme Court had no power to go behind the Crown grant, meaning that the claim that the Crown grant to the Bishop was *ultra vires* and could not be considered. In 1896 the issue resurfaced, not, however, from Wi Parata but rather as a result of a petition by Heni Te Whiwhi, Matene Te Whiwhi's daughter (Matene having been one of the original donors). The petition was successful, the Committee recommending that the land be returned, but this was not to the liking of the government. This led to the extraordinary series of events from 1896-1907, during which time Whitireia became the storm centre of a major controversy over endowed Church grants and Maori educational policy. The controversy involved numerous further petitions, two failed Government bills in parliament (1898 and 1900), two decisions by the Supreme Court (1899¹³⁹⁹ and 1900¹⁴⁰⁰), two Court of Appeal decisions (1901¹⁴⁰¹ and 1902¹⁴⁰²) and then the Privy Council decision in *Wallis v Solicitor-General* (1903¹⁴⁰³). This in turn led to the famous protest of the New Zealand Bench and Bar at some of Lord Macnaghten's perhaps somewhat intemperate remarks in the Privy Council about the New Zealand government and the New Zealand Court of Appeal. (As it happens the scheme for the variation of the Whitireia trust approved by the Supreme Court, overturned by the Court of Appeal and then reinstated by the Privy Council was strongly objected to by Ngati Toa, something that not all commentators on these events have grasped). This was not all. In 1905 there was a major Royal Commission on Whitireia, which heard a great deal of evidence – including that of Wi Parata and Heni Te Whiwhi – presided over, ironically, by none other than Sir James Prendergast. This in turn led at last to the legislative settlement of the question in 1907 with the Otaki and Porirua Empowering Act of that year. But the outcome was not an optimum one for Ngati Toa, who got none of the two things they most wanted, a college of their own at Whitireia, or – failing that – a return of the land. The Trust still exists, although Whitireia itself was later sold to the government and is now managed by the Department of Conservation; but as a result of yet further legislation the income from the fund is managed by the Otaki Marae Trustees, an arrangement which may well have long outlived whatever suitability it might once have had.

Kapiti, as noted, was investigated and partitioned by the Native Land Court in May 1874. The various sub-blocks from that point on all have their own complicated individual

¹³⁹⁹ *Bishop of Wellington v The Solicitor General*, per Prendergast CJ, 19 May 1899, (1900) 19 NZLR 214;

¹⁴⁰⁰ Per Stout CJ at (1900) 19 NZLR 235.

¹⁴⁰¹ *Solicitor-General v The Bishop of Wellington and others* (1901) 19 NZLR 665

¹⁴⁰² *Hohepa Wi Neera v Bishop of Wellington* (1902) 21 NZLR 655

¹⁴⁰³ [1902] AC 173.

histories, which were traversed comprehensively in chapter 9. Interests in some of the Kapiti blocks were transferred to Wi Parata. The tenurial position as at the time of the Kapiti Island Act in 1897 is summarized above in part 10.4. By this time title to the island was in a complex and fragmented state; some of the island had been sold to Pakeha private buyers (W H Field, Malcolm Maclean); parts were owned or leased by Wi Parata; the original grantees or their successors owned other sections and there had been a considerable number of partitions. By the 1890s it seems that few owners actually lived on the island, but as was emphasized in part 10.9 above, it would be wrong to infer from this fact that Ngati Toa had in any way lost their sense of identification with the island. The owners seem to have visited the island to maintain connections with it and collect resources, while at the same time leasing out their interests in order to generate some much-needed income for their families. With the Kapiti Island Public Reserve Act 1897 the Crown equipped itself with pre-emptive purchasing powers for the Maori interests, and powers of compulsory acquisition for the non-Maori blocks (see part 10.5). But the Crown purchasing programme of the Maori interests was itself a complicated and prolonged matter. By 1920 or so virtually all of the island was in Crown hands. The legislation meant that Maori could no longer alienate interests on Kapiti – alienation including new leases – to any one but the Crown, and as with pre-emptive regimes elsewhere the inevitable outcome was that virtually all owners gave up the unequal struggle and sold their interests to the government.

Finally, the depleted and fragmented pieces of what was left of Ngati Toa's once-great estates were further depleted by public works takings, especially for housing as described in the preceding chapter.

As indicated in the introduction, the principal blows struck against Ngati Toa were those that took place in the years from 1846-7, dealt with in Report 1 in this sequence. But there was still room for insult to be added to injury, as we hope this report has demonstrated. Given that the Crown had already extinguished the major part of Ngati Toa's great estates before 1860, one cannot help but feel that – taking a long-term view – they had the right to remain unmolested on such lands as they had still managed to retain.

APPENDIX 1

TAKAPUWAHIA TOWNSHIP SECTIONS NARRATIVE

1. Introduction

This section will traverse the information contained in the files about the sections of the Takapuwahia Township so as to discern the recorded details of what happened to the ownership of land in the block. It will then draw together from those details the various threads that comprise the greater patterns of land ownership at Takapuwahia.

Valuations were made for many of the Takapuwahia sections in the mid-late 1950s and noted in the summaries below. The exact date is not given on any of the forms, nor is the reason for the valuation explained in any of the documents sighted. It may well have been associated with the moves to develop the 'pa' area, which included the provision of services by the local authority, Makara County, which in turn required the collection of rates from the properties, and, of course, valuations were required on the basis of which those rates could be levied. Another possibility is that there were plans afoot for the Crown to acquire township sections as part of the housing development and that valuations were necessary to determine compensation, but this seems less likely as by then many (although far from all) township sections had already been developed by the owners. It is perhaps also possible that the valuations were done by the Maori Affairs Department, both in order to gain some quantitative data about the community, but also because many of the houses would have been financed, at least in part, by Maori Affairs loans, for which the valuation of the security property would have been necessary. Still, the first of these three possibilities would seem to be the most likely.

The original title to the Takapuwahia Township sections had been awarded on 21 September 1895 by Judge Alexander Mackay and Assessor Rawiri Rota te Tahiwī, acting under the Native Land Court Act 1894. It appears from the file copies of the court orders that Judge Mackay retired between the time of making the orders and the drafting and signing of the documents, which were all signed by Chief Judge Jackson Palmer on his behalf.

The original owners of the Takapuwahia Township sections were set out in 28 Otaki MB 67-75.

2. Narrative:

Section 1:

Section 1 (2r 10.5p) was originally awarded to Mere Hiko solely in 1895. In January 1952 the section was sold to Taylor Samuel Mihaere for £325 (approved by the Maori Land Court 25 January 1952). It was then resold to Waikoromiko and Evan Williams in 1956 for £350.¹⁴⁰⁴

Section 2

Section 2 (2r 3.7p) was originally awarded to Wi Karehana solely in 1895. By a vesting order dated 26 June 1941 under s 20 of the Native Housing Amendment Act 1938 1 rood for the section was vested in

¹⁴⁰⁴ Filenote. WN 110 Takapuwahia Block Order File.

Tuhaha Matenga, and this was transferred to James Te Hau Hintze Elkington by a vesting order dated 20 January 1948 made under s 7 of the Maori Purposes Act 1941.¹⁴⁰⁵

Section 3

Section 3 (1r 33.3p) seems to have been held jointly with secs 4, 5 and 6 originally. It was owned by Waepiti Matenga/Hanikami solely from the time of the partition of 12 May 1948 of these four sections and was transferred to Walter Kauwhata Martin on 20 April 1949. The 4 sections together were valued in January 1954 at £710 unimproved value, plus £2050 of improvements, making a capital value of £2760.¹⁴⁰⁶

Sections 4, 5 and 6

Sections 4, 5 and 6 (total 3r 38p) were held jointly from the 1948 partition by 5 owners: Hera Matai held ½ a share while the other 4 held 1/8 share each. On 12 August 1949, Hera Matai's half-share was divided amongst 5 successors, 3 of whom received 1/8 while the other 2 received 1/16. This meant that the 3 sections, held together, were owned by 9 people.¹⁴⁰⁷

Sections 7, 8, 9 and 10

Sections 7, 8, 9 and 10 (total 2r 8.5p) were originally awarded to Raiha Puaha solely. On 26 October 1915, Joshua Henry Prosser (Hohua Rawiri Puaha Prosser) succeeded solely in trust for Hohua Rawiri Puaha Prosser. This ownership remained the same in 1954, when the sections were jointly valued at UV £400 + improvements £1950 for a capital value of £2350.¹⁴⁰⁸

Section 11

Section 11 (1r) was awarded to Marara Horomona solely in 1895. Kingi Horomona succeeded solely on 27 May 1947.¹⁴⁰⁹

Section 12

Section 12 (1r) had a more varied history. Awarded in 1895 to Ani Retimana solely, it was sold by her to Richard Weller in April 1913, and then subsequently transferred to David Prosser. The section was vested in Henitipo Takiari by an exchange order dated 8 August 1950.¹⁴¹⁰

Section 13

Section 13 (1r) was awarded in 1895 to Te Whai Tokorau solely. There were no successions and at some stage in the early-mid twentieth century it was sold to Wikitoria Katene for £25.¹⁴¹¹

¹⁴⁰⁵ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴⁰⁶ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴⁰⁷ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴⁰⁸ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴⁰⁹ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴¹⁰ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴¹¹ Filenote. WN 110 Takapuwhahia Block Order File.

Section 14

Section 14 (1r) was awarded in 1895 to Matiu Moko solely. There were no successions and at some stage in the early/mid-twentieth century it was sold to Charles James Kelly of Porirua for £25. In early 1954 it was valued at £245 unimproved value + £2130 improvements, giving a capital value of £2375.¹⁴¹²

Section 15

Section 15 (1r) was awarded in 1895 to Ria Hori Tame solely. Not until November 1954 were there any successors, when June Moana Warena and Percy Keith Warena succeeded to a half-share each.¹⁴¹³

Section 16

Section 16 (1r) was awarded in 1895 to Huriana Tamairangi solely. In January 1907, Huirana Pohe Maaka succeeded solely, and in September 1932 Heni Panori succeeded solely. She sold the section to Te Kanawa Wineera and in January 1952 his 6 successors vested it in Wihau Parata solely by exchange order.¹⁴¹⁴

Section 17

Section 17 (1r) was awarded in 1895 to Te Whaitokorau and Matiu Moko equally. In November 1939 it was sold to Te Kanawa Wineera for £20.¹⁴¹⁵

Section 18

Section 18 (1r) was awarded in 1895 to Roka Hori solely, who sold it to Ethel Prosser for £15 in August 1918.¹⁴¹⁶

Section 19

Section 19 (1r) was originally awarded to Hanimaku Te Hiko solely, who was succeeded in January 1927 by Waipiti Matenga, Hera Matai and Pirihiara Rota Paki. Their successors got ever smaller portions. In 1950, the 1/3 of Waipiti Matenga, and the 1/12 each of Maraea Efferson and Kuini Kahiwa Rereti, totalling ½ of the section, was vested in California Pomare Piwari solely under s 7 of the Maori Purposes Act 1941 for a dwelling site. So by 1954, when the section had a capital value of £255, it had 8 owners, 7 of whom shared half. The 1/12 shares would have been worth about £10, while the two who owned 1/24 shares would have had a mere £5 interest each.¹⁴¹⁷

In 1961, for Section 19, Judge G. J. Jeune acted under ss 34 and 445 of the Maori Affairs Act 1953 to order that, as the dealings since the 1895 investigation of title order had not been recorded in

¹⁴¹² Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴¹³ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴¹⁴ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴¹⁵ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴¹⁶ Filenote. WN 110 Takapuwhahia Block Order File.

¹⁴¹⁷ Filenote. WN 110 Takapuwhahia Block Order File.

the court records, resulting in there being no complete record of the block's ownership, there were to be 8 owners recognised as at 25 January 1961.¹⁴¹⁸

Sections 20 and 21

Sections 20 and 21 (2r) were held together having both been awarded in 1895 to Nika Hakimanu solely. There were no successors and in February 1954 the block was vested in Pirikawau Parai solely by court order under s 30 of the Maori Land Act 1931.¹⁴¹⁹

Section 22

Section 22 (1r) was originally owned by Tohuroa Hira Parata solely, but was vested in January 1950 in Waikuhara Parata solely by court order under s 7 of the Maori Purposes Act 1941.¹⁴²⁰

Section 23

Section 23 (1r) was originally owned by Pirihana Tungia solely, who was succeeded in February 1907 by six owners equally: Wi Parata, Hemi Matenga, Rangikauhoe Te Hawe, Te Riri Te Hawe, Henikami Te Hiko and Mere Te Hiko. Although long deceased, they remained the named owners in 1954, when the capital value was £250.¹⁴²¹

Section 24

Section 24 (1r) was originally owned by Nopera Manupiri solely, who was succeeded in September 1918 by Potete Nopera. It was vested in Marara Potete Martin solely by court order in January 1948 as a dwelling site under s 7 of the Maori Purposes Act 1941, but subsequently sold to William Baillie and his wife, of Titahi Bay, for £330.¹⁴²²

Section 25

Section 25 (1r) was originally awarded to Nopera Manupiri, Hori Manupiri and Kereihi Manupiri equally. Their successors succeeded originally to the same shares, but by the mid-twentieth century they were starting to be divided further, so that the next generation were receiving only 1/6 shares of the section.¹⁴²³

Section 26

Section 26 (1r) was awarded in 1895 to Inia Tuhata solely. There were no successions and in May 1947 it was vested in Wiki Mohi (2/3) and Henitape Takiari (1/3) by Exchange Order. They transferred it to William Portland, a chef from Wellington, in December 1947 and he transferred it to Te Oti/George

¹⁴¹⁸ Consolidated Order, 25 January 1961. WN 111 Takapuwhia (Vol 1 & 2) Block Order File. Unfortunately the schedule supposed to be attached to the order is missing, so the owners are not identified.

¹⁴¹⁹ Filenote. WN 110 Takapuwhia Block Order File.

¹⁴²⁰ Filenote. WN 110 Takapuwhia Block Order File.

¹⁴²¹ Filenote. WN 110 Takapuwhia Block Order File.

¹⁴²² Filenote. WN 110 Takapuwhia Block Order File.

¹⁴²³ Filenote. WN 110 Takapuwhia Block Order File.

Katene, a labourer of Porirua, in July 1950. Under s 440 of the Maori Affairs Act 1953, Te Oti Katene vested it in Wayne and Amiria Leavitt equally in May 1955.¹⁴²⁴

Section 27

Section 27 (1r) was originally awarded to Miriama Rawiri solely and by the mid-twentieth century there had been no successions registered.¹⁴²⁵

Section 28

Section 28 (1r) was originally awarded to Mohi Nopera solely. In September 1924, he was succeeded by Turama Mohi (2/3) and Wiki Mohi (1/3). Henitipe Takiari succeeded solely to Turama's interest in October 1949 and in August 1950 transferred the 2/3 interest to David Prosser by Exchange Order. Wiki Mohi then sold the other 1/3 to David Prosser for £35.¹⁴²⁶

Mohi Nopera mortgaged Sections 28, 66 and 67 in August 1909 to Wellington solicitor William Hughes Field—the same Willie Field who played such a prominent role in the story of Kapiti—for £30 plus further advances.¹⁴²⁷ There were no further details of whether this was approved, or on what terms it proceeded. Turama Mohi Nopera of Johnsonville applied on 3 July 1941 to have Takapuwahia Township Sections 28 and 66 partitioned, but her application was dismissed on 9 December 1941.¹⁴²⁸

Sections 29 and 30

In Sections 29 and 30, which appear to have been dealt with as a single parcel, Huirua Ngapuhi's interest of 19.02 perches had been divided amongst three successors on 19 December 1938.¹⁴²⁹

Section 29 (1r) was partitioned equally between Hunia Rangikauhoe Ngapaki and Maikara Rangikauhoe Ngapaki in August 1948. It was valued in January 1954 at unimproved value £250 + improvements £2,190 giving a capital value of £2,440.¹⁴³⁰

Section 30 (1r) was partitioned equally between John and Wharauoa Harvey, of the Chatham Islands and Christchurch, in August 1948.¹⁴³¹

Section 31

Section 31 (1r) was originally awarded to Atanatiu Te Kairangi solely. In February 1913, this section was divided amongst 10 successors, with Amiria Horomona receiving half and the others receiving 1/18 each. The next generation saw those already minute shares being carved up further, such that by the late 1940s there were 20 owners holding various combinations of shares of as little as 1/144 total, having succeeded to the portions of their various predecessors. In May 1950, this hopeless tangle was

¹⁴²⁴ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴²⁵ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴²⁶ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴²⁷ Memorandum of mortgage. A1905/129 to 1918/204 Takapuwahia.

¹⁴²⁸ Application, 3 July 19141. WN 110 Takapuwahia Sec Applications 1869-1948. Unusually for the mid-twentieth century, Turama appears to have been illiterate, making her mark instead of signing the application.

¹⁴²⁹ Application, 8 July 1948. WN 110 Takapuwahia Sec Applications 1869-1948.

¹⁴³⁰ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴³¹ Filenote. WN 110 Takapuwahia Block Order File.

cut through by the whole section being vested in Frederick Katene (a 1/144 shareholder) as a dwelling site by court order under s 7 of the Maori Purposes Act 1941.¹⁴³²

Section 32

Section 32 (1r) was originally awarded to Pirihana Tungia solely. In February 1907, he was succeeded equally by Matenga Te Hiko and Raiha Puaha. Passing through another generation of successors, by 1950 4 owners shared Matenga Te Hiko's ½ share, while Roderick Prosser had bought the other ½, which had been David Prosser's from Raiha Puaha.¹⁴³³

Section 33

Section 33 (1r) was also originally awarded to Pirihana Tungia solely. In February 1907, Kerehi Manupiri succeeded to 2/3 and Hori Manupiri to 1/3. The part-share of Kerehi was kept intact by an exchange order in 1944 which vested it in Rangiruhia Arthur, although the other one-third was shared between two others.¹⁴³⁴

Section 34

Section 34 (1r) was another awarded originally to Pirihana Tungia solely. In February 1907, Harete Wi Katene and Amiria Horomona succeeded to ¼ each and Te Whare Kereama to ½, but then the next generation in the 1940s succeeded to shares as small as 1/288th. By 1950, there were 18 owners, all of whom owned at least 1 part each of the 3 portions of the section, but none of whom owned more than 1/9th of the whole and many of whom had only 1/72nd. In May 1950, the whole of the section was vested by the owners in Manu Katene as a dwelling site through a court order under s7 of the Maori Purposes Act 1941.¹⁴³⁵

Section 35

Section 35 (1r 16.6p) was originally awarded to Natanahira Pene Koti solely. There were no successions until 1951, when 2 members of the Pene family received 1/3 each and the other third was divided between 4 members of the Rei family. In June 1951, the whole section was sold to David Prosser for £220.¹⁴³⁶

Sections 36 and 37

Sections 36 and 37 (1r 15p and 1r 13.3p) were awarded in 1895 to Wi Neera Te Kanae solely. In 1907, Peneamine Wi Neera succeeded solely, and then in August 1951 section 36 was sold to Ethel Prosser and section 37 to David Prosser for a total sum of £600.¹⁴³⁷

Section 38

¹⁴³² Filenote. WN 110 Takapuwahia Block Order File.
¹⁴³³ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴³⁴ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴³⁵ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴³⁶ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴³⁷ Filenote. WN 110 Takapuwahia Block Order File.

Section 38 was originally awarded to Erenora Tungia but her interest was transferred by her to Hana Wi Neera solely in 1909. There were no successions and in April 1939 by court order the section was vested in Te Kura Whakaipae and Ruka Swainson for a dwelling site under s 20 of the Native Housing Amendment Act 1938.¹⁴³⁸

Section 39

Section 39 was originally awarded to Erenora Tungia but her interest was transferred by her to Hana Wi Neera solely in 1909. There were no successions and in April 1939 by court order the section was vested in Stanley Wi Neera for a dwelling site under s 20 of the Native Housing Amendment Act 1938.¹⁴³⁹

Sections 40, 41 and 42

Sections 40, 41 and 42 (3r) were awarded as one parcel to Pani Teote Ouenuku. In 1944, the block was awarded in half-shares to Te Ouenuku Rene and Puru Rene and shortly afterwards vested in others of the Piwari whanau for dwelling sites under s 7 of the Maori Purposes Act 1941.¹⁴⁴⁰

Sections 43-7, 52-4

Sections 43, 44, 45, 46, 47, 52, 53, 54 seem to have been dealt with originally as a single section. The restrictions on alienation were removed *en bloc* for a series of Takapuwahia town sections, including this group, in October 1908 by Judge W E Rawson and Assessor Hemi Erueti.¹⁴⁴¹ The sections affected were 38, 39, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55. The order did not name the single owner who had satisfied the court, after a ‘public inquiry’, that he or she had sufficient other land for his maintenance and occupation. The order also stated that at least one-third of all those who were owners or had a beneficial interest in these sections had concurred in the removal of restrictions. The court was acting under Court Rule 48 and the Native Land Court Act 1894.

The Ikaroa District Native Land Court approved in June 1939 the alienation of Takapuwahia Township sections 43, 44, 45, 46, 47, 52, 53, and 54 to Rauparaha Wineera of Porirua. This was not a sale, but was transferred on the basis of natural love and affection.¹⁴⁴²

Section 43 (1r) was solely owned by Rauparaha Wineera following the transfer resulting from ‘natural love and affection’ confirmed on 13 June 1939. On 10 April 1949, John Arthur Elkington and Waitohi Elkington of Porirua applied successfully for a partition, claiming that they now had an interest in the section.¹⁴⁴³ The other seven sections totalled 1ac 2r 38.7p and following a partition order of May 1949 they too were owned by Rauparaha Wineera solely. Sections 52 and 53 were vested by exchange order in the Latter Day Saints Trust Board for a church on 10 October 1952. In January 1954, this double section was valued at £6925, of which £450 was the unimproved value and £6475 the

¹⁴³⁸ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴³⁹ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁴⁰ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁴¹ Order annulling or varying restrictions, 31 October 1908. WN 111 Takapuwahia (Vol 1 & 2) Block Order File.

¹⁴⁴² Order, 19 June 1939. WN 111 Takapuwahia (Vol 1 & 2) Block Order File.

¹⁴⁴³ Application, 10 April 1949. WN 110 Takapuwahia Sec Applications 1869-1948.

improvements, which by that time would have included all or part of the church. Sections 43 and 44 together were valued at £3385, being £275 unimproved value and £110 of improvements, while the other four sections (45, 46, 47 and 54) together had an unimproved value of £950 but improvements of only £25, probably just perimeter fencing.¹⁴⁴⁴

John Arthur Elkington and Waitohi Elkington, of Porirua, having an interest in Takapuwahia 43, applied on 10 April 1949 for Takapuwahia Sections 43-7 and 52-3 to be partitioned.¹⁴⁴⁵ The title was based on an order of 21 September 1895 following investigation of title. The area in total was 1ac 3r 38.7p. The owner of at least some was Rauparaha Wineera who had acquired it through transfer based on natural love and affection and confirmed on 13 June 1939. A vesting order of 12 May 1948 under section 7/1941 had vested section 43 of 1 rood in the two applicants.

Sections 48, 49 and 55

Sections 48, 49 and 55 were also dealt with as a single parcel, being originally awarded to Erenora Tungia. They were transferred to Hana Wi Neera solely in July 1909.¹⁴⁴⁶ Also in June 1939, and also for 'natural love and affection', the Native Land Court approved the alienation to Te Kanawa Wineera of Porirua of sections 48, 49, 55 and 20 perches of 80, which became 80A.¹⁴⁴⁷ This took place under s 28 of the Native Land Act 1931, but was apparently not finalised until a court order in May 1946.¹⁴⁴⁸ In 1954, the parcel of three and a part sections was valued at £2,900, being £875 unimproved value and £2,025 of improvements.

Sections 50 and 51

Sections 50 and 51 (0ac 1r 1p each) were awarded to Erenora Tungia alone and were made inalienable except by lease of no more than 21 years.¹⁴⁴⁹ The two sections were surveyed into separate blocks in November 1915. Section 51 formed the northern side of No 3 Road, which ran from No 2 Road to Titahi Bay Road along the edge of the harbour, No 2 Road roughly paralleling the harbour line behind the row of sections along the beachfront.

By an 'instrument of alienation' (i.e. a deed of gift) dated 27 January 1908, Erenora Tungia had alienated her interest in sections 50 and 51 to Wiremu Aata / William Arthur solely. However this deed became lost and it was necessary for the Maori Land Court in 1958 to order that these sections were to be deemed vested in Karewa Arthur solely as of 27 June 1944.¹⁴⁵⁰ This case was brought by the Board of Maori Affairs on behalf of the Crown as mortgagee under the Maori Housing Act 1935. Presumably Maori Affairs funds had been or were being borrowed for building a house on at least one of the sections and there was a need to regularise the ownership to provide security for the mortgage. In October 1942, William Arthur was succeeded by Karewa and Rangiruhia Arthur equally and in June

¹⁴⁴⁴ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁴⁵ Application, 10 April 1949. WN 110 Takapuwahia Sec Applications 1869-1948.

¹⁴⁴⁶ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁴⁷ Order, 19 June 1939. WN 111 Takapuwahia (Vol 3) Block Order File.

¹⁴⁴⁸ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁴⁹ Title order, 21 September 1895. WN 111 Takapuwahia (Vol 3) Block Order File.

¹⁴⁵⁰ Order, 11 July 1958. WN 111 Takapuwahia (Vol 3) Block Order File.

1944 an exchange order was used to transfer Rangiruhia's half to Karewa. In 1954, the parcel of two sections was valued at £2,835, being £500 unimproved value and £2,335 improvements.¹⁴⁵¹

Sections 56 and 57

Sections 56 and 57 (1r 38p) were awarded to Kerehi Pene/Edmonds solely by a partition order in June 1950. They remained unimproved and in 1954 were valued together with Section 58 at £625.¹⁴⁵²

Section 58

Section 58 was awarded to Taporene Pene $\frac{1}{4}$, Waipatiki Pene $\frac{1}{4}$ and Patara Pene $\frac{1}{2}$ by a freehold order in November 1912. After two generations of successions, owners held portions between $\frac{1}{4}$ and $\frac{1}{40}$ th. In November 1936 the whole parcel was transferred to Hamumu Rei and Hinekoto Patara Pene and by the 1950s there were only 4 owners holding portions equally.¹⁴⁵³

Section 59

Section 59 (1r 4p) was originally awarded to Pene Koti solely and then to two generations of successors holding as small as $\frac{1}{30}$ th of a share until in November 1936 the block was transferred by the three remaining owners to Hamumu Rei and Hinekoto Patara Pene as joint tenants. By the 1950s it was back to 4 owners holding portions equally.¹⁴⁵⁴

Section 60

Section 60 (1r 4p) was held by Waitaora Raniera solely from a freehold order of November 1912. In October 1928 it was sold to the Latter Day Saints Church for £45 but then vested in Rauparaha Wineera solely by exchange order in October 1952.¹⁴⁵⁵

Sections 61-3

Sections 61 (1r 4p), 62 and 63 (2r 8p together) were originally awarded to Waitaora Raniera under a 1912 freehold order also, but were all sold to Rakapa Pohio for £135 in March 1929.¹⁴⁵⁶ Section 61 was on sold to Teoti Katene for £80 in November 1939 and a new certificate of title issued in his name. At the same time, sections 62 and 63 were sold to Ria Moheko Wi Neera for £160.¹⁴⁵⁷

Sections 64 and 65

Section 64 and 65 (2r 8p) were treated as one parcel and awarded in 1895 to Rangirere Kapo and Wekipiri Kapo equally. In December 1926 the parcel was sold to Rakapa Pohio or Matui for £150. Half was sold by him to Parata Pita Kerei in 1940 and the other half was awarded by the court to Thomas

¹⁴⁵¹ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁵² Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁵³ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁵⁴ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁵⁵ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁵⁶ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁵⁷ WN 111 Takapuwahia (Vol 6) Block Order File.

Saunders in 1943. Their successors retained the same portions.¹⁴⁵⁸ However another filenote says that in September 1945 half of the parcel was sold to Kerehoma Katene for £715.¹⁴⁵⁹

Sections 66 and 67

Sections 66 and 67 (together 2r 20p), located on the northern side of the intersection of No 4 Street and No 7 Street, were originally awarded in 1895 to Mohi Nopera of Motueka and Charles Servantes equally.¹⁴⁶⁰ The blocks were awarded with a restriction on alienation except by lease for no more than 21 years. The owners apparently applied in 1909 for the restrictions on alienation to be removed and Judge W E Rawson and Assessor Hemi Erueti ordered the removal of the restrictions on 23 July 1909, being satisfied that those interested both agreed to the transaction and also had enough other lands for their maintenance and occupation.¹⁴⁶¹ The two sections were surveyed in November 1915.

Sections 66 and 67 were separated by a partition order of 8 September 1924. Section 66 was owned by two women, Wiki Mohi (2/3) and Turama Mohi (1/3), while section 67 was owed by Pumipi Matenga Te Hiko solely. By means of a vesting order under the Native Housing Amendment Act 1938 the whole of Pumipi's interest was vested in Pirihiira Wi Nera for a housing site on 7 June 1939 under s 20 of the Native Housing Act 1938. Each of the sections owed £8 19s for survey liens at that time.¹⁴⁶² By an exchange order in May 1947 the whole section was vested in Pirihiira Hammond/Wi Neera solely as a dwelling site.¹⁴⁶³

Sections 68, 69 and 70

Sections 68, 69 and 70 (together 3r 0p), located on the southern side of the intersection of No 4 Street and No 7 Street, were originally awarded in 1895 to Wi Parata Kakakura of Waikanae and Hohepa Horomona of Porirua equally.¹⁴⁶⁴ They were restricted as to alienation except by lease for no more than 21 years. They were surveyed in November 1915 and subsequently it appears that the area was apportioned in 1912 by giving section 68 to Hohepa Horomona and section 70 to Wi Parata, and dividing 69 into 69A for Hohepa and 69B for Wi Parata. Survey liens of £5 11s 7d arose from this work which seem not to have been discharged until September 1962.

Section 68 was partitioned in November 1926 and awarded to 5 owners. In June 1944, the 5 shares were brought back together and the whole section awarded as an estate in fee simple to James Elkington. Also in November 1926, section 69A (20p) was awarded to Wiri Hata solely and in June 1944 it was awarded to Rangiruhia Arthur solely.¹⁴⁶⁵ In November 1944 it too was sold to James Elkington for £20.

¹⁴⁵⁸ Filenote. WN 110 Takapuwhia Block Order File.

¹⁴⁵⁹ WN 111 Takapuwhia (Vol 6) Block Order File.

¹⁴⁶⁰ Title order, 21 September 1895. WN 111 Takapuwhia (Vol 4) Block Order File.

¹⁴⁶¹ Order annulling or varying restrictions, 23 July 1909. WN 111 Takapuwhia (Vol 4) Block Order File.

¹⁴⁶² Filenote, nd [1939?]. WN 110 Takapuwhia Sec Applications 1869-1948.

¹⁴⁶³ Filenote. WN 110 Takapuwhia Block Order File.

¹⁴⁶⁴ Title order, 21 September 1895. WN 111 Takapuwhia (Vol 4) Block Order File.

¹⁴⁶⁵ Filenote. WN 110 Takapuwhia Block Order File.

Wi Parata's original interest of Sections 69B and 70 (1r 20p) were partitioned by Judge M Gilfedder in November 1926 on a value basis between 7 successors.¹⁴⁶⁶ Metapere Ropata, Mahia Parata, Ngapera Parata, Utauta Parata and Pekahou Parata each received a 1/6th interest while Marara Parata and Henare Parata each received a 1/12th interest. By 1954, the 23 owners owned as little as a 1/42nd share in this parcel, which was valued at £260, containing only £10 of improvements, perhaps a perimeter fence.¹⁴⁶⁷ A 1/42nd share was therefore worth only a little over £6.

Section 71

Section 71 (1r) was held from November 1912 under a freehold order by Tamati Waiti and Ringi Horomona equally. By the 1950s, worth only its unimproved value of £250 plus £10 improvements, it was still held in half-shares.¹⁴⁶⁸

Section 72

Section 72 (1r) was held under a freehold order from November 1912 by Miriama Kauhoe / Ngapaki solely. In 1951 she was technically succeeded by two women but at the same time a vesting order was made transferring their interests to Matuaiwi Horomona solely.¹⁴⁶⁹

Sections 73 and 74

Sections 73 and 74 (2r) were held under a 1912 freehold order by Rawiri Iraia solely. Successions had divided the share into thirds by the 1950s when its capital value was £435, being virtually unimproved.¹⁴⁷⁰

Section 75

Section 75 (0ac 1r 0p) was originally awarded in 1895 to Terewai Eketone of Te Hoiere and restricted as to alienation except by lease for no more than 21 years. It was located on No 4 Street. It was partitioned in 1928 by Judge Gilfedder into 75A and 75B. Section 75A (16p) was awarded to 6 people: Ratapu Eketone a ½ share and Te Rangi Haungariri Horomona, Matchuirua Horomona, Marore Horomona, Te Oriwa Horomona and Paranihia Anaru/Paranihia Aturangi Anaru receiving a 1/10th share each.¹⁴⁷¹ Section 75B (24p) was awarded to 3 people equally: Matiu Teiti, Waitokorau Teieti and Pote Te Nopera.¹⁴⁷² Matiu and Waitokorau sold their interests to Te Rauparaha Wi Neera for £9 each in mid-1934.¹⁴⁷³ The whole of section 75 was valued at £235 in 1954 being likewise virtually unimproved.¹⁴⁷⁴

Section 76

¹⁴⁶⁶ Partition order, 2 November 1926. WN 111 Takapuwahia (Vol 4) Block Order File.
¹⁴⁶⁷ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴⁶⁸ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴⁶⁹ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴⁷⁰ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴⁷¹ Partition order, 23 August 1928. WN 111 Takapuwahia (Vol 4) Block Order File.
¹⁴⁷² Partition order, 23 August 1928. WN 111 Takapuwahia (Vol 4) Block Order File.
¹⁴⁷³ WN 111 Takapuwahia (Vol 6) Block Order File.
¹⁴⁷⁴ Filenote. WN 110 Takapuwahia Block Order File.

Section 76 (1r) was alienated from its original ownership (Moki Maaka solely, then his successors) in December 1921, being sold to Te Rauparaha Wi Neera for £30, the alienation being approved by the Ikaroa District Maori Land Board.¹⁴⁷⁵ He vested it in his wife, Ria Moheko for a dwelling site in April 1939.¹⁴⁷⁶

Section 77

Section 77 (1r) was originally awarded to Wi Neera Te Kanae solely. In 1939 it was vested by Te Rauparaha Wi Neera, the sole owner, in his wife Ria Moheko, as a dwelling site.¹⁴⁷⁷

Section 78

Section 78 (1r) was owned by Te Rauparaha Wi Neera and Ngahina We Neera under a 1912 freehold order and in April 1939 was also vested by Te Rauparaha Wi Neera in his wife Ria Moheko as a dwelling site.¹⁴⁷⁸

Sections 79, 81 and Part 78

Sections 79, 81 and Part 78 (1r + 1r + 12p, total 0ac 2r 12p), located on the south-western side of the intersection of No 1 Street and No 4 Street, had their title investigated in November 1912 by Judge M Gilfedder. He ordered that the three sections were to be treated as a single parcel and that the 3 persons he named were and were declared to be trustees of the parcel 'on behalf of the Ngatitōa Tribe'. The three trustees were Matenga Te Hiko, Hohua Rawiri Puaha and Hohepa Wi Neera.¹⁴⁷⁹ No restrictions were specified in the ensuing freehold order. In 1954 this parcel was valued at £565 unimproved value + £1,765 improvements making a capital value of £2,330.¹⁴⁸⁰

In 1937, an application was made to the Native Land Court to declare this parcel a Native reservation, 'set apart and reserved for the members of the Ngati Toa Tribe as a site for a meeting house'. The court found the owners of the land had consented to this application, and Judge Harvey's recommendation to the Governor-General was that this be done and that it be vested in the 41 named trustees 'to hold and administer the same for the use and benefit of the Ngati Toa Tribe'. The Recommendation included an express declaration that:

The land is owned at law or in equity by not more than ten owners and that there is erected thereon the meeting house known as Toa which in the opinion of the Court is tribal property.¹⁴⁸¹

¹⁴⁷⁵ Order, 1 December 1921. WN 111 Takapuwahia (Vol 4) Block Order File.

¹⁴⁷⁶ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁷⁷ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁷⁸ WN 111 Takapuwahia (Vol 5) Block Order File.

¹⁴⁷⁹ Freehold order, 21 November 1912. WN 111 Takapuwahia (Vol 5) Block Order File.

¹⁴⁸⁰ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁸¹ Recommendation to Declare Land a Native Reservation, 1 July 1937. WN 111 Takapuwahia (Vol 5) Block Order File.

Judge Alexander Mackay, with Assessor Rota Te Tahiwī, awarded the original title of Takapuwahia Township secs 79 and 81, totalling 2 roods located on the south-western corner of No 1 Street and No 4 Street, to Matenga Te Hiko solely on 21 September 1895.¹⁴⁸²

On the recommendation of the Ngati Toa Marae Trustees, and the assurance that resolutions had been properly passed, Judge Harvey in the Native Land Court made an order on 1 July 1937 recommending that Takapuwahia Township secs 79 and 81, and part of sec 78 be set apart and reserved for the Ngati Toa tribe as a meeting house site. Rauparaha Wi Neera explained that two well-attended meetings had been held at Porirua and that these meetings had unanimously supported the creation of the site as Native Reservation for that purpose and approved a list of 41 named trustees.¹⁴⁸³ The land was vested in the trustees 'on trust to hold and administer the [said land] for the use and benefit of the Ngati Toa Tribe'.¹⁴⁸⁴ This wording was slightly but not significantly different from the recorded wishes of the owners that it be held for 'the purposes' of the Ngati Toa tribe.

Judge Harvey's order expressly declared that the land was owned at law or in equity by not more than 10 owners and 'that there is erected thereon the meeting house known as Toa which in the opinion of the Court is tribal property'.¹⁴⁸⁵

The Native Under-Secretary subsequently supported the issuing of an Order in Council, but, as there was no surveyed plan of the part of sec 78 that was to be included, he doubted whether the District Land Registrar would accept it for registration. Judge Harvey responded that the portion had been clearly described by reference to physical features and that this was acceptable for nearly all purposes.¹⁴⁸⁶

The Land Transfer Certificate of Title for the area of 2 roods 12 perches was not in fact issued at that time.

Judge Jeune heard in August 1954 an application by the owners of these three portions that the land be 'set apart as a Maori reservation for the purposes of a meeting place for the Ngati Toa tribe'. The owners were represented before the court by a lawyer named Simpson. The Court therefore recommended to the Governor-General that these sections, totalling 2r 12p, be set aside as a Maori reservation under section 439 of the Maori Affairs Act 1953.¹⁴⁸⁷

The title was not finally approved by the Governor General by an Order in Council until April 1956. This approval followed another Court order, also of 16 August 1954, appointing three trustees—Hohepa Wineera, David Prosser and Erina Daymond—with the 'owners' being the Ngati Toa Tribe. The Certificate of Title could not be issued until the Trustee Order had been registered, and that could not happen until the Reservation had been completed by the Order in Council, which was gazetted on 12 April 1956.¹⁴⁸⁸

¹⁴⁸² Order on Investigation of Title, 21 September 1895. WN 111 Takapuwahia (Vol 5) Block Order File.

¹⁴⁸³ 30 Wellington MB 14.

¹⁴⁸⁴ Order, 1 July 1937. WN 111 Takapuwahia (Vol 5) Block Order File.

¹⁴⁸⁵ Order, 1 July 1937. WN 111 Takapuwahia (Vol 5) Block Order File.

¹⁴⁸⁶ Registrar to Harvey, 23 August 1938. WN 110 and 111 Takapuwahia Correspondence 1894-1943.

¹⁴⁸⁷ Order, 16 August 1954. WN 110 and 111 Takapuwahia Correspondence 1894-1943.

¹⁴⁸⁸ NZG, 12 April 1956, 501; Filenote, 21 February 1957. WN 111 Takapuwahia (Vol 5) Block Order File.

Subsequent amendments to the memorials attached to the title of this reserve included changes in 1960, 1965 and after 1967 to the trustees as previous trustees died, and the taking of 3.22p of Section 81 for a street (gazetted 13 July 1967).¹⁴⁸⁹

Sections 80A and 80B

Sections 80A and 80 B (20p each) were held in association with sections 48, 49 and 55. Under a partition order of May 1946, Te Kanawa Wi Neera held 80A and Wiremu Haata held 80B.¹⁴⁹⁰

Sections 82-88

Sections 82 to 88 (1ac 3r 0p), located on No 5 Street, were originally awarded in 1895 to Tamati Hotu (aka Uaiti or Waite) and Horomona Matakape of Porirua equally, and made inalienable except by lease of no more than 21 years.¹⁴⁹¹

In August 1914, Judge Rawson partitioned this block of sections into three portions. Sections 82 and 83 (2r) were awarded to Tamati Waiti alias Tamati Hotu solely. Sections 84 and 85A, totalling 1r 20p, were awarded to Tamati Waiti/Hotu and Houngariri Horomona/Horomona Matakapa solely, but the day before the block was partitioned a transfer of this area to Amiria Horomona for £27 10s was confirmed by the Ikaroa Board, the partition arrangements meaning that Tamati alone received all the purchase money. There was a survey lien of £1 1s on each quarter-acre section, and this was owed to the Government.¹⁴⁹² Sections 85B and 86-88 (3r 20p) were awarded to Ringi Horomona/Horomona Matakape solely and he was succeeded by Amiria Horomona and Hou Ngariri Horomona equally.¹⁴⁹³ The file copies at least of Judge Rawson's orders are not signed. Perhaps for this reason, in 1954 Judge Jeune made an identical award of secs 82 and 83, totalling 2 roods, to Tamati Waiti.¹⁴⁹⁴ In March 1958, successions divided this parcel into quarter-shares.¹⁴⁹⁵ Judge Jeune awarded sections 84 to 88 (1ac 1r) to Houngariri Horomona solely.¹⁴⁹⁶

Section 89

Section 89 (1r) was held by Inia Hoani Tuatete solely from a partition in November 1912, then sold to Amiria Horomona in May 1914 for £20 when the 1909 government valuation was £15. The land was unoccupied and had a government survey lien of £1 2s outstanding.¹⁴⁹⁷ The Ikaroa Board confirmed the sale subject to the production of the receipt of the purchase monies and the transfer was confirmed by

¹⁴⁸⁹ Memorial Schedule. WN 111 Takapuwahia (Vol 5) Block Order File. Although there are 2 different versions of this memorial schedule for the same piece of land in the one file, neither goes past 1967.

¹⁴⁹⁰ WN 111 Takapuwahia (Vol 5) Block Order File.

¹⁴⁹¹ Title order, 21 September 1895. WN 111 Takapuwahia (Vol 5) Block Order File.

¹⁴⁹² Application, 1 August 1917. A1905/129 to 1918/204 Takapuwahia.

¹⁴⁹³ Partition orders, 19 August 1914. WN 111 Takapuwahia (Vol 5) Block Order File. Also Filenote, WN 111 Takapuwahia (Vol 6) Block Order File.

¹⁴⁹⁴ Partition order, 13 August 1954. WN 111 Takapuwahia (Vol 5) Block Order File.

¹⁴⁹⁵ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁹⁶ Filenote. WN 110 Takapuwahia Block Order File.

¹⁴⁹⁷ Application, 29 March 1914. A1905/129 to 1918/204 Takapuwahia.

October 1914. Technically divided in August 1951 amongst 11 successors, those owners vested it in Tarawera Katene solely for a dwelling site under s 7 of the Maori Purposes Act 1941.¹⁴⁹⁸

Section 90

Section 90 (1r 17.8p) was partitioned out of the earlier cluster of sections 56, 57, 90 and 91 by Judge Whitehead in 1950. It was awarded to Manunu Patara Pene solely. In 1954, its combined value together with section 91 was £2,545, only £525 of which was unimproved value.¹⁴⁹⁹

Section 91

Section 91 (1r 27.3p) was partitioned out of the earlier cluster of sections 56, 57, 90 and 91, by Judge Whitehead in 1950 and awarded to five owners equally: Mata Rei, Sarah Rei, Eileen Rei, Wapataka Rei and Ngahui Rei. At that time Sarah Rei was already deceased and Eileen, Waipataka and Ngahui were still minors, for whom Mata Kotua was appointed trustee.¹⁵⁰⁰ Nine years later, Judge Jeune awarded the same section 91, which ran from No 1 Street towards the foreshore, to Waipataka Rei (Mrs Gripp) and Ngahui Rei equally.¹⁵⁰¹

Section 92

Section 92 (1r 36.2p), running from No 1 Street to Titahi Bay Road along the harbour foreshore, was originally awarded in 1895 to Hohepa Horomona solely and restricted as to alienation.¹⁵⁰² By the 1950s, Iringa Horomona owned 2/3 while 5 others had 1/15th share each. In June 1964, Judge M.C. Smith partitioned sec 92. Sec 92B (1r 9.9p) was awarded to Te Iringa Horomona solely, the balance apparently going to Rangī Anewa Parker.¹⁵⁰³

Section 93

Section 93 (1r 35.6p) had been awarded in 1895 to Nopera, Hori and Kereihi Manupiri equally. By the 1950s Rangiruhia Arthur and George Katene owned 1/3rd each, while Emma and Hori Manupiri owned 1/6th each. Its capital value was £350.¹⁵⁰⁴

Section 94

Section 94 (1r 31.6p) was originally awarded to Te Waari Kerehoma solely. In 1923 and 1924 the interests of all the 9 owners were sold to one of them, Teo Katene.¹⁵⁰⁵

Section 95

¹⁴⁹⁸ Filenote. WN 110 Takapuwahia Block Order File.
¹⁴⁹⁹ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵⁰⁰ Partition order, 1 June 1950. WN 111 Takapuwahia (Vol 5) Block Order File.
¹⁵⁰¹ Partition order, 23 January 1959. WN 111 Takapuwahia (Vol 5) Block Order File.
¹⁵⁰² Order, 21 September 1895. WN 111 Takapuwahia (Vol 5) Block Order File.
¹⁵⁰³ Partition order, 11 June 1964. WN 111 Takapuwahia (Vol 5) Block Order File.
¹⁵⁰⁴ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵⁰⁵ Filenote. WN 110 Takapuwahia Block Order File.

Section 95 (1r 18p) was originally awarded to Wi Neera Te Kanae solely, who was succeeded by Hohepa Wi Neera. In 1944 it was vested by Hohepa in Hui Ngangutu for a dwelling site.

Section 96

Section 96 (1r 13.9p), running from No 1 Street to Porirua Harbour, was originally awarded in 1895 to Takuma Horomona and Riria Kahurangi of Porirua equally and restricted as to alienation.¹⁵⁰⁶ In December 1944, Judge Whitehead partitioned the section. Section 96A (33.9p) was awarded to Te Matoe Wi Neera solely, while section 96B (20p) was awarded to five members of the Parata whanau equally.¹⁵⁰⁷

Section 97

Section 97 (1r 19.6p), running from No 1 Street to Porirua Harbour, was originally awarded in 1895 to Te Pehi Wi Parata solely and restricted as to alienation.¹⁵⁰⁸ Kahurangi Parata succeeded in October 1941.¹⁵⁰⁹ In November 1967, Judge M.C. Smith cancelled previous orders creating sec 96B on 7 December 1944 and originally awarding title to sec 97 on 21 September 1895.¹⁵¹⁰

Section 98

Section 98 (1r 22.2p) was originally awarded to four members of the Rawiri whanau equally. No successions were recorded until 1950 when the section was divided into twelfths. The whole section was sold to Ngakareti Pahina for £450 in January 1956.¹⁵¹¹

Section 99

Section 99 (1r 23.9p) was awarded in 1895 to Ruta Rene solely. In March 1927 it was vested in Rawiti Pekahou/Pekahou Parata by exchange order, and then in May 1948 in Oriwia Parata under s 7 of the Maori Purposes Act 1941. In 1954, it was valued at £2,300.¹⁵¹²

Section 100

Section 100 (1r 29.1p) was awarded in 1895 to Pirimona and Hohapata Te Kohupuku equally. By the 1950s, the 11 owners had as little as a 1/36th share in its £355 capital value, worth less than £10.¹⁵¹³

Section 101

¹⁵⁰⁶ Order, 21 September 1895. WN 111 Takapuwahia (Vol 5) Block Order File.
¹⁵⁰⁷ Filenote. WN 110 Takapuwahia Block Order File. Partition order, 7 December 1944. WN 111 Takapuwahia (Vol 5) Block Order File.
¹⁵⁰⁸ Order, 21 September 1895. WN 111 Takapuwahia (Vol 5) Block Order File.
¹⁵⁰⁹ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵¹⁰ Order under 182 and 184/53, 10 November 1967. WN 111 Takapuwahia (Vol 5) Block Order File.
¹⁵¹¹ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵¹² Filenote. WN 110 Takapuwahia Block Order File.
¹⁵¹³ Filenote. WN 110 Takapuwahia Block Order File.

Section 101 (1r 30.6p) was originally held under the 1895 partition order, together with Section 102, by 7 owners. In July 1913, Mata Korou/Paero and Waherau Hiperini sold the two sections together (3r 19p) to Pumipi Matenga Te Hiko for £20, the 1909 government valuation being £30 for 2 roods. The Ikaroa Board confirmed the sale subject to the Native Land Court ordering a partition survey, that survey to be completed and the lien paid, all of which was done by July 1913.¹⁵¹⁴ Section 101 was awarded to Tengī Inia solely under a partition order in December 1944.¹⁵¹⁵

Section 102

Section 102 (1r 29p), having been sold to Pumipi Matenga Te Hiko in 1913, was awarded to Tamati Waiti and Te Ua Sarah Josephine Tokotua equally under the 1944 partition order. In August 1954 it was vested in Joseph Kotua for a dwelling site and valued at £300.¹⁵¹⁶

Section 103

Section 103 (1r 17p) was originally awarded to Ihaia Te Paki solely, then passed through the hands of Raiha Puaha and Joseph Prosser until in December 1927 it was vested in Paeroa Pene Wineera by exchange order.¹⁵¹⁷

Section 104

Section 104 (1r 6.7p) was originally awarded to 3 members of the Karehana whanau equally, By the 1950s it was held in unequal portions by 4 owners, but undeveloped at £265 capital value.¹⁵¹⁸

Section 105

Section 105 (1r) was owned by Piri Kawau Parai under a partition order of May 1951.¹⁵¹⁹

Section 106

Section 106 (1r) was held by Moeroa Ropata under a partition order of May 1951 also.¹⁵²⁰

Section 107

Section 107 (1r) was awarded to Rawiri Puaha solely in 1895, then vested in Hanikamu Te Hiko in March 1921, passing to Huria Roa Puki in May 1924.¹⁵²¹ It was partitioned in October 1956.

Sections 108 and 109

¹⁵¹⁴ Application, 17 January 1913. A1905/129 to 1918/204 Takapuwahia.
¹⁵¹⁵ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵¹⁶ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵¹⁷ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵¹⁸ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵¹⁹ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²⁰ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²¹ Filenote. WN 110 Takapuwahia Block Order File.

Sections 108 and 109 (2r) were awarded in 1895 to Rawiti Pekehau solely. They were vested in Teo Rene jnr and Te Ruru Rene equally by exchange order in March 1927 and in September 1938 the whole parcel was vested in Te Ruru Rene solely by exchange order.¹⁵²²

Section 111

Section 110 (1r) had an identical ownership history to 108 and 109 until October 1948, when it was vested in Manuhiri Horomona solely by exchange order under s 7 of the Maori Purposes Act 1941.¹⁵²³

Section 111 (1r) likewise had a history that was exactly the same until October 1948 when the section was vested in Hariata Moriarty solely.¹⁵²⁴

Section 112

Section 112 (1r) too had an identical history until in June 1946 the block was vested in Hongi Hau for a dwelling site.¹⁵²⁵

Section 113

Section 113 was awarded to Te Rene Ouenuku solely in 1895. A 1902 succession to Te Ouenuku Rene and Te Ruru Rene equally was still the current situation in the 1950s.¹⁵²⁶

Section 114

Section 114 was also awarded to Te Rene Ouenuku solely in 1895. It likewise passed to Te Ouenuku Rene and Te Ruru Rene equally in 1902, but the whole of Te Ruru's interest was transferred to Te Ouenuku by exchange order in 1938.¹⁵²⁷

Sections 116 and 117

Sections 115 and 116 (2r) had the same history as 114, but in May 1952 the whole block was vested by Te Ouenuku/Teo Rene in Uta Rene for a dwelling site under s7 of the Maori Purposes Act 1941.¹⁵²⁸

Sections 117 and 118

Sections 117 and 118 (2r) had the same history as 114.¹⁵²⁹

Section 119

Section 119 (1r) was awarded in 1895 to Haneta Rukaroa/Ruakere of Porirua solely and designated inalienable except by lease of less than 21 years.¹⁵³⁰ By the mid-twentieth century there had been no

¹⁵²² Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²³ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²⁴ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²⁵ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²⁶ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²⁷ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²⁸ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵²⁹ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵³⁰ Title order, WN 111 Takapuwahia (Vol 6) Block Order File.

successions and the section, valued in 1954 at £200, had not been developed at all.¹⁵³¹ However, on 23 October 1956 8/9th of it was sold to Ruru Rene for £400.¹⁵³²

Section 120

Section 120 (1r) was originally awarded to Rawiri Te Whatawharangi solely. He was succeeded in 1905 by Pirihira Tutane Hanikami/Pirihara Rota Paki solely and then in 1939 the share was divided equally amongst four new successors. The section remained undeveloped and was valued in 1954 at £225.¹⁵³³

Section 121

Section 121 (1r 10p) was originally awarded to Horomona Wi Parata solely. Two others succeeded in 1936 and in 1974 a consolidated order awarded it to Reginald Brown.¹⁵³⁴

Section 122

Section 122 (1r 10p) was originally awarded to Hira Wi Parata solely. In January 1952 it was vested in 6 owners by exchange order, but it was not developed by 1954 and was still worth only £200.¹⁵³⁵

Section 123

Section 123 (1r 10p) was awarded in 1895 to Ropata Tangahoe solely and there were no successions by the mid-twentieth century.¹⁵³⁶

Section 124

Section 124 (1r 10p) was awarded in 1895 to Hirini Tangahoe solely. Two generations of successors saw the size of entitlements being reduced to as little as 1/15th of the undeveloped section, but in 1952 an order under s7 of the Maori Purposes Act 1941 resulted in just two owners, holding 2/3rd and 1/3rd respectively.¹⁵³⁷

Section 125

Section 125 (1ac 1r 17.1p), running back from Porirua Harbour up No 6 Street to Takapuwahia Block D2 and bounded to the south by Mahinawa No 1, was originally awarded by Judge Mackay in 1895 to Teo Rene Te Ouenuku and Hohaia Te Kotua. It was designated inalienable except by lease of less than 21 years.¹⁵³⁸ It was subsequently held under a freehold order of November 1912 to Hohia Te Kotua, Te Ouenuku Rene/Teo Rene Te Ouenuku and Tatana Whataupoko (and stated to be slightly smaller at 1ac

¹⁵³¹ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵³² Filenote. WN 111 Takapuwahia (Vol 6) Block Order File.
¹⁵³³ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵³⁴ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵³⁵ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵³⁶ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵³⁷ Filenote. WN 110 Takapuwahia Block Order File.
¹⁵³⁸ Title order, WN 111 Takapuwahia (Vol 6) Block Order File.

Or 9.8p). It was of no economic value to them or their successors, however, as the named owners were merely trustees for the Catholic cemetery on the section.¹⁵³⁹

Section 126

Section 126 (1ac Or 4.5p), at the intersection of No 10 Street and Titahi Bay Road, was originally awarded by Judge Mackay to Matenga Te Hiko, Hohepa Horomona, Raiha Puaha and Pirihana Tungia. It was designated inalienable except by lease of less than 21 years.¹⁵⁴⁰ Subsequently, it was held under a freehold order of November 1912 made out to Matenga Te Hiko, Hohua Rawiri Puaha, Ringi Horomona and Hana Wi Neera, but similarly they were trustees for a Church of England cemetery on the section.¹⁵⁴¹

In addition, as already noted above, Takapuwahia Section K (2ac) was set aside under a third freehold order of November 1912 as a Wesleyan Cemetery which was vested in Matenga Te Hiko, Patara Pene, Hanihamu Te Hiko, Joseph Wi Neera and Ringi Horomona as trustees.¹⁵⁴²

¹⁵³⁹ Filenote. WN 110 Takapuwahia Block Order File. Freehold order, WN 111 Takapuwahia (Vol 6) Block Order File.

¹⁵⁴⁰ Title order. WN 111 Takapuwahia (Vol 6) Block Order File.

¹⁵⁴¹ Filenote. WN 110 Takapuwahia Block Order File. Freehold order, WN 111 Takapuwahia (Vol 6) Block Order File.

¹⁵⁴² Filenote. WN 110 Takapuwahia Block Order File.

APPENDIX 2:

CHRONOLOGY:

1860

(20 February): Survey of the Waitara block begins: this is interrupted peacefully by a group of Te Atiawa. The surveyor, Parriss, calls for military assistance.

(22 February): Martial law is proclaimed in Taranaki.

(21 May) Arahura Deed (Ngai Tahu); this overlaps with the Te Waipounamu boundary of 11 August 1853.

Potatau Te Wherowhero's son Matutaera succeeds him as Maori King. He is later re-baptised by Te Ua Haumene and given the name Tawhiao.¹⁵⁴³

1862

(28 May) Papakowhai Block sale (Porirua) (Ngati Toa Vendors).¹⁵⁴⁴ This is a small block bounded by the Kenepuru Stream at Porirua. The sale price of £210 is paid by Isaac Featherston.¹⁵⁴⁵

(8 July): Commissioner Bell reports on the 'old land claims'.¹⁵⁴⁶

(15 September): Enactment of the Native Lands Act 1862. However the 'Manawatu Block' is excluded from the operation of the Act.¹⁵⁴⁷

1863

(12 July): British forces cross the Mangatawhiri: commencement of the invasion of the Waikato.

1864

(February): Issac Featherston, Wellington Provincial Superintendent, travels to the Rangitikei and meets Ngati Raukawa and Rangitane firstly, and Ngati Apa subsequently, to discuss politics generally but most particularly the Rangitikei-Manawatu block (known as the 'Himatangi' block in the Native Land Court). Tensions have escalated over this very large block between Ngati Raukawa and Ngati Apa.¹⁵⁴⁸ Tamihana Te Rauparaha and Matene Te Whiwhi are both present. The principal leader of Raukawa in the dispute is Ihakara; of Ngati Apa Hunia Te Hakeke. Featherston coolly tells both groups that anyone who breached the peace and resorted to violence would be

¹⁵⁴³ See Keith Sinclair, *Kinds of Peace*, 43-8.

¹⁵⁴⁴ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 24, pp 131-32.

¹⁵⁴⁵ The signatories to the Kenepuru purchase are Horomona Nohorua, Rawiri Waitere, Hare Reweti, Nopera Tongarua, Karehana Weta, Te Rau, Hanita, Hohepa Tamaihengia, Wiremu Parata, Ropata Hurumutu, Wi Te Kanae, Waka Patuparakore and Tungia Ngahuka.

¹⁵⁴⁶ *Land Claims Commission: Report of the Land Claims Commissioner*, 1862 AJHR D-10.

¹⁵⁴⁷ Native Lands Act 1862, s 31. The Manawatu Block was defined in the Schedule to the Act as commencing at "the mouth of the Ohau river and proceeds thence by a line bearing 90 degrees to the Tararua range, thence along the summit of the Tararua and Ruahine Ranges to the source of the Oroua river, thence by a line bearing 282 degrees to the Rangitikei River, and thence by the Rangitikei River to the Sea Coast, and thence by the sea coast to the commencing point.

¹⁵⁴⁸ See Featherston to Fox, 18 Feb 1864, in *Further Papers relative to the Native Insurrection*, 1864 AJHR E-3, 36-8.

regarded as at war with the Queen's government (which, of course, would mean involve confiscation under the New Zealand Settlements Act). Featherston tells both groups that he intends to impound all rents from the area until the dispute has been settled. Ngati Apa offer to sell the land to the government as a way of ending the dispute; Featherston says he will consider it. Raukawa are dismayed and insist the land is not Ngati Apa's to sell, but they are now backed into a corner. Featherston returns to Wellington and leaves Walter Buller to conclude the negotiations.

(14 May): Battle of Moutoa (Whanganui). 'Friendly' Maori from Whanganui comprehensively defeat an Upper Whanganui Pai Marire group who were advancing downriver to attack Whanganui town. This battle is the closest actual fighting in the New Zealand wars to central New Zealand.

1865

(1 August): Matene Te Whiwhi and others petition parliament seeking a judicial inquiry into the Rangitikei-Manawatu (or Himatangi) block.¹⁵⁴⁹

(30 October): Enactment of the **Native Lands Act 1865**. The Manawatu Block, however, remains excluded from the operation of the Act.¹⁵⁵⁰

(1 December) Mana Island purchase (Ngati Toa vendors): £300).¹⁵⁵¹

1866

(April): Ngati Apa, Raukawa, Toa and other tribes meet with Buller and Featherston and agree that the Rangitikei-Manawatu block should be sold to the government in order to end the intractable dispute over it.

(December) Rangitikei-Manawatu purchase is finalized at Parewanui. The block is purchased by the Wellington Provincial government, and the principal negotiator on the Crown side is the Wellington Provincial Superintendent (Isaac Featherston). The principal vendors are Ngati Apa and Ngati Raukawa, although there are a number of Ngati Toa signatures on the purchase deed. To facilitate the purchase the block had been exempted from the Native Lands Acts of 1862 and 1865.¹⁵⁵² But this is a very controversial purchase and many Raukawa will not sign the purchase deed and stay away from the payment hui at Parewanui.

1867

Enactment of the **Native Lands Amendment Act 1867**. Section 40 allows the Native Land Court to investigate claims of the non-sellers in the Block by means of reference to the Native Land Court by the Government.

Native Schools Act 1867.

1868

¹⁵⁴⁹ Petition of Matene Te Whiwhi and and Otaki Natives, 1 August 1865, 1865 AJHR g-9.

¹⁵⁵⁰ Native Lands Act 1865 s 82.

¹⁵⁵¹ *Turton's Land Deeds of the North Island*, Vol II, Wellington Deed No 25. pp 132-33. The signatories are Heta Te Ohuka, Tamihana Te Rauparaha, Matene Te Whiwhi and 78 others.

¹⁵⁵² See generally Bryan Gilling, '*A Land of Fighting and Trouble*': the Rangitikei-Manawatu Purchase, Report for the Crown Forestry Rental Trust, May 2000.

(March): Parakaia Te Pouepa and others apply to the Native Land Court for a certificate of title to the **Himatangi** (or **Rangitikei-Manawatu**) block.

(April): The Native Land Court gives judgment in the Himatangi case.¹⁵⁵³ Ngati Apa are found to have equal rights with Raukawa in this block. Since Ngati Apa had already sold their interests to the Crown, the effect of the decision was that half of the block passed to the Crown. In fact the main purpose of the hearing was to determine the extent of the Crown interest. The Crown played an active role in the case and was represented by William Fox, later to be Prime Minister in the Fox-Vogel-McLean government. The Court also found that Raukawa as an iwi had no rights in the block at all – only certain Raukawa hapu. The Court gives particular emphasis to rights based on occupation rather than on *take raupatu*.

(28 August) A Mackay, Commissioner of Native Reserves at Nelson, writes to Donald McLean enquiring whether the agreement made with the Ngati Toa chiefs respective to reserves and scrip awards had been given effect to; McLean does not reply.¹⁵⁵⁴

1869

(August-September): Rehearing of the Himatangi (Rangitikei-Manawatu) Case. Judges Fenton and Maning give judgment on 25 September.¹⁵⁵⁵ The argument was almost entirely focused on Te Rauparaha's intentions with respect to Ngati Raukawa and Ngati Apa. The Court found that Ngati Raukawa as an iwi had no rights in the block, which went to Ngati Apa, although three Ngati Raukawa hapu (Ngati Parewahawaha, Ngati Kahoro and Ngati Kauwhata had rights in the area by occupation). According to the Native Land Court:¹⁵⁵⁶

There, however, is no evidence at all to show that Rauparaha, in granting or allotting lands to the different sections of the Ngatiraukawa tribe, did ever give or grant to them any lands within the boundaries of the Ngatiapa possessions, between the rivers Rangitikei and Manawatu, or elsewhere; to have done which would have been clearly inconsistent with the relations then subsisting between himself and the Ngatiapa tribe, over whose lands he had never claimed or exercised the rights of a conqueror; and moreover the Ngatiapa, a fierce and sturdy race, were on the land, no longer unarmed, but well provided with those weapons [muskets], the want of which had, on the occasion of the first invasion, reduced their warriors to seek reluctantly the shelter of the mountain or the forest. It is, however, sufficient that we have the fact that, influenced by whatever motives, Te Rauparaha did not at any time give or grant lands of the Ngatiapa estate, between the Manawatu and Rangitikei rivers, to the Ngatiraukawa tribe, nor is there any evidence to show that he had ever acquired the right to do so.

1870

(14-27 June): Native Land Court conducts its investigations of title to the Chatham Islands (Mangatu Karewa or Kekerione, Te Matarae, Te Awapatiki, Otonga, Wharekauri, Rangatira Island and Raigiaura Island blocks). Ngati Mutunga, who continue have close links with Ngati Toa, are successful in

¹⁵⁵³ (1868) 1e Otaki MB 719-20; also reprinted in the *Evening Post*, 29 April 1868.

¹⁵⁵⁴ Mackay to McLean, 28 August 1868, MA 13/17, WNA.

¹⁵⁵⁵ See Fenton (ed), *Important Judgements*, 101-108.

¹⁵⁵⁶ *Ibid*, 106.

these cases. The principal Ngati Mutunga claimant, Wi Naera Pomare, is closely linked to Ngati Toa through his mother.

1873

(4 March): The Native Land Court (Judges Rogan and Smith) gives judgment in the **Kukutauaki** case.¹⁵⁵⁷ The Court finds that sections of Ngati Raukawa have title in the block “together with Ngatitua and Ngatiawa, whose joint interest is admitted by the claimants”.¹⁵⁵⁸ Two areas are excluded, however. These are:

(a) Horowhenua (“a portion of the block, the boundaries whereof are not yet defined, situate at Horowhenua, claimed by the Muaupoko tribe, of which they appear to have retained possession from the time of their ancestors, and which they continue to occupy”¹⁵⁵⁹); and

(b) Tuwhakatupua (“a portion of the block at Tuwhakatupua, on the Manawatu river (boundary not defined), claimed by a section of the Rangitane tribe, whose interest therein is admitted by the claimants”¹⁵⁶⁰).

(11 March): The Native Land Court commences an investigation of title into the **Horowhenua** block, cut out from the larger Kukutauaki Block. The block is contested between Muaupoko and Ngati Raukawa. Matene Te Whiwhi gives evidence, speaking as a rangatira of both Ngati Toa and Ngati Raukawa, as does Tamihana Te Rauparaha.

(5 April): The Native Land Court gives judgment in the Horowhenua case. During the hearing Major Kemp (Keepa Te Rangihwinui) had taken various measures to intimidate the Court. The Court finds for Muaupoko and rejects the Raukawa claim to this block.

(10 June): Manawatu-Kukutauaki 2C Deed of Lien.¹⁵⁶¹

(17 November) Native Land Court investigates title to **Kenepuru block** (124 acres).

(22 November) Certificates of title to Kenepuru are issued under the Native Lands Acts of 1865 and 1867. The five owners were Ngahuka Tungia, Raiha Puaha, Ropata Hurumutu, Nopera Te Ngiha and Rene Te Tahua.¹⁵⁶² The block is set aside as a Native Reserve under s 12 of the Native Lands Act 1867.

1874

(14 January) Maunganui block sale (Waikanae).¹⁵⁶³ This seems to principally be a **Ngati Awa** sale.¹⁵⁶⁴ This is a large block of 19,600 acres.

¹⁵⁵⁷ The judgment is reprinted in Fenton (ed), *Important Judgments*, 134-35.

¹⁵⁵⁸ Ibid, 134.

¹⁵⁵⁹ Ibid, 135.

¹⁵⁶⁰ Ibid.

¹⁵⁶¹ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 29, pp 138-139 (receipt for £41.14.6 paid to Hoai Taipua (Ngati Raukawa?). The document is referred to in Turton as a ‘Deed of Lien’ and looks like a receipt for an advance payment of some kind.

¹⁵⁶² Order, 22 November 1873. WN 42 Kenepuru (Vol 1) Block Order file (General Land).

¹⁵⁶³ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 26, pp 134-135.

¹⁵⁶⁴ Judging by the list of signatories, although some of them may be Ngati Toa as well.

(April): Native Land Court at Otaki investigates titles to Kapiti.¹⁵⁶⁵

(1 May): Judge Rogan makes final awards with regard to Kapiti. The island is partitioned into five separate blocks, these being Te Minga Kapiti (No 1); Maraetakaroro (No 2) Kaiwharawhara (No 3); Rangatira (No 4); Waiorua Kapiti (No 5).

(July) Paranihira Karepa applies to have Native Land Court investigate title to Kaongaumu block (305 acres).

(3 December). Wairarapa Block (Otaki) Purchase.¹⁵⁶⁶ This is a Ngati Raukawa transaction. The area of the block is 5,038 acres: price is £504.10s. This block is “bounded on the North by the Otaki river to its junction with the Waioatauru river thence by a straight line to the Tararua range, on the East by the Tararua range, on the south by the Ngakororo blocks numbered 1B, 1C, and 1A, and on the South West Te Waha o te Marangai Block”.

(3 December). Waihoanga No 4 Block (Otaki) Purchase.¹⁵⁶⁷ A Ngati Raukawa transaction. This is a large block (10,050 acres): price is £1,457.

1875 **(7 January) Ngakororo 2B Purchase (Otaki).**¹⁵⁶⁸ Ngati Raukawa transaction. Price £257 10s: area is 1933 acres.

(3 February) Manawatu-Kukutauaki 4A purchase.¹⁵⁶⁹ Ngati Raukawa transaction. £550.

(3 February) Manawatu-Kukutauaki 4C and part 4B purchase.¹⁵⁷⁰ Also a Ngati Raukawa transaction. Price £421.17.6; area 1445 acres.

(4 February) Pukehou No 1 Block purchase.¹⁵⁷¹ Ngati Raukawa: £200: 1685 acres.

(4 February) Pukehou No 3 Block purchase.¹⁵⁷²

1876

(July 14): Wi Parata gives evidence to the Native Affairs Committee at Parliament about Whitireia in support of his petition that the Whitireia land be

¹⁵⁶⁵ The Kapiti Island hearings are in (1874) 2 Otaki MB. The case was heard by Judge Rogan. Final orders were made on 1 May.

¹⁵⁶⁶ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 30, pp 139-141.

¹⁵⁶⁷ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 31, pp 141-143.

¹⁵⁶⁸ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 32, pp 144-146. The vendors are Hpi Te Rangitewhata, Hakaraia Te Wera, Parekawau Pouawha etc. Title is simultaneously investigated by the Native Land Court and the block vested by the Court in the Crown: see *ibid*, 145.

¹⁵⁶⁹ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 33, pp 146-47.

¹⁵⁷⁰ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 34, pp 147-148. Simultaneously investigated and awarded to the Crown by the Native Land Court sitting at Waikanae (see *ibid*, 148).

¹⁵⁷¹ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 35, pp. 148-49. Simultaneously investigated and awarded to the Crown by the Native Land Court sitting at Waikanae (see *ibid*, 148).

¹⁵⁷² H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 36, pp 149-50. Simultaneous Native Land Court orders (*ibid*, 150)

returned. The Committee learns that the school has not been built but declines to recommend that the land should be returned to the donors. Instead it suggests (19 July) that the whole issue of these various educational trusts be comprehensively investigated by parliament.¹⁵⁷³

1877

(17 October): The Supreme Court gives its decision in *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72. In this case Wi Parata's counsel (G E Barton) argued that the Whitireia grant had been made without full knowledge and understanding of Ngati Toa; that the failure to build the school was a violation of the agreement between Bishop Selwyn and Ngati Toa and thus was a fraud on the donors, and that the Crown grant was *ultra vires* (because it formed part of a native reserve, and the Crown had no power to grant it.) Wi Parata's claim is rejected by the Supreme Court (Prendergast CJ).

1878

(7 November) Kenepuru No. 2 is created by Judge Theophilus Heale, and memorial of ownership ordered in favour of Raiha Puaha, Te Matenga Waipunahau, Wi Parata and Matenga Te Hiko.

1879

(15 February) John Sheehan, the Native Minister, in response to pleas from Taiaroa, who had been entrusted with the management of the Ngai Tahu claim in 1875, appoints the Smith-Nairn commission to investigate Ngai Tahu grievances. The commission does a thorough job and reports in January 1881. It recommends a generous settlement for Ngai Tahu.¹⁵⁷⁴ But in the meantime the government has fallen and the Hall ministry ignores the report.

1880

(4 March) Hohepa Horomona and Raiha Puaha apply to the Native Land Court for an investigation of title to the Aotea block.

(31 May) Wi Parata and Nopera Te Ngiha meet the Native Minister (Bryce) to request that that the money still owed by the government to Ngati Toa as part of the compensation for the Te Waipounamu block be paid out to the tribe in a lump sum. Bryce tells them this is impossible.¹⁵⁷⁵

¹⁵⁷³

See Le 1/1876/7, No 67:

I am now directed to report as follows. That the Educational reserve referred to in the Petition is a block of land situated at Porirua in the Province of Wellington containing 500 acres which in the year 1850 was conveyed by natives of the Ngatitōa and Ngatiraukawa tribes to the Bishop of New Zealand in trust, for religious and educational purposes. There can be no doubt from the terms of the grant that erection and maintenance of a school at Porirua formed the principal conditions of the trust, and it seems especially clear from evidence taken by this Committee that a school has not been erected there.

Moreover it does not appear that there is any intention on the part of the Trustee to fulfil this condition of the Trust. This Committee are not prepared to say that it would be either wise or expedient to erect a school on this particular piece of land for the purposes indicated in the grant, and still less are they disposed to recommend that legislative action should be taken for the conveyance of the land in question to the Petitioners.

But your Committee are of opinion that if many Educational reserves are similarly situated to this one, the present position of the religious, charitable and educational trusts of the Colony requires the most serious and careful consideration of the Houses.

¹⁵⁷⁴

On the Smith-Nairn Commission see Evison, *Te Wai Pounamu*, 442-457.

¹⁵⁷⁵

See Minutes of meeting of 31 May 1880, MA 13/17 WNA.

(12 October) James Prendergast appoints the Ngati Toa Royal Commission to identify the successors to the 26 names listed in the Te Waipounamu deed. The Commissioners are Charles Heaphy and Alexander Mackay.¹⁵⁷⁶

1881

(29 January) Report of the Ngati Toa Royal Commission.¹⁵⁷⁷

(July): King Tawhiao crosses the aukati line into the Waikato, ending the years of exile.

(2 July) Native Land Court (Judges Brookfield and Puckey, and Wiremu Hikairo, Assessor) make orders relating to Aotea. **Aotea No 1** is awarded to Rawiri Puaha, **Aotea 2** to Pene Koti, **Aotea 3** to Wiremu Neera, **Aotea 4** to Hohepa Horomona and **Aotea No 5** to Hohaia Pokaitura and Hira Te Aratangata.

(5 December): Bryce, the Native Minister, and Rolleston, the former Native Minister, with a force of 1,600 volunteers and Armed Constabulary enter Parihaka. Te Whiti, Tohu, and Hiroki (who was charged with murder and had escaped to Parihaka) are taken into custody. Maui Pomare of Ngati Toa, a small child at the time, is present and is injured (a horse stands on his foot).

1882

(22 October) Native Land Court partitions the Kapiti Blocks.

1883

The Native Land Court vests **Rangitito** (D'Urville Island) in Ngati Koata. The claim is made on the basis of a gift from the tangata whenua to Ngati Koata and is uncontested.¹⁵⁷⁸

(1 August) Native Land Court at Wellington hears the **Parumoana** case relating to Porirua Harbour. The applicant is **Wi Parata** and the case is heard by Chief Judge Macdonald and Judge Puckey.

(7 August) Native Land Court gives judgment in the Parumoana case. The Court awards to Ngati Toa an incorporeal hereditament, a right of fishery, but not a freehold title to the harbour bed. In so doing the Court applies Chief Judge Fenton's decision in *Kauaeranga*.

(15 November) **Te Taitapu** case. The claimants are Ngati Rarua and the counterclaimants are (i) the tangata whenua tribes (Rangitane, Ngati Kuia and Ngati Apa) and (ii) the Puketapu hapu of Ngati Awa. Alexander Mackay, Commissioner of Native Reserves gives evidence supporting Ngati Rarua. The Court orders that a certificate of title be ordered to representatives of Ngati Rarua.

1892

¹⁵⁷⁶ See (1881) AJHR G-2

¹⁵⁷⁷ See (1881) AJHR G-2

¹⁵⁷⁸ (1883) 1 Nelson MB 1 (Judge Mair)

Native Land Court hears and adjudicates the **Nelson Tenths** case. There are competing claims by Ngati Rarua, Ngati Tama, Te Ati Awa, Ngati Koata (take raupatu), and by the pre-invasion owners, Rangitane and Ngati Kuia.¹⁵⁷⁹

1895

(20 September) Interlocutory decision by the Native Land Court relating to **Kahotea No 1** and **Kenepuru**.¹⁵⁸⁰ The Kahotea block included an area of foreshore. It was awarded Wi Parata, Hemi Matenga and 9 other people, mostly members of the Ngapaki whanau.

(September): Native Land Court (Judge Mackay) conducts an investigation of title to the **Takapuwahia Block**. The block is divided into a Rural Portion and a Township portion; the rural portion is then partitioned into Blocks A-K, and the Township portion into 126 residential sections.

1896

(31 July): Native Affairs Committee reports favourably on the petition of **Heni Matene Te Whiwhi** seeking a return of the Whitereia Block.¹⁵⁸¹ The Committee recommended that the Government introduce legislation for the purpose of setting aside the Crown grant and and re-vesting the land in Ngati Toa. This is never carried out..

(16 October) Native Reserves Amendment Act 1896. This deals *inter alia* with the **Taupo No 2 Block** vested in Wi Parata as a Reserve. According to the Preamble:

And whereas the parcel of land described in the Second Schedule hereto is vested in Wi Parata upon trust for a burial ground for the Ngatitua Tribe, but only part thereof has heretofore been used for that purpose, and the surviving members of that tribe are few in number: And, whereas, in the interests of all concerned, it is expedient that the said land should be used in manner hereinafter appearing...

Section 5 of the Act transfers the land from Wi Parata to the Public Trustee.¹⁵⁸² Section 6 of the Act empowers the Public Trustee to set aside one acre of the land as a burial reserve and to lease the balance on long term leases (42 years).¹⁵⁸³

¹⁵⁷⁹ (1892) 2 and 3 Nelson MB.

¹⁵⁸⁰ Order of 20 September 1895. WN 48 Kahotea Block Order file.

¹⁵⁸¹ See 1896 AJHR I 3, 7.

¹⁵⁸² Section 5 states:

5. Land in Second Schedule vested in Public Trustee: The parcel of land described in the Second Schedule hereto is hereby transferred from the said Wi Parata Kakakura and vested in the Public Trustee for an estate of inheritance in fee simple as a Native reserve, subject nevertheless to the hereinafter-mentioned provisions of this Act.

¹⁵⁸³ Section 6 states:

6. Portion to be set aside as burial-ground and residue leased: The Public Trustee shall set apart portion of the said land, to wit, one acre thereof, as a burial-ground, and may lease the residue thereof, either together or in lots. For such term as not exceeding forty-two years, and subject to such covenants and conditions, as he shall think fit:

Provided that with respect to every such lease –

(1.) The rent shall be the best obtainable, and shall be payable half-yearly throughout the term; and also that

(2.) The lease shall contain covenants by the lessee, -

1897

(22 December): Kapiti Island Public Reserve Act.¹⁵⁸⁴ The Preamble to the Act claimed that the island was “principally owned by Natives who are not in beneficial use or occupation”. It stated also that it was desirable that the island should be acquired by the government as a reserve “for the purposes of conserving the natural scenery of the said island, and providing a preserve for the flora and fauna of New Zealand”. To achieve this objective pending acquisition by the Crown all private dealings were “prohibited and determined”. Section 2 provides that it was unlawful for anyone to acquire an estate or interest in any Kapiti lands unless they were both acting on behalf of the Crown and under the written authority of a Minister of the Crown. Section 3 of the Act stipulates that all estates and interests, including freehold, held by anyone other than Maori, were to immediately vest in the Crown. Compensation was to be paid under the Public Works Act.

1899

(19 May): Prendergast C.J. decides that the land at Whitireia and the accumulated funds could be applied *cy-près*.¹⁵⁸⁵ Although Prendergast decides that the *cy-près* doctrine can be applied he however declines to approve the particular schemes placed before the Court. Prendergast suggests that a technical training school might be established.

1900

(Sept 7): Stout CJ gives his approval, subject to certain modifications, to the revised scheme put forward on behalf of the Bishop: *Bishop of Wellington v The Solicitor General (2)*, (1900) 19 NZLR 214, at 235.. The Bishop’s scheme is opposed by the Crown on the basis that because of the specific nature of the grant the *cy-près* doctrine should not apply.

(15 October): The revised scheme, diverting the funds to the school in the Wairarapa, is approved and sealed by the Supreme Court.¹⁵⁸⁶ This revised scheme is strenuously objected to by Ngati Toa.

1901:

(22 May): Court of Appeal decision in *Solicitor-General v The Bishop of Wellington and others*.¹⁵⁸⁷ The decision arose out of opposition by Ngati Toa and other groups relating to the scheme submitted for approval to the Supreme Court and approved by it. Ngati Toa, Ngati Raukawa and Ngati Awa were strongly hostile to the income and accumulated rentals from the Trust being expended on a hostel in the Wairarapa. By this time £6,480 had accumulated in the hands of the Trustees.¹⁵⁸⁸ The Court of Appeal judgment is given by Williams J.

The Court of Appeal found that the land and the money had become the property of the Crown as the Crown had been “deceived in its grant”.

To enclose with a good and substantial fence the land comprised in the lease, and at all times throughout the said term to well and sufficiently repair and keep in good condition all such fences, and also all other fences, buildings, and erects for the time being on the land comprised in the lease.

¹⁵⁸⁴ See generally C. and J. Maclean, *Waikanae: past and present*, Whitcombe Press, 1988, 214-5.

¹⁵⁸⁵ See *The Bishop of Wellington and others v The Solicitor-General (1)*, (1900) 19 NZLR 214.

¹⁵⁸⁶ The revised scheme is reprinted at 1905 AJHR G5, 156.

¹⁵⁸⁷ (1901) 19 NZLR 665.

¹⁵⁸⁸ See *ibid.* 676.

(6 August): Native Affairs Committee reports on a petition of Te Manuauate Tuhaia and 2 others seeking a return of the Whitireia Block.¹⁵⁸⁹ The Committee recommends that the petition ‘be referred to Government’.

1902:

Court of Appeal gives its judgment in *Hohepa Wi Neera v Bishop of Wellington*.¹⁵⁹⁰ The case is removed from the Supreme Court directly to the Court of Appeal. This case is brought while the decision in *Wallis* was under appeal to the Privy Council. Hohepa Wi Neera argued that the Native title to Whitireia had not been validly extinguished. The Court of Appeal holds (citing headnote):

- (1.) That the Crown grant could not be declared void as between the plaintiffs and defendants for matters not appearing on its face.
- (2.) That the issue of the Crown grant was an implied declaration by the Crown, and was conclusive, that the Native title to the land had been extinguished.
- (3.) That, if the Native title had been extinguished, then, even if the grant were set aside, the land would remain Crown land.
- (4.) That the letter of 1848 was a cession of the land by the tribe.
- (5.) That, the land being in the Crown, the plaintiff’s remedy, if any, could only be against the Crown.
- (6.) That the plaintiff’s claim, in the action against the defendants, to dispute the validity of the cession, was barred by delay and *laches*; but
- (7.) That the Statute of Limitations did not run against the plaintiff’s claim as owner according to Native custom of land the title to which had never been investigated, the occupation of such land by a European having been a penal offence, and it having been declared inalienable by many Acts throughout the period in question.

1903:

(February 10): Privy Council releases its decision in *Wallis and others v Solicitor-General*.¹⁵⁹¹ This is the appeal from the Court of Appeal decision of [1901] 19 NZLR 665, 3 GLR 293. which in turn reversed the Supreme Court decision of [1900] 19 NZLR 214 relating to the Whitireia Trust. The Privy Council judgment is given by Lord Macnaghten. The Privy Council is scathingly critical of the decision of the Court of Appeal (which had found that the land had reverted to the Crown) and reverses.

The Privy Council holds:

- (1.) That the grant was not a deed *inter partes*, and the statements in it were statements of the Crown and there was no evidence the Crown was deceived.
- (2.) That, as no school was ever established, the occasion which the trust was to determine never arose and never could have arisen.
- (3.) That the doctrine of *cy-près* was applicable.
- (4.) That the validity of the charitable trust was not in issue in the suit, and that there could be no issue in that suit between the Crown and the charity.

(20 May): Privy Council issues an order by which Hohepa Wi Neera is excused from finding security for costs for an appeal to the Privy Council unless the Bishop of Wellington files a defence to the order. The Bishop then files a defence alleging that Ngati Toa have plenty of money are wealthy and

¹⁵⁸⁹ 1901 AJHR I3. The Committee recommended that the petition be referred to the Government.

¹⁵⁹⁰ (1902) 21 NZLR 655.

¹⁵⁹¹ [1902] AC 173, (1902-03) NZPCC 23.

can easily afford security for costs. This forces Hohepa Wi Neera to abandon his appeal.¹⁵⁹²

(23 December): Native Land Court determines title to Kahotea No. 2 Block.

1904

(10 August): Native Affairs Committee declines to make a recommendation on a further petition by Heni Te Whiwhi seeking the return of the Whitireia Block.¹⁵⁹³

1905

(23 August): Report of the Royal Commission into the Porirua Trust and other school trusts chaired by Prendergast CJ. Samuel Williams gives evidence to the Commission at Napier.¹⁵⁹⁴ The Commissioners report that in their opinion in the case of Porirua the Trust has not been carried out and must be taken to have wholly failed.¹⁵⁹⁵

1906

(29 October) Enactment of **Maori Land Claims Adjustment and Laws Amendment Act 1906**. Section 32 of this repeals sections 5-10 of the Native Reserves Amendment Act 1896 and gives Taupo No 2 the status of a scenic and historic reserve under the Scenery Preservation Act 1906.¹⁵⁹⁶

¹⁵⁹² See Fredericka Hackshaw, "Nineteenth Century Notions of Aboriginal Title", 127; Janine Ford, Report on Whitireia Block. 15.

¹⁵⁹³ See 1904 AJHR I3.

¹⁵⁹⁴ See 1865 AJHR G-5. The Royal Commission inquires into the Porirua and Otaki Trusts, various Waikato Trusts, the Kaikokirikiri Trust and the Motueka Trust.

¹⁵⁹⁵ See *ibid*, p vi:

In reply to the question whether the original trust has been carried out, your Commissioners find that no school has been established and maintained at Porirua as promised to the Native donors at the time of the cession of the land, and as required by the Crown grant, and are unanimously of opinion that the trust has not been carried out, and that its object has not been attained. A small but inefficient school was carried on for a short time before and after the issue of the Crown grant, and an effort was made by Bishop Selwyn to erect a building suitable for a college, which it was his great desire to establish at Porirua; but his effort was unsuccessful, as he failed to obtain the financial assistance from England on which he relied. From that time nothing has been done towards establishing a school at Porirua. The trustees have apparently always had in view the scheme of establishing a boarding-school or college, but have not been, in their opinion, sufficiently in funds, and, while looking forward to the future, have taken no steps towards the establishment of a day-school, which would probably have been within their means for some years past.

¹⁵⁹⁶ Section 32 states:

32. Scenic Rserve at Porirua: On and after the passing of this Act that parcel of land at Plimmerton, in the Provincial District of Wellington, being a Native reserve known as Taupo No. 2, described in the Second Schedule to "The Native Reserves Act Amendment Act, 1896" shall be a scenic and historic reserve under "The Scenery Presevation Act, 1903.

(1.) The Public Trustee, out of moneys to be received by him as compensation under section five of the last-mentioned Act, shall expend sufficient to put in proper repair the fence around the burial-ground on such reserve, and shall invest the balance and apply the income thereof as provided by subsection 2 of the said section.

(2.) Any contract entered into by the Public Trustee in respect to the dedication and forming of roads on such reserve shall be carried out by the Government, subject to such deviation thereof as the Governor may deem necessary.

(3.) Sections five to ten, inclusive, of "The Native Reserves Act Amendment Act, 1896," are hereby repealed.

1907

(13 June): The Native Appellate Court dismisses Raiha Puaha's appeal relating to Kahotea No 1 and other blocks. The original interim orders made with respect to the Kahotea No 1 are confirmed by the Appellate Court.¹⁵⁹⁷

(26 October): Otaki and Porirua Empowering Act 1907. This Act combines the Otaki and Porirua Trusts into a single Trust.¹⁵⁹⁸

1908

Taupo No 2 Block Act 1908

1909

(28 January) The Native Land Court partitions the Kahotea No 1 Block (Porirua) into Kahotea 1A, 1B and 1C.¹⁵⁹⁹

1910

(17 January) Kahotea 1 is repartitioned by Judge Rawson and Assessor Hemi Erueti into Kahotea 1A to 1F.

1937

J H Grace completes a report on the housing and living conditions of Maori living at Waikawa and the Wairau. He finds that living conditions are "bad", that there are "too many old houses that should have been demolished long ago"; that "tuberculosis is prevalent and is increasing its hold", and that "malnutrition is also evident".¹⁶⁰⁰

1940

The Church of England decides it wants to sell various trust lands, including the land at Whitireia, and use the money to pay for scholarships at Hukarere Girls' School and at Te Aute. But Ngati Toa and other donor groups are strongly opposed to this project.

1942

Loten, as headmaster of Te Aute, opposes the Wairarapa and Otaki Porirua Trusts Bill.

1943

(26 August) Enactment of the **Otaki and Porirua Trusts Act 1943** ('An Act to incorporate a New Board to hold the Property now held by the Porirua College Trust Board under the Otaki and Porirua Empowering Act, 1907, and to vary the Trusts upon which that Property is held').

¹⁵⁹⁷ Order on Appeal, 4 July 1907, WN Kahotea Block Order File (General Land).

¹⁵⁹⁸ The Preamble to this Act states:

Whereas the lands described in the first part of the First Schedule hereto (hereinafter termed the Otaki Property) are vested in the New Zealand Mission Trust Board incorporated under the Religious, Charitable, and Educational Trust Boards Incorporation Act 1884, upon the Trusts stated in the second part of the said First Schedule: And whereas the lands described in the first part of the Second Schedule hereto (hereinafter termed the Porirua property) are vested in the Porirua College Trust Board (hereinafter termed the trustees) upon the trusts stated in the second part of the said Second Schedule: And whereas by an order of the Supreme Court of New Zealand, Wellington District, made on the seventh day of September, nineteen hundred, the trustees were empowered to expend the

¹⁵⁹⁹ Kahotea 1A (10 acres) is awarded to Mere Te Hiko, 1B (16 acres 0r 11p) to Te Rangi, Tiaho and Kohe Ngapaki, and the balance, being 68 acres 3r 29p being Kahotea No 1C to 18 owners: see Order and NZ Gazette Notice, 23 September 1909, WN Kahotea Block Order File (General Land)

¹⁶⁰⁰ J.H. Grace, Domestic Survey of South Island Maori Settlements 1937, MS 173-4/5, WATL.

1946

Enactment of the **Otaki and Porirua Trusts Amendment Act 1946**

1949

(20 May) J. Prendeville, Crown Solicitor provides an opinion to the Commissioner of Works dismissing Ngati Toa's claims for compensation for the Crown occupying land in Porirua harbour.¹⁶⁰¹ Relying on earlier Land Court case law and on the decision in *Waipapakura v Hempton* Prendeville rejects Ngati Toa's claims.

(24 August) T.T. Ropiha, Undersecretary of Maori Affairs, advises the Ministry of Works that Ngati Toa have no legal claim against the Crown for Crown activities in the Harbour, and that "there is no reason why you should not proceed with the taking of the area of Maori land required".¹⁶⁰²

1956

(May) As a result of efforts of the Wellington Acclimatisation Society, approximately one-third of Pauatahanui Harbour is set aside as a Wildlife Refuge (1666.98 ha).¹⁶⁰³

1960

(10 March): A large Ngati Toa delegation led by G. Katene and T. Wineera meets with the Associate Minister of Maori Affairs, Mr Tirakatene, seeking an investigation by "a competent tribunal" of Ngati Toa's rights in the Harbour.¹⁶⁰⁴

(26 May): Sir Eruera Tirakatene and his officials met again with Ngati Toa and their legal advisers at Porirua. Tirakatene, obviously briefed in advance, told those present that as a result of the Supreme Court decision in the Ninety Mile Beach case "it was clear that no claim could be made to any land which was the bed of tidal waters".¹⁶⁰⁵

(2 Sept): J K Hunn, Secretary of the Department of Maori Affairs, advises the Chairman of the Maori Affairs Committee at Parliament that Ngati Toa's claim for compensation for Porirua Harbour has no foundation in law.¹⁶⁰⁶

¹⁶⁰¹ Prendeville to Commissioner of Works, 20 May 1949, AATE W3387 22/0, Archives NZ Wellington.

¹⁶⁰² Ropiha to Permanent Head, Ministry of Works, 24 August 1949, AATE W3387 22/0, Archives NZ Wellington.

¹⁶⁰³ Pauatahanui Wildlife Management Committee, Royal Forest and Bird Protection Society of NZ Inc, *Pauatahanui Wildlife Reserve Restoration Plan*, February 2005, 18.

¹⁶⁰⁴ Anon, "Maori Deputation Seeks Investigation into Porirua Fishing Rights", *Evening Post* (Wellington), March 11, 1960.

The setting up of a competent tribunal to investigate the fishing rights, laid down in 1883, of the tidal area, or parimoana, at Porirua, was one of several requests made by a large deputation which waited on the Associate Minister of Maori Affairs (Mr Tirakatene).

Mr Tirakatene's Southern Maori electorate includes Porirua.

The deputation was led by Mr. G. Katene and the principal speaker was Mr. T. Wineera.

The deputation

¹⁶⁰⁵ Walter Nash to Minister of Works, 29 June 1960, Porirua City Library, Vertical File: Housing Corporation Records, Harbour Reclamations.

¹⁶⁰⁶ Hunn to Chairman of Maori Affairs Committee, 2 September 1960, ABJ2 869 W4644 43/1/6, Archives NZ Wellington. Hunn states:

In a recent judgment in the Ninety Mile Beach, the Supreme Court held that the statutory provisions of section 147 of the Harbours Act, 1878 as incorporated in section 150 of the

(27 Sept): Maori Affairs Committee hears petition of Tutuira Wineera and 88 others of Ngati Toa seeking compensation for damage to and pollution of Porirua Harbour (Petition No 16/1960).¹⁶⁰⁷ J A Elkington, T Wineera, J F Stevenson and M W Rei read their submissions aloud and are questioned by the Committee in detail. Elkington states that Sir Walter Nash had stated that he would ensure that compensation be paid to Ngati Toa for the harbour when Labour returns to office.

(13 October) J K Hunn advises the Minister of Maori Affairs (Walter Nash) that “there is no record of any promise having been made by the Rt. Hon. Mr Fraser or yourself touching compensation for the loss of fishing, or anything else that could be construed as a promise”.¹⁶⁰⁸

1962

(September) Ngati Toa makes a further approach to the Department of Maori Affairs regarding matters of concern, including the marae buildings at Takapuwhia, the steps being taken by the Ministry of Works to fill in and grass tidal areas on the inland side of Titahi Bay road, the preservation of shellfish and the legal effect of the Parumoana decision.¹⁶⁰⁹ The Department is not particularly receptive.

1967

Enactment of the **Water and Soil Conservation Act 1967**. This in effect abolishes the doctrine of riparian rights and vests all development rights with regard to natural water in the Crown (preserved by RMA 91 s 354).

(August) *The Dominion* reports that eating shellfish from Porirua and Wellington harbours created a risk of contracting typhoid.

1969

(4 Nov) B.D. Bell, R.K. Dell and others forward a detailed report on Porirua Harbour to the Physical Environment Committee of the National Development Conference, entitled *Conservation of the Biological Values of Porirua Harbour*.¹⁶¹⁰ This report recommends that:

Crown Grants Act, 1866, as incorporated in section 35 of the Crown Grants Act, 1908, prevented the Maori Land Court from issuing any title to land below the high water mark at ordinary tides unless authorised to do so by special statute. It is therefore clear enough that there is no legal basis for the petitioners' claim and that the Maori Land Court in 1883 had no jurisdiction to grant a title below high water mark.

The only claim that the Ngati Toa tribe can make is one based on equity and good conscience. It is difficult to see how any such claim can be recognised as there has been no invasion of a legal right and it cannot be said that the petitioners are entitled, ahead of any other section of the community, to compensation for loss of their fishing; they have no greater rights to fish the harbour than any other members of the public.

¹⁶⁰⁷ A copy of this petition is on ABJ2 869 W4644 43/1/6, Archives NZ Wellington.

¹⁶⁰⁸ Memo, J K Hunn to Minister of Maori Affairs, 13 October 1960, ABJ2 869 W4644 43/1/6, Archives NZ Wellington.

¹⁶⁰⁹ Memorandum, J K Hunn to Minister of Maori Affairs, 14 September 1962, re Deputation by Ngati Toa, ABJ2869 W4644 19/8/5 part 1, Archives NZ Wellington.

¹⁶¹⁰ B.D. Bell, R.K. Dell, C.A. Fleming, J.A. Gibb, B.G. Hamilin, D.E. Hurley, R.W. Little, J.A.R. Miles, and G.R. Williams, *Conservation of the Biological Values of Porirua Harbour*, Report to the Secretary, Physical Environment Committee, National Development Conference, 14 November 1969, copy on ABWN 6095 W5201, 16/2212, Archives NZ, Wellington.

1. Nor further encroachment upon, or destruction of, the shorelines of Porirua Harbour should occur.
2. No further restriction or diminution of the tidal flow into or out of the Harbour should take place.
3. All care should be taken not to degrade the present quality of the Harbour catchment; nor should any change on a large scale be made to the topography of the land immediately surrounding the Harbour.
4. Every effort should be made to avoid increase in any kind of pollution of the Harbour water or that of the immediately adjoining sea coast.
5. Planning for development or for recreation of should be such that the natural plant and animal communities in the area will be affected as little as possible.
6. The 1969 Report of the Physical Environment Committee of the National Development Conference should be taken as a general guide for the future treatment, in all respects, of Porirua Harbour and its catchment.

The report is critical of the proposal to re-route SH 1 along the inside beach at Mana, pointing that it “is hard to see how such a development could do other than destroy, at least in part, this section of the Harbour”.¹⁶¹¹

1972 Establishment of the Commission for the Environment.

1973 *Environmental Protection and Enhancement Procedures*. The Procedures implement a system of environmental impact reporting and assessment (with reports ‘audited’ by the Commission for the Environment, based on the United States National Environmental Policy Act (NEPA).

1973 **(20 December)**: Establishment of the Sheehan Commission into Maori Reserved Land. The members of the Commission are B Sheehan (former MLC judge), Rolland O’Regan and Georgina Te Heuheu.¹⁶¹²

1976 **(14 December) Deed between the Crown and Raukawa Marae trustees** by which the balance of the Whitireia block, 283 ac.3r.20.3p) is sold to the Crown for the purpose of a public reserve. The deed is subject to a number of covenants relating to the management of Whitireia, these being:

- * That the land shall continue to be known by its historical name of ‘Whitireia’ and shall be administered as Public Reserves;
- * That a separate Board will be set up to control and administer Whitireia and any further lands brought under the control and administration of such Board as public reserves;
- * The separate Board shall include two members of the donor Tribes to be nominated by the Trustees and appointed by the Minister of Lands one of whom shall be a member of the Ngatittoa Tribe.
- * That an appropriate area surrounding Onehunga Bay known as the ‘Anchorage’ shall be set aside and permanently preserved in such a way as will protect the historical associations of this area with the Ngatittoa tribe. The

¹⁶¹¹ Bell et.al., *Conservation of the Biological Values of Porirua Harbour*, 1969, 12.
¹⁶¹² *Supplement to NZ Gazette*, 20 December 1973.

precise area to be so set aside shall be determined by the Elders of the Ngatitōa Tribe now resident at Takapuwahia. The Crown will at its expense provide the services of a Surveyor to confer with such elders in order to enable him to properly define such area and set cut the boundaries of the same in a suitable plan;

* That the Crown will cause to have suitably marked in a permanent manner four old pa sites on Whitiŕeia as indicated by the two members of the Board appointed pursuant to paragraph 3 hereof.

1981

(19 November) Pauatahanui Wildlife Management Reserve is formally gazetted.¹⁶¹³

1987

High Court decision in *Huakina Development Trust v Waikato Valley Authority*.¹⁶¹⁴ Planning Tribunal practice in rejecting Maori spiritual concerns/issues as a relevant factor in water rights appeals is overturned.

1988

(August) Ministry for the Environment releases *Directions for Change: A Discussion Paper*, the Ministry's first major statement relating to the Resource Management Law Reform Process (RMLR).

(December) Ministry for the Environment releases *People, Environment and Decision-Making*, a much more elaborate policy document on RMLR.

1991

Enactment of the **Foreshore and Seabed Endowment Revesting Act 1991**. The Court of Appeal subsequently held in *Ngati Apa* that this legislation did not of itself extinguish Maori customary title to the foreshore and seabed.

¹⁶¹³ On the steps leading to this, see especially Pauatahanui Wildlife Management Committee, Royal Forest and Bird Protection Society of NZ Inc, *Pauatahanui Wildlife Reserve Restoration Plan*, February 2005, p 18:

In February 1979 David Collingwood and Brian Ellis recommended to the [Forest and Bird] Society's National Executive that Pauatahanui was the most suitable site in the Wellington Region for a wading bird reserve. In 1980 Forest and Bird suggested to the Dept of Lands and Survey that Pauatahanui Domain (as the wetlands were then called) be passed from the Domain Board, who then controlled the area, to the Society to manage as an ornithological and wetland centre for education and the public interest. The Pauatahanui Domain at that time consisted of Sections 1-3, 7 and 8. The salt marshes were in a sad state, with a go-cart track and cricket ground, rubbish and uncontrolled dumping of spoil. Wildlife in the wetlands had been largely driven away by the disturbance created by the go-cart track and due to fencing and drainage of the area.

Discussions ensued between the Society, Dept of Lands and Survey and Dept of Internal Affairs. The delegation from the Pauatahanui Domain Board from the Minister of Lands, the Assistant Commissioner of Crown Lands, was formally revoked on 3 December 1980 (*NZ Gazette*, 18 December 1980, No 146, page 4064). The area was then gazetted as a Reserve for Government Purposes on 19 November 1981 (*NZ Gazette*, 3 December 1981, No 145, page 3569). Further small additions to the reserve, Sections 5 and 6, were gazetted as parts of the reserve in 1983 (*NZ Gazette*, 7 April 1983, No 48, page 1030). The reserve was formally named on 24 March 1983 (*NZ Gazette*, 7 April 1983, No 48, page 1030) and made subject to the provisions of the Wildlife Act on 27 June 1983 (*NZ Gazette*, 21 July 1983, No 105, page 2317). Finally, lots 5 and 6 DP 52599, formerly vested as esplanade reserves with the Porirua City Council, were transferred to the Crown as additions to the reserve (*NZ Gazette*, 21 March 1996, No. 28, page 876).

¹⁶¹⁴ [1987] 2 NZLR 188 (Chilwell J.)

Enactment of the **Resource Management Act 1991**. This provides, inter alia, for a comprehensive system of coastal and water management, building on the earlier provisions of the Water and Soil Conservation Act 1967.

Enactment of the **Crown Minerals Act 1991**

1992 Waitangi Tribunal's *Mohaka River Report*.¹⁶¹⁵

Establishment of the Kapiti Island Marine Reserve under the Marine Reserves Act 1971. The Reserve covers two separate areas of seafloor, a 342 ha section on the western side of the island and an area of 1825 ha extending to the Waikanae Estuary Scientific Reserve on the mainland.

1995

Greater Wellington Regional Council, *Wellington Regional Policy Statement*.

1998

(May) Department of Conservation releases its Marine Reserve Conservation Management Plan for the Kapiti Island Marine Reserve.¹⁶¹⁶

1999

(September) *The Dominion* reports on serious concerns raised by the Guardians of Pauatahanui harbour about the state of harbour waters. It was claimed that the inlet was no longer safe for swimming and that shellfish from both the Porirua and Pauatahanui Arms of the Harbour were unsafe to eat.¹⁶¹⁷

2000

(1 November) *Porirua City District Plan*. (This is the current operative plan.)

(19 June) Wellington Regional Council Coastal Management Plan becomes operative.

(August) Completion of the Pauatahanui Inlet Advisory Group's plan, *Towards Integrated Management: Pauatahanui Inlet Action Plan*.

2001

(November) A survey of the Pauatahanui Arm of the harbour by the Guardians of Pauatahanui Inlet reveals that cockle numbers are in a state of serious decline in the inlet.¹⁶¹⁸

2004

(Jan) The Waitangi Tribunal hears evidence and submissions in the Foreshore and Seabed Inquiry (Wai 1071). Ngati Toa participate, and Oriwa Solomon and Miria Pomare give evidence.

¹⁶¹⁵ Wai 199, 1992.

¹⁶¹⁶ Department of Conservation, *Kapiti Island Marine Reserve Conservation Management Plan*, Wellington, 1998.

¹⁶¹⁷ Murray Williams, 'Guardians of the Inlet', *The Dominion*, 7 September 1999, p 7 (clipping held on file at Porirua Public Library).

¹⁶¹⁸ Dave Hansford, "Fear for inlet's safety as cockle numbers dwindle", *The Dominion*, 20 November 2001, p 5 (clipping held on file, Porirua Public Library).

(4 March) Waitangi Tribunal's *Foreshore and Seabed* report released.¹⁶¹⁹

(20 September) Ngati Toa lodge a statement of claim with the Waitangi Tribunal with regard to marine farming permits.

(24 November) Foreshore and Seabed Act 2004 and **Resource Management Amendment Act 2004** receive royal assent.

2005

(Feb): The Forest and Bird Society releases its *Pauatahanui Wildlife Management Reserve Restoration Plan*.¹⁶²⁰

2006

(October) The Greater Wellington Regional Council releases a draft *Coastal and Marine Biodiversity Action Plan*

¹⁶¹⁹ Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy*, Wai 1071, 2004.

¹⁶²⁰ Pauatahanui Wildlife Management Committee, Royal Forest and Bird Protection Society of NZ Inc, *Pauatahanui Wildlife Reserve Restoration Plan*, February 2005.

APPENDIX 3

Land Blocks of Relevance to Ngati Toa

Kapiti Island Blocks

Kaiwharawhara (Kapiti No. 3)
(Grant to Mr A. Brown) Kapiti
Maraetakaroro (Kapiti No. 2)
Rangatira (Kapiti No. 4)
Te Mingi (Kapiti No. 1)
Waiorua (Kapiti No. 5)

Porirua Harbour Area Blocks

Aotea
Haukopua (East and West)
Hongoeka
Kahutea
Kenepuru (or Te Kenepuru)
Koangaamu
Komangarautawhiri
Korohipua
Mahinawa
Motuhara
Onepoto
Rangituihi
Takapuwahia
Taupo
Te Arataura (Arataura)
Te Parumoana (or Porirua Parumoana)
Tutae Paraikete
Urukaika
Wairere

Paekakariki Blocks

Paekakariki
Pukerua
Tunapo
Waimapihi
Wainui
Wairaka
Whareroa

Paraparaumu and Waikanae Blocks (to the Otaki River)

Katihiku
Kukutauaki
Mangaone
Moana
Muaupoko
Ngakaroro
Ngarara
Ngarara West
Ngawhakangutu
Pahiko
Paraparaumu
Parata (Parata Township)

Reikorangi
Te Waka
Te Horo
Tuahiwi
Waho-o-te-Marangai
Wairarapa
Waopukatea
Wellington Fruit Growers Block
(Hautere)
(Ngarara Settlement)
(Tikotu Settlement)
(Waikanae)

Horowhenua Blocks (from the Otaki River to the Manawatu River)

Aratangata
Hakuwai
Haruatai
Hokio
Horowhenua
Huritini
Ihakara
Kahukura
Kaingapipi
Kaingaraki
Manawatu Kukutauaki
Matakarapa
Muhunua
Ngawhakahiamoei
Ngoungou
Ohau
Ohinkekaeo (or Ohirie Kakeo)
Opaekete
Opiki
Otane
Otawhiuai
Oturoa
Pahianui
Pahiko
Paiaka
Papangaio
Paremata
Paruauku
Pokapoka
Pukehou
Rahauhaumama
Rangiwhinui
Raumatangi
Rewarewa
Tahamata
Tahitiki
Takapu
Taumanuka
Te Awahohonua
Te Karaka
Te Moutere (or Moutere)
Te Rerengaohau (or Rerengaohau)
Totara
Turangarahui
Tuwhakatupua
Waihoanga

Waiorongomai
Wairarawa
Waitohu
Waiwiri
Wirokino
(Otaki)

Manawatu Land Blocks (Manawatu River to the Rangitikei River)

Aorangi
Awahou
Himatangi
Manchester Block
Mangoira
Moutoa
Oroua
Otamakapua
Puketotara
Rangitikei Manawatu
Te Ahua Turanga (or Upper Manawatu Block)
Waitapu
Wharangi
(Awahuri NR)
(Hutt Small Farm Block)

Rangitikei Land Blocks (North of the Rangitikei River)

Awarua
Mangaohane
Motukawa
Otairi
Paraekaretu (or Parae Karetu)
Pohonuiatara
Raketapauma
Rangatira
Rangitikei
Rangitikei Turakina
Ruanui
Ruatangata
Te Kapua
Waipu
(Westoe)
(York Farm)

APPENDIX 4 KEY DOCUMENTS AND TEXTS

Memorandum, Featherston to Fox, 18 February 1864, in *Papers relative to the Native Insurrection, 1864 AJHR E-3, 36-39*¹⁶²¹

I started from Wellington for the West Coast on the 13th ultimo, partly on provincial business, but chiefly with a view of endeavouring, in compliance with your request, to adjust the long-pending land dispute between the Rangitane and Ngatiraukawa on the one side and the Ngatiapa on the other.

The following day I visited, by a written invitation, Wi Tako and his people; their welcome was more than cordial, and a long korero ensued. Reminding me that they had faithfully redeemed their pledge to keep the peace during my absence at Auckland, they evinced great anxiety to learn what had taken place at Waikato, and at the great pakeha runanga. They listened with deep interest to the account of General Cameron's operations (Wi Tako showing that he had a thorough knowledge of the country, by explaining the nature of each position), and were highly pleased with the fraternizing of the soldiers with the natives at Rangiriri, with the compliment paid them by General Cameron, and the kind treatment the prisoners were receiving. Wi Tako remarked that he had always said that the battle of Kingism would have to be fought at Waikato; the battle had taken place, and the Waikatos were conquered; admitting repeatedly that all I had told him at my meeting with them last year had come true, and that the Maoris were engaged in a hopeless struggle; still *he gave no intimation that he intended to abandon the king movement* [emph. added], although he expressed uneasiness at the future of himself and his people. Wi Tako finds himself between two fires; he is afraid that he will be punished by the Government for the part he has taken in kingism, but he is still more thoroughly convinced that if he gave it up he would be murdered by his own people. The opinion I have long held, that had Wi Tako, not on more than one occasion, at a sacrifice of his personal influence, restrained the more violent of the ultra-kingites, the peace of this province could not have been preserved, remains unchanged. Neither surprise nor dissatisfaction was expressed when I explained the measures passed by the Assembly [Featherstone is presumably referring to the Suppression of Rebellion Act, New Zealand Settlements Act and related legislation passed at the end of 1863], and the determination of Governor to crush the rebellion at once and forever, and to trample out kingism in every part of the Colony. While freely confessing the part they had taken in hoisting the king's flags, in issuing proclamations in his name, in arming and drilling, &c., they laid great stress on their not having disturbed the peace of the province, and upon none of them having gone to the war either at Taranaki or Waikato, pleading also that they in common with many others had been disappointed with the results of the king movement. After suggesting to them that the time had arrived when it became them calmly to consider the position in which they would stand towards the Government if they did not soon return to their allegiance, I left them, with many thanks from them for my visit, and the exaction of a promise that I would see them on my return.

On passing through Otaki, on the same day, I found that most of the natives had already proceeded to Rangitikei, but I saw Heremia and promised to meet them on the way home. Manawatu was also deserted for the same reason. Arriving at Rangitikei on the evening of the 15th, I immediately proceeded to Ihakara's pa, where I found about 400 (including women and children) of the Rangitanes and Ngatirauka[wa] was assembled. Hiepa is not in any sense fortified; and there are not more than a few, probably four or five, acres in cultivation. All the principal chiefs of the two tribes were present; Ihakara being evidently the recognized leader in this land dispute. He has, in fact, by the prominent lead he has taken in it,

¹⁶²¹ In some instances the text has been broken into smaller paragraphs for ease of reading.

acquired an influence which he never previously possessed, and seems inclined to foment the quarrel rather than abdicate the position he has obtained by it.

Having uttered a few words of welcome, Ihakara called upon me to open the proceedings. After stating that I came amongst them deputed by the Government to do my utmost to arrange a quarrel which seemed likely to involve the parties engaged in it at any moment in war, I begged them distinctly to understand that the Government would not permit any fighting in this or any other case; that the time had for ever gone by when one tribe would be permitted to make war upon another; that the Queen's government was prepared to preserve the peace and protect all Her Majesty's subjects, whether Pakehas or Maoris, and that whichever of the three tribes engaged in the dispute dared to fire a shot, or strike the first blow, would be regarded as being in arms against the Queen's government, and punished accordingly. Referring to the efforts already made to adjust their differences, I suggested whether, if each party appointed a committee of their leading men, they could not come to some compromise without the Government interfering. They scouted this subject as infinitely absurd, and then said that they had all along been and were still willing to submit the matters in dispute to arbitration, that they were prepared to nominate as their arbitrators Captain Robinson and Mr Yalcombe, with a Maori to be named hereafter, and requested me to bear their proposal to the Ngatiapas. In consequence of an observation which fell from one of the speakers, I asked whether the arbitration was to be strictly in accordance with Pakeha rules, which I briefly explained. "Kahore," exclaimed Ihakara. "the arbitrators must meet in the presence of the three tribes; the tribes will meet with their arms in hand. Each man will say what he pleases." I pointed out that such a meeting must end in a general shindy. Tamihana Te Rauparaha backed me in urging them to adhere to Pakeha regulations; but Ihakara's motion was put to the meeting in regular form, and carried with enthusiasm.

The following day (Saturday the 16th) I met the Ngatiapas at Parawhenua; they did not muster more than 150. I was here joined by John Williams,¹⁶²² Mete Kingi, and other Wanganui chiefs. J. Williams has been for some months doing his utmost to induce the Ngatiapas to sign the arbitration bond, and at once told me that he had given it up in despair; that he felt satisfied the Ngatiapas would never agree to arbitration. The proceedings were opened by Governor Hunia addressing a few compliments to Matini Te Whiwhi and Tamihana Rauparaha. The Ngatiapas recognised them as chiefs, and would to some convenient extent be guided by them, but as to Ihakara he was nobody, and they utterly ignored him and his people. I then related what had taken place at my yesterday's meeting with the Ngatiraukawas and Rangitanes, and submitted their proposal, pointing out that such a fair proposal was evidence of their desire for a peaceful solution of the difficulty, and that Government was prepared to carry it out. At first there was a good deal of fencing with the question of arbitration. "They could not entertain such a proposal without consulting chiefs who were absent." "Well, I will wait until you can see those who are absent". A consultation here took place among the chiefs, and they got up one after another in rapid succession, and declared they never would consent to arbitration; that an arbitration would involve them in an endless number of disputes; that they would dispute about the apportionment of the block; that they would dispute about the particular block to be assigned to each party, about the surveys, about the boundaries of each man's land, and therefore they would have nothing to say to arbitration. "We hand over the block in dispute to you". "Your words," I replied, "are not clear. I must understand clearly what you mean by handing over to me, as the representative of the Government, your lands." Mohi, the old fighting warrior of the Ngapuhi, became very angry, declaring that I knew perfectly well what they meant. "We hand over the whole block to you [p. 38] for sale, not retaining a single acre, and with it the dispute. It is far easier to apportion the money than the land. We all consent to this, and will agree to nothing else, and you take this proposal to the Ngatiraukawhas [sic]". The Reverend Mr Taylor, who was present, and who had been for a long while most zealous in his endeavours to arrange the matter, agreed with John Williams that it was hopeless to insist upon their agreeing to arbitration.

¹⁶²²

A prominent Whanganui rangatira.

In the evening I accordingly laid their proposal before the Rangitanes and Ngatiraukawhas [sic]. They seemed to feel that the Ngatiapas, in making such an offer, had stolen a march upon them, but they would neither themselves sell nor allow the Ngatiapas to sell. Arbitration had first been proposed to them by the Government, and the Government were therefore bound to see it carried out. After explaining to them that just in the same way I could not force them to sell, so I could not compel the Ngatiapas to accept arbitration, I urged them to consider whether there was any other mode of adjusting their differences. A day or two after my arrival at Wanganui, the natives there requested me to attend a meeting on the same subject at Putiki, on Thursday 21st. I found all the principal chiefs of Wanganui, Wangaehu, and Turakina present at it. The Rev. Mr Taylor kindly interpreted for me. After they had heard my report of what had happened at Rangitikei, Hori Kingi, and the whole of them, repudiated arbitration, and insisted on the block being handed over to the Queen.

Native Land Court Judgment, Rangitikei-Manawatu Decision (1869)

(Fenton, *Important Judgments*, 101-108):

[101.]

RANGITIKEI-MANAWATU LAND CLAIMS.

Wellington, 25th September, 1869.

F. D. Fenton, Esq., *Chief Judge*; F. Maning, Esq., *Judge*; and Ihaia Whakamairu, *Assessor*.

THIS is a claim made by a native named Akapita for himself and others to certain lands situated between the Manawatu and Rangitikei rivers, and which has been referred to the Native Land Court by the Governor, under the provisions made to that effect by the "Native Land Act, 1867."

The claimants ground their title firstly on conquest, stating that the land in question was conquered from the Ngatiapa tribe, the original possessors, by the Ngatitua tribe under their chief Te Rauparaha, who subsequently gave, or granted, this land to the Ngatiraukawa tribe, his allies, of which tribe the claimants are members; and secondly, failing the proof of the right by conquest, the claimants claim under any right which it may be proved the Ngatiraukawa tribe, or any sections or hapu of that tribe, may have acquired either by occupation or in any other manner.

This claim by Akapita is opposed by the Crown, who have purchased from Ngatiapa, on the grounds that the original owners, the Ngatiapa, have never been conquered, and that the Ngatiraukawa as a tribe have not acquired any right or interest whatever in the land, and, moreover, that the land claimed by Akapita is now the property of the Crown, having been legally purchased from the right owners.

A great mass of evidence has been taken in this case, from which, after eliminating minor matters and everything which has no very important bearing on the matter for decision, the following facts appear to remain.

Before the year 1818, and to that date or thereabouts, the Ngatiapa tribe were possessors of the land in question, its owners by Maori usage and custom, the land being a part of the tribal territory or estate.

On or about the above date the chief Rauparaha, with the fighting men of his tribe and a party of Ngapuhi warriors armed with firearms, left his settlement at Kawhia and marched to the South with the intention of acquiring by conquest a new territory for himself and tribe. In the course of this expedition he passed through the country of the Ngatiapa, remaining only long enough to ravage the country and drive back to the fastnesses of the mountain, the Ngatiapa, who, with some parties of allies or kindred tribes, had attempted resistance, but were at that time obliged to retreat before an enemy armed with firearms.

[102.]

The invaders then passed on to the southward, and after a series of battles, onslaughts, stratagems, and incidents attendant on Maori warfare, but not necessary further to notice here, Te Rauparaha, with the assistance of his Ngapuhi allies, succeeded in possessing himself of a large territory to the north and south of Otaki, the former possessors of which he had defeated, killed or driven off.

After this inroad, in which Rauparaha had laid the foundation for a more permanent occupation and conquest, and being therefore, as it would appear, desirous to collect around him as many fighting men as possible — a great object of every native chief in those days of continual war and violence — he returned to Kawhia with the purpose of collecting the remainder of his tribe who had been left at Kawhia and of inviting the whole tribe of Ngatiraukawa to come and settle on the territory which he had then but partially conquered.

It is to be noticed here that on the return of Rauparaha to Kawhia he was met by the chiefs of the Ngatiapa tribe on their own land, and that upon this occasion friendly relations and peace were established between them, he returning to them some prisoners he had taken in passing through their country when advancing to the southward; presents were also exchanged, and the nephew of Te Rauparaha, Te Rangihaeata, took to wife with all due formality a chieftainess of the Ngatiapa tribe called Pikinga, notwithstanding that she had been taken prisoner by himself on the occasion of the first inroad into the Ngatiapa country.

After arriving at Kawhia the Ngapuhi returned to their own country, and need not be again mentioned, as they have not made any claim on account of their alliance with Te Rauparaha on the occasion of the first invasion.

About a year after the return of Rauparaha to Kawhia he mustered his tribe and some other followers, and taking also the women and children, he again marched for the South, with the intention of permanently occupying and securing the conquest of the lands which up to this time he had merely overrun.

The effect of the invitation by Te Rauparaha to the Ngatiraukawa tribe to come and settle on his newly acquired lands was, that soon afterwards strong parties of Raukawa came from time to time to Kapiti, partly to examine the new country which had been offered to them, but chiefly, it would appear, moved by the reports which they had heard that gunpowder and firearms were procurable at the place from European traders, who about that time, had commenced a traffic for flax and other native produce. These parties of Raukawa, on their way South, in passing through the country of the Ngatiapa, killed or took prisoners any stragglers of the Ngatiapa or others whom they met with, and who had lingered imprudently behind in the vicinity of the war track, when the prudent but brave war chief of the Ngatiapa had withdrawn the bulk of the tribe into the fastness of the country whilst these ruthless invaders passed through, being doubtless unwilling to attack the allies of Te Rauparaha, with whom he wisely made terms of peace and friendship. In [103.] passing through the country of the Ngatiapa these Raukawa parties also took a kind of *pro forma*, or nominal, possession of the land, which, however, would be entirely invalid except as against parties of passing adventures [sic] like themselves who might follow; because the Ngatiapa tribe, though weakened, remained still unconquered, and a considerable proportion of their military force still maintained themselves in independence in the country under their chief Te Hakeke. But what was no doubt fully as much in favor of the Ngatiapa tribe, and which may probably have been the cause of their not having been eventually subjugated, was the fact already noticed, that Rauparaha on his return to the North, when he invited the Ngatiraukawa to come down, had made peace with the Ngatiapa, thereby waving [sic] any rights he might have been supposed to claim over their lands; and indeed from that time for a long period afterwards, friendly and confidential relations undoubtedly were maintained between Te Rauparaha and his tribe and the tribe of Ngatiapa, — which were only broken off, more by accident than by design of either party, in consequence of a few men of the Ngatiapa having been killed in an attack made by Ngatitua and others on a fort belonging to the Rangitane tribe in which these Ngatiapa men happened to be staying at the time, and whose death was afterwards avenged by the Ngatiapa — after which peace was again established between them and Te Rauparaha and the Ngatitua tribe.

To Europeans not much acquainted with these peculiarities of Maori thought and action, the destruction by these passing parties of Ngatiraukawa, of individuals of the Ngatiapa tribe — a tribe with whom Rauparaha was then on peaceful and even friendly terms,— their destruction by parties who were not only also allies of Rauparaha, but who were then actually in expectation of receiving from him great benefits in the shape of grants of land, and above all the opportunity of trading for firearms, may appear a strange inconsistency, and not to be reconciled with the fact of the people so treated being in any other position than that of helpless subjection, and not — as has been seen — in alliance with the paramount chief, Rauparaha; but to those who know what the state of society (so to call it) was in those days, and have noted the practical consequences arising therefrom, this matter presents no difficulty. The Ngatiraukawa parties would, as a matter of course, act as they did without anticipating any reference whatever to the matter by Te Rauparaha, to whom they were bringing what he most wanted, a large accession of physical force, and who would not therefore have quarrelled with them at this time for such a small matter as the destruction of a few individuals, no matter who they were, provided they were not of his own particular tribe. It was the pride and pleasure of the Raukawa to hunt and kill all helpless stragglers whom they might fall in with on their march; it was customary under the circumstances, and being able also to do it with impunity, they were, according to the morality and policy of those times, quite within rule in doing so. As for the Ngatiapa tribe themselves, they would not at all blame the [104.] Ngatiraukawa in the sense of their having done anything wrong; being Maori themselves, they would appreciate the circumstances of the case, knowing that they themselves would have done the same if in the same position. They would also fully understand the reason why the paramount chief Rauparaha could not notice the matter, and that in fact the Ngatiraukawa had done nothing to be considered as wrong or out of order, but only something to be returned in kind and with interest at some future day, provided that the Ngatiapa should ever be able, and that it would be good policy in them to do so when the opportunity offered. I have made these remarks, which are applicable to the actions and proceedings of all the different Raukawa parties when on their way South to join Te Rauparaha at Kapiti, for the purpose of showing that no acts of the Ngatiraukawa tribe, previous to the arrival of their whole force at Kapiti, whether by killing or enslaving individuals of the Ngatiapa, or by taking a merely formal possession of any of their lands, without halting or residing, did give them (the Ngatiraukawa) any rights of any kind whatever over the lands of the Ngatiapa tribes according to any Maori usage or custom.

It should be noted here, that on the first coming of Rauparaha on his expedition of conquest, he found living amongst the Ngatiapa, a party of Rangitane, a tribe whose proper tribal lands were adjacent to, but distinct from, those of the Ngatiapa. These people, upon the second coming of Rauparaha on his return from the North, were still there, and they, in confederation with some other people of the Muaopoko [sic] tribe, did, by means of a treacherous stratagem, very nearly succeed in killing Te Rauparaha, who barely escaped by flight, leaving four of his children, and all, or very nearly all, of his companions, dead at the place where they were attacked. This affair occurred after Rauparaha had made peace formally with the Ngatiapa tribe, who, it is in evidence, had warned him against the treacherous design of the Rangitane and others; notwithstanding which the Rangitane very nearly succeeded in ridding themselves of the most dangerous of all their enemies, Te Rauparaha — famous himself for wiles and stratagems — and who, it is pertinent to the matter in hand to remark, either conquered by force or made tools of by policy, or destroyed by treachery, almost everyone he came into contact with. The Ngapuhi warriors, strong in warlike ability, doubly strong in being armed with firearms, he made use of to conquer for him a great territory, and they dismissed them, paying them for their great services with friendly flattering words, a few prisoners, and some insignificant presents. The Ngatiapa he spared and made friends with, and even allowed to purchase firearms at Kapiti, evidently with the purpose of using this tribe as a check upon his friends the Ngatiraukawa, who were much superior to his own tribe in numbers, and who in their turn were to be pitted against the numerous enemies by whom he was surrounded, and who had become so in consequence of his recent conquests. The effect however of the nearly successful attempt by the Rangitane,

as regarded themselves, was to prevent Te Rauparaha [105.] from extending to them the same favourable consideration which he had done to the Ngatiapa, and to cause him to pursue them with persistent and vindictive warfare, slaughtering a great proportion of their fighting men, breaking their military force, and driving them from place to place whenever opportunity offered, during which operations we lose sight of them on this block; and when we afterwards find a small company of people called "Rangitane," settled unopposed and apparently in a permanent manner at Puketotara, just within the country of the Ngatiapa, and not far from the boundary of the proper tribal estate of the Rangitane tribe, we find on investigation that these people are called "half-castes" or children of inter-marriages between members of the Ngatiapa, and Rangitane tribes, and who, there is no doubt, owed their undisturbed possession to their Ngatiapa blood. I am therefore of opinion that in the decision to be given as to the ownership of the whole block, these people holding land within the Ngatiapa boundaries by virtue of their Ngatiapa blood, should be held to be members of the Ngatiapa tribe and have all the rights which may accrue to them from that position, and that when the Ngatiapa tribe is spoken of for the purpose of the decision in this case it shall be understood to include these Rangitane half-castes.

For the sake of brevity and perspicuity, I have avoided as much as possible, recurring to many minute circumstances, seeing that the questions under consideration can be decided, as far as the Court can decide them, on the evidence adduced, on broader considerations, which are more easily understood. I now therefore pass at once to the time, about the year 1829, when we at last find the whole emigration of the Ngatiraukawa tribe arrived and settled about Kapiti, Waikanae, and the immediately adjacent country.

The whole Ngatiraukawa emigration having arrived, it appears that they did not immediately disperse themselves over the conquered country, but remained for about three years in the vicinity of Otaki, Waikanae, and Kapiti, where they employed themselves in manufacturing flax and producing other commodities for sale to the European traders for gunpowder and fire-arms, without which they could not count on being able to establish themselves on their allotted lands; but, having at last accomplished this object, the different sections of the tribe separated, and each section went to, and took possession of, and settled on, that particular portion or district of the conquered country which had been granted or allotted to them by the paramount chief Rauparaha.

During the above period of time, between the arrival of the Ngatiraukawa tribe and its final occupation in sections of the different districts allotted to them, it appears that the Ngatiapa had also, with the full consent of Rauparaha, and the active assistance of the chief Rangihaeata, made the most of the time in arming themselves with firearms, which, it would appear, they succeeded in doing to fully as great an extent as their means of purchasing allowed, and probably to fully as great an extent as the Ngatiraukawa had been able to do. [106.] This fact has a very significant though indirect bearing on the questions at issue, as it seems evident that had Rauparaha intended to depress or subjugate the Ngatiapa tribe, he would on no account have allowed or offered facilities to their war chief Hakeke in coming to Kapiti with parties of his young men to procure those arms, which, were it not for the friendly relations subsisting between them, would have made the Ngatiapa formidable even to Te Rauparaha himself. The policy, however, of Te Rauparaha was evidently, from the beginning, after having made the Ngatiapa feel his power, to elevate and strengthen them as a check on his almost too numerous friends the Ngatiraukawa, whom, were it not that they were bound to him by a great common danger, created by himself in placing them on lately conquered lands, he would never have trusted. He has also evidently had the intention, and succeeded in it, after having made peace with his enemies in the South who were not likely to attack him again, of setting up both tribes, Ngatiraukawa and Ngatiapa, as a barrier against his far more dangerous enemies in the North.

There, however, is no evidence at all to show that Rauparaha, in granting or allotting lands to the different sections of the Ngatiraukawa tribe, did ever give or grant to them any lands within the boundaries of the Ngatiapa possessions, between the rivers Rangitikei and Manawatu, or elsewhere; to have done which would have been clearly inconsistent with the relations then subsisting between himself and the Ngatiapa tribe, over whose lands he had

never claimed or exercised the rights of a conqueror; and, moreover, the Ngatiapa, a fierce and sturdy race, were on the land, no longer unarmed but well provided with those weapons, the want of which had, on the occasion of the first invasion, reduced their warriors to seek reluctantly the shelter of the mountain or the forest. It is, however, sufficient that we have the fact that, influenced by whatever motives, Te Rauparaha did not at any time give or grant lands of the Ngatiapa estate, between the Manawatu and Rangitikei rivers, unopposed by the Ngatiapa, on terms of perfect alliance and friendship with them, claiming rights of ownership over the lands they occupied, and exercising those rights, sometimes independently of the Ngatiapa, and sometimes conjointly with them; joining with the Ngatiapa in petty war expeditions, “eating out of the same basket,” “sleeping in the same bed,” as some of the witnesses say, and quarrelling with each other, and, on the only occasion on which the disagreement resulted in the loss of one life, making peace with each other like persons who, depending much on each other’s support, cannot afford to carry hostilities against each other to extremity, and who therefore submit to the first politic proposals of their chiefs for an accommodation. Upon investigation of the causes which brought about this [107.] state of things, with the view of ascertaining what was the real status or position of the three Raukawa hapu on the land, we find that they did not make their settlement on the lands of the Ngatiapa by virtue of any claim of conquest, or any grant from Rauparaha, or by any act or demonstration of warlike powers by themselves; but it is in evidence, which from all the surrounding circumstances seems perfectly credible, that two at least of these Raukawa hapu, namely, Ngatiparewahawaha and Ngatikahoro, were very simply invited to come by the Ngatiapa themselves, and were placed by them in a position which, by undoubted Maori usage, entailed upon the incomers very important rights, though not the rights of conquerors. The third hapu, the Ngatikauwhata, appears to have come in under slightly different circumstances. The lands allotted to them by Rauparaha were on the south side of the Manawatu river, the lands of the Ngatiapa were on the north, and, to quote the very apt expression of one of the witnesses, “they stretched the grant of Rauparaha and came over the river;” the facts appearing in reality to have been that they made a quiet intrusion on to the lands of the Ngatiapa, but offering no violence, lest by so doing they should offend Rauparaha, as, under the then existing established relations between the tribes, to do so would have been a very different affair from the killing of the stragglers they met with several years before on the occasion of their first coming into the country. The Ngatiapa, on their part, for very similar reasons, did not oppose the intrusion, but making a virtue apparently of what seemed very like a necessity, they bade the Ngatikauwhata welcome, and soon entered into the same relations of friendship and alliance with them, which they had entered into with the other two sections of Raukawa. That this was the true state of the case seems very certain, for in those times of rapine, violence, and war, when men could only preserve their lives and the trifling amount of prosperity which under such a state of things could exist, by a constant exhibition of military strength, it is well known to the Court that all chiefs of tribes, and all tribes, particularly such as were, like the Ngatiapa, not very numerous, were at all times eager, by any means, to increase their numerical strength; and that, much as they valued their lands, they valued fighting men more, and were at all times ready and willing to barter a part of their territorial possessions for an accession of strength, and to welcome and endow with land, parties of warlike adventurers like the Ngatiraukawa, who would, for the sake of those lands, enter into alliance with them, and make common cause in defending their mutual possessions. In exactly this position we find these three Raukawa hapu, in a position which gives them (by Maori custom) well known and recognised rights in the soil. Those who, living on the soil, have assisted in defending it, — who, making a settlement, either invited or unopposed by the original owners, have afterwards entered into alliance with them and performed the duties of allies, — acquire the status and rights of ownership, more or less precise or extensive, according to the circumstances of the first settlement, and [108.] to what the subsequent events may have been. But be the motives of the Ngatiapa whatever they were, for inviting or not opposing the settlement of these three Raukawa hapu, the fact remains that we find them in a position, and doing acts, giving them or proving that they had acquired, according to Maori usage and

custom, rights which the Court recognises by this judgment: that is to say, firstly, that the three Ngatiraukawa hapu — called respectively Ngatikahoro, Ngatiparewahawaha, and Ngatikauwhata, have acquired rights which constitute them owners, according to Maori usage and custom, along with the Ngatiapa tribe in the block of land, the right to which has been the subject of this investigation.

Secondly, that the quantity and situation of the land to which the individuals of the above named Ngatiraukawa sections who have not sold or transferred their rights are entitled, and the conditions of its tenure are described in the accompanying schedule.

And the Court finds also that the Ngatiraukawa tribe has not, as a tribe, acquired any right, title, interest or authority in or over the block of land which has been the subject of this investigation.

Native Land Court Judgment, Kukutauaki Case (1873)

(Fenton, *Important Judgments*, 134-5)

[134.] MANAWATU, 4th March, 1873,

JOHN ROGAN, ESQ., *Judge*, T.H. SMITH, ESQ., *Judge*, HEMI TAUTARI, *Assessor*

KUKUTAUAKI

This is a claim of Akapita Te Tewe and others, representing certain portions of the Ngatiraukawa tribe, to a block of land lying between Manawatu river on the North and the Kukutauaki stream on the South, on the West Coast of the Province of Wellington, and extending inland from the sea coast to the watershed of the Tararua range of mountains.

These boundaries include lands the titles to which have been investigated and decided by this Court, which lands are therefore excepted from the present inquiry.

The claimants apply to the Court to order certificates of title in favor of individuals and of sections of the Ngatiraukawa tribe, asserting an exclusive ownership, founded on conquest and on continuous occupation from a period anterior to the Treaty of Waitangi.

The claim is opposed by Te Kepa Rangihwinui and others, representing five tribes - Muaupoko, Rangitane, Ngatiapa, Whanganui and Ngati Kahungunu, who contend that Ngatiraukawa had acquired no rights of ownership over the said block, and that the land belongs to them as inherited from their ancestors and as still retained in their own possession.

The claimants and counter claimants, with their witnesses, have been heard by the Court on the general tribal question, and

The Court finds: That sections of the Ngatiraukawa tribe have acquired rights over the said block, which, according to Maori custom and usage, constitute them owners thereof (with certain exceptions), together with Ngatitua and Ngatiawa, whose joint interest therein is admitted by the claimants.

That such rights were not acquired by conquest, but by occupation, with the acquiescence of the original owners.

That such rights had been completely established in the year 1840, at which date sections of Ngatiraukawa were in undisputed possession of the said block of land, excepting only two portions thereof, viz.:

1. A portion of the block, the boundaries whereof are not yet defined, situate at Horowhenua, claimed by the Muaupoko tribe, of which they appear to have retained possession from the time of their ancestors, and which they continue to occupy.

[135.]

2. A portion of the block at Tuwhakatupua, on the Manawatu river (boundary not defined), claimed by a section of the Rangitane tribe, whose interest therein is admitted by the claimants; and

The Court finds: That the Ngatiapa, Whanganui, and Ngatikahungunu tribes have no separate tribal rights as owners of any portion of the said block, nor any interest therein beyond such as may arise from connection with Muaupoko resident at Horowhenua, or with that section of Rangitane whose claims at Tuwhakatupua are admitted by the claimants.

Native Land Court Judgment, Horowhenua Case (1873)

Fenton, *Important Judgments*, 136.
[136.]

Foxton, Manawatu, April 5th, 1873.
John Rogan, Esq., *Judge*; T.H. Smith, Esq., *Judge*; Hemi Tautari, *Assessor*.

HOROWHENUA

This is an application made by Ngatiraukawa claimants for a certificate of title to that portion of the Manawatu Kukutauaki Block, which was excepted from the previous order of the lease made in their favour, excluding only the portion admitted to belong to the Muaupoko tribe.

The application is opposed by Muaupoko, who claim the whole of the excepted portion as owned by their ancestors, and still owned and occupied by them.

The claimants have brought forward evidence, and have sought to prove such an occupation of the land, the subject of inquiry, as would amount to a dispossession of the Muaupoko.

We are unanimously of opinion that the claimants have failed to make out their case, and the judgment of the Court is accordingly in favor of the counter claimants.

The claimants appear to rely principally on the residence of Te Whatanui at Horowhenua, and there can be no doubt that at the time when the chief took up his abode there, the Muaupoko were glad to avail themselves of the protection of a powerful Ngatiraukawa chief against Te Rauparaha, whose enmity they had incurred.

It would appear that Te Whatanui took the Muaupoko under his protection, and that he was looked up to as their chief, but it does not appear that the surrender of their land by the Muaupoko was ever stipulated for as the price of that protection, or that it followed as a consequence of the relations which subsisted between that tribe and Te Whatanui.

We find that the Muaupoko was [sic] in possession of the land at Horowhenua when Te Whatanui went there, that they still occupy these lands, and that they have never been dispossessed of them.

We find, further, that Te Whatanui acquired by gift from Muaupoko a portion of land at Raumatangi, and we consider that this claim at Horowhenua will be fairly and substantially recognized by marking off 100 acres at that place, for which a certificate of title may be ordered in favour of his representatives.

Evidence of Wi Parata to Native Affairs Committee, 1876, Le 1/1876/7.

Native Affairs Committee

July 14th 1876

Mr Bryce chairman.

In the petition of Wi Parata and others

Wi Parata called and examined.

Q The chairman [Bryce]: Do you know of any facts to support the petition?

A Yes

Q Can you give the committee any information as to the circumstances under which the land was ceded?

A Yes

Q Will you be good enough to state them?

A When Bishop Selwyn first came down he asked the natives for certain land to be set aside for religious and educational purposes. The Maoris were pleased with that proposition because the word came from the Bishop, and they gave up the land to the Bishop in accordance with his word that it was to be used for religious and educational purposes. They did not understand that the Bishop would keep the land for himself, and it was not understood that the Bishop would take a larger piece of land than it was intended that he should have. The Maoris saw the survey but did not object because they thought it was being done in accordance with the agreement. The Maoris waited to see if the school would be put up on this land; but no school has been put up. At the Kohimarama conference one of our chiefs went up and stated our case to the Governor, who admitted it was right that no school had been put up on this land. The whole of the persons interested have signed this petition; the rest are dead. These are the only remaining members of the Ngatitōa tribe. The persons who actually gave the land were not real Ngatitōa; they were partly Ngatiraukawa and partly Ngatitōa. They gave up the land at Otaki while we lived at Porirua. The committee might have reference made to the documents which were signed when the land was given over to the Bishop and see whether the transfer is a valid act or not. If that land could be brought before the Native Land Court to have the title adjudicated upon the Court would award it to petitioners [‘act favourably to’ deleted]. It would decide that no others but the natives signing the petition would have right to it. The land is tribal property. The title cannot be discovered unless the court heard the case.

Q Where is this land situated

A At Porirua; at the south head of the harbour.

Q What is the extent of it?

A I don’t know; we understand the Bishop got five or six hundred acres

Q Have you a copy of the deed under which it was given?

A I have not got it; it is among the records

Q Can you give us any idea of the value of the land?

A It is worth about two pounds (£2) per acre. There is not much bush upon it. It is open land.

Q Was it an absolute condition of the cession that a school should be erected upon the land?

A I have not seen the grant. At least I do not remember having seen it.

Q Are there schools near the land from which the tribe receive benefits for the children?

A There is a school at Otaki to which the children of the Ngatiraukawa go. Our children do not go to that school. We have got no school at all.

Q You have stated that the Ngatiraukawa have an interest in the land as well as Ngatitōa?

A No; the Ngatiraukawa have no interest in the land; but the chiefs who gave it were partly Ngatiraukawa and partly Ngatitōa.

Q How could they give it if they had no interest in the land?

A The chiefs were Matene Te Whiwhi and Tamihana Te Rauparaha. Those who gave it were a mixture of the two tribes.

Q Mr Wakefield – Are you certain there was a deed of cession?

A Yes; I have seen the document. It was to Sir George Grey and said the land should be given to the Bishop. It was written in Maori.

Q How many children are there of the Ngatitōa?

A It is too late to ask that question now. The school was for the benefit of those who had children then. There was a good number then.

Q How many are there now. There are eighteen petitioners I see.

A Seven or eight.

Q Mr Hursthouse – When was it that the arrangement was made between the Natives and the Bishop?

A The arrangement was made about 1842 or 1843; but the document was not signed till about 1848 I think.

Q Did the Natives have a distinct understanding when they granted this land that they were to have a school erected upon it or in the immediate vicinity.

A The Maoris understood and expected that a school would be erected upon this piece of land or they would not have given it.

Q Mr Williams – was not this matter brought before a Committee of the Legislative Council last session?

A Yes; it was brought before the Legislative Council last session; not by a petition though, but by a motion of Wi Tako's.

Q But it was brought before a committee?

A Yes; there was a committee

Q Was not the deed of cession produced before that committee?

A I do not know. I was summoned to attend the committee as a witness

Q How old were you when the land was given up?

A About nine years old. I was baptised at the time this land was given up.

Q Mr Macandrew – How many of the natives who signed this deed of cession are alive now?

A Three.

Q Where is the nearest school?

A At Otaki

Q How many miles distant is that?

A About forty miles.

Q How many children are at Porirua now?

A Seven or eight

Q Has this land been granted to the Bishop/

A I cannot tell of my own knowledge.

Q Mr Taiaroa – If the land was brought before the Native Land Court would the persons who petition be able to prove a claim to it?

A If the land were brought before the Native Land Court Matene and Hoani Te Ohoro would be able to show they had an interest in it, but not Tamihana Te Rauparaha.

Q Then what do you want to do? Do you want a school put up or the land to be given back to you?

A We want the land or else to be paid for it.

The attention of witness is drawn to Journals of Legislative Council 1875

Witness: I have seen this document before. It was signed at Otaki, not at Porirua. The ideas are clothed in different language to what the natives would have used, had they written it themselves. They have not put it into their mouths.

Q The Honorable [] McLean - Have the representatives of the Church of England received notice of this petition?

A No; they have been given no notice by me.

Q Are you not aware that it is not necessary to erect a school on every piece of land that may be given in support of a school or college?

A Yes; but this was different. This land was given with the view and in expectation that a school would be erected upon it and that our children might be taught. We would not have given the school for an endowment.

Q Mr McAndrew – Have any of the children at Porirua attended the Otaki school, or a school any where else.

A No; I went myself, but I was living at Waikanae.

Q Mr Wakefield – Is the land occupied?

A There is a white man living there. It was let to him by the Bishop to get money out of him.

Q The Chairman [Bryce] – Were you educated at a school which existed under the auspices of the Bishop of the Church of England?

A Yes; I was at school at Otaki.

Q Then in point of fact you derived benefits from the endowment?

A I do not consider I received any benefit from the school at all. If I were to state the things that went on at that school you would not believe me. I was five years at the school and when I left I did not understand a word of English. I would have been able to speak English well now if I had been taught during those five years. We had to cultivate potatoes instead of learning English.

Q Have you received no education besides that which you received at that school?

A I have never been at any other school.

Q Mr Macandrew – What number of Maoris were there at that school?

A About eighty, and none of them received any better education than I have. We were taught to plough though.

Q Can you read?

A I can read Maori, but I was taught to do that before I went to school by my mother, and I could write before I went to school. I went to school to learn English. I had no idea that the primary education given by my mother was merely to be continued.

Q About one hundred children were to have received a benefit from this school to have been put upon this land. Where were they educated?

A Not one of them have been educated anywhere.

Q Do you mean to say that not one of them could read or write?

A Yes; they could read and write, but they were taught that at home.

Q Were no others of your tribe educated at Otaki.

A None of them.

Q Mr Wakefield – While at Otaki were you taught to read the Bible?

A Yes; we were taught to read the Bible in Maori. But we were not taught anything more than we already knew.

A The chairman – You wish the land to be returned because the conditions have not been carried out?

A Yes.

[W. Parata]

Evidence of Wi Parata to Royal Commission on the Porirua, Otaki etc. School Trusts, 1905 AJHR G-5, pp 20-21:

I object to this scheme. I will commence from the time when the Natives gave this land to the Church. The first person who brought the news of the Gospel to these parts was a Maori, and Waikanae was the first place where he announced the Gospel. Ngatiawa were the people living there, and Ngatitooa.

After this trouble arose, known as the fight at Kuititanga; at that time Ngatiraukawa had not embraced Christianity. Ngatiawa and Ngatitooa only had done so. After the battle of Kuititanga, the Ngatiraukawa thought they had been beaten because the Ngatitooa and Ngatiawa were Christians. Tamihana te Rauparaha and Matene te Whiwhi went to Ngapuhi to get the new religion and a clergyman, and Mr Hadfield came and took up his residence at Waikanae. He went there because the people there had embraced Christianity. After that, Ngatiraukawa embraced Christianity. Then Mr Hadfield used to travel between Waikanae and Otaki, visiting each place.

After that, religion spread to Rangitikei and to Wellington, and when the Bishop heard all these people had embraced Christianity he came down here, and as soon as he got here he commenced to apply to Ngatiraukawa for land. Tamihana te Rauparaha and Matene were the chief men in the tribe – the other chiefs took their lead from them and supported what they did and said. Accordingly a meeting was held in Otaki, and the question of giving land to the Bishop was discussed. The land was to be given for the purpose of teaching the people principles of Christianity only; they did not know anything at the time beyond that.

After that Matene and Tamihana went to Porirua to ask Ngatitōa to also hand over a piece of land for the same purpose, and they consented to do so. They meant it was not to be applied to any other purpose than the teaching of religion. In the year 1850 the land was Crown-granted, and the conditions upon which it was given were altered. The people who gave the land had never been informed that the land would be diverted in this way; the grant was made in secret; it was not made in the presence of Ngatitōa and with their full knowledge, they being the people who had given the land.

I will confine my remarks now to Porirua only. Owing to the length of time during which this land lay idle without any school on it – from 1850 to 1860 – the donors, seeing it was idle, requested the Church to give it back to them, on the occasion of a meeting with Governor Browne at Kohimarama, near Auckland, and ever since that time we have kept that in view and wished that the land to be returned to us. Fifteen years after 1860 I took proceedings at law against the Bishop for the reason that the purpose for which the land had been given had not been carried out. But I did not appear in presence before the Supreme Court, the matter was conducted in another room, and there it was decided that this land was Crown land, and apparently the original gift by the Maoris of this land was put on one side and not considered at all.

After that the Natives sent a petition to Parliament to have the land returned to them; that was not to ask for the erection of a school there, but for the land to be returned to them. Since I have been here listening to the powers conferred upon the Commission, I have come to the conclusion they are not in accordance with with the intentions for which the land was given by the Maoris. They are entirely from a European point of view, not a Maori. The object of giving the land was with the object of teaching the new religion, with a view to cause intertribal wars and the killing of men to cease. Now I hear to-day that it is suggested that the children are to be taught how to kill and destroy human beings. At the time the land was given it was so given under the powers of the Treaty of Waitangi. At that time the Maoris still had their mana, and they gave the land under their mana. But when the land was Crown-granted that mana was set on one side, and the land appeared under a different mana.

I will not presume to say anything about the Governor's instructions to you and the inquiry you are to hold into this land. It would appear that the Commission has come here to make inquiries because the trusts have not been given effect to, and it is with a view to having them given effect to the Commission is now sitting. I will leave out the first four paragraphs, and will take the fifth. In regard to this, I have to say that if these trusts cannot be carried out in their integrity, then I say, return us the land. In reference to clause 6, in the case of the Porirua grant, it is here suggested if the scheme approved by the Supreme Court cannot be given effect to what modifications can be made, and if that cannot be done the land should be given back to the Maoris. The Commission should not consider the Crown grant only, but should also consider the gift behind the Crown grant. This land was given under the mana of the Treaty of Waitangi, which was approved by the Queen. The Treaty of Waitangi gave certain powers, but this was taken away outside the powers of the Treaty of Waitangi. Speaking for myself, I cannot approve of the present scheme. The part I most disapprove of is the part where it is suggested that Maori children should be taught how to kill human beings – military drill. That is not the work of religion; that was not the purpose for which the land was given.

I attended the school at Otaki. At that time the children attending the school were mostly older than eight or nine years – they were well grown boys; they were so selected to be strong and work in the fields. I was attending the school in 1852, and I saw that the masters treated the Maori children differently from the manner in which they treated the European children. We were taught only to read and write – to read Maori books and to write Maori only. At the time Archdeacon Williams, of Te Aute, had charge of the school I was here [sic.] I saw no good in it; others may have seen good in it, but I saw no good in the way in which he looked after the children. Most of their time was occupied in tilling the soil. I do not wish to say anything bad of the clergymen of those days, but I am informing the Commission of what they did. From that time to this, this strange way of managing a mission school has been in force.

1. *Mr Quick.*] The children do not till the ground now, do they? – No, they do not do it now, we having brought the land into cultivation and improved it. I do not know how they manage the schools just now, but during my time I know how they managed them. You must not understand me to mean that I wish to have a school, the school is too late for us now. I was not intended for these schools; I am now an old man. Perhaps you will say, “You have plenty of children,” but I have nothing to do with that. These lands have now been in European hands fifty-five years, and nothing has been done. I have finished what I have to say.
2. *Mr Wardell*] From whence do you derive your knowledge of the motives of the donors in giving the land? – I was quite old at the time the lands were given.
3. But you were at school in 1850, and the land was given two years before that? – I was grown up when the land was given.
4. Two years before you went to school? – I had been educated a little at Waikanae before I came here.
5. When were you born? – In 1837. The old people did not conceal the matter. They talked about it in the presence of all the people.
6. Was Matene te Whiwhi at the meeting at Kohimarama? – Yes.
7. Did he take any part in the demand for the return of the land made at that meeting? – No.
8. Did Tamihana te Rauparaha? – No.
9. Did any of the donors? – No, it was only Hohepa Tamaihenga.
10. *Mr Quick.*] Was Tamihana alive when you brought your action against the Bishop in 1875? – No.
11. Who of the donors were alive then? – They were all dead.
12. Whom did you represent – yourself only, or any others? – I took proceedings on behalf of myself and a lady sitting over there for the people of Porirua.
13. The Ngatiraukawas were not mixed up with it? – No.
14. Did the people of Porirua ask you to take those proceedings? – No, I did it myself because of what I had heard said at Kohimarama, and also because the land had been so long lying idle without a school.
15. Nobody else moved in the matter but you? – Myself only. The reason why I took action myself was that I knew the people at Porirua did not know how to go about getting the land back; they had no idea they could do so.
16. Have you been asked to sign this “scheme”? – No, because I will not consent to it.
17. Have you been attending meetings where the scheme was talked about? – No, I have been at no meetings; they do not tell me about those.

Evidence of Heni Te Whiwhi to Royal Commission on the Porirua, Otaki etc. School Trusts, 1905 AJHR G-5, pp 8-10

Witness (to Mr. Stafford): My age is sixty-nine years; I was born about the time of the Battle of Haowhenua, which was, I think, between Te Rauparaha and his tribe against the Ngatiawa. Te Rauparaha was Ngatiraukawa and Ngatitooa. I am not very sure as to the locality of Haowhenua; it is perhaps near Waikanae. I was born at Cloudy Bay in the other island. My father was Matene Te Whiwhi; he was one of the givers of the land at Porirua and of the land at Otaki. He was Ngatihua, a sub-hapu of the Ngatiraukawa; he was also Ngatitooa. Before the battle of Kuititanga Matene te Whiwhi and Tamihana te Rauparaha decided to get a Minister of the Church of England to come to reside in the midst of Ngatiraukawa. They told the people of their intention, and said they were going to Paihia, Bay of Islands, to ask for one. The people tried to dissuade them from going, fearing that Ngapuhi might do them harm for some early acts of Ngatiraukawa against Ngapuhi. They, however, did not heed their people’s warning, as the desire to have a minister in their midst to preach and teach the gospel of Christianity to their people was great. They left for Paihia, and saw the head of the mission

there and told him of their wish. Mr Hadfield was sent here, and he set up at Waikanae and Rangiuru (Otaki). A place was built for him alongside of Rangiuru Pa. Ngatiraukawa were then living at Rangiuru Pa and Pakatutu Pa. I think Mr Hadfield arrived here [meaning Otaki] in 1846. Apart from his residence a church was built and also a school building. Mr Hadfield was here two years when Bishop Selwyn arrived. Bishop Selwyn saw Rangiuru was not a good place to live in, and, after looking over the land in the vicinity of the Otaki Township, he suggested to Ngatiraukawa to leave Rangiuru and come and make their home in this locality. The Bishop next asked Ngatiraukawa to give land in this locality to other hapus of the Ngatiraukawa who were living in other parts, so they could be near the church and the school. This Ngatiraukawa agreed to. The outside hapus of Ngatiraukawa then came to live here. The Bishop then asked Ngatiraukawa for the endowment of a school here. This Ngatiraukawa agreed to, and this land was given. I did not hear from my father that the Bishop gave cattle to Ngatiraukawa as a payment for the land. I think Ngatiraukawa left Rangiuru Pa for this place in 1845. I think it was in 1851 that a building for the accomodation of boys for a boarding-school on a portion of this reserve was built, and I think the building was completed in 1853. The land was given to the Bishop because he told Ngatiraukawa that it would be the means of educating their children to be taught all the learning that was taught to European children

In.1853, I think, the Rev. Samuel Williams opened the boarding-school. I think the Reverend S. Williams arrived here in 1845. The children who came to this school came from Hawke's Bay, Wairarapa, Manawatu, Rangitikei, and the Ngatitua and Ngatiawa settlements at Waikanae, Wainui, and Porirua. The boarding-school was made to board the children from kaingas away from this locality. The Ngatiraukawa children who lived here lived with their parents and attended the day-school. I think there were about 150 boys boarded here, and about 50 girls boarded with the Rev. S. Williams. At the boarding-school the Rev. S. Williams always conducted a short service, morning and evening. The elders in the place used to go to these services. After mornin services the Rev. S. Williams used to teach the elders, after dismissing the boys and girls, the lessons of the Church. The boys and girls were taught religious lessons in the Church of England only on Sundays, when Sunday-schools were held. During Mr Hadfield's time the Ngatiraukawa always attended services in the Rangiatea Church in very large numbers. The church, on almost all occasions, not being able to hold the people. The same was the case in the Rev. S. Williams's time.

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WP 3 23/68/117 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – Chief Judge, Native Land Court, Auckland – 23 March 1868 – Asks that enclosed notices about a sitting of the Court be distributed amongst the natives 1868

WP 3 23/68/119 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – William Norgrove, Blenheim – 24 March 1868 – Wishes to know when Land his son selected and made a payment on in the Manawatu will be ready for sale 1868

WP 3 23/68/160 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – John T Stewart, in charge of Surveys, Manawatu – 28 April 1868

WP 3 23/68/181 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – F Robinson, Foxton – 11 May 1868 – Says there will be about 140 voters

WP 3 23/68/183 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – William Fox, Rangitikei – 13 May 1868 – Brings to the Superintendent's notice the interference of Mr Alexander McDonald, sheep inspector in the Manawatu Native Claims Hearings, against the Government 1868

WP 3 23/68/193 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – William Fox, Tutaenui – 16 May 1868 – Reports that Maoris have seized cattle in the district, to satisfy their claims for rent in the district 1868

WP 3 23/68/303 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – W M Daniels, Rangitikei – 8 July 1868 – Reports on trouble over John Gotty’s sheep between Ngati Apas and Ngati Raukawas 1868

WP 3 23/68/349 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – Chief Clerk, Native Land Court, Auckland – 14 August 1868 – Encloses notice of Court sitting for publication in the Gazette 1868

WP 3 23/68/356 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – Chief Judge, Native Land Court, Auckland – 22 August 1868 – Encloses notice of Court sitting for publication in the Gazette 1868

WP 3 23/68/392 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – Walter Buller, Resident Magistrate, Wanganui – 30 September 1868 – Forwards resolution of a meeting of magistrates, asking for two companies of HM’s 18th Regiment

WP 3 23/68/406 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – District Engineer, Wanganui to Provincial Secretary – 21 October, 1868 – States that an earthquake has badly damaged Turukina Bridge 1868

WP 3 23/68/425 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – Chief Judge, Native Land Court, Auckland – 10 November 1868 – Asks for notice of Court sitting to be Gazetted 1868

WP 2 23/68/426 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – Chief Judge, Native Land Court, Auckland – 12 November 1868 – Asks for notice of Court sitting to be Gazetted 1868

WP 3 23/68/428 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government – Chief Judge, Native Land Court, Auckland – 19 November 1868 – Asks for notice at court sitting to be distributed amongst the natives 1868

WP 3 23/1868/388 Gowling Advocating the Purchase of the Pukerua Block

WP 3 25/69/201-474 475-565 Superintendent – General Inwards Letters and Letters from the Commissioner of Crown Lands and the General Government 1869

WP 3/416 Inward Correspondence, 1869

WP 3 1857/519 Horowhenua, Muaupoko Land Sales

WP 3 1857/7267 Tamihana Te Rauparaha Informing

WP 3 1859/208 Mana Island as a Prison

WP 3 1863/551 Correspondence re Ngati Raukawa and Ngati Apa

WP 3 1864/530 Notes on meeting about the Muhunoa Purchase

WP 3 1866/727 Maori Meeting re Manawatu-Rangitikei

WP 3 1869/416 Manawatu-Rangitikei, Maori Refusing Survey

WP 3 1872/952 James Grindell re Land in Dispute, Otaki

WP 4 1-6 Provincial Secretary – Inwards letters from General Government and the Commissioner of Crown Lands

WP 4 1872/315 Arrangements for Native Land Court up to Manawatu

WP 4 1873/86 Problems with Native Land Court

WP 4 1874/3 Telegrams re Maori dispute at Horowhenua

WP 4 1872/57 Maori Reserves, Manawatu-Rangitikei

WP 4 1872/77 Tracing of Land claimed by Natives

WP 4 1872/318-9 Correspondence re Native Reserve Manawatu

WP 4 1875/6-7 Sale of Land Mungaroa-Waikanae

WP 7 7 Papers relating to Land transaction of lighthouse on Mana Island 1863

WP 7 19 Papers relating to Land transactions

WP 7 1872/374 Native Lease Arrears

WP 7 1872/421 Valuation of Manawatu and Rangitikei

WP 7 1872/696 Delay in giving Maori titles to their lands

Aotea Maori Land Court

Porirua Area Blocks

Aotea

WN 25 Aotea Correspondence 1889 – 1898.
WN 25 Aotea Applications 1880 – 1944.
WN 25 Aotea Block Order File (General Land).

Haukopua

WN40 Haukopua East Correspondence 1881 – 1887.
WN 41 Haukopua West Applications 1907.
WN 41 Haukopua (Urupa; West; East) Block Order File.

Hongoeka

WN 28 Hongoeka Correspondence 1883 – 1941.
WN 28 Hongoeka Applications 1918 – 1948.
WN 28 Hongoeka Applications.
24/28 Hongoeka (I).
24/28 Hongoeka (II).
WN 28 Hongoeka (Vol. 1) Block Order File.
WN 28 Hongoeka (Vol. 2) Block Order File.
WN 28 Hongoeka (Vol. 3) Block Order File.
TC 68 Hongoeka Pt. Sec 4 Alienation File 1891 – 1900.
Hongoeka No. 5 (58) Alienation File (Wellington).

Kahotea

WN48 Kahotea Correspondence 1901 – 1918.
WN 48 Kahotea Applications 1868 – 1927.
WN 48 Kahotea Block Order File (General Land).
TC 94 Kahotea Alienation File.
1900-217 Kahotea No. 3 Alienation File.
A1909/73 to 1917/299 Kahotea.

Kenepuru

WN 42A Kenepuru No. 2 Correspondence 1876 – 1922.
WN 42 Kenepuru Applications 1871 – 1912.
WN 42A Kenepuru No.2 Applications 1888 – 1896.
WN 42 Kenepuru (Vol. 1) Block Order File (General Land).
WN 42 Kenepuru (Vol. 2) Block Order File (General Land).
TC 137 Kenepuru Alienation File.
1907/150 to 1918/204 Kenepuru.

Koangaumu

WN 44 Koangaumu Correspondence 1876 – 1922.
WN 44 Koangaumu Applications 1874 – 1926.
WN 44 Koangaumu Block Order File (General Land).
TC 143 Koangaumu Alienation File.
1911/510 to 1912/14 Koangaumu.

Komangarautawhiri

WN 45 Komangarautawhiri Correspondence 1873 – 1921.
WN 45 Komangarautawhiri Applications 1863 – 1948.
WN 45 Komangarautawhiri Block Order File (General Land).
TC 147 Komangarautawhiri Alienation File.
1900-217 Komangarautawhiri 1, 2, 3, 4 and 5.
A1907/150 to A1909/100 Komangarautawhiri.

Korohiwa

WN 49 Korohiwa (Porirua) Correspondence 1885 – 1904.
WN 49 Korohiwa (Porirua) Applications 1882 – 1941.

WN 49 Korohiwa (being Pt. Sec 109, Blk XI, Paekakariki Survey District) Block Order File.
24/49 Korohiwa (or Part Sec 109, Paekakariki Survey District, Block XI).

Mahinawa

WN 51 Mahinawa Correspondence 1916.
WN 51 Mahinawa Applications 1872 – 1944.
WN 51 Mahinawa Applications.
WN 51 Mahinawa Block Order File (General Land).
A1908/157 Mahinawa.

Motuhara

WN 57 Motuhara Correspondence 1895 – 1937.
WN 57 Motuhara Applications 1876 – 1914.
WN 57 Motuhara Block Order File (General Land).
TC 198 Motuhara Alienation File.

Onepoto

WN 162 Onepoto N.R. Correspondence 1911 – 1929.
WN 162 Onepoto Ordered Applications.
WN 162 Onepoto Block Order File (General Land).
A1909/139 Onepoto.

Parumoana

WN 68 Porirua Parumoana Applications 1875 – 1916.

Porirua

1900-215 Porirua Sec 110 Alienation File.
1900-216 Porirua Sec 110 Alienation File.
1900-217 Porirua Sec 110 Alienation File.

Takapuwahia

WN 110 and 111 Takapuwahia Correspondence 1894 – 1943.
WN 110 Takapuwahia Secs Applications 1869 – 1948.
WN 110 Takapuwahia Secs Applications 1866 – 1913.
WN 110 Takapuwahia Block Order File.
WN 110A Takapuwahia Block Order File.
WN 111 Takapuwahia (Vol. 1 and 2) Block Order File.
WN 111 Takapuwahia (Vol. 3) Block Order File.
WN 111 Takapuwahia (Vol. 4) Block Order File.
WN 111 Takapuwahia (Vol. 5) Block Order File.
WN 111 Takapuwahia (Vol. 6) Block Order File.
WN 170 Takapuwahia Block Order File.
WN 110 Takapuwahia (Vol. 1) Block Order File (General Land).
WN 110 Takapuwahia (Vol. 2) Block Order File (General Land).
WN 110 Takapuwahia (Vol. 3) Block Order File (General Land).
A1905/129 to 1918/204 Takapuwahia.

Taupo

WN 109 Taupo 1, 2, 3, 4 Correspondence 1872 – 1927.
WN 109 Taupo 1, 2, 3, 4 Applications 1877 – 1927.
WN 109 Taupo Block Order File.

Tiriraukawa

WN 68 Tiriraukawa Block Order File (General Land).

Tutaeparaikete

WN 165 Tutaeparaikete Correspondence 1895 – 1938.
WN 164 Tutaeparaikete 2 Applications 1932.
WN 164 Tutaeparaikete Applications.
WN 164 Tutaeparaikete Block Order File.
A1909/149 Tutaeparaikete.

Wairere

WN 129 Wairere Correspondence 1898 – 1920.
WN 129 Wairere Block Order File (General Land).
1900-222 Wairere No. 2 Alienation File.
A1907/153 to 1916/106 Wairere.

Pukerua / Paekakariki Blocks

Paekakariki

WN 142 Paekakariki Applications 1892 – 1930.
WN 142 Paekakariki Applications.
WN 142 Paekakariki Applications 1945 – 1949.
WN 142 Paekakariki Block Order File (General Land).
A1909/82 to 1915/299 Paekakariki.
TC 309 Paekakariki Alienation File.

Pukerua

WN 69 Pukerua Applications 1884 – 1948.
WN 69 Pukerua Applications.
WN 69 Pukerua (Vol. 1) Block Order File.
WN 69 Pukerua (Vol. 2) Block Order File (General Land).
WN 69 Pukerua (Vol. 3) Block Order File (General Land).
WN 69 Pukerua (Vol. 4) Block Order File (General Land).
TC 326 Pukerua No. 1, 2, 3, and 4 Alienation File.
1907/69 to 1911/457 Pukerua (Vol. 1).
1911/602 to 1916/174 Pukerua (Vol. 2).

Tunapo

WN 107 Tunapo Applications.

Waimapihi

WN 125 Waimapihi Correspondence 1914.
WN 125 Waimapihi Applications 1872 – 1882.
WN 125 Waimapihi Block Order File (General Land).

Wainui

WN 127 Wainui Correspondence 1910 – 1946.
WN 127 Wainui Applications 1880 – 1939.
WN 127 Wainui Applications.

Wairaka

WN 131 Wairaka Correspondence 1873 – 1898.
WN 131 Wairaka Applications 1873 – 1908.
TC 402 Wairaka Alienation File.
A1910/109 Wairaka.

Whareroa

WN 124A Whareroa Correspondence 1876 – 1938.
WN 124 Whareroa Applications 1886 – 1949.
WN 124 Whareroa Applications.
WN 124 Whareroa Block Order File.
WN 124 Whareroa Block Order File (General Land).

Kapiti Island Blocks

OTI 120 Kapiti Correspondence 1902 – 1919.
25/120-6 Kapiti and Islands.

Kapiti No. 1 / Te Mingi

TC 122 Kapiti No. 1 (Te Mingi).

Kapiti No. 2 / Maraetakaroro

OTI 121 Maraetakaroro Kapiti No. 1 and 2 Applications 1872 – 1944.

OTI 121 Maraetakaroro Kapiti Block Order File.

1915/142 to 1919/11 Maraetakaroro – Kapiti.

Kapiti No. 3 / Kaiwharawhara

OTI 122 Kapiti No. 3 Correspondence.

OTI 123 Kaiwharawhara Kapiti Block Order File (General Land).

Kapiti No. 4 / Rangatira

OTI 124 Kapiti No. 4 Correspondence.

OTI 125 Rangatira Kapiti Correspondence 1922 – 1925.

OTI 125 Kapiti No. 4 (Rangatira) Applications 1878 – 1940.

OTI 125 Rangatira Kapiti Block Order File.

OTI 125 Rangatira Kapiti 4 Block Order File (General Land).

TC 334 Rangatira Kapiti Alienation File.

Kapiti No. 5 / Waiorua

OTI 126A Waiorua – Kapiti No. 5 Correspondence 1914 – 1918.

OTI 126 Waiorua Kapiti No. 5 Applications 1880 – 1948.

OTI 126 Waiorua Kapiti Applications.

OTI 126 Waiorua Kapiti Block Order File.

OTI 126 Waiorua Kapiti Block Order File (General Land).

TC 405 Waiorua – Kapiti No. 5 Alienation File.

1915/144 to 1918/164 Waiorua – Kapiti.

Ngati Toa Trust

WN 160A Ngati Toa Trust Correspondence 1896 – 1909.

WN 160 Ngati Toa Trust Block Order File.

Alienation Files

TC 156 Kukutauaki Alienation File.

TC 159A Levin Alienation File.

1900-321 Ngakaroro No. 3D, Sec 1, Sub 7 Alienation File.

TC 231 Ngarara West A Alienation File.

TC 232 Ngarara West A Alienation File.

1900-220 Ngarara West A Sec 77 Alienation File.

TC 299 Paraparumu Secs Alienation File.

TC 295 Paremata Sec 15A No. 5 Alienation File.

Pukehou 4H Sec 8B (88) Alienation File Otaki.

TC 316 Pukehou No. 5 Alienation File.

Pukehou 5M 90-14 Alienation File.

TC 329 Rahui No. 1 and 2 Alienation File.

TC 155 Te Kuha Alienation File.

TC 331 Te Rahui Moutere Alienation File.

TC 392 Waerenga Alienation File.

Waihoanga 3A Sec 2 92-536 Alienation File.

TC 404 Waitarere Alienation File.

TC 408 Waitohu No. 11c Alienation File.

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- 1860, E-1A. Further Papers relative to Native Affairs. Petition from Natives of Otaki for Governors recall.
- 1861, C-1. Commissioners' Reports relative to Land Purchases.
- 1861, E-1F. Further Papers relative to Native Insurrection.
- 1862, E-3. Native Addresses of Welcome to Sir George Grey, Auckland, 1861.
- 1864, E-3. Papers relative to the Native Insurrection.
- 1865, D-15. Papers relative to Certain Disallowed Accounts of the Resident Magistrate, Manawatu.
- 1865, E-2. Papers relative to the Rangitikei Land Dispute.
- 1865, E-2A. Papers relative to Bringing Lands in the Manawatu District under the Operation of 'The Native Lands Act, 1862'.
- 1865, E-2B. Correspondence relating to the Manawatu Block.
- 1865, G-4. Petition of Ihakara and Other Natives Resident at Rangitikei and Manawatu.
- 1865, G-9. Petition of Matene Te Whiwhi and Otaki Natives.
- 1865, G-10. Petition of Parakaia Panepa and Other Natives.
- 1866, A-4. Further Papers relative to the Manawatu Block.
- 1866, A-15. Correspondence relative to the Manawatu Block.
- 1867, A-19. Return of Correspondence relative to the Manawatu Block.
- 1867, G-1. Petition of Te Whiwhi and Other Natives at Otaki.
- 1867, G-13. Petitions presented to the House of Representatives. Petition of Natives of Manawatu relative to Rangitikei Lands.
- 1868, A-1. Further Despatches from the Governor of New Zealand to the Secretary of State for the Colonies.
- 1868, A-19. Reply to Application of Non-Selling Ngatiraukawa Claimants for the Hearing of their Case in Wellington.
- 1870, A-1B. Further Despatches from the Secretary of State for the Colonies and the Governor of New Zealand. Rangitikei-Manawatu, Final Decision.
- 1870, A-11. Return Giving the Names, etc., of the Tribes of the North Island.
- 1870, A-16. Reports from Officers in Native Districts.
- 1870, A-25. Memorandum on the Rangitikei-Manawatu Land Claims.
- 1870, G-4. Petition of Ngatiraukawa Tribe.
- 1871, F-4. Report on the Native Reserves in the Province of Wellington.
- 1871, F-6B. Further Reports from Officers in Native Districts.
- 1871, F-8. Papers relative to Horowhenua.
- 1871, I-1. Petition of Tamihana Te Rauparaha and Others.
- 1872, F-1B. Report on the Native Reserves in the Province of Wellington.
- 1872, F-3. Reports from Officers in Native Districts.
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- 1872, F-8. Further Correspondence relating to the Manawatu-Rangitikei Purchase.
- 1872, G-40. Claims of the Province of Wellington against the Colony. Manawatu Purchase.
- 1872, G-40A. Claims of the Province of Wellington against the Colony. Settlement of Immigrants at Palmerston.
- 1872, G-40B. Claims of the Province of Wellington against the General Government.
- 1874, H-18. Report on the Claim of the Province of Wellington in respect of the Manawatu Reserves.
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- 1885, I-2A. Himatangi. Report of Native Affairs Committee.
- 1894, I-3. Report of the Native Affairs Committee, Petition of Wiremu Neera Te Kanae.
- 1894, J-1. Petition of Major Kemp Te Rangihiwini relative to the Horowhenua Block.
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1885, Railway Compensation Notice, Wellington
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